

Initiative for Progress (INPO),
Kosovo Democratic Institute (KDI),
Institute for Development Research (RIINVEST),
Foreign Policy Club (KPJ),
FOL Movement,
Kosovo Center for Security Studies (QKSS), and
Youth Initiative for Human Rights (YIHR)

PROGRESS REPORT

Made in Kosova

2011

October 2011
Prishtina

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ABBREVIATIONS

KIA	Kosova Intelligence Agency
ACA	Anti-Corruption Agency
PPA	Public Procurement Agency
EU	European Union
GDP	Gross Domestic Product
CBK	Central Bank of Kosova
CEFTA	Central European Free Trade Agreement
KC	Kosova Customs
ENEMO	European Network of Election Monitoring Organizations
EULEX	European Union Rule of Law Mission
IMF	International Monetary Fund
KSF	Kosova Security Force
CPI	Consume Prices' Index
ICO	International Civilian Office
FDI	Foreign Direct Investment
IPOL	Institute of Balkan Policy IPOL
PISG	Provisional Institutions of Self- Government
KFOR	Kosova Forces
IOB	Independent Oversight Board
CEC	Central Election Commission
PPRC	Public Procurement Regulative Commission
KSC	Kosova Security Council
ACEC	Appeals and Complaints Election Commission
MEF	Ministry of Economy and Finance
MMA	Monitoring, Mentoring and Advising
MFA	Ministry of Foreign Affairs
MTPT	Ministry of Transport and Post-Telecommunication
NDI	National Democratic Institute
NGO	Non-Governmental Organization
UNO	United Nations Organization
OSCE	Organization for Security and Cooperation in Europe
PRA	Procurement Review Authority
PACE	Parliamentary Assembly of the Council of Europe
KP	Kosova Police
RCC	Result Counting Center
RTK	Radio and Television of Kosova
KIS	Kosova Information Service
KPSF	Kosova Pension Savings Fund
VAT	Value Added Tax
KLA	Kosova Liberation Army
UNMIK	United Nations Mission in Kosova

INTRODUCTION

Every year, the European Commission publishes the progress report for EU candidate states and potential candidate states. The report summarises the achievements and respective challenges for each state, and its main findings are used as a highly important mechanism to measure and evaluate developments within the countries.

Last year, prior to the publication of the European Commission Progress Report on Kosovo, a few civil society organisations drafted the first Kosovo version of the progress report that reflected the local assessment and take on progress in Kosovo. The goal of this product – a unique product among countries that are recipients of the European Commission Progress Report – was to offer an alternative view to progress (including stagnation and regress) in Kosovo, thus reflecting the point of view and evaluation of Kosovo civil society organisations on essential areas of state governance.

A number of civil society organizations have drafted a similar report this year as well. This report evaluates the time period

from October 2010 to October 2011 and covers the following areas:

- The relations of Kosovo – region – EU
- Political and institutional progress (consolidation of institutions, elections, rule of law, local governance, the fight against corruption, human rights and minority protection), and
- Economic progress (economic policies, foreign trade, financial sector).

Considering that the involved organisations specialise in certain fields, this report reflects their monitoring, research, analytical and reporting work conducted throughout the past year. Furthermore, assessments are based on many primary and secondary sources and on consultations conducted with experts of relevant fields.

The organizations that drafted the Progress Report **Made in Kosova** 2011 are: Initiative for Progress (INPO), Kosovo Democratic Institute (KDI), Institute for Development Research (RIINVEST), Foreign Policy Club (FPC), FOL Movement, Kosovo Center for Security Studies (QKSS), and Youth Initiative for Human Rights (YIHR).

1. Kosovo – Region – EU Relations

1.1 Kosovo in relation to regional countries and European integration

Prior to the declaration of independence in February 2008, Kosovo participated in regional initiatives through UNMIK, which administered and represented Kosovo through the mandate of the UN Security Council decision. As such, although Kosovo was not recognised as a state, it was part of regional and international initiatives. Through UNMIK representation, Kosovo was a member of the regional initiative for free trade known as CEFTA, and it commenced EU integration processes through the Stabilization and Association Process Tracking Mechanism.

Following the declaration of independence, Kosovo's participation in CEFTA became difficult, as Serbia and Bosnia and Herzegovina banned free movement of Kosovo's goods (due to the new Kosovo stamp) as foreseen in the CEFTA agreement. The fact that five EU member states refused to recognise Kosovo presented another obstacle to Kosovo's participation in regional initiatives and EU integration.

Kosovo predominantly has constructive political relations and a free goods exchange with its other neighboring countries. These relations are maintained mostly due to the policy of regional stability led by Kosovo, which is often detrimental for Kosovo. Kosovo has yet to complete the border demarcation process with Montenegro, a process that apparently will not be easy, and the two countries have not yet established diplomatic relations. Montenegro has requested for the Montenegrin minority to be recognised as a constitutional category before both countries exchange ambassadors and demarcation is completed. Residents of the Rugova area, living on the border with Montenegro, have complained that Montenegro has trespassed onto neutral land and has obstructed residents' usual

activities by coming close to the territory of Kosovo.

During the past year, Kosovo has exported Montenegrin goods to the amount of €3 920 000.00 or 1.3% of total Kosovar exports; meanwhile, Kosovo has imported €11 454 000.00 worth of goods, or 0.5% of total imports.¹

Kosovo has proper relations with Macedonia. The demarcation of the border has been completed and good diplomatic relations have been established. However, the demarcation has cost Kosovo several thousand hectares of land according to an agreement with Macedonia, which is also recognised by the Ahtisaari package.

Kosovo imports a large amount of goods from Macedonia. During the past year, Kosovo has exported goods to Macedonia to the amount of €26 3080 000.00 accounting for 8.9% of total Kosovar exports, while imports were to the amount of €319 313 000.00, accounting for 14.8% of total imports.²

All neighboring countries considered, Kosovo's best relations are with Albania. Viewing Albania as the "mother state," Kosovo officials visit Albania often and vice-a-versa. Albania has been and continues to be very active in securing recognitions for Kosovo and lobbying for Kosovo's inclusion in regional initiatives.

Trade relations have progressed just as easily as the "brotherly" political relations – except for a disagreement on the export of Kosovar potatoes to Albania last year. Nevertheless, Kosovo exports mostly to Albania. During 2010, Kosovo has exported Albanian goods to the amount of €30 841 000.00, accounting for 10.4% of total Kosovar exports, while it has imported €69 714 000.00, accounting for 3.2% of total Kosovar imports.³

1 Statistical Office of Kosovo. Statistic of Foreign trade. 2010, Series 3: Economics Statistics. http://esk.rks-gov.net/publikimet/cat_view/10-statistikat-ekonomike/14-statistikat-e-tregtise-se-jashtme

2 Ibid 1.

3 Ibid 1.

North Kosovo

The main difficulty in finalising Kosovo's statehood remains extending sovereignty over its entire territory. Kosovo and Serbia meet in the North of Kosovo, thus representing an informal, yet de facto border. The intervention by the Government of Kosovo on July 25th in the north of the country marked the first attempt in the last 12 years to establish the border with Serbia and extend sovereignty over its entire territory.

Serbia is the only country in the region with which Kosovo has no political relations – due to Serbia's territorial claims over Kosovo. Even economic relations continue to be asymmetrical – Serbia is the biggest exporter in Kosovo and until recently, Kosovo could not export to this country. The intervention on July 25th and the so-called "technical" negotiations in Brussels resulted in an agreement over the customs stamps, and the trade exchange in the framework of CEFTA has re-commenced, although with problems. During 2010, Kosovo imported goods from Serbia to the value of €260 471 000.00, accounting for 12.1% of the total of Kosovo's imports, while it has exported almost symbolically in relation to imports, to the amount of €3 941 000, accounting for 1.3% of total exports.⁴

Serbia continues to have claims over Kosovo and has stated its intention to take the north of Kosovo. The international community has excluded the option of partition, a view that was also clearly communicated by German Chancellor Angela Merkel in her visit to Belgrade in August of this year. Meanwhile, the talks in Brussels have not yet generated any long-term solution. It appears that Serbia's main priority through the negotiations is to receive a positive evaluation by the European Commission and gain the status of a candidate country.

The Government of Kosovo has failed, through its July 25 action, to place under

control the two border points, as well as to extend its authority in the north of the country. As a result, the inclusion of the north in the talks between Kosovo and Serbia can be expected, which could result in autonomy for the north.

Nevertheless, it does not seem that a solution between the two countries is going to be forthcoming anytime soon. Problems will pursue as long as the west does not take on a more active and leading role, in order to oblige Serbia to accept unconditionally the reality in Kosovo. Such action would also pave the way for integration of both countries into the EU and NATO.

Relations with the EU

Kosovo is part of the Stabilization-Association Process (SAP); however it still remains the only country in the region that has no contractual relations with the EU. This prevents Kosovo from undertaking a series of different reforms, and from being part of many integration processes along with the rest of the region, as no Stabilization-Association Agreements (SAA) can be signed.

Within the framework of the SAP Dialogue for Kosovo, eight sectional and one plenary meetings are foreseen (most sector areas are tackled in this report), as well as dialogue with civil society and the Joint Monitoring Committee. This year the meetings were held within the framework of the Stabilization – Association Process (SAPD), followed by a plenary meeting on July 1st between the European Commission and Kosovo institutions. While the final evaluations shall be published as part of the European Commission Progress Report in October 2011, at the meeting, representatives of both sides emphasized that the areas in most need of reform are the rule of law and the fight against organized crime and corruption, public administration, election and constitutional matters and macro-economic policies (further elaborated in this report). These areas, and in particular rule of law, the fight

⁴ Ibid 1.

against corruption, good governance and the reform of public administration also have a great impact on the commencement of the dialogue for visa liberalization for Kosovo.

However, two years after the EC Kosovo Study (2009), which opened two directions for Kosovo – the initiation of visa dialogue with the perspective of eventual liberalization once the required reforms were met, and the establishment of a trade agreement between the European Union and Kosovo – Kosovo continues to be left outside these two processes. The plan by the Government of Kosovo to precede the visa process by drafting and implementing its unilateral roadmap, similar to the official one by the EC for the countries of the region, did not accelerate the process. In fact, two years after visas were uplifted for countries of the Western Balkans, Kosovo has not even begun the visa dialogue process. The relevant institutions undertook measures to meet the preconditions set by the EC – for example the adoption of the legislation for repatriation. However, the technical missions of the EC have constantly assessed that more progress is needed in creating conditions in the municipalities for repatriation and re-integration.

In September of this year, the technical mission of the EC again visited the relevant institutions and the results are expected to be issued in October. However, prompt and efficient implementation by Kosovo institutions on key issues of the guide, including safety of personal documents, legal migrations, public order and security, external relations and fundamental rights, could have been better used as a tool to promote and develop reforms. The assessments and conclusions of the last visit of the technical mission are expected to determine whether or not Kosovo will receive the official EC roadmap on visa liberalization.

Regarding the national elections of December 12th 2010, monitoring teams of the European Parliament and of the European Network of Election Monitoring Organizations were present in Kosovo. The

monitoring teams concluded that elections were characterized by irregularities and fraud, but that in general, Election Day had been well-organised and good attendance was encouraging for the continuation of the democratic development of Kosovo, with special emphasis on the increased participation of the Serbian community in the elections. However, criticism within Kosovo and particularly from civil society, focused on the fact that there were higher expectations from the monitoring teams for condemnation of irregularities, especially bearing in mind that the evaluation of such teams would carry more important weight.

In the past year, the most visible role of the EU concerned the technical talks between Prishtina and Belgrade, held under the auspices of the EU. The talks began on March 8th, 2011 with the purpose of focusing on regional cooperation, freedom of movement, and the rule of law. To date, six rounds of talks have been held, and decisions were made on civil registry books and stamps. The seventh round was foreseen for September 28th, but the meeting was boycotted by the Serbian delegation since the EU and USA rejected Serbia's proposal that the north be a part of the discussions.

Most issues for discussion have a greater implication and influence for citizens of Kosovo – for example the fact that Serbia is blocking trade with Kosovo, that the use of air space over Serbia is prohibited for flights, that no passengers with Kosovo passports or vehicles with a Kosovar registration are allowed, and that Kosovo cannot have a country code or become a member of many international economic bodies because of Belgrade's objection etc. Although the resolution of such issues may improve the day to day life of Kosovo citizens, in a political context Kosovo and Serbia come to the talks from different positions, especially regarding the fact that the talks are expected to determine the way forward for Serbia and Kosovo towards EU membership. While on one hand Serbia is already going through

the Stabilization Association Agreement and its way to achieving the status of a member state has opened, Kosovo on the other hand does not even have a capacity to enter into contractual agreements with the EU. Therefore, Kosovo is lagging behind in the channels of official processes for EU integration, especially compared to the rest of the region. Therefore, the talks may end with solutions being brought for issues that are so far, mainly blocked or obstructed by Serbia, while Kosovo will not necessarily earn a lot as far as political advancement is concerned.

The EU is present in Kosovo through the European Security and Defense Policy (ESDP) mission on the rule of law, the Special Representative and the contribution by the International Civilian Office (ICO). In 2011, €68.7 million have been foreseen as financial aid for Kosovo in the framework of the Instrument for Pre-Accession Assistance (IPA).

The EU is also present in Kosovo through the Rule of Law Mission. While the efficiency of the work of this mission is tackled more thoroughly in the rule of law section, public perception remains that EULEX and the Government of Kosovo disagree on “hot” issues, such as on high levels of corruption. This decreases public trust in the ability of EULEX to fight corruption and also risks strengthening the perception that the “strongest” go by unpunished in Kosovo.

Trade Agreement with the EU

At the beginning of 2011, Kosovo’s Preferential Trade Measures with EU countries were ended after 10 years. Other Western Balkans countries have such preference through their contractual agreements with the EU, as part of the SAA. It is unclear whether the decision came as a result of negligence on the part of Kosovo institutions or because of disagreements amongst EU member countries on their approach towards Kosovo. However, it has marked another drawback for Kosovo in the European integration processes.

1.2 Foreign Policy

Lobbying and Multiple Official Positions

The number of political positions in the successive governments of Kosovo has progressively increased. Usually, the reason has been to accommodate individuals in government positions rather than an actual need for such positions. This trend has also continued with the PDK – AKR coalition government.

Following the Constitutional Court’s decision that President Behxhet Pacolli’s election was unconstitutional, Prime Minister Thaçi re-appointed him as the first Deputy Prime Minister, to handle foreign affairs, or more specifically to lobby and ensure new recognitions. Pacolli was appointed to this position despite the Government of Kosovo already having a Minister of Foreign Affairs, Enver Hoxhaj, two Deputy Ministers of Foreign Affairs, and Deputy Prime Minister Edita Tahiri in charge of Prishtina-Belgrade talks. Initially, this did not seem to be a duplication of positions since Pacolli’s lobbying efforts focused on African and Central American countries. But strife and rivalry between Pacolli and the Minister of Foreign Affairs has begun with their competition to appropriate merits for recognitions. If one day, Pacolli claimed that he had ensured a new recognition, Hoxhaj would appear the following day claiming he had ensured another recognition.

The relationship turned into a media war as to who had more merits on new recognitions. Their rivalry was further exacerbated by the fact that both government officials came from different parties of the coalition, and quite likely, felt endangered by each other. The latter also created the impression that recognitions were being presented without credentials only so to claim merits faster. While both officials would present new recognitions, they would fail to present any supporting recognition documents from the respective countries. This raised some doubt regarding

the recognitions, but also conveyed a competitive relationship between government officials to appropriate merits for recognitions, instead of actually bringing more recognitions, the job for which they were given their mandates.

New recognitions

Confusion regarding new recognitions came as a result of Serbian press coverage that the Sultanate of Oman and Guinea Bissau had not recognised Kosovo. While Guinea Bissau's recognition was rightfully confirmed, the Sultanate of Oman had not sent a verbal recognition in addition to a letter referring to Kosovo as "the Republic of Kosovo. Several days later, Oman confirmed the recognition, thus raising the number of total recognitions to 81, including the recent ones from Saint Lucia and some other states.

Although Deputy Prime Minister Pacolli has stated that Gabon has also recognised Kosovo, the Ministry of Foreign Affairs (MFA) has not yet listed this country as the 82nd on its webpage. Pacolli stated that in addition to Gabon, Kosovo has been recognised by Nigeria and Ivory Coast. Pacolli has qualified the failure of the MFA to change the number of recognitions from 81 to 84 as an omission and negligence of the MFA.⁵ However, the MFA has not listed these recognitions because the MFA has not yet received a verbal note from these states, the MFA admitting however that these states have recognised Kosovo.

Five EU member states

A problematic issue for Kosovo is the failure of five EU member countries to recognise Kosovo. To date, this has obstructed the establishment of contractual relations with the EU that would open the way for signing agreements that would expedite Kosovo's integration process into the EU. In its relations with the EU, Kosovo needs to improvise on some areas

e.g. visa liberalisation and trade relations with EU countries due to the failure of these five countries to recognise Kosovo. Kosovo needs to establish relations with these countries as soon as possible; if not managing recognition, there should at least exist regular communication so that these countries do not obstruct Kosovo on its way towards the EU and its access to regional initiatives.

The broken agreement

The image of Kosovo in the international arena was further shattered by the reversing of the agreement between Kosovo and the IMF as a result of the public sector salary increase in contradiction with the objectives of the IMF Standby Agreement program.⁶ The reversing of this agreement not only resulted in Kosovo losing grants amounting to €150 million and soft concessional loans of €100 million (including budget support from the European Commission and the World Bank), but also resulted in Kosovo moving backwards in its relations with the IMF, one of the only international organisations that Kosovo has managed to become member of.

⁵ Indeks Online, "Jahjaga e Thaçi regarding recognitions: They believe Pacolli, not," September 25, 2011 <http://www.indeksonline.net/?page=1,2,8517>

⁶ "Kosovo, IMF end agreement." SE Times. http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/roundup/2011/06/03/roundup-bs-05

2. POLITICAL AND INSTITUTIONAL PROGRESS

2.1 Assembly of the Republic of Kosovo

The mandate of the third legislature of the Assembly of the Republic of Kosovo ended prematurely by one year, on November 2nd, 2010. This was a result of the successful vote of a motion of no-confidence for the Government, a vote initiated by the AKR parliamentary group. The motion was supported by 40 members of the Assembly of Kosovo, and by further decree of the Acting President of the Republic Jakup Krasniqi to dissolve the Assembly of Kosovo.

The fourth legislature of the Assembly of the Republic of Kosovo came as a result of early parliamentary elections on December 12th, 2010 – elections that both local and international factors deemed quite disputable due to huge irregularities.

From the start of its mandate, this legislature has faced a complicated process of electing the President of the Republic of Kosovo. Not later than 35 days following the election of Mr. Behgjet Pacolli (AKR) as President of the Republic of Kosovo, the Constitutional Court overthrew his appointment on the basis that the Assembly's election procedure had been unconstitutional. Deputies from LDK and AAK had sought the Court's opinion.⁷

On April 7th 2011, the Assembly elected the current President of Kosovo. Former Deputy Director General of Kosovo Police, Atifete Jahjaga, received a majority of votes in the first round, by the deputies present in the Assembly. President Jahjaga was elected following a preliminary agreement reached between three political parties: PDK, LDK and AKR.

Another issue of importance that has marked this legislature of the Assembly of Kosovo is the Kosovo-Serbia dialogue. The Assembly has been the last entity to see the agreements (frameworks) reached in these

talks, and it has had very little information regarding the flow of the process. In general, the Government has ignored the role of the Assembly.

Other issues that have characterized the work of the Assembly of Kosovo in this period are: a lack of readiness of the Government cabinet to be present in the plenary sessions dealing with issues of importance, such as the Report on Expenditures for the Budget of Kosovo for 2010, Annual Report of the Anti-Corruption Agency (ACA) for 2010; lack of readiness of deputies to remain in the plenary sessions, deputies voting on behalf of their colleagues, the beginning of dealings with issues but a failure to complete them (the case of the debate of KIS) etc.

Parliamentary Oversight of the Government

The current political structure of the Assembly of Kosovo has positively changed the Assembly's role of overseeing the Government. The difference between the number of deputies who are part of the governing coalition and opposition political subjects has resulted into a much consolidated position and opposition. This has considerably influenced the dynamics of the work of the Assembly of Kosovo and therefore, the Assembly's overseeing role of the Government of Kosovo has increased.

Interpellations

The use of interpellations has increased compared to previous legislatures. Within five months, two parliamentary interpellations were organized. Both came as a result of the request of Movement Vetëvendosja and on both occasions the Prime Minister of Kosovo Mr. Hashim Thaçi was invited. The first interpellation was organised during the session of May 5th 2011, in relation to Kosovo-Serbia talks; while the second interpellation was organised on June 30th 2011, in relation to the Vërmicë – Merdare motorway.

⁷ <http://www.kdi-kosova.org>. Submission I-VI (2011).

Parliamentary Questions

Between February and June 2011, deputies asked a total of 36 parliamentary questions to the government cabinet. Overall, the largest number of questions by deputies came from deputies of opposition parties; while only three deputies from political subjects currently in power have filed a total of eight parliamentary questions. Compared to previous years, the trend of parliamentary questions has decreased significantly.

Implementation of the Legislative Plan of the Assembly for 2011

In April 2011, the Assembly of Kosovo approved the work plan based on the Legislative Strategy of the Government of Kosovo. This plan, in two readings, foresaw the approval of a total of 148 draft laws and 15 other acts during 2011.

The approval of many draft laws through a quick procedure, inconsistent with the Assembly's Work Regulation, is continuously producing weak legislation of weak quality that is almost impossible to apply. The fact that in the Government Legislative Strategy for 2011, around 60% of the laws are up for amendment, points to the institutions' weak approach in the law drafting process, and a weak quality for approved laws from the Assembly of Kosovo.

The Government of Kosovo failed to advance, in time, all the draft laws as foreseen in its Legislative Strategy, and the Assembly is facing this issue year after year. Therefore, the Assembly should strengthen its role at every stage of the legislation drafting process, and should not be transformed into a body that merely votes on legislative acts.

Transparency of the Assembly

The transparency of the Assembly of Kosovo is insufficient. Instead of undertaking actions that would advance transparency, the Assembly is issuing regulations that further prevent its transparency. The Regulation on Order and

Media and Public Access to the Work of the Assembly of Kosovo, adopted by the Presidency of the Assembly on April 19th 2011, is a concerning development. This Regulation prohibits the taking of pictures or filming in the hall of the Assembly of Kosovo - "No photographing or filming is allowed in the hall of the Assembly"⁸ it reads expressively on the issue. Such an approach indicates the regressive inclination of the Assembly regarding the transparency of this institution.

Meetings of the Presidency of the Assembly are still closed to civil society organisations and the public, while they are open only to international organisations that act in Kosovo, such as the OSCE, NDI and ICO.⁹ The broadcasting of the plenary sessions by RTK (public television) until only 17:00, and the difficulties of access to public documents, are other flaws impairing the transparency of this institution.

Inclusion of citizens in public consultation – Public Hearings

Public hearings, as a mechanism of the Assembly, enable deputies to obtain information and expert opinions from groups of civil society, sector-related organisations, specific interest groups or citizens themselves in relation to the draft laws being drafted. In the reporting period only three public hearings were held, all in June. The request of CSOs (Civil Society Organisations) has constantly been to increase the number of consultations. Compared to the previous legislature where during the spring session only 17 public hearing were organised, in the reporting period there has been a decrease of the number of public consultations.

Monitoring of the Implementation of the Laws

Implementation of the laws remains a challenge. According to the responsibilities

⁸ <http://www.kuvendikosoves.org>. Regulation on Order and Access of the Media and Public in the Work of the Assembly of Kosovo.

⁹ <http://www.kdi-kosova.org>. Monthly report on the monitoring of the work of the Assembly of Kosovo, June 2011.

determined by the Work Regulation, parliamentary commissions are in charge of overseeing implementation of the laws. However, until the end of August, with the exception of one commission, (The Commission for Economic Development, Infrastructure, Trade and Industry) no other commission managed to complete this process and present at the session any report with recommendations from such monitoring. Compared to the six months of the previous legislature, the trend is more progressive. However, it falls clearly short of the need for the Assembly to take on a more significant role in controlling the executive power, so that the implementation of the laws adopted by this authority is strengthened.

Administration of the Assembly of Kosovo

The work of a legislature depends greatly on a professional administration that is independent of political pressure. The practice at the Assembly of Kosovo indicates that there exists a very high pressure of politics on the work of the Administration of the Assembly, both on staff recruitment, and on other organisational issues. The influence of politics in the recruitment of administrative staff for the Assembly has had a negative influence on team work, on the cooperation between organisational units and collegial relations. Staff recruitment based on orders from political circles, ignoring meritocracy based on professional qualifications, have also signaled for the European Commission to address such issues in the Kosovo Progress Report 2010.¹⁰ Another concern related to the administration of the Assembly remains the influence on the work of the civil administration, which is not only a tendency of various political circles, but also of the individual deputies themselves.¹¹

¹⁰ <http://www.kdi-kosova.org>. Administration of the Assembly in relation to the remarks of the Progress Report (2010)

¹¹ KDI has gathered this information from its daily monitoring activities for the Assembly of Kosovo and from interviewing stakeholders.

2.2 The Government and the Public Sector

The Political Context

Until February 2011, Kosovo was governed by an outgoing Government. The Government was dissolved after the governing coalition of the Democratic League of Kosovo (LDK) declared its withdrawal. The LDK party leader Mr. Fatmir Sejdiu was the President of Kosovo until his resignation on September 27th, (where as a result of the decision of the Constitutional Court he could not hold two posts simultaneously, i.e. party leader and President). Early elections were determined for December 12th. While the many irregularities that took place during the voting process paved the way for the repeat of elections in five municipalities.¹²

In general

In spite of limited human, technical and financial resources, the Government of Kosovo continues to produce results that fall short of expectations. A lack of resources is generally compensated by international assistance, which is directly influencing on the independence of the executive. The Assembly of Kosovo is not properly exercising its oversight function over the Government, thus giving a lot of freedom to the latter in many important areas of policy. In practice, the level of Government transparency is considered insufficient and disproportionate to the strong Government rhetoric on the subject. Accountability and integrity mechanisms are not sufficiently developed, and furthermore are not effectively applied in practice.¹³

The Law on Government

The functioning of the Government of Kosovo urgently needs legal regulation. The draft Law on the Government was submitted to the Assembly of Kosovo for

¹² More on elections under "Election Management"

¹³ KDI & TIK, Study on the Integrity of the Institutional System 2011, August 2011

adoption in May 2009, while it passed the first reading at the Assembly only a few days before the publication of this report.¹⁴ Between January 2008 and June 2011, the Government of Kosovo approved and submitted to the Assembly 252 draft laws. The majority of these draft laws were made into laws following adoption by the Assembly. However, there was no draft Law on the Government of Kosovo among these laws. The executive of the country, even in the reporting period, continued to operate without a special law. Formally, the legal basis that regulates the functions of the executive branch is UNMIK Regulation 2001/19 On the Executive Branch of the Self-Governing Institutions.¹⁵ Non-existence of a Law on the Government and the limitation of the role of the Assembly of Kosovo to determine the Government structure, which the Assembly elects, resulted in an endless increase in government structure, without any legal basis deciding on the rules of creating and ending ministerial portfolios.¹⁶

Civil society in Kosovo has been proactive in raising the issue of the law on the government, and has provided numerous recommendations on the contents of such a law. It has been recommended that parts of the Regulation 02/2011, on areas of administrative responsibilities of the Office of the Prime Minister and ministries, be included in this draft Law on the Government. However, in order to meet the constitutional obligation that the Government be subjected to parliamentary oversight, the legal basis for the functioning of the Government needs to be regulated by a law from the Assembly of Kosovo. Some of the legal gaps that need to be filled by the Law on the Government are: the number of ministerial portfolios, the increase in numbers and closing of positions, the duties and responsibilities of the outgoing

Government and the responsibility of Government members towards the Assembly of Kosovo.¹⁷

Re-structuring of the Cabinet

In February 2011, the Ministry of Energy and Mines was dissolved, two ministries were created out of the Ministry of Economy and Finance: the Ministry of Finance and the Ministry of Economic Development, while the new government composition increased the number of deputy prime ministers from 2 to 6. All such changes to the structure of the Government of Kosovo were introduced without any executive or legal decision. While in May 2011, the Government of Kosovo established, by an executive decision, the 19th ministry – the Ministry of Diaspora.

Sensitive Issues

In the reporting period, the Government of Kosovo has faced several highly charged political developments that have consumed the greater part of the energy of the executive. Among such developments, the north of Kosovo and the related security issue of the area, as well as the talks with Serbia, have dominated the agenda, and consequently have decreased the Government of Kosovo's ability to perform.

In general, the Government of Kosovo has demonstrated unsatisfactory performance in accomplishing its duties, in particular in relation to the implementation of the agenda for European integration.

The Public Sector

In this reporting period, as in previous years, the public sector remained politicised and sensitive to the direct influence of the Government, in particular to senior public appointments. Public sector resources in Kosovo are extremely limited, with the sector also having low salaries and benefits. The administration is overburdened and politicised; this is a concern that has already been repeated regularly in past

¹⁴ Express newspaper, Draft Law on the Government adopted in principle, at <http://www.gazetaexpress.com/?cid=1,13,63333>, 22 September 2011

¹⁵ The Regulation may be accessed at http://www.unmikonline.org/albanian/regulations/2001/RA2001_19.pdf

¹⁶ GAP Institute, Need to Adopt the Law on the Government, August 2011

¹⁷ Ibid HAJRA

years. The legal infrastructure has been completed with the passing of two laws: the Law on Civil Servants and the Law on Salaries of Civil Servants, as requested by the unions. Although up to a certain extent the legislation defends the independence of civil servants, in practice the public administration of Kosovo, even in the reporting period, has remained highly politicised, with political intervention in the appointment of Permanent Secretaries and even with the employment of cleaning staff. Despite shortcomings, transparency of the public sector appears well covered by the legislation, but practice indicates otherwise; the implementation of the Law on Access to Official Documents is unsatisfactory. The implementation of the Law on Declaration of Assets is a good start that will increase the transparency of the public sector, although shortcomings have been identified.¹⁸

Fight against corruption

Regarding the legal system fighting corruption, the Government has sponsored a package of laws, which civil society considers as “toothless” mechanisms to uncover and punish abuse. In general, the Government of Kosovo is demonstrating poor performance of governance, and is one of the most criticised entities of the entire institutional system. According to the most recent UNDP Early Warning report (May of this year), the level of citizen satisfaction with the Government is 29% i.e. 7% lower than in January 2010.¹⁹

Independent state agencies that are charged with protecting general interests are powerless to hold state institutions responsible for their actions. The institution of the Ombudsperson is ignored by both central and local authorities. The Ministries and municipalities are engaged very little in cooperation with this institution. Its main weapon – the right to bring to court, institutions that fail to offer the requested

information, has been taken from it. The majority of complaints addressed to the Ombudsperson concerned the judicial system and the administration of the judicial system. Reports and cases that the Anti-Corruption Agency of Kosovo submits to the prosecutor’s office are ignored. Reports of the General Auditor’s Office establishing numerous violations by Kosovo institutions and failure of prosecutors to take any action have been a hot issue of debate between the latter and the media and civil society. The Procurement Oversight Authority in the area of procurement is often accused in the media as a politicised institution and has also been harshly criticised by the European Commission for a lack of transparency and a lack of professionalism. In fact, procurement institutions have been the most criticised, in the progress reports for 2009 and 2010 by the European Commission, for lack of transparency, professionalism, effective oversight of procurement activities etc.

In general, the public sector in Kosovo remains one of the main challenges for the functioning of the state. The building of a professional, responsible and representative administration, and the provision of efficient public services for the citizens, is a challenge that requires to be addressed urgently at the political level. The European Partnership has identified, as a key priority, the reform of the public administration in Kosovo, while this sector, even in the reporting period, has shown highly discouraging results.

2.4 Local Governance and the Process of Decentralization

The Law on Local Self-Governance (LLSG) that came into effect in 2008 changed substantially the system of the local governance in Kosovo, where the Mayor is now elected by direct votes of the citizens; he/she appoints the executive political staff and exercises governing power in the Municipality. This change has raised many dilemmas regarding accountability; balance and control between

¹⁸ KDI & TIK, Study on the Integrity of the Institutional System 2011, August 2011

¹⁹ Ibidem HAJRA

the two powers at the local level of the governance – Assembly and the Mayor; the exceeding of competences and exercising of power, often authoritatively by the mayors; lack of clear definition of the role of the Assembly and its staff. Due to problems with the implementation of the LLSG, the Ministry of Local Power Administration included the LLSG in its legislative agenda for 2011 and commenced the process of amending it. However, this process has been terminated part-way through, since the working group could not find a solution to two issues: 1). Public enterprises – whether municipalities have the right to establish and manage public enterprises. 2). Assembly Speaker – whether such a position should exist, and in case yes, what role and function it would have. On the other hand, respect for the dispositions of transparency and accountability have predominantly remained low and have not been respected by the municipalities. This is reflecting on the work of the municipalities of Kosovo, which under the justification that the law is being amended, or will be amended, continue to bring decisions that often are in contradiction with LLSG.²⁰

Even during this time period, the Law for Prishtina, which is a constitutional request,²¹ has not been approved by the Assembly of Kosovo. This law continues to be politicised among political parties. As a result, the municipality of Prishtina is losing as it cannot benefit from a law on the capital.

In general, the changing of the system of local governance is proving to be harmful for local democracy. Municipalities should be more engaged in achieving European standards of local governance by creating the right balance between offering public services and observing the democratic principles of governing. The Government should change as soon as practicable the

LLSG by improving the technical errors and by addressing content issues that have been identified during the implementation of the LLSG.

Financial Independence (Budget)

Based on the Law on Local Self-Governance, municipalities should have their budget and finances to finance the work and activities under the competence of the municipalities, although in reality they still depend on government grants to realise their plans. The relations between the municipalities and the Ministry of Finance remain a problem (also with other line Ministries), characterised by bureaucracy and excessive procedures, which very often disable the municipalities from exercising efficiently their competences to determine the budget. Apart from this, municipalities are often inefficient in collecting, through a variety of municipal taxes, their own revenues.

In general, the municipalities are not financially independent. The fiscal decentralisation process was not included in the agenda of the central government during the reporting period. On the other hand, the municipalities should increase the cashing in of their revenues so that financial independence becomes a reality, not just one more thing on the legal and political wish list.

Relations between the Executive and the Legislative

At Municipal Assemblies the absence of high quality councillors is quite obvious. Aside from the lack of professionally qualified political and non-political staff within the branches of political parties in Kosovo, it is obvious that the position of member of the Municipal Assembly does not represent a very attractive opportunity (or political career) for the politicians or professionals working at municipal level. Furthermore, most conflicts between the mayor and the chairperson of the municipal assembly (and consequently, between the largest parties within assemblies), are

²⁰ The municipality of Prishtina has decided not to leave open the meetings of the Committee for Politics and Finances, even though the LLSG foresaw such a thing. Moreover, the municipality of Kacanik had decided to dissolve the municipal council for community that goes against the LLSG.

²¹ Constitution of the Republic of Kosovo, Article 13 (2008)

created as a result of different interests and political influences between different factions within political parties. Experience from the mayoral system has also proved that the chairpersons and councillors of the municipal assemblies lack readiness and willingness to look after their working conditions and summarily capitalise on the legal competences of the institutions they lead, especially in relation with the Mayor. The inability of the Municipal Assembly to effectively supervise the mayor proves the perception of citizens questioned in this research, where over 70% thought that members of municipal assemblies **do not perform or somehow perform insufficiently.**²²

In general, relations between the executive power and the local legislative power should be characterised by the responsibility that both powers have before the citizens and the law, and not by the relations of political forces within these institutions. The political parties did not prove themselves to be responsible in exercising control and asking for accountability by the executive, in particular by the Mayors.

Citizen Representation in Decision Making

Municipal authorities have noted very limited progress in realising the principle of subsidiary in practice. Municipalities still do not implement direct democracy mechanisms and citizen inclusion in decision making.

Municipalities do not offer efficient mechanisms that can be easily used by citizens so that they are able to be a part of the decision and policy making processes that affect their lives. In most cases, meetings between municipal officials and citizens for purposes of information and consultation serve only to meet the legal obligation; civic petitions and initiatives, although few in number, are not adequately handled. This has influenced the very low

citizen participation and a lack of trust that their judgments and ideas have any importance or will be taken into account.

Furthermore, municipalities continue to deny citizens and NGOs participation in sector consultative committees. These committees, that should serve as a forum for discussion and be used to obtain ideas from citizens and civil society, continue to remain totally closed and ineffective.

Limited progress was marked in the reporting period in realising agreements between the Municipality and the villages or neighborhoods to decentralise decision making.

In general, municipalities continue to disregard citizens and treat them without respect, by disabling them from taking part in decision making processes. Local institutions should establish mechanisms to include citizens in decision making.

Gender Equality

Representation of women at the municipal level is not satisfactory, in both the executive and the legislative branch of the municipality. The most important actors in promoting legal equality are the NGOs and the international community.

Regarding the executive, there are still no women leading specific municipalities; they extend only to the management of various municipal directorates. Despite of the fact that women have their positions guaranteed in Municipal Assemblies through quotas, they still hold no positions in roles where they should exercise responsibilities, more specifically they don't hold positions in the Committees for Politics and Finances, which represents the main committee of the assembly and discusses policies of the municipality, fiscal documents, plans and initiatives.

In general, no special attention has been paid to gender equality at the municipal level and it is not on their agenda as an issue to be addressed.

Communities in the Municipalities of Kosovo

²² BIRN –System of direct mayor election, December 2010.

Legal structure in Kosovo guarantees communities a very favorable position in the municipalities in which they rest, especially in those municipalities accounting for more than 10% of the general population or represent the majority ethnic group. With the exception of those parts of Kosovo where local institutions do not manage to exercise sovereignty, the functioning and creation of new municipalities where the various communities form the majority was successful and there has been marked progress. Citizens in these places have started to understand the importance and numerous competences of the municipalities and to use them to address problems of the community. Furthermore, the assistance and different investments by the donor community and the Government have increased the capacities of these municipalities.

In general, minority communities have sufficient legal mechanisms at their disposal to realise their programs in the framework of local governance, while their use in practice often depends on the political situation in Kosovo, and on the political influence from other countries.

Education

Primary and secondary education, as one of the main responsibilities of the municipalities continues to face various problems. Progress has been made in building the necessary infrastructure, such as the building of new schools and renovation of existing ones. Despite this, problems like too many students per classroom have not been entirely resolved. The quality of education is not at a satisfactory level. Programs and teaching methods do not reflect the needs of the Kosovo or European market. Full classes with students and assessment methods do not guarantee quality. The plan of the Government to start teaching English classes from the first grade does not match actual capacity and the number of qualified English teachers in Kosovo.

Violent incidents continue to be an issue

of concern. Nationally, less than 50% of students managed to graduate from high school.

In general, although education has continued to be reformed for many years, little progress has been made in improving the situation and increasing the quality of education. Institutions should intensify their efforts to implement reforms that match European education standards.

Public Services, Economic Development and Doing Business in Municipalities

In general, public services are characterised by bureaucracy and unnecessary procedures. In addition, the quality of services offered, in most cases do not meet the elementary needs of the citizens.

Doing business in the municipalities of Kosovo continues to be difficult, and amongst the many factors contributing to this situation is the role of the municipalities themselves. From the circle of responsibilities they have in terms of local economic development, and creating suitable conditions to do business, the municipalities of Kosovo have not made any progress and have not undertaken the necessary reforms to address these problems.

This area includes the obtaining of work permits and licensing of businesses, construction permits, municipal inspections, and registration of real estate, tax levels and many other things. On the other hand, the municipal institutional organisation is characterised by heavy bureaucracy, many procedural steps and an unprofessional administration that instead of being ready to offer assistance to businesses, often comes across as an impediment to the daily activities of the businesses. Although for a long time it was proclaimed that the concept of "one stop shop" was implemented, it is not, perhaps with the exception of some pilot projects supported by USAID and the EU.

Prishtina is among the last in the region

to be a business enabling environment (World Bank, Doing Business in South-East Europe). Regarding business start-up, Prishtina is ranked 22 from 22 cities in the region, and as such is ranked the least suitable place to do business. In the category of contract realisation, it is ranked 21, in the area of obtaining construction permits it is ranked 17 and regarding registration of property it is ranked 18. A similar situation appears in other centres and municipalities.

In general, the municipal level does not offer the required support to create a suitable environment to do business. Municipalities are characterised by bureaucracy, a large number of procedural steps that are often unnecessary, as well as extremely long procedures. Furthermore, the level of municipal taxes remains very high and the municipal administration is unprofessional in relation to the businesses. This has contributed to the lowest foreign direct investment level in the region.

Decentralisation Process

Despite the existence of the legal framework that reflects European principles of local governance, even by 2011 the decentralisation process that commenced in 2008 was not concluded. The inability to establish the Municipality of Mitrovica North based on the requests stemming from the Ahtisaari Package and government strategy, as well as the fact that the Municipalities of Zvečan, Zubin Potok and Leposaviq are outside of control, have further aggravated the functioning of local governance in general. These three municipalities continue to be without leadership that is elected in a democratic way, as a consequence of the failure to organise local elections; and also there exists no mutual cooperation with the Ministry of Local Power Administration (MLPA). In the local elections organised by the authorities of Kosovo at the beginning of 2010, a fourth municipality, with a Serbian majority was established in the east of Kosovo, i.e. the Municipality of Partesh. The Government of Kosovo allocated about

€2 million dedicated to financing newly-established municipalities with a Serbian majority.²³

However, until now, the establishment of new municipalities has not managed to undo the existence of parallel Serbian structures, including the operations of Serbian security and intelligence services.²⁴ Aside from this, the state of Serbia has continued to finance municipalities with a Serbian majority, with even parallel education, health systems and public services.

Despite the perception that the success of the decentralisation process would help the inter-ethnic reconciliation between Serbs and Albanians, the process has produced no success in the north of the country. Nevertheless, the MLPA and the International Civilian Office will be involved for an indeterminate period of time to continue with the action plan focusing on support to the Preparatory Team for the establishment of the Mitrovica North Municipality, which resulted in the opening of an office in the north of Mitrovica.²⁵ In this context, in 2011 no joint strategy between the Government of Kosovo and the international presence was noted in relation to revoking the Serbian parallel structures as the main challenge to finalise the decentralisation process and place the northern municipalities under institutional control.

The issue of the draft law on the Historical Centre of Prizren and the implementation of the Law on Hoça e Madhe, that is located in the Municipality of Rahovec, remains a challenge; both these cases include extra-territorial competences granted to the Serbian Orthodox Church. The International Civilian Office continued to maintain its control over the entire decentralisation process, exercising

²³ Ibidem. .QKSS

²⁴ Freedom House, Country Report - Kosovo, Shtator 2011.

²⁵ International Civilian Office, The International Civilian Representative (ICR) Pieter Feith's remarks at the conference "Decentralization a Heavy Weight to be Carried Out" held in Prishtinë/Prishtina, 5 July 2011, http://www.ico-kos.org/ico/data/Image/Decentralization_a_heavy_weight_to_be_carried_out.pdf

pressure on the Government, which in a short timeframe and without conducting any debates with the citizens, submitted to the Assembly the Draft Law on the Historical Centre of Prizren, which was subsequently rejected by the Commission on Agriculture, Forestry, Environment and Spatial Planning. A coalition of NGOs, through a petition with over 10,000 signatures from citizens of Prizren, has strongly objected to the sponsoring of this draft law by the Government. "The undersigned citizens consider that the drafting of a Law on the Historical Centre of Prizren would have to be a process that would involve all interested parties. Furthermore, we consider that such a law cannot create privileges for specific groups, even more so for specific religious communities."²⁶ Also, in the case of the adoption in principle of the Law on Hoça e Madhe on September 1st 2011, at the Assembly of Kosovo,²⁷ the Mayor of Rahovec refused this law emphasising that it was drafted against his will and the will of all citizens of the municipality. In general, the International Civilian Office and the Government of Kosovo have attempted to expand the influence of the asymmetrical decentralisation in Prizren and Rahovec, without the preliminary consent of the respective municipalities, reasoning that these requirements stem from the Ahtisaari package of laws and as such should be supported.

2.5 Election Management

Political Context

In September 2010, the Constitutional Court issued a verdict establishing serious violations of the Constitution of Kosovo by Mr. Fatmir Sejdiu²⁸. This verdict resulted in the resignation of Mr. Fatmir Sejdiu from the position of the President of Kosovo. The two biggest political parties in Kosovo, that

²⁶ Zëri, Petition for the Centre of Prizren submitted to the Assembly, 19 September 2011.

²⁷ Koha Ditore, Hoça e Madhe, as a third power, 2 September 2011.

²⁸ <http://www.demokracianeveprim.org>. Report on Monitoring of Parliamentary Elections 2010.

were in governing coalition, did not manage to reach an agreement for a new president, and this lack of agreement imposed the constitutional solution for the country to be led by an acting president. Political parties developed their political agendas and articulated their requests for early elections as a way out from this political situation, and therefore it was decided to hold elections for the Assembly of Kosovo on February 13th 2011.

Following this decision, LDK decided to quit the governing coalition, one day after the election date was scheduled. After LDK withdrew from the Government, the parliamentary group of Aleanca Kosova e Re, with the support of 40 signatures from deputies, undertook an initiative to file a motion of no-confidence for the Thaçi Government. With 66 votes for, one against and two abstentions, the Assembly overthrew the Government of the Republic of Kosovo²⁹.

Following the approval of the motion by the Assembly, the Acting President of the Republic, Mr. Jakup Krasniqi, in complete compliance with his competences guaranteed by the Constitution of Kosovo, issued a decree dissolving the Assembly of Kosovo and decided to change the election date from February 13th, as decided earlier, to December 12th, in compliance with constitutional and legal timeframes in Kosovo.

For the first time, Kosovo faced organising early elections. Two new political subjects joined the political stage of Kosovo, subjects that were running for the first time in elections – Movement Vetëvendosje led by Albin Kurti, and Fryma e Re (FER) Party led by distinguished individuals from civil society.

Legal Framework and the Election System

The early parliamentary elections were conducted with a legal framework that was only superficially completed and by

²⁹ <http://www.voanews.com>

expedited procedures from the Assembly of Kosovo, only a month and a half before holding early parliamentary elections. The short timeframe for a proper reform of the election law failed to resolve issues like: election thresholds, division of Kosovo into more electoral areas, etc.

However, from all the amendments to the law on elections, only the following issues should be assessed: the determination of timeframe for ECAP³⁰ and the Supreme Court, which influenced positively on concluding the election process and the certification of the results; preferential voting with the possibility of voting for 5 candidates, and the removal of fines for local monitoring organisations. The current law on general elections determines Kosovo as a single electoral area with a system of proportional representation³¹. Although it has several shortcomings, the proportional system in Kosovo, was not, until after the last parliamentary elections, a topic to be subjected to amendments by the main election figures. The creation of several electoral areas would present great advantages, the main one being the increase of citizen representation and more contact between deputies and citizens³².

The one-zone election system has continuously endangered the broad electoral representation in the Assembly of Kosovo. The Law on General Elections, Article 110, Item 1, considers Kosovo as one election zone with many candidates. The results of the December 2010 elections left some municipalities unrepresented in the Assembly of Kosovo. At the same time, municipalities without a lot of inhabitants managed to have the highest number of deputies. Such cases undoubtedly demonstrate the need for urgently changing the legal framework on elections, with special emphasis on creating several electoral zones³³.

³⁰ Election Panel for Appeals and Complaints

³¹ http://www.kuvendikosoves.org/common/docs/tigjet/2008_03-L073_at.pdf

³² <http://www.kdi-kosova.org>. Reform of the Election System of Kosovo

³³ <http://www.kdi-kosova.org>. My Vote. IV Legislature of the

Bodies for the Administration of the Election Process (CEC, PRAC, Supreme Court)

The Central Elections Commission (CEC) had a relatively short time to organise the election process. As a consequence, many irregularities were noticed, which have largely influenced on the impairment of the election process. Irregularities noted consist of cases where the required election materials were not present in all voting stations, or reached these places with a delay. Ultra-violet lamps did not work at all at some voting stations, due to their poor quality. At some centres, the spray used for fingers was of extremely poor quality. Inappropriate selection of VSC members (including through vote manipulation), resulted in a repeated vote in some of the municipalities of Kosovo. CEC meetings were open and were attended by monitors and media representatives. However, the work of the CEC was influenced by party affiliation of Commission members³⁴.

Amendments made to the Law on General Elections, in particular the determination of timeframes for ECAP and the Supreme Court, produced positive results in completing the election process to the certification of results. Due to the large number of appeals, based on convincing facts, to the Election panel for the December 12th 2011 voting day, the latter decided to instruct the CEC to repeat voting in some municipalities: Drenas, Skenderaj and Deçan, and to repeat the voting process in the Municipality of Lipjan and Malisheva. The CEC decided to repeat elections at these locations, and following the decision of the Supreme Court, the CEC decided to repeat elections in Mitrovica too.

Election Lists

Final Voters List (FVL) for the 2010 elections for the Assembly of the Republic of Kosovo is based on the extract of the Civil Register Book compiled by the Agency

Assembly of the Republic of Kosovo.

³⁴ ENEMO Report.

for the Production of Documents (APD), under the auspices of the Ministry of Internal Affairs. The Final Voters List for the elections of December 12th 2010, contained 1,630,636 names of voters divided into 37 municipalities, with an increase of 73 288 or 4.4% compared to previous elections. Despite the fact that the CEC did a good job in cleaning voters' lists, this problem largely persists³⁵.

Election Campaign

The spirit of the overall election campaign was relatively calm, conducted freely without any great obstacles except for some small incidents (isolated ones). However, several instances of the violation of the Code of Ethics by electoral subjects and their candidates were noted during the election campaign for the elections of December 12th such as: damaging of promotional material by political parties, abuse of public resources, presence of children in many activities of political subjects, placement of promotional materials in public buildings, insulting language and threats, even failure of political subjects to submit the calendar for activities to the EC. Although the time for election campaigning was limited (only 10 days), nevertheless the huge expenses incurred by political subjects during the election campaign, especially by larger parties, were obvious.

Process on voting day December 12, 2010

Based on the assessment of the local and international monitors about the process on voting day on December 12th 2010, a large number of irregularities were reported during this process, which to a certain extent influenced the final result. The recorded irregularities were: number of voting ballots in the boxes exceeded the number of people signed for in the voters' register books, forgery of signatures in the

³⁵ <http://www.demokracianeveprim.org>. Report on Monitoring of Parliamentary Elections 2010.

Final Voters List (an individual signed on behalf of several others), family voting, failure to check identification documents, continuous presence of unauthorised individuals in voting stations, political party monitors assisting voters, abuse of duty by managers of voting stations, opening and photographing of votes by voter companions.

Re-voting of January 9th 2011

Following the decisions brought by ECAP regarding the appeals from political subjects and civil society organisations for manipulation of the election process of December 12th 2010, the CEC brought a decision to declare re-voting in three municipalities and two voting centres on January 9th 2011. Therefore, re-voting took place in the municipalities of Skenderaj, Drenas and Deçan, while in the Municipalities of Malisheva and Lipjan re-voting took place at two specific voting centres. The re-voting process in five municipalities of Kosovo was largely accompanied by irregularities that accompanied the main election process of December 12th 2010. Despite changing the CEC commissioners, the irregularities of December 12th were not remedied in the re-vote.³⁶

Re-voting of January 23, 2011

Following the decision of the Supreme Court for re-voting in the Municipality of Mitrovica, the Central Elections Commission brought a decision that the voting for parliamentary elections in this municipality be repeated on January 23th 2011, and in spite of slight irregularities, was evaluated as a calm, regular and democratic election process. Nevertheless, the fact that an extremely low number of citizens voted in the Municipality of Mitrovica was considered troubling.

Amendment of Electoral Legislation in Kosovo

³⁶ <http://www.demokracianeveprim.org>. Report on Monitoring of Parliamentary Elections 2010.

Great irregularities characterised the recent parliamentary elections, as well as the institutional crisis that was created after the decision of the Constitutional Court on the President, however the leaders of three political parties: PDK, LDK and AKR, reached a political agreement to elect the new President, and also agreed to commence a process to reform the election legislation and amend the Constitution. Later, this Agreement was incorporated in the Resolution that was approved by the Assembly of Kosovo, providing for constitutional changes regarding the election of the President: citizen voting to elect the President, and the creation of more election areas in Kosovo³⁷. This Resolution also determined the timeframe dictating when such issues should end. The Assembly of Kosovo has established two special parliamentary commissions that are working intensively on these issues: the Commission on the Amendment of the Constitution of the Republic of Kosovo, and the Commission on the Amendment of the Law on General Elections in the Republic of Kosovo.

Civil Society and Elections

The December 12th 2010 elections, and the re-voting that followed, were monitored by a considerable presence of civil society organisations. Structural problems concerning the election management caused specific difficulties in the election monitoring process. Civil society failed to demonstrate a satisfactory level of responsibility in this process, thus impairing the general election situation, which was far from having democratic standards.

2.6 Rule of Law and Justice System

The rule of law remains one of the areas with the least progress in the entire territory of Kosovo. The most challenging part of the rule of law in 2011 is the north of Kosovo, namely the municipalities of Leposaviq, Zveçan, Zubin Potok, and the

not-established municipality of Mitrovica North. Courts have continued to remain non-functional, which has disabled access to justice for citizens as well as disabling the enforcement of law for Kosovo Police.

The activity of illegal Serbian structures (police, intelligence, judiciary) across the entire territory of Kosovo, with the support of the Government of Serbia and with special emphasis on the North have proved the insufficient progress and lack of political will and decisiveness by the Kosovo institutions and the international institutions to provide security and law and order for all citizens, regardless of their residence or ethnicity. The continued international presence under Resolution 1244 of the UN Security Council and non-configuration of this presence to be in compliance with reality and post-independence circumstances is a characteristic of the reporting period.³⁸

The UNMIK mission³⁹ continued its presence in the Northern municipalities thus recognising only the pre-February 17th 2008 reality, while the presence of the European Union Rule of Law Mission – EULEX, in the area of justice, continues to be a minimal presence that covers only urgent cases with criminal and interethnic motives, at the district court in the northern part of Mitrovica.⁴⁰ To date, only six EULEX judges are involved and four prosecutors, while the Albanian judges and prosecutors work in “exile” with incomplete quotas in the city of Vushtrri and are involved only in pre-trial sessions.⁴¹ In this respect, EULEX has shown poor performance regarding investigation and criminal prosecution of crimes.

Due to a lack of internal unity within the EU in relation to Kosovo, EULEX has not achieved anything from its executive mandate, especially in the northern part of the country. As a consequence, the

³⁸ Freedom House, Country Report – Kosovo, Shtator 2011.

³⁹ Forum for Security, Political Implementation of the Law in Kosovo, April 2011

⁴⁰ KCSS, Re-establishment and reform of the justice system in Kosovo, May 2011.

⁴¹ International Crisis Group, North Kosovo: Dual Sovereignty in Practice, Mars 2011.

³⁷ <http://www.kuvendikosoves.org>. (Resolution of the Assembly of Kosovo).

establishment of a unique legal system and the exercise of the judicial or prosecutorial jurisdiction over the entire territory of Kosovo are still not in compliance with the Constitution of the Republic of Kosovo.⁴² On the contrary, the continuation of the exercise of the EULEX judicial and prosecutorial authority under the auspices of neutrality towards the status within the framework of Resolution 1244 has created a dual, asymmetrical legal system, highly dangerous for the statehood of Kosovo.

Nevertheless, in the second part of the year following July 25th 2011, the Government of Kosovo has created new circumstances by undertaking actions to return the customs control at points 1 and 31 by sending officials of the Kosovo Customs as well as police officers. This action was strongly contested by illegal structures in the north, the Government of Serbia and a part of the international community. Up to this reporting period, a strong determination by the Government has been noticed, to render functional the law enforcement agencies at the border crossing points, to unify the customs areas over the entire territory of Kosovo in spite of the burning of the border-customs point 1 on July 27th 2011. Even though KFOR has played an important role in logistical support and maintaining security, the latest actions in the north have not solved the problem of controlling the green border line, since in the meantime new, illegal crossing points have been opened. Moreover, SHKEPUTJA of the command chain within the Kosovo police in the north augments the potential danger in the field of rule of law and security in this part of Kosovo.

At the strategic level of cooperation between the Government of Kosovo, EULEX and the European Commission Liaison Office, joint work with the Coordination Board for the Rule of Law continued,⁴³ this being a body that is co-led by these three

institutions. At this level, dynamics have been noticed in terms of prioritising joint activities to accomplish the plan of approval and implementation of the legislation requested by the European Commission.

Justice System

Although several steps have been taken to improve the justice system in Kosovo, this sector continues to suffer from poor performance. Ever since the adoption last year of the Law on Courts and several other laws related to the organisation of the judiciary, no further substantial progress has been achieved in issuing the required legislation to finalise the justice reforms and the efforts to implement and render functional this system. One of the reasons for this lagging has been the parliamentary crisis where the main institutions that should have worked on their adoption were not functional for six months.

The biggest part of the legislation foreseen in the Legislative Strategy 2011 that covers the area of justice, was not adopted, amended and/or complemented. There was stagnation with the amendment and complementing of the Law on Police, Criminal Code, Code of Criminal Procedure, adoption of the law on International Legal Cooperation in Criminal Cases etc.,⁴⁴ although these laws are directly linked with the functioning and strengthening of the justice system.

Another fact that is concerning is that the biggest part of the legislation, in the rule of law area and the justice system, is being drafted without the participation of civil society or the media.

There has been no progress in amending and complementing the Criminal Code and the Code of Criminal Procedure although these two laws are key parts of the reform of the justice system in general.

Compared to the previous reporting period, important steps have been made with the adoption of the laws on the

⁴² Ibid. fq.33. QKSS

⁴³ EULEX, Programme Report Bolstering the Rule of Law in Kosovo: A Stock Take, Shtator 2011.

⁴⁴ Legislative Strategy 2011, Assembly of Kosovo, March 2011.

Judicial⁴⁵ and Prosecutorial⁴⁶ Councils. Likewise, in this reporting period the consolidation of these two institutions was achieved through a process that was considered as mainly democratic. However, with the exception of the fact that these two Councils were established, so far no concrete results have been noted from their work.

Meanwhile, progress has been achieved with the process of re-appointment and appointment of judges and prosecutors. The process, which was carried out for the first time, also opened up the way for the recruitment of new judges. Although a large number of judges and prosecutors failed to successfully pass the evaluation, despite having many years of experience in those positions. So far there has been no other evaluation about their performance while exercising the functions of judges and prosecutors. There were also problems with the recruitment of new judges and prosecutors, with both opposition political parties and a part of civil society alluding to politicisation of this process.⁴⁷

In the area of international legal cooperation the situation remains the same as in the previous reporting period. To date there has been no full agenda by increasing the inter-state bilateral agreements regarding extradition. A very small number of agreements have been reached. Meanwhile, regarding the Law on International Legal Cooperation, although it has passed the first reading at the Assembly of Kosovo, still no exact date is known as to when this law shall be adopted.

Unlike the previous year, the respective law for witness protection has been adopted.⁴⁸ However, there are still none of the necessary mechanisms for its implementation. The law bears a

high financial cost as it should provide permanent shelter and support to protected witnesses. It is unclear whether apart from offering support to protected witnesses within the territory of Kosovo, the same will be made possible by agreements with other countries to send them outside of the country – considering that this is a small territory and that they may be uncovered, and as a result, their physical security would become a huge problem.

Limited progress has been noted in the development of rehabilitation centres. In fact, the Kosovo Correctional Service even before enjoyed relatively satisfactory capacities. The work that has started in order to build a high security prison in Dyz village in Podujeva further advances the progress in this area.

Legal Aid provided to individuals deprived of freedom is unsatisfactory. There are a lot of complaints by individuals within this category, in particular about conditional release and amnesty. Regarding legal aid for individuals deprived of freedom, ex officio attorneys largely do not consult with their clients and do not even visit them in the detention centres. There is no mechanism to deal with the verification and assessment of their commitment to their clients. Many complaints concern the conditional release committees which in most cases are suspected of being very corrupt regarding the process of selecting those who will benefit from this measure.

2.7 Public Procurement

The legal framework that regulates Public procurement in Kosovo has had limited progress. The Law on Public Procurement has been amended twice in the last two years. In 2011, the initiative to amend this law was a result of the negative evaluation the Government of Kosovo received in the European Commission Progress Report regarding the deficient legal basis. Although the Government of Kosovo approved the new law on public

⁴⁵ Law on Kosovo Judicial Council, Assembly of Kosovo, October 2010.

⁴⁶ Law on Kosovo Prosecutorial Council, Assembly of Kosovo, October 2010.

⁴⁷ CIF & KDI, Re-Appointment Process, Independence and Influence (Re-Appointment and Appointment of Judges and Prosecutors in Kosovo)

⁴⁸ The Law on Witness Protection, Assembly of Kosovo, September 2011

procurement, Law No. 04/L-042⁴⁹, approved by the Assembly and which came into effect by the decree of the President's Office of the Republic of Kosovo, this law does not contain any positive changes regarding the increase in transparency and accountability of procurement procedures.

None of the recommendations of civil society members, who were part of the working group for the amendments to this law were taken into consideration, with the exception of Paragraph 2, Article 26, which provides for every tender of high value, the contracts should be signed by the minister of the respective ministry, mayor or any respective director of the contracting authority. All other recommendations offered by civil society were in compliance with the Directive 2004/17 and 2004/18 on Public Procurement of the European Union⁵⁰. Approximation and adoption of such directives within the legal framework of the Public procurement would assist the increase of transparency of procurement procedures and minimise corruption and abuse of public money during such procedures.

In 2010, the Public Procurement Agency

49 Assembly of the Republic of Kosovo (2011). Law No. 04/L-042 On Public procurement in the Republic of Kosovo. Official Gazette of the Republic of Kosovo / No. 18 / 19 September 2011, Prishtina

50 Direktiva 2004/17/EC, është miratuar në mars të vitit 2004, parasheh procedurat e planifikimit dhe menaxhimit të proceseve të prokurimit sa i përket projekteve me subjektet që veprojnë në "sektorët e veçantë" të ujit, energjisë, transportit dhe shërbimeve postare.

Direktiva 2004/18/EC, e miratuar në mars 2004, parasheh rregullat mbi koordinimin e procedurave për dhënien e kontratave të punëve publike, kontratave publike të furnizimit dhe kontratat për shërbimet publike.

Rekomandimet e shoqërisë civile kanë qenë në përputhje të plotë me dispozitat që rregullojnë transparencën e procesit të prokurimit dhe realizimit të kontratave publike, përshtatshmërisë dhe kapaciteteve të operatorëve ekonomik, luftën kundër mashtrimit dhe korrupsionit, mjeteve tradicionale dhe elektronike të komunikimit dhe procesit të mbikëqyrjes së realizimit të kontratave publike.

Përmbledhje e përgjithshme e Direktivave:

http://europa.eu/legislation_summaries/internal_market/businesses/public_procurement/l22009_en.htm
Direktiva 2004/17/EC:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:en:PDF>

Direktiva 2004/18/EC:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:EN:NOT>
European Commission (2004). Direktiva 2004/17/EC e Parlamentit dhe Këshillit Europian.
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:EN:PDF>
European Commission (2004). Direktiva 2004/18/EC e Parlamentit dhe Këshillit Europian.
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0114:0240:EN:PDF>

(PPA), marked limited progress regarding the giving of sole-source tenders by public institutions. According to the data "the value of contracts won through sole-source tenders marked a slight decrease from €200 million, which was their value in 2009, to €170 million in 2010"⁵¹. This decrease notes modest progress in the management of public procurement since the practice of single-source tender has been most problematic and most criticised from the European Commission and other institutions. Unhappy with the decisions of the PPA they have filed with the CRA requesting them to review the PPA decisions⁵², or appeals about non-permission to use negotiations without publishing the notification for contracts or to revoke Article 30 A. 4 of the LPP, known also as sole-source tenders.

In 2010, the CRA reviewed a total of 155 such requests. Of these, 42 requests filed by Contracting Authorities with the CRA concerned the request to revoke Article 30A. 4, and 33 such requests have been approved, while the other 9 were refused – sole-source tenders were not permitted⁵³. Major shortcomings of the PPA concern the low level of transparency of the institution, and this is proved by the fact that the agency does not have even an active webpage that would serve as a mechanism to provide information regarding the PPA. Also, the institution has not made public any of its decisions and has not conducted a yearly report which it has to present in front of the Assembly.

The Procurement Review Authority (PRA), known to be the authority that deals with appeals, in 2010 received a total of 430 appeals from economic operators against

51 Friedrich-Erbert-Stiftung & Riinvest Institute (2011). Guiding Paper: Economic Challenges 2011 Plus. Prishtina. [http://www.fes-prishtina.org/wb/media/pdf/FESRIINVESTALBANIAN\(fin\).pdf](http://www.fes-prishtina.org/wb/media/pdf/FESRIINVESTALBANIAN(fin).pdf)

52 FOL Movement (2011). Procurement Monitoring Report. As a consequence of violations of the law on procurement we risk losing millions of euros. Prishtinë. http://levizjafol.org/images/uploads/files/Raporti_i_Monitorimit_te_Prokurimit_Publik.pdf

53 Procurement Review Authority (2011). Annual Work Report 2010. Prishtinë. http://oshp.rks-gov.net/repository/docs/raporti_shqip_2010_online.pdf

decisions of contracting authorities, of which it reviewed 331 appeals. Of this number, only in 62 cases did the review panel of the PRA decide to cancel the procurement activity (re-tendering), as a consequence of establishing violations of the provisions of the LPP, on irregularities in tender files or proceedings lacking procurement procedures. As in the previous years, appeals mainly concerned tendering procedures of high value (€77 million), and fewer appeals concern tenders of medium or low value.⁵⁴

Regarding appeals for violation of the law while awarding tenders to companies, the list is topped by the Kosovo Energetic Corporation (KEK). KEK closed 2010 with 25 appeals against its tenders, and two of those had to be re-evaluated, seven were cancelled and a new procedure should start. The PRA, the mandate of which is to review appeals, has been much accused regarding its decisions, and these accusations raise suspicions about its independence, impartiality and the legality of the decisions of this institution⁵⁵.

The Public Procurement Regulative Commission (PPRC), based on the law on public procurement is responsible for the development, functioning and general oversight of the public procurement system in Kosovo⁵⁶. In 2010 this institution noted

limited progress in drafting secondary legislation following obligations that stemmed from the new law on procurement adopted in the previous year. According to the annual report of the General Auditor for 2010, the absence of internal guidelines for public procurement and delays in drafting the guidelines did not help to make it any easier to implement this law⁵⁷. The PPRC managed to a considerable degree to maintain its informative webpage that provides the public unrestricted access to all information concerning public procurement in Kosovo.

However, the PPRC has lagged significantly in the oversight of execution of public contracts. As a consequence, the PPRC had a blank "black list" this year, which would serve as a measure to prevent damages to the budget of Kosovo by irresponsible contractors realising contracts. The institution is mandated to oversee the realisation of public contracts, but according to the report of the General Auditor, it has itself committed violations at the stage of realising contracts with the contractors of these institutions. The violations established by the GAO at this institution concern payment of bills in the absence of proof, a discrepancy between the evaluated amount for supply with real needs and eschewing of adequate procurement procedures⁵⁸.

The final report of the procurement audit in 2010 of the General Auditor's Office (GAO)⁵⁹, testifies slow progress and a high level of legal violations and abuse by public institutions while realising procurement procedures and executing public contracts. According to the data of this report, the managerial control over processes, activities and decisions of procurement

54 During 2010, Procurement Review Authority has treated 430 complaints presented by economic operators against the decisions of Contracting Authorities for contract releases, without calculating 155 complaints of the contracting authorities for reassessment of PPA. From 430 complaints of economic operators unsatisfied with the decisions of the institutions for tenders, 84 tenders have gone to reassessment, 62 were cancelled in order to rebegin procedures, and 87 were placed in the "outcast" list. Classification of complaints according to value: complaints with great value in total of 77.086.424,63 euros; complaints with medium value in total of 11.310.280,61 euros; complaints with little value in total of 450.994,10 euros.

55 Article "Procurement did not trust the cheapest offer", published on August 9, 2011, by the daily newspaper Koha Ditore deals with a case when "PRA is expected to be accused by the private security company "Syri Group" for legal violation when returning for re-evaluation the procurement activity for the physical security of buildings of the Ministry of Labor and Social Welfare. Owner of company "Syri Group", which the Ministry of Labor pronounced to be the winner, said he will address EULEX, Anti-Corruption Agency and the Supreme Court about a PRA decision as the criterion for giving the contract to the "lowest price" was not observed. <http://www.kohaditore.com/index.php?page=1,3,65520>

56 Public Procurement Regulative Commission – PPRC (2011). Report on public procurement activities in Kosovo in 2010. Prishtinë. <http://krpp.rksgov.net/krpp/PageFiles/File/Raportet%20vjetore%202006%202007%202008/Shqip%20Raportit%20KRPP%202010%2001%2003%202011.pdf>

57 General Auditor' Office (2011). Annual Audit Report 2010. Executive Summary. Prishtinë. <http://oag.rks-gov.net/Raportet%20shqip/BKK/KCB2009alb.pdf>

58 General Auditor's Office (2011). Audit Report on Annual Financial Sheets of the Public Procurement Regulative Commission for the Year Ending on December 31, 2010. No. Of document: 24.34.1-2010-08. Prishtinë. http://oag.rks-gov.net/Raportet%20shqip/2010/Agjencionet/2010_KRPP_Raportit_Auditimit_Shq.pdf

59 General Auditor's Office (2011). Annual Audit Report 2010. GAO Audit for Procurement for 2010. Prishtinë. <http://oag.rks-gov.net/Raportet%20shqip/BKK/KCB2009alb.pdf>

were not frequently applied. Management should pay more attention to the process of procurement, both at the planning, and execution stages. Also, according to the same report of GAO, central institutions did not take sufficient measures for monitoring and controlling the procurement process, transparency and equal competition for all Economic Operators (EO), nor assessed offers in order to ensure better functioning of the procurement system. According to the Freedom House report published in 2010, procurement and tendering procedures in Kosovo are not transparent⁶⁰. This is proved by non-inclusion of the recommendations of civil society by Kosovo institutions regarding the provisions on transparency in the law on public procurement No. 04/L-042, decreed on August 31, 2011. Also, if we take in this context, as an example, the procurement procedures for the motorway Morinë-Merdare, as one of the biggest capital projects, then it is clear that some of the basic principles of transparency were not observed, such as the public information during the planning of the project and procurement procedures, refusal of the requests by the civil society for access to the documents of the project, and the tendency to eschew oversight institutions^{61,62}. The insistence of Kosovo institutions for the public procurement procedures and management of public funds to be processes further isolated from the public contradict Article 120 of the Constitution of the Republic of Kosovo, which guarantees transparency, accountability and efficiency in spending public monies⁶³.

2.8 Fight against Corruption

60 Freedom House (2011). Nations in Transit 2010: Kosovo. Corruption. <http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Kosovo-final.pdf>

61 FOL Movement (2010). Transparency of Public Investment in Road Infrastructure. Prishtinë. http://levizjafol.org/images/uploads/files/Transparenca_e_investimeve_publike_n%C3%AB_infrastruktur%C3%ABn_rrugore1112.pdf

62 For more about this problem please see the section on Economy that talks about the motorway

63 Assembly of the Republic of Kosovo (2008). Constitution of the Republic of Kosovo. Chapter IX Economic Relations – Article 120 Public Finances. Prishtine. http://www.kuven-dikosoves.org/common/docs/Kushtetuta_sh.pdf

The Institutions of the Republic of Kosovo have limited marked progress in the fight against corruption. In the reporting period, the anti-corruption legislation has been amended, changed and complemented. However, this legal package continues not to be entirely in compliance with the international standards and practices.

Declaration of assets by senior public officials to the Anti-Corruption Agency of Kosovo contains inaccurate data and is not in compliance with the declarations on assets submitted to the Central Elections Commission. This constitutes a significant concern for the high rates of corruption and its broad expansion in public institutions of the country. Likewise, the institutions of the country have indicated little willingness to fight corruption being extremely passive in undertaking concrete actions to minimise the high rates of corruption.

The Government of Kosovo has made little progress in undertaking anti-corruption actions. In the reporting period it has supported two requests of the Kosovo Special Prosecutor's Office to compensate overtime and stimulate financially its employees, has established the Unit for International Cooperation on Law Enforcement, and has approved the Legislative Strategy for 2011. Nevertheless, such activities were insufficient to reduce the high rates of corruption and its broad expansion in public institutions. Irregular granting of tenders, abuse of official authority and abuse of public money are only some of the corruption affairs that accompany the Government of Kosovo.

The judicial system has made limited progress in its fight against corruption. The number of unresolved cases concerning abuse of office, accepting of bribes and giving of bribes, is continuously increasing. Failure to resolve these cases indicates the poor functioning of the Kosovo judiciary. This considered, the number of judges and prosecutors working in the anti-corruption area should increase. Nevertheless, there are some positive steps by the prosecutor's

offices (district and municipal level) by filing indictments and proposals for charges. Attempts to reform this power continued throughout the year. The Anti-Corruption Agency (ACA) has marked satisfactory progress in relation to the fight against corruption. Throughout the year the ACA received information from citizens and various officials in relation to corruption affairs within public institutions, has denounced abusive practices, has submitted to the prosecutor's offices information on officials implicated in corruption affairs, and has successfully completed the process of declaration of assets by senior public officials. In the reporting period, the Anti-Corruption Agency (ACA) focused on the process of declaration of assets by senior public officials, on the publication of the Annual Report 2010 and its approval by the Assembly of Kosovo. More than 95% of senior public officials have declared their assets to the ACA. According to the Law on Declaration, Control and Origins of Assets the number of senior public officials who were under an obligation to declare their assets to the Anti-Corruption Agency was 1 830. Of this total number, only 1 746 or 95.40% have met their legal obligation. The number of those who did not declare their assets is 84 officials, or 4.60%, while 26 other officials have declared their assets but in fact the forms were not filled out in conformity with the law and standards/criteria determined by the ACA. The Agency should be further strengthened because its role and function has been reduced to only administrative investigations. The negative aspect of the ACA was demonstrated in relation to conflict of interest. Many officials involved in conflict of interest were exonerated by ACA, thus giving them the entitlement to hold multiple public functions. Also, a drawback with the Law on Declaration, Control and source of Wealth remains the fact that false declaration

is sanctioned very softly,⁶⁴ from €150 to €1500. Civil society and the ACA have requested that false declaration be included in the Penal Code of Kosovo as a penal act. The other drawback of the law is that it does not enable finding the source of wealth of high officials. They can declare wealth based on their wish as no one will attempt to trace it.

In the reporting period, the Kosovo Police (KP) has shown higher determination in the fight against corruption, but it still remains dependent on other institutions, which lessen its anti-corruption engagements. There have been more attempts for strengthening the fight against corruption: by conducting investigations into corruption affairs, by arresting public officials and submitting information to the Prosecutor's Office of Kosovo etc. However, the practices of abuse of official duty, accepting bribes, appropriation during the conduct of official duty and giving bribes, continue to be a part of this institution.

Even though Kosovo Customs (KC) has been under investigation, this institution has reacted against corrupt affairs, although it has not been adequate in doing so. The commitment of this institution was in the context of openness and transparency. Every time abusive practices have surfaced, immediate steps have been taken to punish the officials involved in corruption affairs. Ultimately, the corruption affairs cases have decreased.

2.9 Security Sector

Compared to last year, the security sector has had marked progress; however, shortcomings have been identified in consolidation of institutions. In this period of time, several important laws have been adopted, such as the Law on Private Security, the Law on Police Inspection, the Law on Weapon Acquisition, etc. Nevertheless, parts are still ongoing or at the initial stage of drafting. As in other

⁶⁴ Penalties for officials who falsely declare vary from €150 to €1500, which in general is a soft penalty for concealing considerably higher amounts.

fields, low implementation of the laws remains a problem.

In general, the drafting and adoption of the legislation in the area of civil emergencies has been slow and no progress has been identified in relation to the increase of capacities of managing civil emergencies in Kosovo.

The State Agency for the Protection of Personal Data was consolidated this year. However, the Department for the Verification of Credibility, which would start building the state system for the classification of information, has not yet become operational. Municipal Security Councils in the Communities have continued to function and the Strategy for Community Security was drafted.⁶⁵ Their sustainability is rendered questionable as a result of lack of capacities, little support by mayors (as chairpersons of these) and the establishment of mechanisms with similar roles by the donors.

Kosovo Police

The Police remain the most consolidated institution relative to other security institutions.⁶⁶ Currently, the new law on police is being drafted and it is expected to reflect the complete reform of this institution and its adaption in conformity with the new circumstances. However, it has been proved that the numerous and frequent changes of managerial positions in the police impair the coherence of the institution's reform process. Furthermore, in addition to subjective problems, the police are also facing a lack of technical capacity, and consequently it remains the under operational dependency of international institutions for the rule of law – KFOR and EULEX. As a result of this situation, the police are deprived from exercising and executing its mission, and from realising its objectives in the area of fighting organised crime, terrorism, and also keeping and enforcing public order, in particular in

⁶⁵ MIA, National Strategy and Action Plan for Security in the Community, June, 2011

⁶⁶ KCSS, Contextual Analysis for the Reform of the Security Sector in Kosovo, March 2011

situations where they may face eventual upheavals.

The police still depend on three armored vehicles purchased in 2010; furthermore, it is the only police force in the region that has no air observation and control capacities for the border areas, traffic, upheavals, emergency situations and the transport of specialised units in areas requiring their intervention.⁶⁷ The management of the fleet of the existing vehicles is one of the basic weak points that affect the police, due to a lack of required expertise to maintain the different types and makes of vehicles the police operate with.

The police continue to be subject to political implications based on frequent management changes, and the institution is believed to be divided into groups of interests of specific actors. Relations with EULEX have deteriorated as a result of events in the north and open the position of Minister Rexhepi regarding the failure of EULEX to carry out its duties and mission. Non-participation in regional and international police initiatives (such as SECI Centre, EUROPOL, INTERPOL, Police Convention and other regional mechanisms) for political reasons, is being reflecting on the accomplishment of the mission of the police, and also on the strengthening of international cooperation as a requirement to fight and face international security challenges.

The police have achieved in conveying a more satisfactory level of good governance, and compared to other institutions, it has shown results regarding transparency, internal control and ethnic and gender inclusion.⁶⁸ The Report of the General Auditor has identified many irregularities with the management of public monies by the MIA and the Police.⁶⁹

⁶⁷ The police have no observation helicopter or transporter to serve for this function.

⁶⁸ Police progress in the aspect of good governance has been identified in the research into progress by KCSS in relation to the development of the governance and democratic oversight of security institutions.

⁶⁹ GAO, Audit Report for Annual Financial Sheets of MIA for 2010, June 2011

The border police have concluded the process of taking control over the green border line with Montenegro; however it is still unsure whether the same will happen soon with the border with Serbia. To achieve this, in addition to overcoming political problems, depends also on the need to increase the number of border police officers and equipping them appropriately.⁷⁰ Another problem is represented by the lack of border demarcation with all neighboring countries, with the exception of Macedonia.

Kosovo Security Force

The Kosovo Security Force (KSF) continued its development. According to data of June 2011, approximately 2 300 active members were recruited, thus almost finalising the entire recruitment process in the active component.⁷¹ Nevertheless, despite the adoption of the law on reserve component, there is a holding back in the treatment and rendering operational of the reserve forces, foreseen to be 800 members. Research in the reporting period identified plenty of shortcomings in the selection process for the KSF members, based on group, regional and political preferences.⁷² In general, there are discrepancies between the statements of the Head of KSF regarding the achievement of complete operational capacities on one hand, and the subjective and technical shortcomings on the other hand.

In the course of this year the KSF managed to be partially supplied with light weaponry; however it is still short in the technical aspect. Local ownership continues to be a problem with the KSF, as a result of considerable dependency on international presence. However, the participation of a KSF unit on the occasion of the change of KFOR command is a step forward towards the advancement and independence of this institution.

The KSF has not properly developed a good governance component; in particular it reflects as a non-transparent institution with a built-in culture of closing shop. Just like the police, the KSF continues to face difficulties with participation in joint regional conferences and activities. However, although the KSF Ministry claims to have participated in several activities, their number is small compared to the number of existing initiatives in the region, Europe and further. The Auditor's Report for 2010 found flaws in the management of public finances (particularly related to recruitment, supply and internal control) however there is improvement compared to previous years.⁷³

Kosovo Intelligence Agency (KIA)

KIA continued to function and it has been reported that a respectable number of people were recruited and trained in the reporting period have. However, a lack of transparency at KIA and the difficulty for the media and civil society to have access to the work of this institution deprives the report of an accurate conclusion in relation to the KIA establishment.⁷⁴ The parliamentary commission for the KIA oversight is presided over by the opposition and the continued internal debates reflect a democratic atmosphere. However, the several-month-long focus on the issue of party intelligence services has taken the attention of the commission away from carrying out its mandate – oversight of the KIA.

2.9 Human Rights and Minority Protection

Applicable International Human Rights Law in Kosovo and its observance

The Constitution of the Republic of Kosovo⁷⁵ provides for direct applicability of

⁷⁰ Security Forum, Integrated Border Management, December 2010

⁷¹ Security Forum, Kosovo Security Force – between current challenges and the future vision, June 2011

⁷² Ibid, p.90KSS

⁷³ GAO, Audit Report on Annual Financial Sheets of MKSF for 2010, June 2011

⁷⁴ E.g KIA has not yet launched the website for the scholars to have access to in open sources. The work of the Oversight Commission for the KIA is also non-transparent.

⁷⁵ Article 22.YIHR

international agreements and instruments, enunciating 8⁷⁶ internationally recognised human rights conventions and case law of the **European Court of Human Rights**⁷⁷. Therefore, such legal provisions provide a very strong foundation of human rights protection, which should be applied in practice by all of Kosovo's governing institutions especially the judicial system.

However, in reality not a lot of progress has been made in the last year in the promotion and protection of human rights. A crucial problem remains in that the very guarantors of such fundamental rights are in fact, in the majority of cases, the violators. It has been recorded that during 2010 the highest number of alleged violations of human rights in Kosovo were conducted by the judicial system, which remains ineffective, as well as by Ministries, Municipalities and Public Enterprises of the Republic of Kosovo⁷⁸.

National Legal Measures

The Assembly of Kosovo has continued to adopt a range of legal measures, for instance the amended **Law on Access to Public Documents**⁷⁹ came into force during this reporting period. Whilst this piece of legislation is crucial in strengthening the right to public information as a fundamental human right in Kosovo, its implementation is lacking and research suggests that in practice there has been no progress⁸⁰. Similarly the **Law on Labour**⁸¹ was adopted,

although it is highly questionable whether this piece of legislation is compatible with anti-discrimination law⁸². Whereas the **Anti-Discrimination Law**⁸³ itself is not being effectively implemented in the various spheres of Kosovar society and citizens continue to face some form of discrimination including multiple-discrimination.

Freedom of Expression

Whilst, steps have been taken to remove the inconsistencies between the **Law on Defamation and Insult**⁸⁴ and the **Kosovo Criminal Code**, amendments should be adopted as a matter of urgency. Additionally, it has been reported that freedom of speech has gradually improved⁸⁵. However, the position of journalists being able to report freely has not improved. During this reporting period there have been a number of cases where journalists were intimidated, abused, harassed⁸⁶, and even physically attacked⁸⁷. Such acts were not strongly condemned by Kosovo institutions and at times were even conducted by government officials. Moreover, the government continues to retain its dominant place in the media, maintained through advertising, which it uses as a tool to control what is said and written. Furthermore, the independence and impartiality of RTK has still not been addressed⁸⁸.

Freedom of Religion

There is generally respect for religious

76 Universal Declaration of Human Rights; European Convention for the Protection of Human Rights and Fundamental Rights and its Protocols; International Covenant on Civil and Political Rights and its Protocols; Council of Europe Framework Convention for the Protection of National Minorities; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Rights of the Child; Convention against Torture And Other Cruel, Inhuman and Degrading Treatment or Punishment available at <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf> p. 6 accessed on 15/09/2011

77 Article 53 of the Constitution of the Republic of Kosovo

78 Republic of Kosovo Ombudsperson Institution, 'Tenth Annual Report 2010', Prishtina July 2011, at p. 19 para. 3

79 Law No.03/L -21 adopted on 7 October 2010 entered into force 65 days later

80 GAP Political Analysis, 'Implementation of the Law on Access to Public Documents - Six months after entering into force' May 2011, at p. 1 and 19 available at <http://www.institutigap.org/repository/docs/QasjaDokumentePublike2.pdf> accessed on 17/09/2011

81 Law No.03/L -212 adopted on 1 November 2010

82 This will be dealt with in more detail in the section on Women's Rights

83 Law No.2004/ 3 adopted 19 February 2004 entered into force 19 September 2004

84 Law No. 02/L-65 adopted 15 June 2006

85 Awarded the score of 2.70, this highest since 2001, Kosovo Media Sustainability Index 2011 available at <http://www.irex.org/resource/kosovo-media-sustainability-index-msi> accessed on 17/09/2011

86 US Department of State, '2010 Human Rights Report: Kosovo', April 8 2011, at p. 17-20 available at <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154432.htm> accessed 17/09/2011

87 Please see <http://ks.yihr.org/ks/article/79/> and <http://ks.yihr.org/ks/article/78/Condemn-of-the-attack-on-Klan-Kosovas-journalist> accessed on 17/09/2011

88 Youth Initiative for Human Rights Kosovo, 'State of Constriction? Governance and Free Expression in Kosovo', 24 May 2010, available at ks.yihr.org/en/article/8/State-of-Constriction-report accessed on 27/09/2011

freedom through legal instruments and in practice. However, the legal framework for registering religious communities has still not been adopted, thus at times hindering religious communities from enjoying their full rights. Furthermore, regrettably the right to freedom of religion has become highly politicised and has extended to acts within the government, which are arguably not within the law⁸⁹.

Freedom of Movement

Whilst this is a guaranteed right and generally it is realised in practice, there are areas of Kosovo where minorities encounter difficulties in realising free movement. Of particular significance is the situation of minorities⁹⁰ in certain enclaves such as Zubin Potok, Pasjan, Ropotova, Leposavic, who cite security as the main reason for being unable to realise this right⁹¹. Additionally, the current situation in the North of Kosovo continues to hinder the realisation of this right for all citizens regardless of their ethnicity.

Freedom of Association

Some progress can be noted in this sphere with the **Law on Freedom of Association in Non-Governmental Association** having been amended. However, without further legislative acts in regards to religious communities and enterprises, it is questionable whether it will be effectively implemented. Additionally, no progress can be reported in respect of the Government using civil society expertise. In regards to NGOs, whilst they have worked to increase capacities, there is room for further improvement in a range of aspects including: cooperation, increasing public awareness and increasing monitoring.

Minority Rights

⁸⁹ United States Department of State, July-December, 2010 International Religious Freedom Report - Kosovo, 13 September 2011, available at: <http://www.unhcr.org/refworld/docid/4e734c8a7d.html> accessed 17/09/2011

⁹⁰ Including Serbs and RAE.

⁹¹ This is based on Youth Initiative for Human Rights Kosovo's work in the project 'Visiting within Kosovo' conducted in the last three years.

a. Use of Languages

The **Law on the Use of Languages**⁹² was adopted in 2006; progress of its implementation in the judiciary was reported during the last reporting period and the Language Commission made further recommendations in 2009⁹³. However, little progress can be reported at this time as capacities of institutions to effectively implement the above mentioned law have not improved and the public are still not fully aware about the work of the Commission. Therefore, despite this law being in force for 5 years, implementation and enforcement remain incomplete and persistent discrimination continues.

b. Roma, Ashkali, Egyptian

RAE communities continue to encounter marginalisation and discrimination in a range of spheres including access to education, healthcare, employment and social protection. In regards to education, no universal system of data collection of minority pupils exists, which makes it difficult to establish numbers of minority children who are not able to realise their right to education, particularly at compulsory age level, due to various reasons. Additionally, de-facto segregation continues to take place for those children that do attend school⁹⁴. Furthermore, access to healthcare at point of service also remains difficult for minorities, which is a discriminatory practice on the part of the authorities.

Such marginalisation and discrimination is further exacerbated by the pressure of repatriation of such minorities from Western countries, which have continued despite calls to bring a halt to this practice from the UN Secretary General, the Council of Europe Commissioner for Human Rights and a

⁹² Law No. 02/L-37 adopted on 27 July 2006

⁹³ Languages Commission, Office of the Prime Minister, Annual Report 2009 available at <http://www.ks-gov.net/kgjz/Homel.aspx?id=21&l=1> accessed on 18/09/2011

⁹⁴ European Centre for Minority Issues Kosovo, 'Protecting and Promoting Education for Minority Communities - A manual for municipal officials', Prishtina March 2010, at p. 8 and 38 available at <http://www.ecmikosovo.org/fileadmin/ecmikosovo.tpl/pdf/10ManualMinorityEducation.pdf> accessed on 18/09/2011

number of NGOs⁹⁵. This is primarily because their return makes them particularly vulnerable to human rights abuses. It is clear that political considerations are at play here, however, it should be remembered that legal obligations are just as important, if not more so, and these are not discharged by continuous planning and very little action or by ad hoc actions.

Women's Rights

In this area, the government continued with further planning of activities, which in itself does not amount to progress. Women's rights during this reporting period have continued to suffer in a range of areas.

Firstly, while rape is criminalized, spousal rape remains an issue that has not been addressed. It has been reported that rape in Kosovar society, due to the stigma attached amongst other reasons, remains largely unreported⁹⁶. However, due to the current legal standing in regards to spousal rape we know even less, which is extremely unacceptable. Similarly, victims of sexual harassment, the majority of which tend to be women, are also not legally protected as there is no specific legal act which criminalises such behaviour. Whilst the Anti-Discrimination Law⁹⁷, in Article 2(a), recognises harassment as a form of discriminatory behaviour, in light of the position of women in Kosovar society, this is not sufficient, and for those women who encounter such harassment better protection should be provided.

Secondly, domestic violence continues to persist as a problem largely affecting women, which during this reporting period has even resulted in loss of life. Whilst

the legal framework is in place primarily, the **Law on Protection against Domestic Violence**⁹⁸, domestic violence has been recognised as a form of discrimination⁹⁹, which is directly applicable in Kosovo¹⁰⁰, its implementation is wholly unsatisfactory. One cannot claim to have any progress in this area where fundamental rights such as the right to life are not sufficiently protected.

Thirdly, women continue to face discrimination in the workplace despite the newly adopted **Law on Labour**¹⁰¹. Whilst the provision on **Maternity Leave** was considered to be highly beneficial to women, in practice its implementation remains hindered by a low government budget and employers circumventing the law through different practices¹⁰². Additionally, it is questionable whether the maternity leave provisions are as beneficial as first thought, primarily because they seem to discriminate against men and women.

In regards to trafficking in human beings, some progress can be reported with more cases brought forward for prosecution, and generally the government adopted a multi-pronged approach in this area. However, more needs to be done in regards to children and ensuring prevention, identification of victims and prosecution of child traffickers¹⁰³.

LGBT Community

Whilst the legislative framework is in place, which prohibits discrimination on the basis of sexual orientation¹⁰⁴, its implementation and enforcement continues to remain a concern; especially since

95 Human Rights Watch, 'The Balkans Must Broaden Approach to Human Rights – Forced Returns to Kosovo', 28 February 2011, available at <http://www.hrw.org/news/2011/02/28/balkans-must-broaden-approach-human-rights> accessed on 17/09/2011

Amnesty International, 'Not Welcome Anywhere – Stop the forced return of Roma to Kosovo', September 2010, available at http://www.amnesty.org.uk/uploads/documents/doc_20747.pdf accessed on 18/09/2011

96 US Department of State, '2010 Human Rights Report: Kosovo', April 8 2011, at p. 17-20 available at <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154432.htm> accessed 18/09/2011

97 Law No.2004/3 adopted on 19 February 2004, entered into force 19 September 2004

98 Law No.03/L –182 adopted on 1 July 2010

99 Opuz vs. Turkey [GC], no. 33401/02, ECHR 2009

100 Article 53 of the Constitution of the Republic of Kosovo

101 Law No.03/L –21 adopted on 2 November 2010, entered into force 16 December 2010

102 GAP Policy Brief, 'Labour Law: its implementation in the first sixth months' June 2011, at p. 3-6, available at <http://www.insitutigap.org/repository/docs/LabourLaw2.pdf> accessed on 18/09/2011.

103 US Department of State, 'Trafficking in Persons Report 2011 – Kosovo', available at <http://www.state.gov/g/tip/rls/tiprpt/2011/164232.htm> accessed on 18/09/2011.

104 Article 2 (a) Anti-Discrimination Law 2004.

negative attitudes at times have prevailed in the press characterising LGBT citizens as 'mentally ill'¹⁰⁵. Additionally, what is particularly regretful is that institutions do not mention verbally or in written form these citizens; it is as if they do not exist in Kosovo. A key example is the 10th Annual Report of the Ombudsperson (2010), which covers a range of rights both de facto and de jure, although not the predicament of the LGBT group. It is imperative that this issue is addressed, which the institutions should lead on through public debate, training and the creation of an environment where these citizens can freely declare their sexual orientation without fear of reprisal and with enforcement of their rights.

Missing Persons

The Law on Missing Persons¹⁰⁶ has been adopted, but this can be regarded as insufficient progress. This is primarily because this particular law fails to deal with a number of very important issues including; compensation for the victims' families, special privileges for their widows and children, and it doesn't provide any accountability mechanism when victims' families are finding it difficult to exercise their right to information and it doesn't address all the rights to truth. Additionally, the law does not recognise the already commemorated Day of Missing Persons on the 27th of April. In regards to the Commission on Missing Persons, it continues to be composed of only Kosovo Albanians. However, investigations of alleged mass graves in certain regions of Kosovo have begun, although progress remains slow. Overall all relevant parties are criticised for the lack of progress in this area.

Transitional Justice

In accordance with the Ahtisaari Plan, the Kosovo Government is under an obligation within its human rights

¹⁰⁵ US Department of State, '2010 Human Rights Report: Kosovo', April 8 2011 available at <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154432.htm> accessed on 18/09/2011.

¹⁰⁶ Law Nr. 04/L-023, adopted on 31 August 2011.

protection mechanisms to also provide for **transitional justice initiatives**¹⁰⁷. Some progress can be reported within this sphere with the establishment of the **Institute for War Crimes Investigations**¹⁰⁸. However, regrettably the **Institute** has already started receiving well placed criticisms; in particular in regards to recruitment methods used which were not transparent as they did not involve all relevant stakeholders. Additionally, in light of the already existing **regional initiative for regional commission RECOM**¹⁰⁹, it remains to be seen whether this **Institute** will positively contribute and fulfill its mandate, especially as regional cooperation will be exceptionally important.

Human Rights Institutions

a. Ombudsperson

This is an especially important institution for the advancement of human rights protection in Kosovo, although in this reporting period has not performed at a standard that is legally required¹¹⁰. There have been a range of reasons for this, a major one being politicisation. This has meant that the **Ombudsperson** has not spoken out against certain violations of human rights, there have been a number of staff changes and there is ongoing wrangling over the appointment of his deputies. Furthermore, other government institutions have continued to defy letters and recommendations that the **Ombudsperson** has made. It is absolutely vital the **Ombudsperson** is someone who has the utmost integrity and is interested only in serving the people and protecting their human rights. All necessary steps should be taken as a matter of urgency to restore the **Office of the Ombudsperson** to

¹⁰⁷ Article 2 (5), Comprehensive Proposal for the Kosovo Status Settlement, 26 March 2007, available at http://www.unosek.org/docref/Comprehensive_proposal-english.pdf accessed on 21/09/2011

¹⁰⁸ Established on the 1st of June 2011 and will function under the auspices of the Ministry of Justice, available at <http://www.md-ks.org/?page=1,180> accessed on 21/09/2011

¹⁰⁹ Available at <http://www.zarekom.org/The-Coalition-for-RECOM.en.html> accessed on 21/09/2011

¹¹⁰ Article 3, 'Law on Ombudsperson', Law No.03/L - 195, adopted on 09/08/2010

its independent role in order for it to serve the people of Kosovo and protect their human rights¹¹¹.

b. Human Rights Units (Ministries/ Municipalities)

Despite the existence of this mechanism for a number of years now, it is still not clear if they are at all effective due to incoherent bylaws, lack of organisation and coordination and low capacities to serve Kosovo's citizens. Furthermore, any readily available methods they have to inform citizens of what they do they are not utilised; for instance, most websites do not contain any useful or up to date information. Overall, such mechanisms, due to various reasons, are not performing as they should and do not contribute to the awareness or protection of human rights.

3. ECONOMIC PROGRESS (RIINVEST)

Real Sector

Macro-Economic Sheets

In spite of the slight transitory progress, the economy in Kosovo continues to depend mainly on unsustainable developmental sources. Government expenditures, remittances from the Diaspora and the international financial assistance, continue to be the main promoters of economic growth. In fact, the latter comprise of about 20% of the GDP. Kosovo citizens continue to be the poorest in Europe with income per individual of only €1800. Such aggravated economic parameters encourage migration and illegal economy in the country which is calculated to the amount of about €1 billion, while fiscal evasion due to the failure of collecting mechanisms to accumulate, amounts to €300-400 million annually.

According to the International Monetary Fund (IMF), the economy of Kosovo indicated in 2010 a real growth of the Gross Domestic Product (GDP) by 4.6% compared

¹¹¹ Youth Initiative for Human Rights Kosovo observation whilst working on different projects.

to 2009.¹¹² Government expenditures were the main factors that forced this growth and even in the last year continue to be the engine of economic development in Kosovo (IMF 2011), followed by remittances from the Diaspora that noted a slight increase thanks to the recovery of the global economy (CBK 2011).¹¹³ According to IMF forecasts, GDP is expected to increase in 2010 and 2011 by 5.5%, namely 5.2% (CBA 2011). According to the government plan this increase should be mainly generated by the private sector. The first data from the CBK however, indicate a hectic presence of government expenditures in the structure of the economic contributors in the country. Nevertheless, an increase by 5.1%, albeit positive, continues to fall behind Kosovo's development needs.

Planned growth is not sufficient to address the socio-economic problems of Kosovo. According to the World Bank (2011) Kosovo needs an annual growth of 8-10% to reduce the serious levels of unemployment and poverty and to generate sustainable economic growth.¹¹⁴

Labor Market

Kosovo continues to have the highest unemployment in the region. According to the UNDP (2011), unemployment in Kosovo in 2010 was at 44.3%. The largest part of this percentage is composed of women and youth with 59.6%, namely 73%.¹¹⁵ According to the Central Bank (2011) the number of jobseekers in 2010 decreased by 1.1 % compared to the previous year. This structure is dominated by unqualified jobseekers at 63.4%, followed by residents with a secondary education 34.6%, and those who have university degrees 1.8%.¹¹⁶

¹¹² International Monetary Fund (IMF) 2011, IMF Executive Board Concludes 2011 Article IV Consultation with the Republic of Kosovo, <http://www.imf.org/external/np/sec/pn/2011/pn11105.htm>

¹¹³ Central Bank of Kosovo (CBK) 2011, Yearly report 2010, <http://bqk-kos.org/repository/docs/2011/Raporti%20Vjetor%202010.PDF>

¹¹⁴ FES-Riinvest 2011, Forum on economic policies, [http://www.fes-prishtina.org/wb/media/FESRIINVESTALBANIAN\(fin\).pdf](http://www.fes-prishtina.org/wb/media/FESRIINVESTALBANIAN(fin).pdf)

¹¹⁵ United Nations Development Program (UNDP) 2011, http://www.kosovo.undp.org/repository/docs/MDG_1.pdf

¹¹⁶ Ibid 112.

In general, employment by the private sector has significantly increased, by 14 % in 2010, compared to the previous year, while the public sector experienced a decrease by 14 % in the same period of time.¹¹⁷

High rates of unemployment continue to be a serious problem for the rebuilding of Kosovo. The largest numbers of the unemployed are unqualified and untrained for work; furthermore, being outside of the labor market for a long time has lessened their chances for employment. In addition, about 24 thousand young people enter Kosovo's labor market annually (Riinvest 2011), thus rendering the current job creation rates indiscernible.¹¹⁸

Stagnation of employment in spite of the economic growth is an indicator of unequal distribution of Kosovo's economic growth by the creation of new values.

Inflation

According to the World Bank (2011), the Consumer Price Index (CPI) in 2010 noted an average annual growth of 3.5%. On the other hand, the Institute of Statistics stated that in the first six months of 2011 the CPI experienced an increase of 10.7% compared to the same period in 2010. There are several reasons to the steep increase of inflation. Firstly, a large part of prices depend completely on Kosovo's imports. Secondly, a series of fiscal policies on basic products (oil and other fuel products) have caused a partial increase of prices. Thirdly, the increase of prices in recent months partially happened as a consequence of the increase of public sector salaries and reflected the expectation of businesses. IMF foresees that the average increase for 2011 shall be 8.3%. Such an increase mostly affects the unemployed and the poor, whose buying power keeps in real terms suffering.

An inflation of such parameters significantly impairs the living quality of

Kosovo people, especially families whose household income is below average or who live in poverty.

2. Fiscal sector

Revenues and Budget Expenditures

The parameters of Kosovo's budget sustainability have fluctuated every year, with a tendency for a surplus in the early years and increasing deficit in recent years. While the surplus was caused by the lack of planning and budget projection ability, by the restrictions imposed by the law on public procurement, and by the stagnation of budget expenditures, recent deficits were created as a result of hyper-expenditures. This change from surplus of public money to lack thereof is an indicator that Kosovo is spending more than it is generating, thus creating budget gaps that may be financed by bank balances or one-time revenues.

Budget revenues in 2010 increased by 2.8% compared to the previous year.¹¹⁹ On the other hand, budget expenses for 2010 increased by 3.2% compared to 2009. Even in 2010 capital investments comprise the largest part of expenditures. Compared to 2009, capital investments in 2010 increased by 13.7%.¹²⁰

The general budget deficit for 2011 is expected to be €226 million or about 5% of the Gross Domestic Product. The IMF considers this rate relatively high. It also exceeds the recommended rates of budget deficit in the European Union, where they do not exceed 3.5%, as well as by the agreement with the IMF. Until now, 2011 is a year to be remembered for capital investments. The largest share is taken up by "Ibrahim Rugova" motorway. The decision to construct the motorway was taken in 2009 by the Government of Kosovo, and this project was analysed by previous governments but until 2009 it was a project only being analysed. According to the initial project, the road should pass through eight municipalities and over around 1,062 hectares of land - from

¹¹⁷ Ministry of Work and Social Well-being (MWSW) 2011, Work and Employment, <http://mpms.rks-gov.net/Portals/0/Librat/AL%202010%20Raporti%20vjetor.pdf>

¹¹⁸ Ibid 112.

¹¹⁹ Ibid 113.

¹²⁰ Ibid 112.

Prishtina to Vermicë, at the border with Albania, and from Prishtina to Merdare, at the border crossing point with Serbia. The Government has argued that Kosovo will benefit from this project because European corridors shall be opened and jobs will also be created. The biggest capital project in the country is expected to be completed in three years.

However, the entire process did not carry on without problems. In order to reduce cost and avoid hard mountainous terrain, on April 27th 2011, the Government of Kosovo decided to change the road lanes. This change of lanes will reflect on the total cost of the motorway, the value of which is unknown, due to the feasibility studies that would determine the cost and profit of the project not being published. The total cost expected for this project is about €700 million (the assessment made by the Prime Minister of Kosovo). However, the official projection of expenditures has not been published by the Government of Kosovo. Failure to determine the fixed price of the motorway has influenced in such way that the cost of the project may increase up to an unaffordable figure. Unaffordable burdens on the budget of Kosovo, as well as exceeding the cost of initial planning seem to have forced the Government of Kosovo to analyse alternative lanes for the motorway that would have a lower cost. The project is marked by transparency problems, as 16 months since its initiation; the authority to supervise the work has not yet been selected. Failure to publish the contract has given rise to a large debate and suspicions of abuse in this respect. Motorway "Ibrahim Rugova" is expected to be financed by the Budget of Kosovo. Money for financing will be generated by the sale of PTK. Failure to determine the price of the motorway may influence the increase of the total cost, and implications in other capital investment are huge. For at least the next two years, Kosovo will face serious restrictions in constructing regional roads and making other capital investments.

Budget imbalance continues to present

a worry; in the last four years it has gone from a surplus of 7.2% of the GDP to a deficit of 5.1% of the GDP, thus signaling an immediate need for budget reduction in order to achieve financial stability in the country. The trend of financial imbalance indicates that Kosovo has spent and continues to spend much more than it generates from revenues.

Agreement with the International Monetary Fund

In 2010, forced by budget disciplining, the Government of Kosovo signed an international agreement with the IMF known as the "Stand-By Agreement". It is worth mentioning three key elements of this agreement, the realisation of which required a budget disciplining: a) salaries of the public sector cannot exceed 7.4% of the GDP, or €290 million; b) the sale of PTK should generate €300 million to cover the deficit; and c) the budget deficit must be kept within the EU frames.¹²¹ Whilst the budget deficit for 2010 was kept within these frames, the beginning of 2011 saw additional expenditures that exceeded the frames of the preliminary agreement. The increase of salaries to €378 million exceeded the IMF restrictions by 35%, despite GDP growth of only 4.6%. Such an increase was a partial violation of an important financial agreement and its guarantee was the €110 million as IMF financial assistance.

The violation of the agreement presented the need to redesign the relations between the IMF and Kosovo. From July 2011, the IMF moved Kosovo from the "Stand-By Arrangement" to "Staff Monitored Program" or from a formal profitable agreement to an informal and monitoring program, thus restricting the financial assistance.

The design of the agreement with the IMF from a contractual, profitable relationship to a non-profitable and informal relationship represents for Kosovo a step backwards for all

¹²¹ Forum 2015 (2011), State and Budget.

integration processes, for the macro-fiscal sustainability and withdrawal of potential investors. Former agreement with the International Monetary Fund, according to the budget of 2011, constitutes the core source of financing the deficit. Its redesign leaves Kosovo's deficit not covered for 2011, thus forcing the use of the bank balance accumulated in earlier years and revenues made by the sale of national assets. The relationship with the IMF is the biggest regress in Kosovo for 2011.

3. Financial Sector

In 2010, the financial sector in Kosovo noted a slower increase compared to 2009. The bulk of assets in the financial sector still comprises of commercial banks at about 77 %.¹²²

Commercial Banks Sector

According to the report of the Central Bank, the structure of the Kosovo bank system in 2010 was the same as in the previous year, both in terms of the number of banks, as well as structure and ownership. The value of assets managed by commercial banks in Kosovo is about €2.5 billion. Viewed in relative terms, the assets in the banking sector in 2010 noted an increase of 10.5% compared to 2009. Loans continue to be the main activity of the bank system; in 2010 the increase was 4.3% compared to 2009. The value of loans granted by commercial banks in 2010 amounted to €1.46 billion (CBK 2011). As far as the loan structure is concerned, enterprises are in pole position with 70.5%, followed by households with 29.5 %, where loans with long maturity deadlines prevail.

The main financing sources of commercial banks in Kosovo are deposits accumulated within Kosovo. The increasing trend of such deposits has slipped in 2010, being 9.8 % smaller than in 2009.¹²³ However, this fact is explained by the withdrawal of government deposits from commercial banks. The general amount of deposits in December 2010 was €1.93 billion. Regarding the structure of deposits, households top the list with a total of €1.3 billion deposited (67.1%) of the general amount of deposits, followed by enterprises with €526.6 million (27.2 %). Deposits are characterised by short maturity terms. The profits of these banks in 2010 amounted to € 32.8 million, or 29.9 % higher than in the previous year.

Considering the economic and financial crisis in Europe, the sustainability of the

banking system is encouraging. Such sustainability indicates financial progress in Kosovo. However, the high interest rates offered by the sector for Kosovo businesses continued to be a serious barrier to the development of the private sector.

Interest Rates

“Loan risk in Kosovo is still perceived with higher interest rates compared to regional countries. The strengthening of Kosovo’s bank market competition is stagnating. Factors that have affected this are the efficiency of the judicial system and the situation with the cadastre system on one hand, and the capacities as well as the commitment of enterprises in meeting the basic conditions to get loans on the other hand.”

In 2010, the average interest rate for loans in Kosovo marked a slight increase compared to 2009 (from 14.4% in 2009 to 14.6% in 2010). This rate continues to be the highest in the region (Albania – 12.9 %, Macedonia – 11.9%, Serbia 10.29 %, Croatia 10.18%). The increase of interest rates has proportionally affected all sectors, with special emphasis on the agricultural sector. Commercial banks have increased their interest rates for personal loans from 10.8 % to 12 %, for businesses from 12% to 15.6 %, and for agro-loans from 15% to 24%.¹²⁴ Commercial banks in Kosovo continue to make relatively high profits.

High interest rates continue to be a serious barrier to capital generation in Kosovo.

4. External Sector

Exports and Imports

Kosovo continues to face serious problems with the trade deficit. Exports continue to be symbolic vis-à-vis the high rates of imports. This deficit has increased from €1.77 million in 2009 to €1.85 million in 2010, and continues to follow the same increasing trend in 2011. In relative terms, the annual increase of the trade deficit is

¹²² Ibid 112.

¹²³ Ibid 112.

¹²⁴ Magazine on Economy and Business 2011.

4.6%. Trade deficit in GDP in 2010 had a slight decrease from the 45.8 % it was in 2009 to 45.0 %. Based on the Central Bank report, annual growth of prices of oil by-products in international markets by 25% influenced on the increase of imported products. Although there has been a relatively high imbalance in the ratio of exports/imports, which has increased from a very low level, it still seems to be some distance from correcting the economic and trade imbalance. The (low) level and structure of foreign trade seems to indicate poor competitiveness of Kosovo products in both the internal and external markets.

Such increasing trade imbalance continues to be worrisome for Kosovo. The inability to substitute imports with local products has influenced significantly on the widening of this gap.

Regional Free Trade Agreement (CEFTA)

Export to CEFTA countries decreased in 2010 compared to the previous year. In 2009, 32.4% of the total exports of Kosovo went to CEFTA member countries, while in 2010 these exports have fallen to 24.1%.¹²⁵ The CEFTA countries that Kosovo mostly exported to in 2010 were Albania and Macedonia, respectively 11% and 8.9% (CBK 2011). On the other hand, in 2010 imports from these countries increased compared to 2009. According to the Customs Office of Kosovo (2011), in 2010, compared to 2009, Kosovo imported about 22% more goods from Serbia, and about 39% more goods from Bosnia and Herzegovina.¹²⁶ The same trend continued in the first six months of 2011.

In July 2011, Kosovo decided to impose reciprocity measures with Serbia and Bosnia and Herzegovina. Firstly, the Government of Kosovo decided to prohibit import of all products, and secondly, the Government of Kosovo decided to apply a customs tax of 10%. The imposing of reciprocity measures did not reflect in any economic imbalance in

Kosovo. On the contrary, Kosovo managed to substitute Serbia's products with products from neighboring countries.

Although trade prohibition is against the spirit of European integration, the solution to this problem requires mutual compromise.

EU Preferential Trade Measures

With the improvement of markets in the European Union in 2010, Kosovo's exports to the countries of the Union also increased. According to a report of the Central Bank, export of products to European Union Countries in 2010 increased to 44.7% compared to 43.1% in 2008. From 2011, Kosovo remains the only country in the region without preferential trade with the EU.

The removal of preferential trade for Kosovo on the part of the EU was a heavy economic blow to Kosovo's symbolic exports.

5. Business Environment

In 2011, Kosovo was ranked 119th out of a total of 183 economies compared each year in the comparative analysis of the World Bank's "Doing Business". This year, Kosovo went down a further 6 places, from their position in 2010.

The private sector in Kosovo continues to suffer from the lack of rule of law, lack of power supply, poor infrastructure and limited access to finance.

Only 3% of Kosovo businesses (World Bank 2011) have addressed the courts in the last year. This fact indicates the presence of a difficult judicial environment and a lack of trust in the system by businesses. Irregular power supply continues to obstruct local producers from carrying on with a steady process of production. Loss caused by power shortages and additional costs of ensuring regular power supply through alternative sources, are a serious burden to the businesses of Kosovo. On the other hand, infrastructure and public services continue to be inferior given the needs of the Kosovo businesses.

¹²⁵ Ibid 112.

¹²⁶ Kosovo Customs (2011), Yearly report 2010, http://dogana.rks-gov.net/Uploads/Documents/Raporti_Vjetor_2010.pdf

The Law on Labor that came into power in 2011 has encountered numerous rejections by the private sector with special emphasis on paid leave and minimum wages. Issues of this kind have been addressed to the Economic-Social Council. With special emphasis, maternity leave has further exacerbated gender-based discrimination making businesses more selective when hiring female employees.

The business environment in Kosovo continues to demonstrate a lack of progress. Business rankings have demonstrated regress.

5. Privatization of Public Enterprises

The Government of Kosovo was very active in proceeding with the privatisation of the telecom company PTK. The start of this privatization process was preceded by serious over-employment at PTK without observing basic recruitment procedures, and appointment of board members who were influenced by politics. These actions have exacerbated the situation of the enterprise. Since PTK is a profitable company, the arguments of the Government regarding privatisation failed to convince the Assembly and the general public that the benefits of the privatisation of PTK were greater than keeping it under public ownership. Furthermore, the contracted infrastructure projects encourage the need for the privatisation of PTK in order to cover the project expenses and keep fiscal sustainability. The privatisation of PTK is part of the agreement between Kosovo and the IMF. Income from the privatisation, like no-debt financing, should ensure that Kosovo can avoid commercial loans to cover expenses that stem from contracted capital investments. The PTK privatisation strategy, which has encountered a lot of opposition in the Assembly, provides for the sale of 75% of company shares. In the last year, this process has slowed down while the management of this enterprise is under investigation by the prosecutor's office, for operating to the detriment of the company. There have been delays in the privatisation

process in the energy sector too. This process has not become part of the public debate and has been accompanied by a lack of transparency.

The process of the privatisation of public enterprises has been accompanied by a lack of transparency and of political consensus. The linkage between the privatisation and budgeting process is a new practice in Kosovo, and as such, it risks failing to obtain the optimal value from any potential sale. Furthermore, the need to act quickly and cover the debt, risks reducing the value of these assets, and fails to provide any guarantees that the new investors will be sufficiently strong to successfully re-structure this enterprise.



Initiative for Progress - INPO

INPO was established in 2005 to promote efficient, transparent and accountable public policies in local governance by integrating citizens and youth in democratic processes of decision-making. The organization operates under three programs: Good Governance, Index of Local Governance and School of Activity (Activa).

<http://inpo-ks.org/>



Kosovo Democratic Institute - KDI

KDI is a local nongovernmental organization with a mission to support the development of democracy by strengthening citizens and nongovernmental sector, increasing transparency, responsiveness and accountability of governmental institutions, and improving efficiency by involving citizens in decision-making. KDI aims at being a regional organization with influence on political processes by offering aid to processes of democratization.

<http://www.kdi-kosova.org>



Instituti për Hulumtime Zhvillimore - Riinvest

Riinvest operates since 1995 as a research nonprofit organization with the mission of promoting modern economic development of Kosovo based on a philosophy of entrepreneurship.

During the past years, Riinvest activities have included organization of seminars, workshops, and analysis of situation in different sectors toward

a successful reconstruction. Since 2001, its main activities have included research on policy and advocacy for expanding the business environment and creating basic conditions for sustainable economic development.

<http://www.riinvestinstitute.org/>



Foreign Policy Club - KPJ

Foreign Policy Club is a nongovernmental organization that gathers around eminent intellectuals, politicians and activists of civil society that show affinity for foreign policy.

Through an intellectual debate Club aims to contribute to generation of foreign policies by bringing recommendations in service of peace in Kosovo, region and world.

<http://foreignpolicyclub.org/>



Movement FOL

FOL was established to support active citizenry, increase transparency and accountability in order to contribute to good governance and prevent corruption in public institutions. FOL undertakes activities such as: debates, trainings, conferences, seminars and round tables, publications and research reports, monitoring of public institutions, mobilization and networking. FOL's main activities focus on public funds, conflict of interest, negligence and responsibility of institutions, and access to official documents.

<http://levizjafol.org/>



Kosov Center for Security Studies - KCSS

KCSS is a local think-tank in 2008 to promote and enforce democratization of the sector of security in Kosovo and region. The main objectives of KCSS are to contribute toward democratic oversight of security institutions and increase interaction between civil society and public institutions in the sector of security and rule of law. KCSS through the compound of research aims to serve as an alternative to public policy.

<http://qkss.org>



YOUTH INITIATIVE FOR HUMAN RIGHTS
NISMA E TË RINJVE PËR TË DREJTAT E NJERIUT
INICIJATIVA MLADIH ZA LJUDSKA PRAVA

Youth Initiative for Human Rights - YIHR

YIHR is a regional network of nongovernmental organizations that aim to increase youth participation in democratization of society and enforce rule of law by dealing with the past and creating new progressive connections in post-conflict region of former Yugoslavia. YIHR promotes truth, responsibility, justice, and equity as fundamental values.

<http://ks.yihr.org/ks>

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Rr.Mujo Ulqinaku 4/App 10

Tel: +381 38 609 900, 609 901

Fax: +381 38 609 902

Email: contact@fes-prishtina.org

www.fes-prishtina.org

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