



A SHORT POLICIES DOCUMENT

SECURITY VETTING

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THE ISSUE

Security Vetting is an evaluation method that considers whether a person is an acceptable risk to the state and its public order. An evaluation whether a person is considered an acceptable risk for the state and its public order.

If a person is deemed as an acceptable risk, security clearance may be issued through which he or she is allowed to access Classified Documents. Hence, security vetting represents an important procedure for the security sector. If security clearance is granted to a person who poses an unacceptable risk, they may endanger not only the security sector but also the vital interests of the Republic of Kosovo. A security clearance issued to a person, who in fact represents an acceptable risk, it might endanger not only the security sector but the vital interests of the Republic of Kosovo. Alternatively, there is great potential for the misuse of the security vetting procedure. Some may utilize security vetting for personal gain, to eliminate political adversaries. On the other hand, there is a great possibility of misuse of the security vetting procedure, in order to eliminate political adversaries or in order to bring persons into the security system inside the security system certain persons, based on personal or political preferences. The importance of this procedure must ensure that the officials that manage it are of the highest professional, moral and personal integrity. One omission in the development of this procedure could question its integrity and its objectivity. It may discredit the entire security system and it may also cause damages where repair incurs that it can be repaired only through a very high political and material cost and material costs for the state.

The latest scandal in the Kosovo Intelligence Agency (KIA), where in April 2014 there were investigations started against a senior official of the KIA (in charge of Security Vetting procedures), for school diploma forgery, has raised concerns about the integrity and professionalism of this security institution. This scandal places question marks against Security Vetting and security clearances issued so far by the institution. How did the KIA let it happen that allow such an important official in charge of Security Vetting come to be a

suspect for education documents forgery? If the KIA hasn't found out that there are grounds for suspicion when they have hired this official, how can we be sure that the KIA has not made other omissions in other alternative cases of Security Vetting? Why have they hired for such an important position as important as position, such as a Security Vetting Officer, a person where the chances are that she/he might not have the necessary professional credentials? Based on what criteria has this person has been hired? Has she/he been hired based on professionalism and merit or based on political, patronage or clientelism criteria? All these questions fall on the KIA, and as a consequence of this scandal there is a sense of insecurity and that raises the questions about how functional and credible the agency operates in this agency in Security Vetting procedures

The consequences are far reaching and encompass the entirety of the security sector. If the KIA had such an omission within its ranks, how can the citizens of Kosovo be assured that the KIA has not issued security clearances to persons who really are an "acceptable risk" for Kosovo? Or, are there chances that it is possible that the KIA has issued security clearances to persons who might have been infiltrated into the security sector of Kosovo with hostile intentions? This also raises the question, did the KIA refuse to issue security clearances to persons who don't represent a danger to Kosovo, or perhaps, were these persons denied clearance because of professional omissions or because of due to political or social reasons? These persons were denied such a clearance?

A scandal of these proportions opens the door for all of these questions. This raises issues concerning the functioning of the judicial system when considering the legal defense of people who have been denied to attain the attainment of Security Clearance. Often these persons will be perceived as "not loyal to the Republic of Kosovo", which simply put, means they cannot be considered trustworthy for the state and the tasks they may carry out within state institutions. Such a qualification can prove fatal for a person that has had a decision issued against them with such a justification. The media have reported cases where individuals who have had their Security Clearance denied, have

initiated administrative and court appeals. Nonetheless, the question that remains is, in how many cases have the courts decided in favor of the appealing parties?

The aim of this document is to offer some possible explanations and answers in the questions raised above and also, to try and give some professional contribution on developing a public debate on the issues of Security Vetting. To this end, presented below there will be presented organizational solutions for Security Vetting, problems facing this institution, and proposals for alternative solutions that could be more effective in ensuring a Security Vetting system that protects the interests of the Republic of Kosovo, and guarantees effective protection of human rights throughout the procedure.

SECURITY VETTING SYSTEM IN KOSOVO

Security vetting is regulated by Law no. 03/L-178 on Classification of Information and Security Clearance. Vetting and issuance of Security Clearance are the preconditions for a person to have access to classified information. A person can have access to classified information such as "CONFIDENTIAL" information, "SECRET" information or "TOP SECRET" information, under the condition that; (i) the person has a valid Security Clearance, (ii) needs to know the content of the information in order to carry out her/his mission or the task (s) she/he has been assigned to, and (iii) he or she has signed the Confidentiality Declaration. Security clearance is just a precondition for access to classified information. A person may have a security clearance but if she or he, according to the official assignment, has no need to know the content of the requested information, or she or he has not signed the Confidentiality Declaration, then access to the information has to be denied.

Only the President of the Republic of Kosovo, Head of Kosovo Assembly and the Prime Minister have the right to access classified information without security clearance, so that they can carry out their official

duties. But, this is only under the condition that they need to be aware of that particular information.

During the drafting of the law, there were long discussions on whether the MPs of the Kosovo Assembly should be included in the vetting procedures, before gaining access to classified documents. One opinion suggested that MPs have a democratic legitimacy through the citizens' vote and because of this they should not have to undergo the Security Vetting Procedure. On the other hand, it was argued that due to the political situation facing Kosovo, MPs should not be allowed this doesn't allow the MPs to have access to classified information without Security Vetting. There was a prevalent fear that there might be MPs with a suspicious political past and that they might still be hostile or at least damaging to the Republic of Kosovo. There was also a fear that certain MPs might be involved or at least might be under the influence of criminal groups, who have an interest in gaining access to the state's classified documents. With consideration for all of these factors all these factors, a decision was made by that prioritized taking more into consideration the need for security of the Republic of Kosovo rather than the democratic legitimacy of MPs. It was clear that this was unjust against the majority of MPs but maintained that the safety and security of the Republic of Kosovo was in no way to be endangered. One of the strongest arguments was that the "pure" MPs won't refuse the Security Vetting because they would have no reasons to do so. It was for this reason that this is why the MPs were not excluded from undergoing the Security Vetting Procedure.

The Kosovo Intelligence Agency (KIA) is the Vetting Authority which is responsible to carry out the Security Vetting Procedure for all the public institutions of Republic of Kosovo and its contractors. By law, the KIA has an obligation to establish a special department on security vetting. This department is exclusively responsible to implement the Security Vetting Procedure. To ensure professionalism, the Department on Security Vetting and all its employees and the personnel engaged in this Department, have to be politically independent, professional, and nonjudgmental in their proceedings, and they have to act in accordance with the Law and not accept guidance

from any person or institution. These qualities were determined by the lawmakers after extensive debates and involved international actors in the drafting of the law. One of the opinions expressed was that Security Vetting should not be conducted by the KIA. It was considered that there might be a conflict of interest if the KIA carried out Security Vetting while at the same time the staff of KIA had to undergo the security vetting procedure. The question was then raised, "How unbiased will the KIA be in vetting its staff"? Also, there were concerns that, since the KIA is a security institution, and similar to some other security institutions, then why should the KIA should be responsible for the Security Vetting of the personnel of other security institutions? The main argument against having the KIA conducting the Security Vetting procedure was that there would be no form of checks and balances among security institutions. This would then make the KIA an institution with strong authorizations which would turn it into a "Security Super-Institution". To this end, there was a proposal to establish an office within the Office of the Prime Minister that would conduct Security Vetting Procedures, acting as and this office would act as an independent body within the security sector. The arguments for having Security Vetting within the KIA were mainly of a practical nature. There was not enough professional and prepared staff in Kosovo to be dispersed across many security institutions. The creation of an independent security institution on Security Vetting would require human and material resources that were unavailable, or at least it was thought so at the time when the law was being drafted. Also, there were raised concerns on concerns were raised regarding the over-fragmentation over-fragmenting of the security sector. In turn, this raised some constitutional issues, questioning the creation of an office for security vetting within the Office of Prime Minister, which would extend beyond the scope of the Constitution of the Republic of Kosovo on the regulation of security institutions. The main argument when making this decision was that the KIA will have political trust and responsibility for conducting the Security Vetting in an objective and professional manner, and in being a new institution without an administrative past, it wouldn't misplace this trust. For these reasons, the lawmakers decided that the KIA should be responsible for Security Vetting.

In order to protect the security vetting process from possible political, administrative and personal influence, the role of the Department for Security Vetting within the KIA was stressed. Lawmakers have explicitly regulated the establishment and functioning of this Department and have set it as an administrative unit within the KIA by giving it a legal functional autonomy.

The written request for vetting procedures is addressed to the head of the Department for Security Vetting by the head of a public institution with a specific classification level attached to it. Lawmakers deliberately made the procedure like this on purpose so that the Director of the KIA is not involved in the whole entire process, ensuring the minimization and this should minimize the of possible political or personal influences. On the other hand, the sheer fact that it is specified within the in the Law is specified that the only authority that conducts the Security Vetting is the KIA, the role of the Department for Security Vetting is automatically diminished. The Department for Security Vetting is only one of the other departments of the KIA and as long as this is a part of the KIA its regulation and functioning is based on the Law on the KIA and internal KIA regulations. It seems that an aim that held by lawmakers had in when authorizing the KIA to conduct the Security Vetting, whilst at the same time simultaneously to empowering the Department for Security Vetting, didn't function very well in practice because due to of conceptual ambivalence ambiguity. On the other hand, there is no middle way. Either the KIA, conducts the Security Vetting or another institution that is not part of the KIA, must conduct security vetting. To ask the KIA to conduct security vetting, at the same time asking the KIA not to fulfill these duties, weakens the coherent functioning of security vetting and obscures the empowerment of the security vetting department inside the KIA.

The KIA issues a Security Certificate only to that person, who has passed the Security Vetting procedure to persons who have passed the Security Vetting procedure. As prescribed by law, that person must represent an accepted security risk. If a person is considered as an unacceptable risk then their security clearance is denied.

A person represents an unacceptable security risk not accepted risk for security if there are clear indications that she/he:

- Is not loyal to the Republic of Kosovo and its Constitutional order and values;
- Has preferences or it can be manipulated, instigated or blackmailed to help a group, a person, organization or foreign government to damage the security interests of Republic of Kosovo; or
- Behaves in a way that shows signs of personality, emotional or mental disorder, lack of judgment or will, insincerity, lack of self-control or lack of will to obey the rules in a way that it raises suspicion about her/his responsible behavior, trustworthiness and the capability to protect the classified information.

When the Security Vetting Procedure has been conducted and when it is decided that a person represents an unacceptable risk for security risk, the KIA is obliged to pay close attention to this person in general and to evaluate the information about the behavior of the person based on the following factors:

- Nature, extent and the seriousness of the behavior;
- Circumstances that follow such a behavior;
- Frequency and the latest occurrence of such behavior;
- Age and the maturity of the person at the time of such behavior;
- To what extent was his/her willingness contributing to such behavior;
- Rehabilitation or lack of it and other changes to permanent behavior;
- Motivation for such behavior;
- Potential for pressure, to be forced, used or threatened; and
- Possibility for repetition or reoccurrence of such behavior.

Bearing in mind all of the criteria mentioned above, it appears that Security Vetting is a complex and a sensitive

procedure and it cannot be conducted by a simple box ticking exercise. The aim must be to conduct a thorough evaluation of a person. The importance of the evaluation can be understood fully only in a case when a person has been deemed as a non-accepted unacceptable risk for the Republic of Kosovo. The Denial of security clearance or the forced change of a position at work is not as neaconsidered as harsh as the official qualification that a person is not loyal to the Republic of Kosovo. Such qualifications are very sensitive and have far reaching personal and moral consequences, far beyond than just a simple denial of security clearance. In order to reach an accurate conclusion that a person is not loyal to the Republic of Kosovo and presents an unacceptable risk, a thorough evaluation based on a true objective and unbiased judgement is required.

In the case that the Security Vetting Procedure offers reason to believe that a person represents an unacceptable security risk, that person has the chance to contest a decision before it is taken.

A hearing procedure may be carried out to ensure the protection of the legitimate rights and the interests of privacy of that person. The hearing procedure, however, will not be held if the process was to damage the political and security interests of the Republic of Kosovo. In practice, a lot of intelligence agencies often don't conduct hearing procedures by justifying it with protection of secret and the public interest. On the other hand, neglecting the hearing procedure by an executive agency, based on the reasons mentioned above, it raises the question that questions whether there is a potential to misuse the argument of public interest and the protection of secrets. One must have in mind that hearing the party represents a fundamental right of an individual. There is also the question as to what judicial protection exists that is capable of to revise revising the decision of an intelligence agency to deny a party the right to a hearing. There is a great potential for misuse when the judicial protection is weak. This leaves an intelligence agency with significant executive powers and the capacity to This makes an intelligence agency to have huge executive powers with possibilities to violate the fundamental rights of an individual by hiding behind the arguments of public interest and the need for protection of state secrets.

A person considered as an unacceptable security risk receives a written decision that denies the issuance of Security Authorisation. The person has the right to appeal this decision within fifteen (15) days upon receipt of decision notification. Initially, the appeal is submitted to the Inspector General of the KIA. This procedure has since been changed with through Government Regulation no. 37/2012. According to this Regulation, the decision for denying Security Clearance is taken by the Security Vetting Department while the appeal is addressed to the Director of the KIA. The reason for this change was the conviction that the Inspector General of the KIA is not a body of the second grade secondary to the Director, since both of them, the Director and the Inspector, report to the Prime Minister and the President of the state. This makes them equal in ranks. But still, this solution raises some judicial and political dilemmas. If the Security Vetting process was conducted only for the KIA officials, this would represent a reasonable solution. But, KIA, however, also verifies the officials of other institutions like the Kosovo Police, the Ministry of Justice and Ministry of Kosovo Security Force. Officials of these institutions are right to raise their concerns regardless of whether they are refused by the Director of the Department for Security Vetting or the KIA Director. The refusal comes from the same institution. Also, and presenting a larger bigger dilemma, is the fact that the Director of the Department for Security Vetting is a subordinate to the KIA Director, and the division between the KIA and the Department for Security Vetting is not functioning as it was initially though was intended by the lawmakers-the law. This point questions the independence of the Directory for Security Vetting when making a decision under the instructions of the KIA Director, and how much this constellation makes the KIA Director a de facto decision maker in the first stance and de jure in the second administrative stance.

PRACTICES OF SECURITY VETTING

The empirical database for the number of administrative personnel that has have been subject of to the

security vetting process, the number of officials that have had their security clearance denied, and the number of administrative complaints and judicial lawsuits is very limited, despite the requests for access to public and declassified documents and information in the Department for Security Vetting of the KIA. Still, however, the data collected from public sources provide sufficient indicators to evaluate the security vetting process.

1. Kosovo Police

The security vetting process of Kosovo Police members started in 2013. Under the request of the Kosovo Police Director (KP), in October 2012 the KIA started the security vetting process of KP members. Subject to this process were a large number of KP police officers, depending on the level of the information that they had to have access, and based on their official duties.

The exact number of police officers that were subject to the vetting process conducted by the KIA has not been made available. Those Ssubjected to the security vetting process were included all officials of the Ministry of Internal Affairs (MIA) and the Kosovo Police that have access to classified information. So far, the Security Clearance has been denied to 25 police officers, including those that have filed complaints with judicial bodies.

2. Security Vetting of Former Members of MUP

The KIA and the Kosovo Police were challenged with the vetting process of former members of the Ministry of Internal Affairs of Serbia (MUP) who have been foreseen to be integrated in the Kosovo Police as a result of the Agreement for the Normalization of Relations between Kosovo and Serbia. According to the available information, the KIA was not deeply involved in this process. A simple vetting of low ranking police officers was conducted by EULEX. To conduct the security vetting for the "Confidential" level the legal timeline is three months, but in this case it was conducted within a few days. Based on the available information this vetting was not a security vetting according to the law but rather a simple verification. In reality, it is better described as It was more in the line of a "background

check". The reason why the KIA was not included in this process was that the police officers subjected to this vetting did not hold positions that would have access to classified information.

On the other hand, there is no exact information of the KIA's involvement in the security vetting process for the heads of the KP Regional Directory in the North of Kosovo. From the legal point of view, in this case have been conducted the legal procedures of Security Vetting should have been conducted, since here we have to deal with senior police positions that are able to, with a need to have access to classified information. Based on some credible sources of the KCSS investigation team, and because of the current political situation, there were omissions from the regular security vetting procedures on the occasion of the integration of former members of the MUP into the Kosovo Police. According to these sources, there are existing concrete plans that, when in the latter stages, will ensure all of these members will be subject to the regular security vetting process, but without naming an exact concrete date when this is going to occur of occurrence. This means that today there are former members of MUP inside the Kosovo Police that have access to classified information of Republic of Kosovo, without the necessary security vetting. This context raises the question, why was the KIA not involved in the did KIA was not involved in the security vetting process of the former members of the MUP, and did EULEX do the work of the KIA in this case? One can only speculate on political motives, but one can notice that the Government of Kosovo has accepted the fact that the KIA was not considered a suitable institution by Serbia and by the International Community to conduct the security vetting of former members of the MUP. This is equivalent to a vote of no confidence in the KIA. In addition, it questions the legal bases for EULEX to conduct Security Vetting. According to the Law on Classification of Information and Security Vetting, EULEX has no authorization to conduct Security Vetting on Republic of Kosovo officials, and doesn't allow the KIA to give up the security vetting of officials of the Republic of Kosovo, if such vetting is requested by a certain body.

3. Kosovo Security Force

The security vetting process of the Kosovo Security Force (KSF) members since 2008 was conducted by the NATO/KFOR Military Civil Advisory Division (MCA). In particular, it was conducted by Force Unit Vetting (FUV), the unit for KFOR vetting. This institution is the body responsible for conducting the vetting process of NATO members. The procedures and standards applied by this unit are the same procedures that are applicable in all NATO countries in the process of vetting the armed forces. The main information that FUV gathered came from the Kosovo Police, Prosecutor's Office, Courts and the disciplinary data of the TMK, since a large number of former TMK members have been transferred to the KSF. Based on this, the vetting conducted on KSF Members resembles more of a "background check" than a genuine security vetting.

All members of the KSF Ministry and KSF were subject to the vetting process conducted by FUV, including the first level and second level of classification for the members of middle and senior management that have access to Secret and Top Secret information. For the first and second classification level, FUV issued security certifications that were valid for 10 years. For the Secret and Top Secret classification levels, vetting procedures were conducted for all middle and senior levels of management and for both uniformed and civilian members of staff. Security vetting procedures failed 59 officials, including 54 uniformed officials and 5 civilian officials. After receiving the decisions from FUV, the MKSF and KSF ceased their cooperation with these individuals and replaced them with new officials. After the approval for Full Operational Capacities (FOC) of the MKSF by NATO in July 2013, the vetting mandate process for KSF members was transferred from FUV to the KIA.

Currently the vetting process directed by the KIA is being conducted on 97 officials of the MKSF and KSF, including 93 uniformed and 4 civilian officials. All the officials currently undergoing the vetting process belong to the senior management of the KSF and MKSF and will be subject to the Security Vetting of a Secret and Top Secret classification to ensure their reliability. It is expected that this process will be completed in 2014.

4. Kosovo Correctional Service

So far during its internal recruitment procedures the Kosovo Correctional Service (KCS) has never conducted security vetting procedures for its recruited officers. All the recruited officials so far in KCS have undergone the Verification of their Past Procedure, but did not include the proper security vetting procedures. After the request filed by the KCS Director to the KIA on initiating the Security Vetting procedure for the Secret classification level of the senior and middle management, and for the limited and confidential classification level of other officials, the vetting procedure started.

So far, there are 111 KCS officials that have been subjected to the vetting process, mainly officials from the senior and middle managerial levels. Out of 111 officials vetted, 13 of them failed this process and have been evaluated as an unacceptable risk for the Constitutional Order of Republic of Kosovo. The management of the KCS took measures for these officials and all of them have been downgraded in their position by at least two grades.

5. Supervision of Legality

The supervision of an institution is composed of both political and legal supervision. The latter is also known as the Supervision of Legality. At the political level, the responsible body for supervision of the KIA is the Parliamentary Committee on the Supervision of the KIA. The lack of the Security clearance for Members of the Committee on Supervision of the Kosovo Intelligence Agency has had a huge influence on exercising the mandate of supervision and democratic control on the KIA. The Assembly of Kosovo, i.e. the Head of Kosovo Assembly, has never filed a request to the KIA for initiating the Security Vetting Procedure for Members of the Parliamentary Committee on the KIA. The request wasn't filed because the Department of Vetting performs under the umbrella of the Kosovo Intelligence Agency. The Assembly and some international organizations have raised concerns that based on these principles the Executive Branch cannot be the Security Vetting authority for the legislative Branch. The argument for this was that in the European Union Member countries the

majority of MP's have unlimited access to classified documents. However, an analyses of security vetting practice for MPs in the European Union member states shows that there are no set harmonized rules or practices. Within the European Union there are states that allow their MPs to have access to classified documents without security vetting, as found in Italy, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and Great Britain. Alternatively, states such as Latvia, Lithuania and the Netherlands, require their MP's to pass security vetting.

Consequently, members of the Committee on Supervision of the KIA still have no Security Clearance. It appears that there was some mistrust within the Assembly of Kosovo on how objective and unbiased the security vetting process on MPs will be. On the other hand, it is obvious that there is a conflict of interest between the KIA that conducts the vetting and the MP's that would supervise it. Even if there is no influence or misuse of the whole process by the KIA, the fact that something like this could happen diminishes the credibility of the process. This would always raise the question of whether the MPs attained their Security Clearance objectively or based on personal or political preferences. The possibility that the Executive Branch can influence the Legislative Branch through the Security Vetting procedure is objectively large. This influence manifests not only through the denial of security clearance, where one would choose between "wanted" and "unwanted" MPs for access to classified information and with it the supervision of the KIA, but may occur in additional ways. The database created by the Executive Branch through the vetting procedure of MPs, including; files on MPs, members of their families, social ties, their past, wealth etc. represents a strong and dangerous "weapon" because it offers the possibility for the Executive Branch to influence the agendas and programs of the Legislative Branch. This could question the division of powers as one of the basic principles of Constitutional order of Republic of Kosovo. In terms of legal protection, the Committee on the Supervision of the Kosovo Intelligence Agency has received a certain number of complaints from officials that have failed the vetting process of the KIA. The Committee, together with KIA officials, has

investigated for the cases of at least 20 individuals who have failed the vetting process. The KIA granted MPs and members of Committees on Supervision of KIA access to the classified files of persons that have failed the vetting process, despite the fact that MPs were not issued security clearances. The Committee on the Supervision of the KIA received a large number of appeals. Most of them came from the Kosovo Police.

Among the officials that have failed the vetting process, there are officials from the senior commanding structures who have access to a lot of very sensitive secret documents. The majority of those who failed the security vetting process belong to the "Confidential" level. Currently, all files are in the process of revision and we still don't have information on the results of the complaints by the officials that have failed the vetting procedures. Nonetheless, two main problems can be identified at this point.

First, the Parliamentary Committee has no legal authorizations whatsoever to review the complaints of persons whose security clearance has been denied. The appeals procedure is controlled by Regulation 37/012 and after this the aggrieved party can address this to the designated court. The chances are that the Parliamentary Committee took on the issue of complaints from persons affected by KIA decisions as a consequence of the pressure applied by these persons. However, the sheer fact that the Parliamentary Committee was forced to take up the complaints indicates the failure of institutions when offering legal protection for persons who are not satisfied with KIA decisions.

Secondly, there are also concerns about the role of the Judicial Branch in the whole process of security vetting. Judges that deal with appeals against the KIA decisions on security clearance must have security clearance themselves, and must have passed the whole Security Vetting procedure. If this is not the case, then they have no right to access the classified information on which the decision of the KIA has been based. However, based on the information available, so far there has been no security vetting procedure conducted on judges. Judges have been

using the invalid argument that the Executive Branch has no right to conduct the vetting of the Judicial Branch. Since the KIA, by law, has the authority to conduct security vetting of the Legislative Branch, why shouldn't it have the authority to do it for the Judicial Branch? Nowhere in the law is it mentioned that the Judicial Branch is excluded from security vetting. Article 22, paragraph 2 of the Law on the Classification of Information and Security Vetting stipulates the exclusion from Security Vetting procedures only for the President, Prime Minister and the Assembly of Kosovo Speaker. The danger here is that it has been used for the argument of protecting the independency of the Judicial Branch, in order to make it impossible for the judges to have access to classified information and with it, to obstruct court proceedings against the KIA decisions. This has also denied the right of the affected parties by the KIA decisions to have legal protection. If this is the case, we are dealing with a severe violation of the functioning of the Judicial Branch and a violation of basic rights for legal protection that are guaranteed by the Constitution of the Republic of Kosovo. If the KIA did use this argument on purpose, then the question is why did it do it? Was it because it wanted to hinder the work of the courts so they are unable to review the KIA decisions? What would be the interest of KIA in this? Was it to misuse the security vetting procedure for political or personal motives, without being supervised by the judiciary? Of course, this may not be the case, and it may be due to the professional incompetence that misinterpreted the Law and the Constitution. Despite this, such questions can be raised and tarnish the institutional integrity of the KIA.

Another problem concerns the implementation of decisions by the KIA. The Kosovo Police still hasn't implemented KIA decisions for some senior officials of the Kosovo Police whose security clearances have been refused. The KIA has rejected the security clearance for some members of the Kosovo Police based on the information that has been provided by the Kosovo Police itself. Later, the Kosovo Police has hesitated to offer information that would be used during the security vetting process, arguing that this information is unconfirmed and cannot be used as

grounds for denying a Kosovo Police member their Security Clearance. The Kosovo Police aims to wait for the final court decision before it implements KIA decisions. In this regard, there is room for doubt on the quality of the institutional cooperation between KIA and Kosovo Police. If this cooperation was good then there would be no need to wait for the court decisions to prove the objectivity of KIA decisions.

CONCLUSIONS

1. There is a relationship of mistrust between the Assembly of Kosovo and KIA about the objectivity of the KIA's security vetting of the Assembly of Kosovo MPs. This concern is based on the fact that security vetting procedure gives an opportunity for the KIA to misuse the information gathered during this procedure without effective institutional or judicial control.
2. The aim of strengthening the Department for Security Vetting, as an autonomous unit within the KIA, hasn't been achieved, which would minimize the possibility to have subjective influence during the security vetting procedure.
3. Legal protection during the security vetting procedure, at least as it is foreseen in the sense of procedural rights in the Law on Administrative Procedure, is limited. This is especially the case when considering the right of an individual to a hearing and the right to an administrative appeal.
4. The supervision of the legality of the security vetting process by the Parliamentary Committee contains deficiencies. MPs (Members of Committee) have no security clearance and have limited access to classified documents that are needed to carry out their supervision.
5. The Parliamentary Committee exercises authorizations of supervision of legality by reviewing complaints of persons who have had their security clearance refused, even though they have no legal mandate for it.
6. The fact that so many complaints on the refusal to issue security clearance have been addressed to the Parliamentary Committee shows that persons affected by these decisions, are either not informed with legal procedure that protects their rights, or they do not trust the judiciary institutions that will review and attempt to solve their complaints.
7. Exclusion of the KIA from the security vetting of former members of the MUP can be perceived as a vote of no confidence in the KIA by the Government of Kosovo and international sources. This also raises some concerns for National Security, since these former members of the MUP, now members of Kosovo Police, have access to classified information without having security clearance as required by law.
8. Non-vetting of judges infringes on the functioning of the judiciary and violates the Constitutional rights of citizens to an effective legal protection.
9. Defects identified in the field of legal protection and in the effective supervision of the KIA, raise the need to review the authorizations of the KIA to conduct security vetting of MPs of the Assembly of Kosovo. Without the necessary mechanisms that ensure impartiality, objectivity and professionalism, the vetting of MPs by the KIA might become an instrument of influence for the Executive Branch over the Legislative Branch. This is contrary to the Constitutional Principles regarding the division of powers.

ALTERNATIVES

Taking into consideration the reviews and conclusions mentioned above, and especially the relationship between the Assembly of Kosovo and the KIA, it can be considered that the Assembly of Kosovo has a vested interest in reforming the institutional and legal framework of security vetting. This interest has been expressed by the plans of the Assembly of Kosovo to change the Law on the Classification of Information and Security Vetting. In the case that the Assembly of Kosovo decides to reform the institutional and legal framework on security vetting, reform should be based on the following principals:

- To ensure the legality during the implementation of security vetting procedures;
- To ensure objectivity and impartiality of security

vetting procedures by reducing possible political and personal influence;

- Legal protection must be more effective, be it from the Assembly of Kosovo or the courts;
- There should be checks and balances between the security institutions, in order to prevent the concentration of too many authorizations within a security institution that might create a “super-institution” capable of controlling all other security institutions.

Based on these principals, further below we’ll discuss the some alternatives for security vetting outside of the KIA:

1. A Department within the Office of Prime Minister

This alternative resembles the one discussed during the drafting process of Law on Classification of Information and Security Vetting. This model is known in the system of Great Britain. The advantage of this alternative is that security vetting would be detached from the KIA, and with this, would decrease the possible influence of the KIA. On the other hand, security vetting might be influenced directly by the political level since such a department would be dependent on the Prime Minister’s Office. Despite this, security vetting would still remain under the Executive Branch and it is not certain that it would improve relations with the Assembly of Kosovo when conducting security vetting for the MPs of the Assembly of Kosovo. It would also be a problem to determine a body that would review the decisions for the denial of security clearance, except in the case where the administrative appeal would be eliminated and open the possibility for a judiciary procedure without going through the second administrative grade.

2. A Department within the Kosovo Security Council

The Kosovo Security Council is an umbrella security sector institution whose role is to advise on all security issues; to recommend security policies and strategies and to offer security information and evaluations. Positioning the security vetting within the Security Council replicates a model used in Croatia. In the framework

of the National Council of Croatia there is the Office of Security Council who is responsible for conducting security vetting and the issuing of security clearance for all state bodies in Croatia. This office reports directly to the Prime Minister, President, Parliament, and to the parliamentary committee responsible for national security.

This institutional structure is suitable to the security structure in Kosovo. Such an office could be placed within the Secretariat of Kosovo Security Council. By law, it would be determined that for the needs of security vetting procedures the Secretariat would report to Prime Minister, President, Parliament and to the relevant assembly committee. Transferring the security vetting procedure to the Security Council would also be in compliance with the role of this council as an umbrella for all security institutions in Kosovo. In addition, this would achieve the necessary institutional division and it would create the balance between the KIA and Security Council since KIA officials would pass the security vetting through the Security Council. This would also eliminate the possible conflict of interest where the KIA has to conduct the security vetting of its staff.

3. An Independent Agency under Assembly of Kosovo

The problem with the two previously described models is that security vetting would remain within the Executive Branch, even though the model within the Security Council would have a broader inclusion of the Assembly of Kosovo. In order to eliminate the dependency of the Kosovo Assembly from the Executive Branch on security vetting, one option to consider is the creation of an independent agency on security vetting. This agency would act under the supervision of the Assembly of Kosovo and would be detached and independent from the Executive Branch. This agency would be run by a board, composed of members nominated by the Assembly of Kosovo. Such models are known for regulating various sectors where the lawmakers have deemed it necessary to reduce or eliminate the influence of the Executive Branch.

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