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I. INTRODUCTION

The aim of this report is diagnosis of the current situation in thematic fields covered by the Thematic Roundtable n. 2 (on Justice, Freedom and Security) within the framework of the Kosovo Task-force on European Integration. Based on the structure of this roundtable, this report consists of seven chapters:

- Chapter 1: Anti-Corruption Policy;
- Chapter 2: Justice System;
- Chapter 3: Human Rights;
- Chapter 4: Protection of Personal Data;
- Chapter 5: Border Management and Migration Management;
- Chapter 6: Police Cooperation, Fight Against Organized Crime and Terrorism, Cooperation in the field of Narcotics, and
- Chapter 7: Electoral Process.

Aimed at identifying the advantages and weaknesses in each field, in the framework of the European integration, this report elaborates issues linked to these fields and recapitulates strengths and weaknesses identifying during the consultation process with actors involved in the work of this thematic roundtable. As such, it aims to offer an overview of opinions, views and assessments presented in the meetings and workshops, as well as in reports of civil society organizations, the European Union as well as various donor projects and international organizations that are involved in these areas. Data and information provided in this report are based also on discussion papers on each field, developed prior to each thematic meeting and workshop. The whole content of the report was drafted during period October 2012 – May 2013.

Chapter one, on Anti-Corruption Policy, commences with a general overview of corruption in Kosovo, elaborating the nature and forms that corruption as phenomenon is more prevalent based on official data of various institutions and organizations. Second part specifies the European standards and structures on anti-corruption as well as the requirements the European Union has towards Kosovo in the process of European integration and strengthening the sector of rule of law in general. Third part of this chapter contains an analysis of the legislative and institutional framework against corruption through assessing strengths and weaknesses that different laws and key institutions mandated to prevent and combat corruption in Kosovo have. The last part of this chapter reflects conclusions on state of affair in the area of anti-corruption in Kosovo and offers recommendations for addressing and overcoming the shortcomings in this field, in particular as regards to its legislative and institutional framework.

Second chapter of this report assesses the functioning of the justice system in Kosovo, focusing on judicial and prosecutorial system, taking into consideration numerous reforms of this system undertaken lately in Kosovo. This chapter is divided into six parts; every part examines the legal and factual state of the sector by cross examining with various findings revealed in international reports and international standard and best practices. The first part examines the constitutional and legal framework regulating the

justice sector. The second part looks into more details components related to preservation of the independence of judiciary like appointment, tenure, evaluation, discipline of judges, etc. After examining the legal and factual state and the components related to preservation of the independence, the third part will cover the independence of the judiciary, more specifically institutional and individual independence. The fourth part talks about the main element of every institution: the budget and working/environmental conditions of the court buildings. The fifth and sixth part talks about the initiatives taken by Kosovo judiciary to tackle long debated challenges that include the old backlogged cases and the use of the electronic case management data base, widely known as Case Management Integrated System (CMIS). In addition, this chapter covers execution, notary and mediation as well as the international judicial cooperation.

Third chapter deals with human rights in compliance with the methodology and structure of the European Commission for dealing with different categories such as civil and political rights, social and economic rights and other categories dealing with protection and promotion of minority rights, property issues, protection of cultural heritage, missing persons, etc. For each section based on these categories, was described and analysed the legal, policy and institutional framework through identifying strengths and weaknesses and their interconnectivity of compliance with the international standards and conventions for protection of human rights. The last part contains a summary of conclusion for each sub-field with challenges identified and recommendations for addressing them.

Chapter four of the report covers the area of protection of personal data. First part of this chapter consists of a general overview on current situation related to protection of personal data. Second part of this chapter analyzes the legal framework and its compliance with the EU legislation on protection of personal data and its implementation in practice. Third part of this chapter analyzes the institutional capacities, in particular those of the State Agency for Protection of Personal Data as the key institution mandated to promote and implement policies related to protection of personal data. Fourth part of this chapter analyzes the component of awareness as an important element that contributes to adequate implementation of the legislation on protection of personal data, whereas the last part of this chapter identifies strategic challenges related to protection of personal data in Kosovo and offers recommendations for addressing them.

Fifth and sixth chapters of this report cover the areas of home affairs, specifically those of border management and migration management. First part of this chapter covers the field of the integrated border management, in particular the EU standards, the legislative framework and cooperation between the law enforcement agencies, institutional framework and capacities, physical infrastructure as well as the regional and international cooperation in the context of integrated border management. This part ends with conclusion on strengths and weaknesses on integrated border management and lists the identified challenges. Second part covers migration management, including readmission, reintegration of repatriated persons, asylum policy, visa policy, with emphasis given to analyzing the legal, policy, institutional framework and capacities as well as

their compliance with the EU standards and legislation. For each of these themes are also reflected the challenges that Kosovo is facing in the context of fulfilling the EU criteria in the field of migration management.

Sixth chapter covers the areas of police cooperation, fighting organized crime and terrorism, and cooperation in the field of narcotics. First part of this chapter in general covers reforms related to policing in general and international police cooperation in particular. Second part of this chapter elaborates the EU legislation and standards in the area of police cooperation. Third part analyzes cooperation between the law enforcement agencies within Kosovo as well as the police cooperation in regional and international context. Fourth part of this chapter covers fight against organized crime and terrorism, including the assessment of compatibility of Kosovo's legislation with EU's legislation and best practices in fighting organized crime and terrorism, assessing the current situation in the framework of strengths and weaknesses in preventing and fighting all forms of organized crime, including fighting the trafficking with humans, trafficking with narcotics and trafficking with weapons. The last part of this chapter presents challenges identified.

The seventh chapter of the report deals with the electoral process. First part of this chapter presents an general overview of the electoral system in Kosovo. Further, this chapter elaborates the legal and institutional framework that is interlinked with aspects of electoral system and process in Kosovo. Third part of this chapter refers to international conventions on human rights that are also interlinked with elections practices in Kosovo, followed by the elections standards. Other parts analyze the entire electoral process in Kosovo through identifying main strategic challenges that Kosovo is facing and offers recommendation for addressing them.

This diagnosis report ends with a list of names of participants in the Thematic Roundtable on Justice, Freedom and Security, taking into consideration the valuable contribution and expertise they have provided during all phases until completion of this report.

1. Anti-Corruption Policy

1.1. General Overview

The 1993 Copenhagen Criteria establishing the Stabilisation-Association process, a comprehensive framework designed for accession of countries of Western Balkans' and Turkey into the EU, established Political Criteria as a set of three major categories of criteria required to be achieved in order to accede the EU. In this context, Kosovo's integration in the European Union will depend on country's results in areas within the Copenhagen political criteria, predominantly on the fight against organized crime and corruption.

The wide spread of corruption in Kosovo and the lack of satisfactory results of relevant institutions in combating corruption make corruption one of the main obstacles to Kosovo's integration process into the European Union.

The consequences of corruption are comprehensive and tackling all sectors of the society. In addition, taking into account that Kosovo is a state still in consolidation, corruption has a significant impact in this process by decreasing trust and cooperation between citizens with institutions. This may encourage the creation of structural parallels in society which are favourable for the creation of a culture of indifference, apathy and escape from civil liability.

Empirical researches have confirmed the link between corruption and economic development: countries where corruption is perceived high, the investment level is low.¹ Taking into consideration the high level of unemployment in Kosovo, corruption extends its negative consequences on economic development as well as expands the gap between the rich and the ones without access to economic opportunities. Progress Report 2010 for Kosovo argues that since 2007 the proportion of foreign investment in Kosovo has dropped from 19% to 7.1%.² This statistic almost directly coincides with increased perception of corruption, and the decline of public confidence in state institutions.

It is also important that the corruption problem in Kosovo is not viewed only in the local context. One has to take into consideration the regional context when talking about corruption. This means that success in the fight against corruption in Kosovo depends on the effectiveness and level of regional cooperation. Such an approach to corruption acknowledged within the European Union argues that the problem of corruption is multi-dimensional and something that cannot be confined to the physical boundaries of a given state: "Any corruption in the private sector within a Member State is not the only problem internal but also a transnational problem that most effectively is addressed

¹ Treisman, Daniel. "Political Economy Working Papers Archive", Center for Legal and Political Studies webpage, September 1997, http://www.isr.umich.edu/cps/paper/archive/archive_98/19980019.pdf (accessed on September 24, 2012).

² Transparency International and KDI, Study of the Institutional System Integrity, Assessment and Analysis, Prishtina: Transparency International and KDI, 2011.

through joint action of the European Union".³

1.1.1. Corruption in Kosovo: an overview

This part of the chapter attempts to answer some questions: How is corruption defined in Kosovo? Where and how it is manifested? Where Kosovo stands in terms of anti-corruption policies? What is the level of development of institutions responsible for policies against corruption? How is corruption prevented and combated? etc.

The Law on Kosovo's Anti-Corruption Agency defines corruption as the misuse of power or any behaviour by public officials or other persons in order to unlawfully benefit, as well as achieve an advantage or obtain goods for themselves or others.⁴ Depending on the type and extent of specific offence, corruption in Kosovo, is punished by imprisonment of six months to five years, pursuant to Article 421 of the new Criminal Code of Kosovo, which enters into force in January 2013.

Causes of corruption are cross-national and, just like corruption itself, are of universal reasons. Nevertheless, there are some root causes that are specific to a given country or society. Some political scientists attribute high levels of corruption to particular historical and cultural traditions. According to a study by Professor Daniel Treisman of the University of California, "[...] a culture of distrust and private-spiritedness fosters higher rates of venality than occur in communities where generalized trust and civic engagement are strong. Distrust and suspicion boost the demand for corrupt services on the part of private agents."⁵

Although Kosovo has a firm legislative framework that supports public consultations and participation of citizens in decision-making processes, its implementation remains weak. This is evident in the cases of public hearings organized by municipalities, where the number of participants is very low, sometimes no one attends.⁶ Reasons behind this are manifold, but can be summarized in one main argument: the lack of citizen trust in the consultation process and in the governance system, more widely. In Kosovo about 72% of citizens of all ethnic backgrounds are dissatisfied with the economic direction in which the country is headed, and over 60% of them show political pessimism, which means that they are dissatisfied with the direction of country's political development. In addition, "Kosovo's Public Participation Index for 2012 is 0.16 (as opposed to 0.13 in June 2011), indicating that public participation in Kosovo's political and civic life has

³ European Union, "Council Framework Decision 2003/568/JHA, 22 July 2003 on fighting corruption in private sector," European Union Official Gazette', 2003: 54-56.

⁴ Assembly of Kosovo, "Biblioteka: National Legislation" Anti-Corruption Agency, December 29, 2009. http://akk-ks.org/repository/docs/Ligji_per_Agjencine_kunder_Korrupsionit_nr_03_L_159.pdf (accessed on September 27, 2012).

⁵ Treisman, Daniel "The Causes Of Corruption: A Cross-National Study." University of California, 1998, p.4.

⁶ See Democratic Effective Municipality Initiative Report "Participatory Budget Planning", 2012.

increased slightly, but still remains very low.”⁷

In line with Professor Triesman’s arguments, we need to consider the political history of Kosovo when talking about causes of corruption. Kosovo did not have a period of normality of relationship between citizens and state. The history shows that citizens of Kosovo have constantly striven for ‘freedom’ and have always identified the state apparatus as the oppressor of their freedoms. The entire civil resistance of the 1990s was built around the notion of boycotting state and finding ways around paying taxes or public services.

The peace-building process after 1999 focused primarily in constructing the structures and fabric of public institutions and has ignored the much needed process of building relations between the citizens and government institutions, hence creation of a particular set of assumptions, values and beliefs which can function as legitimacy basic state structure.⁸ Taking into account that Kosovo society has not formed such a social cohesion to strengthen and legitimize public authorities, citizens remain highly sceptical and mistrustful towards the state.

Another reason behind high levels of corruption in Kosovo is considered to be the culture of impunity towards corruption and corruptive actions. This is heavily supported by an immense imbalance between reporting of corruption by citizens and media, and the level of responsiveness by public institutions against these reports, contributes significantly to the rise of apathy and indifference: a feeling that everyone is doing it, that is the ‘lubricant’ that makes the government work and things happen. In this situation, people are reluctant to report corruption, not only for security reasons but also because it is not beneficial.

The fight against corruption is widely seen by the public at large as a result of external pressure, rather than as a process driven by domestic demand. Kosovo institutions have embraced an approach of ‘over-institutionalization’, creating structure above structures in the fight against corruption, which only serves to foster the bureaucracy. Such an approach has led to institutional energies being disoriented and a game of constant shift of responsibility established among public institutions. This risks undermining functional independence of the whole institutional setup, particularly division of institutional responsibilities throughout the cycle of policy development, implementation and enforcement, and evaluation of its impact. Changes/amendments to the laws are made hastily, failing to respond to the reality of the situation on the ground.

On the ground, the high level of informal economy and economic parallelism results in a low rate of tax compliance, which is a key indicator of the how bound citizens feel

⁷ UNDP Public Pulse Report III. Public Opinion Polling, Prishtina: UNDP and USAUID, 2012, p.9.

⁸ Bogdandy, Armin von, Stefan Häußler, Felix Hanschmann, and Raphael Utz, “State-Building, Nation-Building, and Constitutional Politics in Post-Conflict Situations: Conceptual Clarifications and an Appraisal of Different Approaches”, Max Planck, 2005: 579-613.

to governmental structures. This means that the less the citizens feel in their pocket the decisions of the government, the less willing they are in demanding accountability from the Government. In this context, fight against informal economy and increase in the level of registration of workers and their taxation contributes directly to the fight against corruption.

The dominant role of the executive branch is seen as another important cause of corruption. Parliamentary oversight is weak and judicial independence is yet to be achieved.

Other causes of corruption can be traced as related to insufficient human capacity in the judiciary to investigate and prosecute corruption, lack of prosecutors and judges specialized in the area of anti-corruption, but also the perceived lack of courage to prosecute senior public officials for corruption offenses.

Lack of witness protection in cases of corruption is another imperative the wide range of causes of the lack of results in the fight against corruption. Moreover, the lack of transparency and accountability in the finances of political parties are also perceived as the kingmakers of corruption in Kosovo.

1.1.2. Forms of Corruption

Corruption in Kosovo is widespread as repeatedly stated by European Commission in its regular assessments. Legally recognized forms of corruption in Kosovo are regulated by Chapter 34 (Articles 422–437) of the Criminal Code of Kosovo,⁹ and are labelled as Corruption and Criminal Offenses against official duty and include the following:

Abusing official position or authority involves cases when public official, intentionally or knowingly, violates laws relating to his/her duties and obligations, which include: failure to perform mandatory duties, accepting any gift, fee or advantage of any kind as a result of the performance of an official duty, misusing public property, etc. Punishments for this offence can vary, from fines to imprisonment up to five years.

Misusing official information involves cases when public officials abuse their privilege of access to official information in order to gain advantages or benefits for themselves or others. Officials committing such an offense can be punished by fine or imprisonment from six months up to five years.

Conflict of interest refers to cases when an official person participates in any official “matter in which he or she, a member of the family, or any related legal person, has a financial interest. These kinds of offenses can be punished by fine or imprisonment up

⁹ Criminal Code of the Republic of Kosovo, available at <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>, (accessed 26 September 2012).

to 3 years.”¹⁰

Misappropriation in office is a corruption offense that is committed when an “official person, who, with the intent to obtain an unlawful material benefit for himself, herself or another person, appropriates property entrusted to him or her because of his or her duty or position, [and] shall be punished by a fine and imprisonment of six months to five years.”¹¹

Fraud in office occurs when “an official person who, with the intent to obtain unlawful material benefits for himself, herself or another person, by presenting a false statement of an account or in any other way, deceives an authorized person into making an unlawful disbursement, [and] shall be punished by a fine and imprisonment of six months to five years”.¹²

Unauthorized use of property: “Whoever, without authorization, uses money, securities or other movable property which has been entrusted to him or her in his or her duty or generally in his or her workplace, or which has been made accessible to him or her because of his or her service or work or whoever confers such property on another person for unauthorized use, [and] shall be punished by a fine or by imprisonment of up to three years.”¹³

Accepting bribes is seen as the most popular form of corruption, even considered to be the synonym of corruption. Kosovo’s Criminal Code defines acceptance of bribes as following: “An official person who requests or receives, directly or indirectly, any undue gift or advantage, for himself, herself or for another person, or who accepts an offer or promise of such gift or advantage, so that the official person acts or refrains from acting in accordance with his or her official duties.”¹⁴ This is punished by fine and imprisonment of six months to five year.

Giving bribes is sometimes used in advantage of the fight against corruption. In addition, usually law enforcement agencies will compromise of charging the bribe giver in cases when he or she reports the bribe accepter. In legal terms, giving bribes is defined as follows: “Whoever promises, offers or gives, directly or indirectly, any undue gift or advantage to an official person so that the official person acts or refrains from acting in accordance with his or her official duties, shall be punished by a fine or imprisonment of up to three years.”¹⁵

¹⁰ Ibid, p. 382-393.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Penal Code of the Republic of Kosovo, p. 153, http://www.md-ks.org/repository/docs/Kodi_Penal_i_R.Kosoves_%28shqip%291.pdf.

¹⁵ Ibid.

Giving bribes to foreign public official is a very important aspect of criminalization of corruption discussed in more detail later in this chapter. Kosovo defines this offense as follows: “Whoever promises offers or gives, directly or indirectly, any undue gift or advantage to a foreign public official, so that acts or refrains from acting in the exercise of his or her official duties, shall be punished by a fine and imprisonment of up to five years.”¹⁶

Trading in influence: “Whoever requests or receives, directly or indirectly, any undue gift or advantage, for himself or herself or for another person, or accepts an offer or promise of such gift or advantage, in order to exert an improper influence over the decision making of an official person or foreign public official, whether or not the influence is exerted and whether or not the supposed influence leads to the intended result, shall be punished by a fine or by imprisonment of up to eight years.”¹⁷

Issuing unlawful judicial decisions: this form of corruption is yet to be criminalized in Kosovo with the new Criminal Code entered into force in January 2013. Before, prosecutors were found in delicate situations and could not act when dealing with citizens’ complaints that a judge ruled in favour of case in order to gain advantages. Kosovo’s legislation protects independence of judges in the decision-making process, because this is essential for an independent judiciary. The new Criminal Code makes an important distinction between judge’s autonomy to rule in a given case and the potential for abuse in the process of deliberation: “A judge who, with the intent to obtain any unlawful benefit for himself, herself or another person or causes damage to another person, issues an unlawful decision, shall be punished by a fine and imprisonment of six months to five years.”¹⁸

Disclosing official secrets: this form of corruption is complex as it can also serve to harm transparency of government’s work, which is crucial for preventing corruption. The Criminal Code defines this offence as follows: “An official person who, without authorization, communicates, sends, or in some other way makes available to person information which constitutes an official secret or obtains such information with the intent to convey it to an unauthorized person, shall be punished by imprisonment of six months to three years.”¹⁹

Falsifying official document is another form of corruption very popular in Kosovo. Investigative journalism has shed light to many cases of falsifying documents in privatization process, as well as those aimed at evading taxes and customs obligations, etc.²⁰

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Penal Code of the Republic of Kosovo, p. 155, http://www.md-ks.org/repository/docs/Kodi_Penal_i_R.Kosoves_%28shqip%291.pdf.

²⁰ One example being this report of “Jeta ne Kosove”, a Balkan Investigative Reporting Network (BIRN) product: available at <http://www.jetanekosove.com/sq/Drejtesia-ne-Kosove/16800-euro-perfitim-nga-falsifikimi-i-dokumenteve-339>, (accessed September 27, 2012).

This form of corruption is encountered in daily life as individuals try to gain advantages by falsifying documents about their social status in order to receive a monthly pension. The Criminal Code defines this offense in the following terms: “An official person who, in an official document, official register or file, enters false information or fails to enter essential information, or with his or her signature or official stamp certifies a document, official register or file which contains false data or enables the compilation of such document, register or file with false contents shall be punished by imprisonment of six months to five years.”²¹

Unlawful collection and disbursement manifests itself in Kosovo through charity organisations, which enjoy the status of public persona. There are reports showing that some of such organisations have unlawfully collected money from citizens for charity purposes; however the goods never went to the needed, but rather have ended in private ownership.²² The Criminal Code defines this offense as “An official person who collects from another something that such person is not bound to pay or collects more than such person is bound to pay or who, in a payment or delivery, pays or delivers less than what is required, shall be punished by a fine or by imprisonment of up to one year.”

Unlawful appropriation of property during a search or execution of a court decision: lawful possession of property is an important safeguard for protecting citizens against abuse by public authorities. The characteristic of this offense is that it has never been reported to have been utilized. It is defines as “An official person who, during a search of premises or a person or during the execution of a court decision, takes movable property with the intent of obtaining an unlawful material benefit for himself, herself or another person, shall be punished by imprisonment of six months to five years.”²³

1.1.3. The Nature of Corruption in Kosovo

Corruption statistics for 2011,²⁴ provided by FOL Movement, indicate how widespread corruption is and of what nature. The statistics show that most corruption offenses in Kosovo can be separated into to three main categories: a) abuse of official position, b) accepting bribes and c) giving bribes. Out of 180 corruption indictments in 2011, 170 of them were found to be within these three categories.²⁵

Based on data provided by Kosovo Police, in 2010 almost every day there was an act

²¹ Penal Code of the Republic of Kosovo, p. 155, http://www.md-ks.org/repository/docs/Kodi_Penal_i_R.Kosoves_%28shqip%291.pdf.

²² Zëri, May 08, 2012. <http://www.zeri.info/artikulli/29/29/48948/arrestohet-humanisti/> (accessed September 27, 2012).

²³ Penal Code of the Republic of Kosovo, p. 156, http://www.md-ks.org/repository/docs/Kodi_Penal_i_R.Kosoves_%28shqip%291.pdf.

²⁴ This section mirrors FOL Movements Corruption Statistics report available at http://levizjafol.org/images/uploads/files/Korrupsioni_pertej_perceptimit.pdf (Accessed September 30, 2012).

²⁵ Mazreku, Armend, FOL Movement, interview, Corruption Statistics (24 September 2012).

of corruption, while in 2011 it almost doubled in two acts of corruption per day. Public prosecutors in Kosovo, in 2010 and 2011, filed 1,273 corruption charges. This data demonstrate that public prosecutors filed up to 4 such charges each day. According to Kosovo Police data, the assumed cost of corruption in 2011 exceeded the amount of 11 million €.

In 2010 a total of 50 people were arrested on corruption charges, which means that every month approximately 5 people were arrested. Regarding the nature of corruption, misuse of official position is the most common form of corruption in Kosovo. Kosovo Police reported on arresting 86 persons during 2011 suspected for corruptive acts, and 33 persons were arrested during January - September 2012.

Regarding the geographical spread of corruption, Prishtina leads, followed by Prizren and Mitrovica. Prishtina region leads with the highest number of cases of corruption; this perhaps because all major government institutions are in Prishtina. Regarding punishment of corruption, courts are relatively polite, with judges coming up with rather soft indictments in corruption cases. In 2011, the courts pronounced imprisonment sentences only to 20 people out of 135 that have been convicted for corruption offenses.

The following part provides a picture at the situation over corruption in Kosovo in specific areas and sectors. In addition to the political level, this section also focuses on corruption in the delivery of public services (mainly covering public procurement, health-care and education), judiciary and the private sector.

Political corruption is prevalent and all encompassing. It has been defined as the “transaction between the private and public sectors such that collective goods are illegitimately converted into private-regarding payoffs.”²⁶ Political corruption is often referred to as an act of perversion of public trust. In the case of Kosovo, when one talks of political corruption, we have in mind three main elements: the finances of political parties, electoral fraud and the finances of senior party and public officials. It is believed that with the change of political party in power in Kosovo, a change occurs in who gets public contracts.

A Kosovo NGO has accused the party in power in Kosovo of awarding its campaigns sponsor with public contracts that amount to one-hundred million Euros.²⁷ A study of the integrity of institutional system of Kosovo by Transparency International and KDI states that political parties in Kosovo are extremely centralized and non-democratic, and are the least trusted institutions in Kosovo.²⁸

26 Heidenheimer, Arnold J., and Michael Johnston, *Corruption: Concepts and Contexts*. New Jersey: Transaction Publishers, 2009, p. 6.

27 See CoHu, “100 milionë” available at <http://www.cohu.org/sq/Aktivitete-q/100-Milion-92>, May 2012, (Accessed October 1, 2012).

28 Transparency International and KDI. *Study of Integrity of Political Parties*.

In order to fill their campaign budgets, political parties accept donations from wealthy donors sometimes through threats or rewards with public contracts. Membership fees can serve for corruption purposes or money laundering.²⁹ In Kosovo, senior political party officials have openly talked of gifts in kind; such as construction of a house or donation of a car. This is also demonstrated by the fact that most political parties did not fully comply with their reporting obligations to the office for political party registration.³⁰

The manner in which elections are organized is an essential indicator of the country's democratic index. In the last elections in Kosovo, voting was repeated in six municipalities and in 890 voting places as a result of fraud.³¹ Following allegations for fraud and corruption in the national elections of November 2010, there were 854 cases involving over 5,000 individuals that have allegedly been involved in election fraud. Prosecutors processed 221 indictments against 1,516 persons, including 758 election commissioners.³²

Positive developments on the political corruption conundrum is the process of disclosure of assets and wealth by public officials and the number of officials fulfilling this obligation is very high, over 95%. All citizens can easily access the forms filled in by public officials that show their income, property and other goods in the web site of the Kosovo Anti-Corruption Agency. However, the problem is that no one has done any research into these forms in order to connect the dots and shed light into some corruption allegations.

Public service delivery in Kosovo suffers greatly from political interference and nepotism that has harmed the performance in various sectors involving delivery of public services directly to citizens. A major portion of corruption in the public services is in the procurement sector. Despite a modern public procurement law in place, the abuse of public procurement procedures continues to be a major problem in Kosovo. This law should be fully implemented, with any abuse investigated and prosecuted.³³ In addition, two other laws that are related to the field of procurement, the Law on Public-Private Partnerships and Concessions is also not in line with the EU *acquis* requirements. A key shortcoming in the area of public procurement is the absence of effective management of conflict of interests in the process of awarding public contracts. Public procurement

29 See a case involving a political party in Kosovo, Supreme Court's verdict available at [http://www.eulex-kosovo.eu/docs/justice/judgments/criminal-proceedings/SupremeC/JahjaLluka-214-2010/\(2011.01.11\)%20JUD%20-%20Jahja%20LLUKA%20\(SC\).ENG_redacted.pdf](http://www.eulex-kosovo.eu/docs/justice/judgments/criminal-proceedings/SupremeC/JahjaLluka-214-2010/(2011.01.11)%20JUD%20-%20Jahja%20LLUKA%20(SC).ENG_redacted.pdf) (Accessed September 30, 2012).

30 2011 EC Progress Report on Kosovo, p. 14, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

31 Musliu, Betim, and Adem Gashi, *Elections Organized Crime, Analyses*, Prishtina: Kosovo Law Institute, 2012.

32 Ibid.

33 Report from the European Commission on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, February 2013, p. 14.

bodies do not cooperate well with each other and “independence of public procurement officers needs to be further strengthened.”³⁴

Moreover, the public procurement sector suffers from other deficiencies that open opportunities for corruption, such as instances of public procurement institutions coming up with different interpretations regarding procurement procedures, single source procurement, lack of guidelines and regulations on how to deal with cases when companies offer unrealistic prices for items in their tenders, which are usually hints of pre-agreements for awarding the contract. There is yet to be indictments against companies that falsify documents in the process of tendering. Some common irregularities in the procurement process include improper documentations, cancelling the tenders without legal basis, failure to ensure specification of measurable criteria without discrimination, breach of contract and establishing criteria in the offer that would favour one particular group or strand of companies. Greater transparency in the procurement procedures can reduce the malpractices.

Strengths in the public services sector include increase in reporting of complaints by economic operators and the efficient manner in which such complaints are dealt by the respective government institutions. These complaints have managed to save millions of Euros from abuse. In addition to this, strength in the procurement sector specifically includes the monitoring of procurement office and procedures by civil society. In March 2011, FOL Movement signed a memorandum of understanding with the Ministry of Justice for monitoring procurement in this institution. This step opened the door for new MoU's and today FOL continues to participate as an independent monitoring organization in all procedures of procurement process in three ministries.

The healthcare sector is also severely influenced by corruption. It is a public secret that in order for patients to get the necessary treatment, especially if it includes surgery most of the time they are obliged to pay bribes. The quality and origin of drugs purchased by the Ministry of Health it is a matter for grave concern. There have been reports in the media of purposeful sabotage of different medical equipment in order for patients to seek such services in the private sector. There are cases when companies have been rewarded with contracts although they had supplied the hospitals expired medicines.³⁵

In the education sector, corruption is most noticed in the process of matriculation of students in public university. Private institutions of education represent another matter of concern. Prices are extremely high for the Kosovo standard and government's monitoring of their compliance with laws and EU standards is weak. The European Union argues that the enormous efforts are required to combat widespread corruption in education and health.³⁶

³⁴ European Commission, Kosovo 2011 Progress Report, Assessment, Brussels: European Commission, 2011.

³⁵ See 'FOL Movement' report on corruption in the Ministry of Healthcare available at http://levizjafol.org/images/uploads/files/Raporti_mbi_Prokurimin_ne_Ministrine_e_Shendetesise.pdf.

³⁶ 2011 EC Progress Report on Kosovo, p. 14, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_report_2011_en.pdf

Kosovo's judiciary is perceived as the most corrupted. The Public Pulse data from UNDP and USAID show public satisfaction with the courts at 19.3% while for the Prosecutors 19.7%. The annual budget for the judiciary in 2011 was €17 million, which is estimated at 0.34% of 2010 GDP.³⁷ A 2010 International Crisis Group report characterizes the Kosovan judiciary as marred by "Demoralized and exhausted judges both struggle under the case backlog and are dogged by a reputation for corruption and favouritism."³⁸ This situation has changed positively with the new Law on the Courts that entered into force since 1 January 2013. The strength in the Judiciary is the will of the Head of the Kosovo Judicial Council, State Prosecutor and President of the Supreme Court to cooperate and support activities that aim to foster Judiciary's performance vis-à-vis corruption. Nevertheless, key problems in terms of corruption in the Judiciary include the following:

- Lack of monitoring capacities to track the progress of corruption cases within the judiciary, in this context a database on corruption cases would address the problem;
- Lack of judges who specialized in adjudicating corruption cases;
- Lack of prioritization of corruption cases by courts;
- Lack of consistent training and education for prosecutors to keep them up to date with new emerging forms and nature of corruption;
- Lack of good relations between the Special Prosecution and State Prosecutor, and, in this context, instances of overlapping or competition are prevalent;
- Judges lack courage to judge cases of corruption that include high political profiles, which is left for to EULEX judges to conduct.

Private sector is considered the main generator of corruption in Kosovo by anti-corruption organizations. The Privatization of publically or socially owned enterprises has boosted the corruption in Kosovo. A study by the American Chamber of Commerce shows that over 76% of businesses pay bribes to gain advantages in procurement procedures. As noted in the previous section, companies that fund political party campaigns are rewarded by the party through public contracts and the privatization of publically owned properties or enterprises.

1.2. European Standards in the Area of Anti-Corruption Policy

In a European Commission guide on main administrative structures required for implementing the *acquis*³⁹ there are ten principles established by Commission's Comprehensive EU Policy against Corruption. These principles are the following:

1. National strategies against corruption must be subject to broad consultations;
2. Ratification and implementation of international instruments against corruption;

³⁷ Ibid.

³⁸ International Crises Group, *The Rule of Law in Independent Kosovo Executive Summary And Recommendations, Analyses*, Prishtina: International Crises Group, 2010, p.12.

³⁹ European Commission- Informal working document, *Guide to the Main administrative structures required for implementing the *acquis**, Administrative guidance, Brussels: European Commission, 2005.

3. Effective implementation of anti-corruption laws and not only their mere existence is more important by competent and visible anti-corruption bodies (i.e. well trained and specialised services such as anti-corruption prosecutors). Targeted investigative techniques, statistics and indicators should be developed. The role of law enforcement bodies should be strengthened concerning not only corruption but also fraud, tax offences and money laundering;
4. Access to public office must be open to every citizen. Recruitment and promotion should be regulated by objective and merit-based criteria. Salaries and social rights must be adequate. Civil servants should be required to disclose their assets. Sensitive posts should be subject to rotation;
5. Integrity, accountability and transparency in public administration (judiciary, police, customs, tax administration, health sector, and public procurement) should be raised through employing quality management tools and auditing and monitoring standards, such as the Common Assessment Framework of EU Heads of Public Administrations and the Strasbourg Resolution. Increased transparency is important in view of developing confidence between the citizens and public administration;
6. Codes of conduct in the public sector should be established and monitored;
7. Clear rules should be established in both the public and private sector on whistle blowing (given that corruption is an offence without direct victims who could witness and report it) and reporting;
8. Public intolerance of corruption should be increased, through awareness-raising campaigns in the media and training. The central message must be that corruption is not a tolerable phenomenon, but a criminal offence. Civil society has an important role to play in preventing and fighting the problem;
9. Clear and transparent rules on party financing, and external financial control of political parties, should be introduced to avoid covert links between politicians and (illicit) business interests. Political parties evidently have strong influence on decision-makers, but are often immune to anti-bribery laws;
10. Incentives should be developed for the private sector to refrain from corrupt practices such as codes of conduct or “white lists” for integer companies. Furthermore, with regard to criminal law aspects of the prevention of, and fight against, corruption, one needs to keep in mind their close links to relevant aspects of Chapter 24 [of the *acquis*] (law enforcement measures, etc);

Kosovo generally subscribes to most of the principles, as the law-making process goes through rigorous process of checking compliance with EU standards. Nevertheless, the Law on Public Procurement and the Law on Financing of Political Parties, crucial legislative pieces against corruption are not in line with EU standards. Serious challenges remain especially for second, ninth and tenth principle.

1.2.1. European Anti-Corruption Structures

While there is a conglomerate of pan-European transnational organizations against corruption, there are two that this paper focuses on: the Group of States against Corruption (GRECO), founded in 1999 by the Council of Europe, and the Open Government Partnership, established on 20 September 2011.

The goal of GRECO is to monitor compliance of member states with the organization's anti-corruption standards. GRECO's standards against corruption are organized around twenty guiding principles established by the Committee of Ministers of Council of Europe in 1997. These principles include: criminalization of corruption, limitation of immunity from investigating allegations of corruption for senior public officials, encouraging research on corruption, adopting and implementing codes of conduct for public servants and officials, media have access to information on matter of corruption, transparent and accountable public procurement, etc.⁴⁰

GRECO's objective is to improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. It helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms. GRECO also provides a platform for the sharing of best practice in the prevention and detection of corruption.⁴¹

Kosovo is not a member of GRECO, although and membership to it is not limited to Council of Europe member States. GRECO has forty-nine member States, all European besides the United States of America.⁴²

The Open Government Partnership is an inter-governmental, transnational organisation that works to promote transparent, effective and accountable governments. The main purpose of OGP is to help government of its member States strengthen transparency in all sectors of governance. It aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In the spirit of multi-stakeholder collaboration, OGP is overseen by a steering committee of governments and civil society organizations.⁴³

OGP has forty-seven members and membership in it is conditioned with acceptance of the Open Government Declaration: "deliver a country action plan developed with public consultation; and commit to independent reporting on their progress going forward."

⁴⁰ See resolution (97) 24 of the Council of Europe available at [http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution\(97\)24_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution(97)24_EN.pdf), (accessed October 10, 2012).

⁴¹ See: "About GRECO" available at http://www.coe.int/t/dghl/monitoring/greco/general/about_en.asp (Accessed October 10, 2012).

⁴² Ibid.

⁴³ For more information see "About" available at <http://www.opengovpartnership.org/about> (accessed October 10, 2012).

1.2.2. EU Demands and Expectations from Kosovo in the Fight Against Corruption

In identifying key EU demands for Kosovo in the fight against corruption, this chapter mainly analyzes the European Commission Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo. This EU report sets forth nine concrete policy actions Kosovo needs to take in order to improve its record in the fight against corruption:

1. Kosovo needs to deliver concrete results in the fight against corruption, which includes launching investigations in cooperation with EULEX.
2. Kosovo needs to adapt the new anti-corruption strategy 2012-2016;
3. Improve the reliability of statistics on the fight against corruption;
4. The law on prevention of conflict of interests needs to improve in order to strengthen reporting obligations for cases of conflict of interest;
5. The law on declaration of assets and the law on conflict of interests need to have stronger and proportionate sanctions;
6. Finances of political parties need to be transparent which requires amending the current law on Financing of Political Parties. Concretely the laws needs to: a) prohibit or regulate donations from legal entities that provide goods or services to public administration, b) oblige the political parties to have a single bank account, and c) set timeframes for parties to publish financial reports;
7. Support and commitment against corruption of senior leaders in all public institutions needs to strengthen;
8. Inter-institutional coordination and cooperation needs fostering; and
9. Simplify institutional set-up against corruption and avoid overlapping.

1.3. Anti-corruption Legal and Policy Framework

Kosovo has a fairly well-established legislation against corruption, but has a very poor level of implementation and enforcement of the laws: in the words of International Crisis Group, “Kosovo suffers from the widespread impression that it is run by a lawless political elite in control of every aspect of society.”⁴⁴

This section of the chapter looks at main laws in the field of anti-corruption policy, explaining their scope and identifying potential room for improvement.

Kosovo Criminal Code-Corruption in Kosovo is criminalized by Article 34 of the Criminal Code. The strengths of this piece of legislation are that corruption is considered a criminal act and legally recognized forms of corruption are broad and allow prosecutors and judges to address a wide range of issues of corruption. The weakness of this law is, though, that it does not provide a clear and sufficient legal basis for confiscation of illegally obtained assets and wealth, which is the true justice in case of corruption. The fight against corruption can benefit enormously in case the code criminalizes the abuse

⁴⁴ International Crises Group, *The Rule of Law in Independent Kosovo*, Analyses, Prishtina: International Crises Group, 2010.

of official information in the process of public procurement.

Law on the Anti-Corruption Agency-Agency against Corruption of Kosovo is a crucial institution, alongside prosecution, in the fight against corruption. The law⁴⁵ defines the status and responsibilities of the Anti-Corruption Agency in the field of combating and prevention of corruption, particularly in relation to reporting, detection and investigation of corruption, and the implementation of the Strategy and Action Plan against Corruption. The strength of this law is that it ensures a sufficient level of political and financial independence for the agency to fulfil its mandate; nevertheless the agency remains open to political interference. One of those areas is traced in the process of approving the strategy against corruption which needs to be given the green light from the Government before it proceeds for final approval to the Parliament. The good news though is that there haven't been reported cases when Government actually changed the strategy before it processed it to the Parliament.

The main weakness in the law is the lack of clarity in the scope of work of the Agency. While the name of the institution creates a right impression, the Agency has very weak powers and authority to implement its duties. The strongest tool in the agency's hands is administrative investigation and official correspondences.

Law on Declaration, Origin and Control of Assets of Senior Public Officials and on Disclosure, Origins and Control of Gifts for all Public Officials-This is one of the crucial laws in the anti-corruption legislation. The law obliges senior public officials to declare their assets, revenues and the origins of their wealth to the Agency against Corruption who then audits those statements. The main strength of this law is that the percentage of the senior public official complying with the demands of the law is above 95%. In addition to this, the Agency publicizes the statements by the senior public officials in its web site allowing easy access for all citizens.⁴⁶

Regarding those officials who refuse to disclose their wealth and assets, Agency against corruption has published a report on the matter and found that the Courts were not very keen on issuing disciplinary actions against those officials as law demands.⁴⁷ From 165 cases that the Agency sent to the Courts only in 97 of them the courts issued some kind of sanctions against the officials. For 13 cases the courts issued a fine of 300 Euros which is the minimum fine set in the law for refusal to disclose the wealth and assets.⁴⁸ The agency against corruption does not have sufficient human resources and capacities to

⁴⁵ See the full text of the law at http://akk-ks.org/repository/docs/Ligji_per_Agjencine_kunder_Korrupsionit_nr_03_L_159.pdf.

⁴⁶ See the section of the web site of the Anti-Corruption Agency on disclosure of the assets at <http://akk-ks.org/?cid=1,1178>.

⁴⁷ Kosovo Anti-Corruption Agency, "Report on disciplinary actions and the cases initiated for the failure to disclose assets by public officials", 2012, available at <http://akk-ks.org/repository/docs/Analiza.pdf> (Accessed October 1, 2012).

⁴⁸ Ibid.

investigate the disclosure forms, and other institutions are often reluctant to cooperate with them. On the other hand, sanctions for failing to disclose assets have aggravated, since it is now considered a criminal offense.

An important aspect of the law that is often ignored is the section on the gifts. This section has been overshadowed by the process of disclosure of assets from senior public officials. In addition to this, in general terms the area of gifts received by public officials is yet to be investigated by civil society and media. Although the law sanctions the amount of gifts a public official can receive, public statements by members of parliament that they received cars from their supporters as gifts and other favour hasn't been investigated. The purpose of the law to shed light into the finances of the senior public officials can be seriously questioned in the near future by narrow interpretations of the law on protection of personal data.

Law on Whistleblower Protection-The Law on Whistleblower⁴⁹ protection is very important but it is a totally anonymous law. The law provides protection for public servants in all public institutions when they report malpractices, abuse or corruption cases. The strength of the law is that Employer is obliged to provide protection, anonymity and integrity from any form of maltreatment. The weaknesses of the law include its very title which in the popular culture of Kosovo is used to describe spies which reduces incentives for people to appeal to the law for protection. In addition to this the biggest weakness of the law is its anonymity, it has been promoted and probably there are government employees who are not aware that such law exists.

The law on Whistleblower Protection is not being enforced sufficiently because it has not been promoted enough. Respective institutions should assign responsible persons for the purpose of enforcing the law.

Law on Prevention of Conflict of Interest-The purpose of this law⁵⁰ is to define the difference between private interest and public interests and how these two can collide and thus cause corruption. The law makes agency against corruption the primary body to review and investigate all cases of conflict interest. The strength of the law is that its definition of the public interest and conflict interests are very strong and provide very clear understanding of the two. The weaknesses include: the weak sanctions in cases of conflict of interest and more importantly despite the fact conflict of interest are criminalized; the prosecution and courts do not take seriously these cases. Most of the cases of conflict of interests are resolved through administrative process by the Agency against corruption. 114 cases of conflict of interest have been addressed by September 2012. New Criminal Code that entered into effect in 1st of January 2013 sanctions the conflict of interest as criminal offense, which is considered a progress in this regard. Legislation

⁴⁹ See the full text of the law at [http://www.md-ks.org/repository/docs/Ligji_per_mbrotjen_e_informatoreve_\(shqip\).pdf](http://www.md-ks.org/repository/docs/Ligji_per_mbrotjen_e_informatoreve_(shqip).pdf).

⁵⁰ See the full text of the law at http://akk-ks.org/repository/docs/Ligji_per_parandalimin_e_konfliktit_shqip.pdf.

that relates to prevention of conflict of interest does not provide for education on conflict of interest, as well as the position of judges and prosecutors in prevention of conflict of interest.

Law on Financing of Political Parties-The law⁵¹ on financing of political parties was approved in 2009 and amended in 211. This law regulates the manner, conditions of financing, administration, supervision, transparency and reporting on expenditure and income of political parties in the Republic of Kosovo. The only strength of the law is that it exists but this legislation does not ensure transparency and accountability in the finances of political parties. Finances of Political parties are not audited, besides the budget that they receive from the Kosovo Parliament.

The law contains very weak sanctions against parties that do not adhere to laws demands. In the 2011 Global Integrity report Kosovo got only 25 points out of 100 points in the effectiveness of the law on financing political parties.⁵² Kosovo got 0 points on legislation on the financing of individual candidates in the absence of legal regulations in this field. Publication of information on party financing got 25 out of 100 points.

National Anti-corruption Strategy-In accordance with the Law for Agency against Corruption, the Agency against Corruption (AAC) is responsible for preparing the national strategy and action plan against corruption. The current 2012-2016 is the third strategy prepared by the Agency and recently approved by Kosovo Parliament. The strategy is the only cross-cutting policy against corruption but that it falls short to represent an all encompassing and unifying strategy. The current strategy informs the work of the agency against corruption. Another important aspect of the strategy is that it establishes a framework that involves all relevant institutions in the fight against corruption. What the strategy does is it establishes a set of obligations and objectives for all institutions to meet, including private sector and civil society. While this might be considered strength, the strategy does not have mechanisms that ensure the follow-up with the obligations by the institutions involved in the strategy.

The main weaknesses of the strategy include:

- The strategy was initiated from a mindset of outsourcing rather than as a result of analyses of domestic demand and needs in the anti-corruption field;
- There are no supporting documents and research to support the process of drafting the strategy. This kind of research would show the nature, the spread and the magnitude of corruption so that strategy establishes proper objectives;
- There were no comprehensive analyses and research into the level of implementation of the previous strategy 2009-2011;
- The strategy uses generalization and therefore creates confusion in terms of responsibilities.

⁵¹ See the full text of the law at <http://www.assembly-kosova.org/common/docs/ligjet/2010-174-alb.pdf>.

⁵² Gazeta JNK, "Kosova Kritikohet për Financimin e Partive", April 1, 2012 available at <http://gazetajn.com/index.php?cid=1,1018,1794>, (accessed October 2, 2012).

During the Thematic Roundtable Working Meeting on anti-corruption, representative of the Ministry of Justice noted that the 2013 legislative strategy provides for reviewing all laws relating to anti-corruption and their harmonization with the Criminal Cod, namely Draft Law amending the Law no. 04/L-050 on Declaration, Origin and control of property of senior public officials and on declaration and origin of gifts for all the officials; and the Draft Law amending to the Law no. 04/L-051 on preventing conflicts of interest in exercise of public functions.

1.4. Institutional Framework and Capacities

Kosovo has a number of institutions specifically designed to investigate and prosecute corruption. While the institutional framework is strong, coordination, communication and cooperation among them is weak.

Kosovo Agency against Corruption is the primary anti-corruption institution in Kosovo, but its name overestimates its true powers. The main strength is that the process of disclosure of assets and wealth is extremely successful, with over 95% fulfilling this obligation including the high ranking officials. However, the Agency focuses its all potential in the rest that doesn't thus ignoring what it was declared.⁵³ The main weaknesses of the agency are traced to the investigation department that fully depends on information outside for their cases they should conduct investigations ex-officio. A key weakness of Agency against corruption is the low quality of the information they send to the prosecutors resulting with most of them being rejected by prosecutors for further actions. The department on conflict of interests also has serious shortcomings and the best evidence for this is that reality where most public officials, especially members of parliament have a second job in a public institution, such as the Post and Telecommunication of Kosovo. General Auditor also found serious problems in the Agency, such as the failure to register of its inventory; violation of employment procedures, employees received per diems although officially they were on vacation, etc.

Representatives of institutions and Civil Society Organizations assess that Anti Corruption Agency should review its mandate focusing on activities that aim at preventing corruption and to include the education element on corruption, while Police, Prosecutor's Office and Courts should fight, prosecute and adjudicate corruption.

Practices have shown that no country in Balkans region has anti corruption agency established, whereas such practices apply more to Asian countries.

Anti Corruption Agency will recruit additional officials during 2013, and primary tasks will be preventing corruption.

In the Office of the State Prosecutor there exists the so called 'Group of Prosecutors against Corruption' with prosecutors, municipal and district that are appointed to in-

⁵³ Armend Mazreku, FOL Movement, Interview, Statistics on Corruption (24 September 2012).

investigate and prosecute corruption cases. The group has a semi-informal character and meets regularly in order to discuss the overall state of corruption cases in the prosecution but its main purpose is to facilitate the communication between Police and Prosecutors. National coordinators prosecuting corruption have been assigned.

Kosovo Prosecutorial Council took the initiative to improve cooperation with other institutions in fighting corruption, based on which the joint strategy will be drafted that would result in augmenting efficiency in fighting corruption.

Prosecutor's Office still faces the challenge of recruiting of additional prosecutors who would be assigned corruption cases. Prosecutors still face lack of working conditions and facilities.

Another important institution in the fight against corruption is the Anti-Corruption Task Force which is part of the Special Prosecution and it is the main mechanism in the fight against corruption. It is comprised by five local and three international prosecutors, who are supported by thirty police officers and five financial experts. The strengths of this institution is that it is the only institution in Kosovo sole specialized and dedicated to the fight against corruption, prosecutors who work in this task force are paid higher than the state prosecutor. The task force enjoys full support from government, judiciary and parliament.⁵⁴ In 2011 the task force received 130 thousand Euros in bonuses, in addition to their salaries and other benefits.⁵⁵

The main weakness of this task is the very process that created it. As for every other policy initiative, the decision to create the task force was not based on research that would conclude the need for a new anti-corruption mechanism. The task force should not operate under the umbrella of the Special Prosecution, as this harms legal capacity of the task force. There isn't a good communication and relationship between the local and international prosecutors. The local prosecutors are kept in dark regarding the cases that their colleagues are working on. When the Anti-Corruption Task Force was established it aimed at making a transfer to local prosecutors the high profile corruption cases, however this is not the case. The local prosecutors in the Task Force only are given the low profile cases, while the EULEX prosecutors are always involved in the high profile corruption cases. In this context establishment of the task force is not justified, because local prosecutor were already doing this before the task force was established.

Within Kosovo Police, there is the Directorate for Investigation of Economic Crimes and Corruption. The head of this directorate reports to Police Director General and it works closely with the anti-corruption Coordinator in the office of State Prosecutor. The main duties of this organization include investigation of allegations for economic crimes and corruption and they do not make a different between officials and ordinary citizens. This Directorate was established by a decision of the Director of the Kosovo Police on

⁵⁴ Ibid.

⁵⁵ Ibid.

15 April 2009, and it became centralized in January 2010. The Directorate has increased human resources and now it employs about 80% of staff foreseen by the Organizational Structure of the Kosovo Police. Statistics offered by this Directorate show the struggle against corruption as following: in 2010 there were 722 cases under investigation; 2011 there were 143 cases; while in the first half of 2012 there were 116 cases. 178 persons were arrested in 2010; 188 in 2011; and 118 during the first half of 2012.

Financial Intelligence Unit with the Kosovo Police works primarily against money laundering and has an important strength which is the capacity to investigate the bank accounts.

A recently established mechanism by the President of Kosovo in the fight against corruption is the National Council against Corruption. The main strength of this council is that it can increase cooperation and coordination among institutions charged with fighting corruption. Furthermore, civil society organisations are invited to attend and the council is an important forum for discussing obstacles and challenges in the fight against corruption. But the main weakness of this institution is that it lacks follow-up capacity and it is turning into a forum of discussion alone. Furthermore, the Council hasn't debated on pending legislation that is important for anti-corruption and other trend issues on corruption area, and generally has not contributed decisively to overcoming a strategic challenge facing Kosovo in the area of anti-corruption policy, namely that of horizontal institutional coordination between key actors, in particular between ACA, police and judiciary (including practical results from a number of MoU's concluded between institutions in this area).⁵⁶ Most stakeholders, especially civil society organizations consider that the National Anti-Corruption Council should deal with the coordination of institutions responsible for preventing and fighting corruption, not just calling formal meetings.

Office of the Auditor General has vital role to play in fostering accountability and transparency of public finances. The main strength of this institution is its professionalism, quality of work and it has always kept its credibility and objectivity. However, a key shortcoming is the lack of follow-up by Kosovo institutions on its findings.

In addition to all this there are also other structures such as Procurement Review Body and Public Procurement Regulatory Commission that play an important role in the fight against corruption. The strengths of this structure include their effectiveness in dealing with complaints; however this has been also identified as weakness because of the allegations that these bodies are just another layer of bargaining for getting public contracts. Although a 'black list' exists of economic operators that have failed to accomplish their duties as per contract and they are not allowed to receive public contracts, the list is ignored.

⁵⁶ EU – Kosovo Stabilisation Association Process Dialogue (SAPD) Sectorial Committee on Justice, Freedom and Security – Conclusions, p. 1, February 2012, Ministry of European Integration, Prishtina.

1.5. Conclusions

1.5.1. Identified Challenges

The most important challenge in the fight against corruption is the lack of delivery in investigations of corruption, lack of transparency and accountability in procurement process and poor implementations of the legislation.

As noted in EU's documents on Kosovo, be that the progress reports or conclusions of sectorial committees, the current legal framework has provisions strong enough to bring tangible results in the fight against corruption, while institutional stakeholders as well as Civil Society Organizations assess that the anti-corruption legal framework is the most advanced in the region, however it needs continuous revision. Anti-corruption legislation is largely in line with the EU *acquis*, though loopholes and weakness in some of the laws are evident. The law on finances of political parties should be amended to ensure transparency of the finances of political parties and prevent conflict of interest in awarding public contracts to companies who fund election campaigns; the law on conflict of interest and the law on the disclosure of assets and wealth by senior public officials needs to have stronger sanctions. The law on public procurement allows for institutions to exclude from the scope of the law certain procurement activities, which calls into question the application of the principle of transparency. These exceptions should be set explicitly in the law, but not be subject to determination by the Government, because this violates, *inter alia* legal certainty of citizens. Key challenge remains poor implementation of the laws.⁵⁷

Kosovo has a solid institutional set-up in the fight against corruption, however key challenge remains on the delivery in the fight against corruption. In addition to this coordination and cooperation among the anti-corruption structures needs improvement, in particular between Agency against Corruption, police, prosecution and judiciary. Furthermore in the Feasibility study for Kosovo European Commission requests simplification of the anti-corruption structures and avoid overlapping.

Proposal for mid-term mission of the Anti-Corruption Agency mission is that that fighting corruption to be excluded for mandate of the Agency, whereas it should focus on activities related to the prevention of corruption, including the education component and other information/awareness activities for institutions and citizens as well as assets declaration, including the investigation of the declaration of property origin.

On the other hand, there is a need to empower institutions that fight corruption, in particular, Courts and Prosecution Offices. It is also imperative to have coordination and communication between all institutions in fighting corruption in order to have positive results in combating corruption.

⁵⁷ See FOL Movement analyses of the law on procurement available at http://levizjafol.org/images/uploads/files/Analizë_e_Ligjit_të_Prokurimit_në_kontekstin_e_transparencës.pdf, (accessed October 15, 2012).

The challenge remains in discrepancy between statistics reported by the Anti Corruption Agency, Kosovo Judicial Council, Kosovo Prosecutorial Council and Kosovo Police.

The new Anti Corruption Strategy and Action Plan 2012 - 2016 was adopted by the Government, and later by the Parliament. The strategy was accompanied with delays in reviewing and adopting, a practice that also accompanied the previous strategy 2009-2011. The new Strategy and Action Plan 2012 - 2016 was submitted to the Government in December 2011; it was approved by the Government in January 2012 and the same strategy was sent back to the Government by the Assembly in April 2012. Majority of stakeholders assess that the responsible institutions for preventing and combating corruption lack serious institutional mobilization regarding the adoption of strategic documents, which is proven with the fact that no government officials is present in the Assembly during presentation and defending the anti-corruption strategy in front MPs during its discussion.

The strategy was criticized by civil society organizations for lacking proper analyses in order to identify the problems in the fight against corruption and allocate proper resources. These organizations also criticised the lack of transparency by the side of Government and Assembly in all stages of reviewing and adoption of the strategy by them.

1.5.2. Recommendations to address the challenges:

- Several laws needs to be improved in order to meet EU demands:
 - The law on finances of political parties needs to ensure full transparency and audit of the finances of political parties in Kosovo. Also the law “needs to prohibit or strictly regulate donations from legal entities that provide goods or services to public administration. It also needs to oblige political parties to have a single bank account and to define timeframes for publishing their financial reports”,⁵⁸
 - The law on conflict of interest and the law on disclosure of assets should have stronger sanctions against failure to comply with the law;
 - To simplify approval procedures for the anti-corruption strategy.

- In terms of institutional set-up:
 - European Commission has demanded “to simplify the institutional set-up for the fight against corruption and avoid overlapping responsibilities”.⁵⁹
 - In this regard, the Anti Corruption Agency should get involved in prevention measures, including education and awareness raising, while Police, Prosecutor’s Offices and Courts should be supported in discharging

⁵⁸ See the European Commission Communication on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, Brussels, 10 October 2012, p.11.

⁵⁹ Ibid.

their mandate in investigation, prosecution and adjudication of all corruption cases;

- Kosovo Council against corruption should focus on strengthening its role as a promoter of coordination and cooperation among anti-corruption institutions;
 - Support for agency against corruption should be increased in order to conduct investigations into the disclosure forms of senior public official regarding their assets and wealth.
- In terms of policy:
 - Anti-corruption agency should increase the monitoring capacities of the implementation of anti-corruption strategy;
 - Anti-corruption agency should take an active role in advancing cooperation and coordination with Prosecution and Police;
 - Respective procurement bodies should implement the so called “black list”.

2. Justice System

2.1. Constitutional and Legal Framework

Constitution of the Republic of Kosovo⁶⁰, and other relevant Laws⁶¹ contain legal norms that regulate the justice system of Kosovo. The justice system in Kosovo is divided in a judicial system, prosecutorial system and advocacy (bar) as independent institutions.

The Constitution of the Republic of Kosovo and the Law on Courts foresee that the judicial power is vested in courts, while the Constitution mandates the Supreme Court as the highest judicial authority over the entire territory of the Republic of Kosovo.⁶² The President of the Supreme Court is appointed and dismissed by the President of the Republic of Kosovo for a non-renewable term of 7 years.⁶³ The Constitution determines the Kosovo Judicial Council (KJC) as the responsible body for ensuring the independence and impartiality of the judicial system⁶⁴, while a fully independent institution in the performance of its functions ensures that Kosovo courts reflect the multi-ethnic nature of Kosovo and follow the principles of gender equality⁶⁵. Upon the proposal of the Kosovo Judicial Council, the President has the right to appoint, reappoint and dismiss judges.⁶⁶

⁶⁰ Chapter 7 of the Constitution of the Republic of Kosovo.

⁶¹ Law on Courts (Law No. 03/L-199), Law on Kosovo Judicial Council (Law No. 03/L-223), Law on State Prosecutor (Law No.03/L-225) and the Law on Kosovo Prosecutorial Council (Law No. 03/L-224).

⁶² Article 103 par.2 of the Constitution of the Republic of Kosovo.

⁶³ Art.103 par.4 of the Constitution of the Republic of Kosovo.

⁶⁴ Art.108 par.1 of the Constitution of the Republic of Kosovo.

⁶⁵ Art. 108 par.2 of the Constitution of the Republic of Kosovo.

⁶⁶ Article104 par.1 of the Constitution of the Republic of Kosovo.

On the other hand, the prosecutorial system is enshrined in Constitution (Art. 109 and 110), stipulating that that the Chief State Prosecutors shall be appointed for a non-renewable seven year term; whilst, the Kosovo Prosecutorial Council (KPC) is established as a self-regulatory and fully independent body for the prosecution system of Kosovo with mandate to recruit, propose, promote, performance assessment of prosecutors, transfer, reappoint, discipline and proposal for dismissal of prosecutors.

2.2. Composition of Judicial and Prosecutorial Councils

“Councils for the judiciary should demonstrate the highest degree of transparency towards judges and society by developing pre-established procedures and reasoned decisions”⁶⁷.

2.2.1. Composition of the Kosovo Judicial Council

The Kosovo Judicial Council is an independent institution consisting of thirteen members, both judges and lay members, including two international members (EULEX judges) who are also part of the KJC.

The overall purpose of KJC, as mandated by the applicable legal framework is responsible for selecting and proposing judges for appointment, as well as for elaborating policies for the overall management and reform of the judicial system. KJC is the institution, which evaluates disciplines and promotes the sitting judges and lay judges. Furthermore, the KJC is responsible for the overall management and administration of all courts, for the elaboration and the implementation of the budget of the judiciary and for the establishment of new courts and court branches.⁶⁸

As a fully independent body in its functioning foreseen by the Constitution and the Law,⁶⁹ the KJC members are elected for a term of five (5) years with the right for one additional non-renewable mandate. Although the majority of members are Judges only five members of KJC are elected by the Judiciary⁷⁰ while the majority of judges or legal professionals are elected by the Assembly and those are 8 members of the Council.⁷¹ Thus making the KJC the judicial authority where the majority of its members are elected by the Assembly.

The European Charter on Statute of Judges in Article 1.3 “envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guarantee-

⁶⁷ CoE Recommendation (2010)12 of the Committee of Ministers to Members States on judges: independence, efficiency and responsibilities adopted 17 November 2010, para.28.

⁶⁸ www.eulex-kosovo.eu/en/justice/kjc.php.

⁶⁹ Article 3 of the Law on KJC.

⁷⁰ Constitution Article 108 par.6 (1).

⁷¹ Idem par.6 (2,3,4).

ing the widest representation of the judiciary.” The independence of this body is necessary and it reflects in the decision on selection, recruitment or appointment of judges the development of their careers or the termination of their office. The same principle is laid down in the CoE Recommendation (2010)¹² at par.27 where it envisages that: “Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.” The position of the Venice Commission (CDL-AD(2007)028) is: ... A substantial element or a majority of the members of the judicial council should be elected by the Judiciary itself. In order to provide for democratic legitimacy of the Judicial Council, other members should be elected by Parliament among persons with appropriate legal qualifications.

The same wording and going even further when recommending the composition of the Council is contained in Art.7 of Kyiv recommendations (2010)⁷² which state that “Where a Judicial Council is established, its judge members shall be elected by their peers and represent the judiciary at large, including judges from first level courts. Judicial Councils shall not be dominated by appellate court judges. Where the chairperson of a court is appointed to the Council, he or she must resign from his or her position as court chairperson. Apart from a substantial number of judicial members elected by the judges, the Judicial Council should comprise law professors and preferably a member of the bar, to promote greater inclusiveness and transparency [...]”. The group of experts who drafted the recommendations in the discussion behind this when discussing the role of court chairs in Judicial Council as a matter of concern for their participation in the Council raised two issues: In many states the Council has competence to control court chairs and with them sitting on the Council it was deemed questionable that this control function can be assumed properly and secondly experts reported that in practice other judge members of the Council feel intimidated by court chairs sitting in the Council. Consequently it was agreed that they should resign from their former function as court chair if elected to the Council.

As the election of KJC members fall short from international standards it is recommended that Constitutional amendment is represented in the election process of KJC members and at least 8 members are elected by their peers within judiciary.⁷³

The second recommendation would be that the Judicial Council in its composition has no court Presidents or at least if elected they decide either one or the other function they want to stay.

The third recommendation would be that Council in its composition is not dominated by high level judges but has the wide representation of judges from all instances of courts.

⁷² OSCE/ODIHR, Kyiv recommendations in Eastern Europe, South Caucasus and Central Asia.

⁷³ See OSCE report, Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions, January 2012, p. 18: “The composition of the KJC would meet European standards if a majority of the members of the KJC were elected by their peers, which currently is not the case”.

2.2.2. Composition of the Kosovo Prosecutorial Council

The Law on Kosovo Prosecutorial Council, which entered into force on 1 January 2011, marks the separation of the KJC and the KPC: the former dealing with matters related to judges solely, whilst the later dealing with matters related to prosecutors only.

The KPC is an independent institution mandated to ensure an independent, professional and impartial prosecution system. To fulfil this goal the KPC is responsible for recruiting and proposing for appointment, training, evaluating, disciplining, transferring, dismissing and promoting prosecutors and for administrating the prosecution offices all over Kosovo. Furthermore the KPC shall develop policies and strategies to effectively combat crime, produce statistics and report to the Assembly about the work of the State Prosecutor.

As a general rule, the Council has no competence and may not interfere with the concrete executive prosecutorial work.

With regard to the composition, in contrary to the KJC composition, the Constitution of the Republic of Kosovo remains silent as to the composition of the KPC, instead it makes reference to the law on the Kosovo Prosecutorial Council (art 5) which sets that the “The Council shall be composed of nine (9) members, five (5) of whom shall be prosecutors.”

The KPC membership consists of members both from the prosecution offices and from other parts of the society, such as Civil Society, Law Faculty, Kosovo Chamber of Advocates and the Minister of Justice. Contrary to the KJC, the KPC within its composition includes ex officio members, as stated above, more specifically the Chief State Prosecutor and the Minister of Justice.

Whilst Art. 108 of the Constitution, which regulate, inter alia, the composition of the KJC specifies the appointing authority eight (8) KJC members appointed by the Assembly, and five (5) by their peers, Art. 110 of the Constitution which regulates in general the mandate of the KPC, does not specify the Composition, it rather delegates this prerogative to the forthcoming Law on the Kosovo Prosecutorial Council, which then leaves no room for the appointment of non-persecutors by the Assembly, as the expectations would be taking into consideration the above-mentioned Art. 65 of the Constitution.

The KPC and the State Prosecution are two independent institutions in exercising competencies and responsibilities as stipulated by law. The Law on the KPC, has foreseen that the “The Office of the Chief State Prosecutor shall provide such administrative support to the Council through a secretariat with certain staff to enable the Council to perform its duties in an effective and expeditious manner”.⁷⁴ Given that this presents real problems in day to day activities, it should be stated that establishment of a KPC Secretariat is imminent for ensuring proper function and support of the KPC.

⁷⁴ Law on KPC, Art. 14.

2.3. Judicial and Prosecutorial System of Kosovo

2.3.1. Judicial System

The Law on Courts that entered into force in January 2013 has substantially restructured and reformed the court system of Kosovo which consists of the Basic Courts, the Court of Appeals and the Supreme Court, while within the area of jurisdiction of a Basic Court, branches have been established.

The planning phase ended on 1 December 2011 with the publication of the Implementation Plan on KJC website and the implementation phase started from January 2012 and it will last up to the end of 2012. During this time KJC, has worked on the reassignment of Judges in the new court structure, reclassification of court files and their transfer to appropriate courts and the allocation of non-judicial personnel.

2.3.2. Prosecutorial System

In parallel to the court structure, the prosecutorial structure reflects similar changes as of 1 January 2013; with seven (7) basic prosecution offices, one (1) appellate prosecution office and the State Prosecution Office. In parallel to the 'regular' structure, there is Special Prosecution of the Republic of Kosovo, with additional competences. There is a general viewpoint that the criminal offences charged by the SPRK, by prosecutors of the Special Prosecution, are then dealt by the former Municipal and District Court judges and since 1 January 2013 basic courts that may be or not at the level of specialization with SPRK prosecutors. However, there is an expectation that this challenge is to be addressed with the creation of Serious Crime Department within the Basic Court in Prishtina.

2.4. Appointment of Judges and Prosecutors

The Council of Europe has recommended that "All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of the government and the administration".⁷⁵

Opinion No. 1 of the CCJE recommends in addition (at 25) that the authorities responsible in member States for making and advising on appointments and promotions should now introduce, publish and give effect to objective criteria, with the aim of ensuring that the selection and career of judges are based on merit, having regard to qualifications, integrity, ability and efficiency. Merit is not solely a matter of legal knowledge, analytical skills or academic excellence. It also should include matters of character, judgment, accessibility, communication skills, efficiency to produce judgments, etc.

⁷⁵ Council of Europe, Recommendation No. R (94)12, Principle I, par.2(c).

The (re)appointment process was organized in 2008 until 2010 and was managed by the Independent Judicial and Prosecutorial Commission (IJPC). This process left 112 vacancies for judges which KJC took over to fulfil, while KPC, following its establishment, also took over the process of recruiting 29 prosecutorial positions that remained unfilled by the IJPC. This process was reported to be accompanied with political interference.⁷⁶

The involvement of political bodies in the appointment of judges has also been a matter of discussion within Kyiv Recommendations. Experts agreed that refusal to appoint judges may only be based on procedural grounds; if the veto is applied by the appointing authority the selecting body can have the option to override the veto by a qualified majority and this should be done in a short time frame to avoid uncertainty for the candidates waiting for appointments.⁷⁷

The challenge of interference from the President in the process of nomination of Judges is considered as overcome by the Judgment of the Constitutional Court of Kosovo concerning constitutional amendments; where the proposed amendment 104.1 of the Constitution for a proposed suspensive veto of the President to send back the names of Judges proposed to be appointed by the KJC is considered as the potential infringement for access to courts, and by implications to the judges making decisions in the courts diminishes human rights and fundamental freedoms guaranteed in Chapter two of the Constitution.⁷⁸

Another issue of concern regarding the appointment of judges and prosecutors is that with the entry into force of the Law on KJC and the Law on KPC the UNMIK Regulation 2005/52 was repelled which automatically repelled also the criteria foreseen for the selection of candidates for judges and prosecutors. However, despite the entering into force, the Law on KJC and KPC did not contain any provision setting appointing criteria. Under these circumstances in order to avoid the legal gap the KJC adopted on 16 February 2011 the Regulation on the process of appointment of judges,⁷⁹ and similarly the KPC adopted its Regulation on the process of appointment of prosecutors (2011 that was amended in 2012).⁸⁰ The KPC has amended slightly the criteria for prosecutors in its Regulation (05/2012)⁸¹ on the Process of Prosecutors' Appointment, a recruitment process from which during 2012 were recruited 22 prosecutors. Since 1 January 2013 with entry into force of the Law on State Prosecutor, clear criteria are determined for nomination of candidates for prosecutors.

⁷⁶ IJPC Report, p. 19, http://www.kgjk-ks.org/repository/docs/Official_Final_Text_of_Final_Report.pdf.

⁷⁷ OSCE/ODIHR Judicial independence in Eastern Europe, South Caucasus and Central Asia Challenges, Reforms and Way Forward, Expert meeting in Kyiv, 23-25 June 2010, Meeting report, p. 12.

⁷⁸ Constitutional Court Judgment in case K.O 29/12 and K.O 48/12 Proposed amendments of the Constitution submitted by the President of the Assembly of the Republic of Kosovo on 23 March and 4 May 2012, 20 July 2012.

⁷⁹ http://kgjk-ks.org/repository/docs/Rregullorja-per-emerimin-e-gjyqtareve-anglisht_581857.pdf.

⁸⁰ http://www.psh-ks.net/repository/docs/KPC_Appt_Rule_FINAL_4_March_2011_-_ENG.pdf.

⁸¹ http://www.psh-ks.net/repository/docs/KPC_Appt_Rule_FINAL_4_March_2011_-_ENG.pdf.

These regulations fall short of obeying with international principles foreseeing that: “In order to ensure transparency in the selection process, the procedure and criteria for judicial selection must be clearly defined by law”.⁸²

As far as it concerns to inclusion of minorities in the judicial system international principles foresee that: “In order to increase the representation of minorities in the judiciary, underrepresented groups should be encouraged to acquire the necessary qualifications for being a judge”.⁸³

Although experts in Kyiv suggested that it would be desirable if the composition of the judiciary reflected the composition of population as a whole they did not feel that recommending quotas for minorities might be an appropriate solution. As art.17 par.1 of the Law on KJC is in line with this recommendation a real challenge lays in the application of par.2 of the same article that requires from the Council that: “Upon completion of each census and at least every five (5) years, the Council shall study the ethnic composition of the Basic Courts and shall request from the Assembly such funding as is necessary to increase the number of judges from Communities that are not in the majority in Kosovo to ensure that the courts reflect the ethnic composition of the area of their jurisdiction.

2.5. Tenure of Judges and Prosecutors⁸⁴

For all judges and prosecutors who successfully completed the reappointment process the mandate is until retirement age.⁸⁵ The exception to this rule exists for newly appointed judges (and prosecutors) whose appointment begins with a three year probationary period.⁸⁶

Currently there are 351 judges in Kosovo, out of which 199 were appointed for the first time. The reappointment process for the newly appointed judges shall start as of June 2013. Out of the total number, 97 are women, which shown in percentage is 27,64 %, judges coming from non-majority communities are 22 shown in percentage is 6,27% .⁸⁷ With regard to prosecutors, currently there are 125 prosecutors, including the appointment of 27 December 2012. 146 positions for state prosecutors in all prosecution offices were approved with the state budget of 2012, including the SPRK. In this regard, vacant positions have remained for 21 prosecutors.⁸⁸ This brings to the conclusion that the ratio

⁸² Kyiv recommendations in Eastern Europe, South Caucasus and Central Asia, par.21.

⁸³ Ibid, par.24.

⁸⁴ Constitution, Article 105 (1) and Article 109 (5).

⁸⁵ Law on Courts, Art. 27, par.5.

⁸⁶ Constitution, Article 105 par.1, “The initial mandate for judges shall be three years”.

⁸⁷ Data provided by the office of Personnel and Human Resources in KJC Secretariat, updated on August 2012.

⁸⁸ State Prosecution of the Republic of Kosovo Report for 2012 http://www.psh-ks.net/repository/docs/Raporti_2012_Shqip.pdf.

between judges and prosecutors is close to 3.5 to 1.

The international standards on the independence of the judiciary establish a number of requirements related to the conditions of service and tenure of judges. For example, the UN Basic Principles stipulate that States have the duty to guarantee the conditions of service and tenure in their legislation: “The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law”.⁸⁹ When referring specifically to tenure, the Principles stipulate that “Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists”.⁹⁰

The difficulty with such probationary periods is that they presumably apply a lower threshold for dismissal than those facing permanent judges; otherwise there would be no need for probationary period.⁹¹ Clearly the existence of probationary periods or renewal requirements presents difficulties if not dangers from the angle of the independence and impartiality of the judge in question, who is hoping to be established in post or to have his or her contract renewed. “Safeguards must therefore be provided through the intervention of the independent authority”.⁹²

Therefore the recommendation would be to introduce constitutional amendment that is in line with the recommendation of the Venice Commission that ordinary judges and prosecutors be appointed permanently until retirement.⁹³ Or if probationary appointments are considered indispensable, “refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards as apply where a judge is to be removed from office”.⁹⁴

Another legal challenge derives from what is considered to be a gap in the Law on Court, more specifically the lack of a provision that stipulates the termination of the mandate of judges. Usually the termination of the mandate is regulated by law – not by subsidiary acts and as a rule mandate is considered to be terminated in the cases of: death, reaching of the retirement age, incapacity to discharge judges’ functions, resignation and removal as a result of disciplinary procedure.

⁸⁹ UN Basic Principles on the Independence of the Judiciary, Principle 11.

⁹⁰ Ibid, Principle 12.

⁹¹ OSCE report, Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions, January 2012, p. 14.

⁹² Explanatory memorandum of European Charter, par.3.3.

⁹³ Venice Commission, Report on the Independence of the Judicial System Part I: The Independence of Judges, 16 March 2010.

⁹⁴ Venice Commission, Opinion on Draft Constitutional Amendments concerning the Reform of the Judicial System in “the Former Yugoslav Republic of Macedonia”, CDL-AD(2005)038, par.30.

2.6. Accountability of KJC members and Judges

“A balance needs to be struck between judicial independence and self-administration on the one side and the necessary accountability of the judiciary on the other side in order to avoid negative effects of corporatism within the judiciary...One way to achieve this goal is to establish a judicial council with a balanced composition of its members.”⁹⁵

Judicial independence is an important guarantee but it should not be used as a shield behind which judges might conceal unethical behaviour. Therefore it is the duty of the Council to establish ethical guidelines. According to the Law on KJC, among the responsibilities of this body is also the promulgation of the code of professional ethics for KJC members and for judges and lay judges whose violation triggers disciplinary procedure that sets the ground for disciplinary sanctions including removal from office. Code of ethics for Council members was just recently adopted by the Council⁹⁶ while Code of ethics for Judges and lay Judges was adopted on 2006 and needs update as it was based on the UNMIK Administrative Instruction No.2006/8. Under the law on KJC the disciplinary procedure is laid out⁹⁷ and the Normative and Disciplinary committee is working on the draft regulation on the work of disciplinary committee. It has incorporated values which determine judicial behaviour: independence, impartiality, integrity, propriety, equality, competence and diligence. The regulation is in line with international standards on accountability which foresee the composition of the body that directs the proceedings, the procedural guarantees enjoyed by judges (full hearing of the parties, right to representation, confidentiality of the process at the initial stage), the requirement that sanctions be proportional to the misdeed and the right that decisions in disciplinary, suspension or removal proceedings be subject to an independent review.⁹⁸ Judges may be removed from office upon conviction of a serious criminal offence or for serious neglect of duties.⁹⁹ It has to be noted that so far none of the Judges in Kosovo have been subject to removal. A judge has the right to directly appeal a decision of dismissal to the Supreme Court of Kosovo.¹⁰⁰

The issue that remains open and a challenge for KJC is the publication of decisions resulting from disciplinary procedure, whether all decisions should be published in the KJC website or only the one that result in suspension or removal. In addition, currently there are no procedural rules for disciplinary liability of KJC members.

⁹⁵ Venice Commission, Opinion No. 403/2006, Venice 22 June 2007.

⁹⁶ KJC meeting held on 8 October 2012.

⁹⁷ Chapter VI of the Law on KJC (Art. 33-42).

⁹⁸ European Charter on the Statute of Judges, par.5.1. and Basic Principles on the Independence of Judiciary (principle 17,18,19,20).

⁹⁹ Constitution, Article 104 par. 4.

¹⁰⁰ Ibid. par.5.

2.7. Accountability of KPC members and prosecutors

Similarly to the KJC, also the KPC has adopted the Code of Ethics for Prosecutors, which provides for the groundwork of the Disciplinary Committee of the KPC. The Disciplinary Committee in 2011 has reviewed 10 cases and imposed 11 disciplinary measures. Same as the KJC, also the KPC is at the stage of review process of the Regulations on the Disciplinary proceeding, hence a recommendation to both Councils could be to try and streamline and harmonize the draft regulations taking into account the similarities between the Law on the KJC and the Law on the KPC regarding the disciplinary procedures and especially the fact that there is only one body that serves both Councils in terms of investigation (Office of Disciplinary Council) for whom it would be very difficult to organize its work with two different sets of procedural rules.

In addition to the Code of Ethics for prosecutors, the KPC has also adopted the Code of Ethics for KPC members, and the Code of Ethics for Prosecutorial Support Staff. The Code of Ethics for KPC members is based on the Law on the KPC,¹⁰¹ whereas the Code of Ethics for Support Staff is to be questioned in terms of its implementation. More specifically, Article 3 item 6 of the Law on Civil Service states that “[W]ith the exception of judges and prosecutors, the administrative personnel employed by the judiciary is part of the Kosovo civil service and subject to this law and relevant applicable legislation.” Thus also the disciplinary measures of the Law on Civil Service are applicable to the civil service, including the administration of the judiciary. It is questionable whether a breach of their specific Code of Ethics as adopted by the KPC leads to a disciplinary procedure and whether it ensures proper addressing/redressing mechanisms through disciplinary channel up to or through the Independent Oversight Board and perhaps also the court system. KPC has certified a number of trainers in the field of code of conduct for prosecutors and administrative staff of the Prosecutor who will provide trainings for the rest of the staff during 2013. In this regard, the Office for Trainings within the Unit for Prosecution Performance Evaluation has cooperation with the Kosovo Judicial Institute that conduct needs assessment for areas necessary for trainings to be offered to prosecutors and administrative staff.

Members of the civil society highlight the need of having a accountability system in place in order to have a functional justice system. In particular, SPRK has to be embraced within the accountability system taking into account that the SPRK do not report to the Chief State Prosecutor, therefore there is not accountability and subordination system.

¹⁰¹ Even though there are no procedural rules for disciplinary liability of KPC members – meaning that if a KPC member is found to have acted on misconduct there are no procedures in place how to proceed with it.

2.8. Remuneration of Judges and Prosecutors

For the past decade, Kosovo's judicial salaries have been inadequate to attract and retain qualified judges or to enable judges to support their families without having to resort to outside sources of income. The continued inadequacy reflected a drastic and long-standing situation that is widely perceived as underlying most of the judiciary's serious problems to date. Since 1-st of January 2011, salaries of the judiciary have been increased and equalled with positions and equivalent with salaries of the executive branch of the Kosovo Government.¹⁰² This step is applauded as long-overdue and critical to support other reform efforts in the justice system.¹⁰³

The new Law on Courts provides for equalization of salaries between judiciary and executive branch of the Government. This can be considered as a major step in improvement of the Judges position as far as it concerns to shielding them from inducements and in the other side it is a good incentive for attracting young professionals to apply. It also brings the judiciary as a third power on the equal basis with legislative and executive. To a certain degree by this, the recommendation by the Committee of Ministers that: "The principal rules of the system of remuneration for professional judges should be laid down by law"¹⁰⁴ and Principle 11 of the Basic Principles have been partially satisfied. This is because pensions are foreseen to be secured as well but as far as it concerns to that Judges share the fate of all people of Kosovo with undefined pension scheme regardless of their occupation.

The President of the Supreme Court receives an equal salary with the Prime Minister of Kosovo, while the Supreme Court judges receive an equal salary with the ministers and certain scales and adjustments were foreseen also for Judges of other instances.

The same remuneration scheme applies for prosecutors as well, apart the fact that there is slight difference between lower level salaries. Namely, both laws set the scheme in that way that equalize the President of the Supreme Court and the Chief State Prosecutor with the Prime Minister, however judges of the Supreme Court level are set at the equal level with the ministers, while the prosecutors of the Chief State Prosecutor Office receive 90% of the salary of the Chief State Prosecutor¹⁰⁵, resulting in having to receive higher salaries than the Supreme Court judges, even though the intention was to set same levels of positions at the same level of remuneration, as it was properly followed at the level of the President of the Supreme Court and the Chief State Prosecutor and also at appellate and basic court levels.

Despite the above, currently another challenge derives from the Draft Law on Salaries for Public Officials, as sponsored by the MPA. This draft law, that has already passed

¹⁰² See article 29 of the Law on Courts (Law No. 03/L-199).

¹⁰³ JRI for Kosovo, 2010.

¹⁰⁴ Recommendation CM/Rec(2010)12 of the Committee of Ministers to Members States on judges: independence, efficiency, responsibilities.

¹⁰⁵ Art 21 (1.2) of the Law on State Prosecutor.

through Government and currently is in the first reading phase in the Assembly of Kosovo, ignores the principle of equality of powers and denigrates the position and authority of the Judiciary. After reaction of the KJC and KPC, drafting of this draft-law was suspended

Lack of clarity of salary by law is a violation of the standards including Recommendation CM / Rec (2010) 12 of the Committee of Ministers of the Council of Europe about the judges independence, efficiency and responsibilities. Art. 54 foresee that: "Judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions."

Furthermore, the law should provide special retirement system for judges that would provide for a pension scheme somewhat equal to the salary that the judge concerned has received while in office. This idea generates from the fact that, unlike other representatives of the two branches of government, judges (and prosecutors) should not be allowed to exercise activities that would allow for development of economic undertakings in the private sector. Consequently, the pension and other post-retirement income are important enough to have a kind of security during and after the mandate. Article 6.4 of the European Charter on the Statute of Judges states that:

In particular the statute ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.

2.9. Performance Evaluation of Judges

Two legal acts were approved this year by KJC in order to define and assess the quantity and quality of work of judges. The first one is regulation on defining the norms on the work of judges¹⁰⁶ that entered into force on 1 January 2012 and the second one is the regulation on the evaluation of performance of judges that entered into force on 15 March 2012. In the recent report of KLI and Forum for Civic Initiative they highlight "the lack of mechanism for control of the quality of work" mentioning that so far there was no mechanism in place to assess the work of judges or prosecutors.¹⁰⁷ With the adoption of the two regulations the mechanism was set in place but so far there was no evaluation performance conducted for judges. In accordance with the Regulation, the newly appointed judges will be evaluated once before the end of their initial term until the decision on their permanent appointment, whereas regular evaluation of judges appointed permanently should be done every three years.

¹⁰⁶ See Regulation on defining the norms on the work of Judges, http://www.kgjk.ks.org/repository/docs/Rregullo-re-per-Norma_ENG-janar-2012_760161.pdf (accessed 5 October 2012).

¹⁰⁷ KLI & FCI report, Reappointment process, independence and influences, p. 20.

Experts in Kyiv pointed out that:

Performance evaluation can be a useful tool to hold judges accountable to professional and ethical standards motivate them and stimulate their professional development". However where performance evaluation is in the hands of the respective court chairs alone, experts agreed that the individual judge's independence may be at risk. Another concern raised by experts from Eastern Europe is the use of statistical data or quantitative indicators to evaluate judges' performance. The group agreed that the quality of a judge's performance cannot be measured by counting the number of cases processed regardless of their complexity, or the number of judgments upheld at the higher instance. While it was acknowledged that statistics regarding case processing and reversal rate can be useful for purposes of judicial administration, management and budgeting, they should not be used to the detriment of the individual judge. The experts concluded that judges' performance evaluations should not relate to the so-called stability of judgment upon appeal, that they should be focused on skills and competencies, and that the evaluation procedure should contain clearly regulated criteria, be transparent and fair, with possibility of appeal by the relevant judge.

While bureaucratic accountability makes judges answerable to court chairs, higher court judges and bureaucratic structures and hence bears the risk of undue influence, professional accountability enables more appropriate control over judges. Under the so-called professional accountability, judges are mainly accountable to their peers, the wider legal community and the public. With this form of mild or benign pressure, judges do not worry about their careers but rather about their public reputation as a good judge and respect of the legal community. The group discussed what is necessary to foster professional accountability and elaborated a number of recommendations. Namely it was agreed that judges' specialized education should include training on what makes a good judge and how to reason a judgment. Furthermore the group concluded that publicity of hearings and transparency of decisions and media access are crucial for professional accountability because they enable scrutiny and critical discussion.

Recommendation would be that in the evaluation of judges Court President has no exclusive role in the evaluation but that the role of the President is complementary to the one of the group of judges of the same and other courts and others who deal regularly with the judge such as lawyers or legal professionals.

Second recommendation would be to take the statistics out of the evaluation report together with the reversal rate.

Third recommendation would be to publish all decisions in the database and website in order to enhance public and professional accountability of judges.

The performance evaluation is a useful tool to identify areas of work in which judge needs to improve and also to be used as a sound basis for promotion of judges. International principles require the objectivity of the system and the independence of the body conducting it. “Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience”.¹⁰⁸ Another way of guaranteeing the independence of the judiciary is by establishing a clear system of promotion for judges. In this sense, systems based on competence or seniority of the judges is acceptable. Irrespective of the system chosen, States must ensure that judges advance in their careers according to objective criteria determined by an independent body.¹⁰⁹ The European Charter on the statute for judges contemplates two systems of promotion of judges: on the one hand, a system based on seniority, under which judges are promoted after spending a fixed time at a post (and are still able to discharge their professional duties); on the other, a system of promotions based on merit, in which improper factors such as race, sex or religious or political affiliation have no role to play. The operative paragraph says: “When it is not based on seniority, a system of promotion is based exclusively on the qualities and merits observed in the performance of duties entrusted to the judge, by means of objective appraisals performed by one or several judges and discussed with the judge concerned. Decisions on promotion are then pronounced by the authority referred to at paragraph 1.3 [an authority independent of the executive and legislative within which at least one half are judges elected by their peers] hereof or on its proposal, or with its agreement. Judges who are not proposed with a view to promotion must be entitled to lodge a complaint before this authority.”¹¹⁰

The promotion or advancement of judges from one instance of courts to another as a process has not been utilized yet. Instead from one instance to another, judges passed through the process of reappointment or reassignment in the new court structure.

Therefore, KJC in the near future based on the results of the evaluation process of judges’ performance needs to establish a process for promotion of judges.

2.10. Performance Evaluation of Prosecutors

Based on the legal provisions as deriving from the Law on KPC, the KPC has adopted Regulation on defining procedures and criteria for Performance Evaluation of Prosecutors and Prosecution Offices. This Regulation is in the process of amendment and the same will be harmonised with the KJC Regulation taking into account specifications interlinked with the work of prosecution offices. While some of the findings pertaining to the evaluation of judges mentioned above, may be reiterated for the evaluation of the prosecutors as well, one thing that strikes out immediately is the fact that the KPC Regulation is the fact that the Prosecutorial Performance Review Unit has been given

¹⁰⁸ UN Basic Principles on the Independence of the Judiciary, Principle 13.

¹⁰⁹ The international principles on the independence and accountability of judges, lawyers and prosecutors; A practitioners’ guide, p. 47.

¹¹⁰ European Charter on the Statute of Judges, par.4.1.

the management role of this process, while the KJC has introduced a judges-composed-only Committee that would be entrusted with the performance evaluation process and guidance for other judges.

With the transition to the new structure and within the Performance Review Unit of the Prosecutor's Office operates Training, Office of Analysis and Evaluation and Statistics Office.

2.11. Cases that our judges are still challenged to deal with: High profile corruption, war crimes organized crime

Dealing with war crimes, organized crime or high profile corruption cases among other cases was and still remains under the exclusive competence of international judges and prosecutors. It all started with the arrival of UN Mission in Kosovo and issuance of the Regulation 2000/6 providing for the appointment of international judge and international prosecutor to Mitrovica. Few months later, the SRSG on 27 May 2000 passed Regulation 2000/34 extending the power to appoint international judges and prosecutors to the whole territory of Kosovo. With the reconfiguration of international presence in Kosovo and the new EU Mission in the Rule of Law (EULEX) becoming fully operational in April 2009, court cases dealt by UNMIK judges were passed to EULEX Judges who try these cases in the panel composed of majority of EULEX Judges and presided by them. Although these panels are mixed and local judges participate as members of the panel they still did not have the chance to deal with these cases on their own. Another concern is that although local judges were in the minority in panels with international judges in these high profile cases they were subject to external pressure and threats.¹¹¹ With the international presence phasing out local judges will have to take over and preside over these cases. Therefore Judicial Council and respective institutions need to build up a strategy in providing first, secure environment and sufficient protection for the judges and their families, appropriate remuneration equal to the responsibilities of the work and necessary trainings whenever needed.

2.12. Training of Judges

Eleventh annual report of Ombudsperson raised as an issue of concern reflecting in Kosovo justice system, the education system of jurists in Kosovo which provides insufficient knowledge about international human rights standards, especially regarding interpretation of domestic legal provisions based on the case law of the European Court of Human Rights in accordance with the European Convention for Human Rights, as it is set forth in the Article 53 of the Constitution of the Republic of Kosovo. The above-mentioned article expressly requests "interpretation of human rights and fundamental freedoms in harmony with decisions of the European Court of Human Rights" and the other article 22 of the Constitution stipulates that human rights and fundamental

¹¹¹ See OSCE Report Kosovo's War Crimes Trials: An assessment ten years on, 1999-2009, May 2010, OSCE report 'Intimidation of the judiciary: Security of Judges and Prosecutors', April 2010.

freedoms guaranteed by the international agreements and instruments “are directly applicable in the Republic of Kosovo” and “in the case of conflict”, have priority “over provisions of laws and other acts of public institutions”. With insufficient knowledge of foreign languages and very few books translated in local languages on international instruments and case law it is almost impossible for our judges to utilize these in their court decisions.

The other deficiency of our education system of jurists is lack of analytical and practical skills while in university education still the legal theory prevails over. Training should focus on what is needed in the judicial service and compensate for any shortcomings of university education. They should include aspects of ethics, communication skills, dispute settlement, management skills and legal drafting skills with focus on the legal reasoning. The evaluation committee could recommend to KJC based on their findings from the whole process of evaluation what are the fields and areas in judicial system that need improvement and together with respective institution design the curricula for continuous legal education of judges.

2.13. Judicial Independence

The notion of institutional independence means that the Judiciary has to be independent of the other branches of government, namely the Executive and Parliament.¹¹² According to Principle 1 of the Basic Principles on the Independence of the Judiciary: “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.” Next, as follows from Principle 1 of the Basic Principles, the other branches of government, including “other institutions”, have the duty “to respect and observe the independence of the judiciary”. “If commenting on judges’ decisions, the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary. They should also avoid actions which may call into question their willingness to abide by judges’ decisions, other than stating their intention to appeal.”¹¹³

There were few cases of interference of other branches of government in the judiciary. Unfortunately even Ministry of Justice in their priorities set for 2011 has foreseen reduction of court cases and increase in the number of professional associates as priorities while they exclusively fall under the competence of Judicial Council. In addition, the MoJ has entered into Memorandum of Understanding with Council of Defense for Human Rights and Freedom to provide access to court proceedings.

The interference is not only in policy level as there are reported cases also in the interference by municipal authorities as it is the case of the property dispute in Viti where

¹¹² See Human Rights in the Administration of Justice: A manual on Human Rights for Judges, Prosecutors and Lawyers, Chapter 4.4, The notion of institutional independence, p. 120.

¹¹³ *Supra* XLI, par.18.

municipality as a party did not obey with the court decision on execution and later when they lost the case on property they took the case into the media accusing the courts and the international community.¹¹⁴

It is not only the Judiciary per se, as a branch of government, that must be independent of the Executive and Parliament; the individual judges, too, have a right to enjoy independence in carrying out their professional duties. This independence does not mean, of course, that the judges can decide cases on the basis of their own whims or preferences: it means, as will be shown below, that they have both a right and a duty to decide the cases before them according to the law, free from fear of personal criticism or reprisals of any kind, even in situations where they are obliged to render judgments in difficult and sensitive cases.¹¹⁵ It is a well-known fact the behavior of judges in a case of the founder of “Vetëvendosje” movement where the local judge as member of the panel called in sick for quite a long period and the President of the court could not replace the judge as no other local judge would take the place. The same was with the local lawyers who were not willing to defend ex-officio as they were exerted to pressure.

The principle of Internal Independence as enshrined in Recommendation C/MRec (2010)12 in par.22 foresees that: “The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organization should not undermine individual independence”. Next par. foresees that: “Superior courts should not address instructions to judges about the way they should decide individual cases, except in preliminary rulings or when deciding on legal remedies according to the law”. The similar principle is foreseen also in Kyiv principles under recommendation. 35 on internal independence: “The issuing by high courts of directives, explanations, or resolutions shall be discouraged, but as long as they exist, they must not be binding on lower court judges. Otherwise, they represent infringements of the individual independence of judges. In addition, exemplary decisions of high courts and decisions specifically designated as precedents by these courts shall have the status of recommendations and not be binding on lower court judges in other cases. They must not be used in order to restrict the freedom of lower courts in their decision-making and responsibility. Uniformity of interpretation of the law shall be encouraged through studies of judicial practice that also have no binding force”.

¹¹⁴ OSCE Report, Independence of the Judiciary in Kosovo, January 2012, p. 26 and 27.

¹¹⁵ Supra XLVIII, Chapter 4.5 The notion of individual independence, p. 123.

2.14. Budget of the Judiciary

Basic Principles in Principle 7 foresee that: “It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.”

While representing only 1.23 percent of the overall Kosovo budget, the Judiciary’s 2012 budget is 18,714,842 €, which accounts for approximately close to fifty percent of judicial revenues collected during the 2011 fiscal year.

The KJC has ultimate responsibility over the budget including drafting, management, control and execution, and is responsible for monitoring the expenditure of allocated funds, as well as the accounting and auditing functions.

Table1. KJC Budget through the period 2008 – 2012

Year	Budget request	Budget Allocated
2008	17,926,846	10,887,439
2009	15,234,489	12,830,053
2010	15,901,140	13,815,998
2011	18,914,466	16,209,821
2012	20,872,115	18,714,842

Conversely, apart from the increase of the budget as shown in the table above, the MF and the Assembly did not meet the requests of the KJC, to allocate funds for implementation of the Laws that were enacted by the Assembly itself. It is interesting to note, that the Law on Special Chamber of the Supreme Court, stipulate for the increase of number of judges and the Law on Courts stipulate for the establishment of Novo Brdo branch, however, the MF and the Assembly did not provide for additional budget to implement this two laws to the KJC, neither for providing for increased number of judges and staff that go along with this increase or for additional operational costs. Furthermore, the MF and the Assembly did not approve also the request of the KJC to provide for additional positions in order to employ officers within the Judicial Vetting and Verification Office, for what the post-IJPC appointment process was brought into question. For that reason the KJC was forced to freeze six (6) judges’ positions in order to allow for the employment of the JVVO personnel.¹¹⁶

In providing sufficient resources for the judiciary the professional staff should be taken into account as well. Number of professional associates in courts still remains very low only 90 for the whole judicial system which is 1 professional associate for 4 judges. There are no incentives currently that indicate that the budget for these positions will be increased in the near future. The real challenge lying in front of KJC is to increase the budget in the benefit of hiring more professional associates whose assistance in the work of judges is tremendous and increases their efficiency in the work. In the other side the

¹¹⁶ Due to this, the KJC approached the Norwegian Embassy whom they allocated a one year budget for covering the costs of the JVVO.

benefit of hiring of professional associates is in preparing young legal professionals for future potential positions of judges.

As a general note, the budget for prosecution system could not be evaluated in retrospect, given that it was integral part of the Ministry of Justice. However, it could be generally stated that the reports published so far did not mention the budget of the KOC as a singled-out challenge.

2.15. Court Buildings

The judiciary needs additional budget to build new courts and buy equipment, regardless to the slight increase of the KJC budget in the Capital Investment from 1,5 million in 2007 to 2,2 million in 2012. The current status of court house buildings is very inadequate. Many of Kosovo's regular courts are housed in overcrowded, substandard buildings. Frequently, each courthouse has only one small courtroom, inadequate to meet the needs of the entire court. Judges' offices are generally readily accessible by the public, resulting in continuous interruptions of the chambers' work, and are usually shared with at least one staff member. Most courthouses have only one courtroom to be shared among all judges, which leads to it being used only for criminal trials.

The KJC is in possession of 33 premises (court houses), out of which three (3) are leased buildings.¹¹⁷ The overall working space is somewhat equal to 31,500 m². The buildings are rather old: a number of buildings were constructed in the late 60s, some in the late 80s and others were built after the war. Challenge in this regard has remained establishment of the court in Novoberde municipality, which, despite its importance budget was not allocated, hence the need was to borrow funds from other courts and find a solution to this court. With support of the USAID, some old courts were and are in the process of renovation in order to fulfil standards related to efficiency and transparency. In addition, the new Palace of Justice is being constructed in Prishtina, with assistance of the European Office in Kosovo with an aim to accommodate all judicial institutions situated in Prishtina. Despite the multi-million euro investment in the construction of the Palace of Justice and the importance of justice institutions for accommodation, this building will not have the capacity to accommodate all prosecutors, although it is very important that all prosecutors are to be placed in one building.

This will ease to some extent the bad situation in which judiciary is at the moment with regard to working premise, but other regions will remain facing the same problem. This calls for an immediate solution one of which could be that the funds that are generated by the judiciary itself be allocated back to the judiciary for a limited period in order to allow for construction of proper court houses, especially for Peja, Mitrovica, Gjakova,

¹¹⁷ Leased buildings are: Gracanica, Shterpce (the building is under construction) and the Special Chamber of the Supreme Court.

Ferizaj, and Prizren, which are centres of new basic courts. The judiciary generates each year close to 9 million EUR - that means that with only half of this fund being generated by the judiciary, within the next five-year period there would be a total of 20 million EUR which are more than sufficient to meet the standards with regard to court buildings.

Challenging for the proper functioning of the prosecution is the lack of facilities and office spaces for prosecutors, as in the case of Prosecution Office in Gjakova. In order to find the practical modalities for the use of facilities, Kosovo Judicial Council and the Kosovo Prosecutorial Council have concluded a memorandum of understanding for the use of facilities.

Facilities are being built for Prosecution Offices in Gjilan and Ferizaj municipalities, whereas in Peja municipality such facilities are expected to be finalized.

2.16. KJC National Backlog Reduction Strategy (NBRS)

In 2010 the National Backlog Reduction Strategy, a two-year program, was adopted by the KJC, which started to be implemented from January 1, 2011.

The KJC has published to date six (6) NBRS Progress Reports. The table below shows data on the implementation of the NBRS through all courts of Kosovo, including the third quarter of 2012.

Courts	QTR 1	QTR 2	QTR 3	QTR 4	QTR 5	QTR 6	TOTAL 1-6/8
Supreme Court	12,00 %	18,56 %	11,94 %	17,46 %	10,50 %	9,20 %	79,66 %
District Courts	12,24 %	8,75 %	4,53 %	5,95 %	2,57 %	3,50 %	37,54 %
Commercial Court	0,60 %	4,13 %	0,15 %	0,91 %	0,61 %	2,30 %	8,70 %
Municipal Courts	6,37 %	8,96 %	5,69 %	7,69 %	5,46 %	7,95%	42,12 %
Minor Offences Courts	23,00 %	55,50 %	5,12 %	1,55 %	14,78 %		100 %

A closer scrutiny reveals that the KJC is required to be more actively engaged in the implementation of all foreseen by the NBRS. The KJC in the future should revisit the ‘hold’ put on by the Supreme Court President on all 2009 and beyond cases, since this could lead to making old the cases that came in after 2009; instead, a rather alternative or combined approach of dealing with old and new cases should be found. This ‘hold’ brought by the Supreme Court President, may also be perceived as a breach of the policy-setting at the central level by the KJC, that would then be implemented throughout the courts in Kosovo, otherwise could be considered against the principles set out by the Venice Commission which says that “...while the Supreme Court must have the authority to set aside, or to modify, the judgments of lower courts, it should not supervise them.”¹¹⁸

¹¹⁸ [http://www.venice.coe.int/docs/1997/CDL-INF\(1997\)006-e.asp](http://www.venice.coe.int/docs/1997/CDL-INF(1997)006-e.asp).

2.16.1. ICT in the Kosovo Judiciary

The KJC Strategic Plan for the period 2007 – 2012 marked introduction of ICT in the Kosovo Judiciary as one of critical preconditions for fulfillment of KJC’s duties and responsibilities. It establishes ICT as a major component for developing an independent and effectively functioning judiciary. The principal IT goal set forth in the plan is to “implement and effectively use modern systems of communication and information management.”

2.16.2. Prior ICT efforts in Kosovo judiciary and KJC’s ICT Strategy 2012 - 2017

One of the major initiatives was to develop and implement Case Management Information system (CMIS). The CMIS was introduced with assistance of the European Agency for Reconstruction. Due to vary elements, development and deployment of CMIS in the Kosovo judicial institutions had limited results. Main ICT efforts in the period before 2008 were managed and conducted by international organizations present in Kosovo, in the first place ECLO, UNMIK and USAID projects. Unfortunately, proactive steps in that direction were omitted by the previous management structures in the Judiciary. Most of the efforts in the implementation of ICT in the past have failed due to lack of support, insufficient planning regarding the sustainability of the project and difficulties in donor coordination. The KJC adopted the ICT Strategy and its Action Plan which basically presents roadmap on how to approach introduction of ICT in the Kosovo judiciary for the period of the next five years that streams towards:

- Paperless courts,
- Proactive management of the courts based on real-time data, and
- Providing extensive services to citizens via a web portal;
- Regional and international cooperation with other ICT systems in judiciary.

In order to implement the ICT Strategy and its Action Plan, an agreement was finalized between the Kosovo Judicial Council and the Norwegian Government in December 2012 aiming to support through a three-year project. This will impact in extending the network in all courts and prosecution offices.

On the other hand, Kosovo Prosecutorial Council has functionalized the database for prosecutors and support staff since the beginning of 2012 and recorded all cases of organized crime and corruption. In this regard, dozens of trainings were organized for prosecutors and supporting staff in using the database.

Nonetheless, these efforts may be hampered with the new Draft Law on Information Society Government Bodies, which directly diminishes the KJC efforts on the ICT sector. The Draft Law provides for establishment of a centralized agency dealing with ICT. More specifically, Art 5.2, sets that the “Agency is state administration central body for development and implementation of Information and Communication Technology for Institutions of the Republic of Kosovo.”

Basically, this Draft Law may hinder the KJC efforts to reactivate and update the CMIS. This may be in contradiction with the CCEJ Opinion (2011) 14 “Justice and information technologies”, (item 36) which sets that “IT governance should be within the competence of the Council for the judiciary or other equivalent independent body.”

On the other hand, challenge will remain the use of information system on case management as well as the commitment of the staff in courts and prosecution offices.

2.17. Execution of Judgments

The enforcement of a court judgment is an integral part of the fundamental human right to a fair trial within a reasonable time [...].¹¹⁹ The European Court of Human Rights in its case law has found that execution proceedings must be viewed as an integral part of the trial for the purpose of Article 6.¹²⁰

“It would be inconceivable that Article 6[1] should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law”.¹²¹

The problem of the execution of civil and criminal judgments for many years now is evident in the judicial system passing from one year to another although many efforts are made to reduce the backlog of cases where the greatest part is exactly by the cases waiting for execution. KJC with the assistance of USAID through their projects tackled this problem and the issue was addressed also in the OSCE reports. Many challenges were identified starting from legislative framework that identified the gaps in the law on execution procedure that allows lengthy execution procedures, the other impediment is filing of execution claims to the court without identifying the correct address of the debtor, lack of any penalties for the debtor for filing of groundless appeals, objections or requests.¹²² As far as it considers the legislative framework the above mentioned gaps were remedied with the new Law on enforcement procedure that was adopted by the Assembly on 20 December 2012 and promulgated by the Decree of the President of the Republic of Kosovo on 3 January 2013. The Law introduced private bailiffs, expedient execution procedures, penalties for debtors, requirement for the creditor to provide the address of the debtor etc.

Beside the initiative for the new legislation, KJC undertook several steps for providing information for judgment debtors and their assets. Therefore several MOUs were signed

¹¹⁹ See Recommendation Rec(2003) 17 of the Committee of Ministers to member states on enforcement, CoE.

¹²⁰ *Hornsby v. Greece*, ECtHR Judgment of 19 March 1997, paragraph 40. *Burdov v. Russia*, ECtHR Judgment of 7 May 2002, paragraphs 33–38.

¹²¹ *Ibid.*

¹²² See OSCE report, *Execution of Judgments*, January 2012.

with institutions in charge for providing this data as Central bank of Kosovo, Tax administration.

According to the latest data provided by KJC¹²³ in all municipal courts in Kosovo out of the total number of 192.086 pending cases by the end of the reporting period more than half of them or 100.141 cases are awaiting for execution. From this number 74.862 are execution cases according to authentic documents, 15.783 are execution cases according to execution title and 9496 are execution cases for criminal offences. In order to calculate the efficiency of the courts the number of incoming cases is compared to the number of solved cases for the reporting period. Out of 9.891 cases received 11.675 execution cases with authentic document were executed which in percentages makes 118 %. Out of 5.098 cases received 3.402 execution cases according to execution title were executed or 67 % and out of 9.652 cases received 8.860 execution of criminal offences were finished or 92%. The data indicate that in all categories with the exception of the execution according to authentic document the number of pending cases is increasing by time. Therefore there is a need for KJC to review the NBRIS and figure out what will be the next steps in order to reduce the backlog in execution cases. One of the positive steps is the increase in the number of judges since June 2012.

The increase of number of judges however should be coupled with some performance indicators for execution clerks in order to increase their efficiency and potential sanctioning for underperformance.

2.18. Notary System

Law on notary entered into force 15 days after the publication into Official Gazette of Republic of Kosovo which was 10 December 2008.¹²⁴ This Law was amended and as such adopted by the Kosovo Assembly on 21 July 2011 with no. 04/L-002. It started in 2004 as a project under the auspices of the Swiss Agency for Development and Cooperation (SDC) where the Swiss notary experts supported UNMIK Department of Justice for the drafting of the Law on Notary system in Kosovo. The support lasted until mid-2006 and included drafting of the law, discussion of the law among relevant stakeholders, drafting of secondary legislation and planning the implementation for this law.¹²⁵ Phase two of the project (2008 to 2011) supported the Ministry of Justice (MoJ) in implementation of the notary law. Swiss support consisted of: drafting of relevant secondary legislation, training of 200 notary candidates, and support in organisation of examination process for notary candidates, etc. In September 2011, MoJ certified the first 48 Kosovar notaries (among which 3 non-Albanians and 10 women).¹²⁶ Phase 3 of the notary project (2012

¹²³ 2012 Report on statistics of regular courts, Statistics Department, KJC Secretariat.

¹²⁴ http://www.md-ks.org/repository/docs/Ligji_per_Noterine.pdf.

¹²⁵ http://www.swisscooperation.admin.ch/kosovo/en/Home/Domains_of_Cooperation/Rule_of_Law_and_Democracy/Support_to_the_Notary_System_in_Kosovo.

¹²⁶ http://www.swisscooperation.admin.ch/kosovo/en/Home/Domains_of_Cooperation/Rule_of_Law_and_Democracy/Establishment_of_a_Notary_System_in_Kosovo_Phase_III

to 2014) aims the consolidation of the notary system in Kosovo. Besides coaching of the first batch of 48 licensed notaries and the Chamber of Notaries, this phase sets up the definite structure for future access to the profession as well as in-service training. Furthermore, harmonization of the legal framework related to the notary service is aimed. Finally, coaching of the new notary division in the Ministry of Justice shall contribute to better capacity of MoJ for monitoring the notary sector in the future.¹²⁷ The first round of 39 notaries in the whole territory of Kosovo has started on 27th of May 2012. Until the end of the year 2012 there will be a dual system where parties can address either to the court or to the notary. After the New Year all non-contentious cases that courts used to deal with will be under the exclusive jurisdiction of notaries.

2.19. Mediation

Law on mediation entered into force on 15 November 2008 and that is 15 days after publication to the Official Gazette of the Republic of Kosovo.

With the process of mediation in Kosovo after 1999 in a more professional manner dealt an NGO called Partners Kosova who trained more than 350 participants and help settled over 200 cases. Partners-Kosova trained 108 local court staff from all municipalities in Kosova in basic mediation skills and conflict resolution, the aim of these trainings was to introduce the advantages of ADR to court personnel and to raise their ability to refer cases that could be solved through mediation.¹²⁸

Mediators according to the law need to fulfil few conditions before taking the function, among others, is the completion of the mediation training and then they need to get certified by the Mediation Commission and get licensed by the Ministry of Justice. Based on the published registry currently there are 87 registered mediators.¹²⁹

However until the entry into force of the law on mediation this process has been informal. After the law on mediation has passed the Ministry of Justice and Mediation Commission have developed the necessary regulations and promulgated. So far, five mediation centers are operational such as in Peja, Gjilan, Gjakova, Prizren and Prishtina, while the mediation centre in Mitrovica is expected to be operational during 2013. Mediation centres in Gjilan and Peja were supported by USAID project and they offer mediation for commercial and other civil disputes and also in cooperation with KJC and Municipal courts accept court referred cases.¹³⁰ For these two centres the courts have referred over 100 cases for mediation and 53 cases have been resolved through mediation. In total during 2012, 175 cases were referred to the mediation centres by courts and 20 cases by other sources, including prosecutors. For this purpose, the KJC has allocated funds for

¹²⁷ Ibid.

¹²⁸ See http://www.partnerskosova.org/index.php?option=com_content&view=article&id=68&Itemid=121&lang=en.

¹²⁹ See http://www.md-ks.org/repository/docs/Regjistri_i_ndermjertesve_ne_Republiken_e_Kosoves.pdf.

¹³⁰ See <http://www.kontrata.info/?cid=2,55,105>.

payment of mediators and approved the Protocol of Referral of Cases to Mediation.

With the support of UNDP, and training provided by NGO Partners-Kosova, two mediation centres were opened during 2012; one in Ferizaj¹³¹ and the other in Gjakova¹³² and for each centre 15 mediators were trained then certified by Mediation commission and licensed by Ministry of Justice. These two centres have no arrangement with KJC regarding the modalities of work; instead the recommendation would be that the same KJC Protocol of Referral of Cases to Mediation should regulate the referral of court cases for mediators form both these two centres.

Having in mind that these centres have just been recently established the number of cases solved through mediation up to present is insignificant in effecting the backlog of court cases.

In addition, the overall recommendation would be to encourage judges that whenever there is a ground to refer cases to mediation.

2.20. International Legal Cooperation

Kosovo has regulated the International Legal Cooperation through the Law (04-L031) on International Legal Cooperation on Criminal Matters by which it “establishes conditions and procedures pertaining to the provision of international legal assistance in criminal matters, unless otherwise provided for by international agreements or in the absence of an international agreement.”¹³³ Amendment of this Law is foreseen with the Legislative Agenda 2013.

Law on International Legal Cooperation in Civil Matters will be adopted in 2014.

Responsibility for international legal cooperation in criminal matters was transferred from UNMIK to the Ministry of Justice in March 2009 through adoption of the Administrative Instruction on International Legal Assistance in Civil and Criminal Matters in accordance with the Criminal Code. In addition, during September 2009, the Ministry of Justice has amended the AI with the aim of transferring responsibilities in international legal cooperation matters for countries that have not recognized Kosovo. Since January 2010, the Ministry of Justice has upgraded the Division for International Legal cooperation into the Department for international legal cooperation composed of two divisions, the division for international legal cooperation in criminal matters and division for drafting and negotiating bilateral agreements.

¹³¹ See <http://www.kosovo.undp.org/old/?cid=2,85,1097&tpl=gallery.php>.

¹³² See <http://www.kosovo.undp.org/old/?cid=2,85,1120&tpl=gallery.php>.

¹³³ See: <http://www.assemblykosova.org/common/docs/ligjet/Law%20on%20international%20legal%20cooperat%20in%20criminal%20matters.pdf>.

The 2011 Progress Report that revealed that Kosovo has bilateral agreements on legal cooperation in criminal matters, extradition and transfer of sentenced persons and those other bilateral agreements are being negotiated. Kosovo has concluded agreements on mutual legal assistance with Croatia, Macedonia and Turkey; agreements on extradition with Macedonia and Turkey; and agreements on the transfer of sentenced persons with Belgium, Switzerland Macedonia and Turkey. On November 2012 was ratified the international agreement with Albania on extradition, transfer of sentenced persons and on mutual legal assistance. Negotiations with Germany, Italy and Albania on mutual legal assistance, extradition and the transfer of sentenced persons have been completed.

Kosovo has approached another 23 states to negotiate further agreements. Beyond this legal framework, international legal cooperation based on reciprocity is taking place with many other countries.

A technical arrangement on mutual legal assistance was signed between the Ministry of Justice and EULEX in August 2012, under which EULEX assumes the role of an intermediate between the Ministry of Justice and states, which did not recognize Kosovo, and will facilitate the processing of requests for mutual legal assistance from those countries. Nonetheless, this challenge continues to surface in practice: there are indications revealing that courts in Kosovo do not recognize, while some do recognize the documents issued by courts within states that have not yet recognized Kosovo as an independent state.

International Legal Cooperation Department has processed and accepted 7024 cases for different type of international legal assistance and has successfully completed the extradition of 18 people from foreign countries in Kosovo, and vice versa, as well as carry out the transfer of 4 convicted. At the request of the Ministry issued 18 international lining papers on wanted persons in Kosovo. The Ministry of Justice has applied the Hague Conference on private international law to take part as an observer in seminars and conferences this organization works. The Ministry has informed the organization for the adoption of the Law on the Civil Aspects against international abduction of children as well as the new competent authority within the Ministry for the execution of such cases, and requested that this be reflected in the website of this organization.¹³⁴

¹³⁴ <http://www.md-ks.org/?page=1,207>.

2.21. Table of challenges vs. int'l standards

Challenge/Factual situation	Int. standard	Action	Entity
Out of 13 members of KJC 8 members are elected by the assembly	At least half of the members of Judicial Council should be elected by their peers	Change in the Constitution	Assembly
Court president in the KJC	No court president in KJC	Change within institution	KJC
Most of the Judges are from Supreme Court and District Court	Representation in the Judicial Council should be from all instances of Courts	Change within institution	KJC
KPC Composition	Some members to be appointed by the Assembly – as per the Constitution	Change in the Law	KPC – Assembly
KPC Structure	To create a Secretariat for the KPC		KPC
Veto of the President in the appointment of judges	Right to veto the appointment of judges should be reasoned and limited only on procedural reasons	Institutional level	Office of the President
Procedure and criteria for judicial selection foreseen in the regulation	Selection process, procedure and criteria for judicial selection defined by law	Law on Courts	Assembly
Inclusion and increase of minorities in the judicial system	Encouragement of underrepresented groups to acquire necessary qualifications for being a judge	Institutional level	KJC and KJI
Appointment is for three years and after that reappointment is for life	Appointment should be permanent until retirement	Change in the Constitution	Assembly
No provision on the termination of mandate for judges	Inclusion of the provision on the termination of mandate of judges	Amendment in the Law on Courts	Assembly
Publication of decisions from disciplinary procedure	Final decisions are published in the KJC website	Institutional level and laws	KJC
Remuneration of judges subject to changes by executive	Remuneration should be laid down by law and reflect equality of powers	Executive should act in accordance with the Law on Courts and principles enshrined in the Constitution	Executive and Legislative (Assembly)
Lack of retirement pension	Retirement pension close to the level of final salary	Retirement pension to be foreseen by law	Assembly
Evaluation of judges (based on the Court president evaluation and statistics and reversal rate)	Court presidents should have no exclusive role and statistics and reversal rate should not be part of evaluation	Change of regulation on performance evaluation	KJC
Draft regulation on the work of disciplinary committee	Regulation according to the law and to have all guarantees of the due process	Adoption of the draft regulation	KJC
No publication of court decisions	Publication of court decisions in the database and website	Institutional level	KJC Secretariat
No promotion criteria set in the law for Judges	Objective criteria should be foreseen for promotion of judges	Change in the law	KJC and Assembly

Limited number of high profile cases tried by local judges	Cases of high profile, organized crime and war crimes tried by local judges	Coordination with international community	KJC, Government
Lack of sufficient trainings on what is needed in judicial service	Trainings in legal reasoning and legal drafting	Institutional level	KJC, KJI
Interference by Executive or Assembly	Independent, impartial and accountable judiciary		Executive, assembly, KJC
Interference by any external factor	Independent, impartial and accountable judiciary		
Interference by higher instances within the judiciary	Independent, impartial and accountable judiciary		
(Lack of) Budget of the judiciary, premises, resources	To ensure proper budget for efficient judiciary	Law on the Budget	Gov't, Assembly, and the KJC
Backlog of court cases	Efficient judiciary	Institutional level	KJC
(Lack of) Information and Communication technology	Efficient judiciary	Institutional level	KJC

3. Human Rights

3.1. General Overview

In the center of Kosovo's capital city is a large sculpture spelling out the word "NEW-BORN." It was installed in Prishtina around the time of Kosovo's independence on February 17, 2008 and has remained an emblem of freedom for the country. The sculpture is meant to convey hope and the birth of a promising future. Over the last four years Kosovo has experienced a kind of birth with the realization of its independence and the creation of new institutions, a constitution and a democratic government. Despite all that is new to Kosovo, the history of the region and the people who inhabit the land dates back centuries. Understanding their unique history and the events that unfolded in the years leading up to their independence is a crucial part of understanding the pressing issues that Kosovo faces today. One of the most pressing issues is respect for fundamental human rights and the rights of minorities. Hence, transitional period from post-conflict to democratization of the society and its institutions does not entail time restraints. The significant challenges that Kosovo has faced during its post-conflict transition, with regard to the creation of democratic institutions and the establishment of a multiethnic society governed by the rule of law, confirm that the path towards EU integration is complex.¹³⁵

The rights of all human beings to freedom, security and education are universal rights and not specific to a country or region. However, here one faces a painful legacy of war that took place in 90s. In addition, the northern part of the country remains fragile while inter-ethnic violence is becoming a permanent threat to peace and stability in Kosovo. The conflicts that brought about massive human rights abuses during the 1990s may be over. Yet, old tensions persist and intolerance remains a constant challenge that has not been carefully and effectively addressed. Minorities such as Roma, Ashkali Egyptians, Serbs and Bosniaks remain fragmented and not well included within social, political and economic life throughout Kosovo.¹³⁶

To date, Kosovo institutions have made substantial progress in creating the necessary legal framework for the achievement of this goal through the adoption of numerous regulations and laws.¹³⁷ On the other hand, a high number of international and local organizations who monitor the process of implementation of legislation affecting human and rights of minorities in Kosovo express concerns over the implementation which is not carried out similarly in all areas. For example, the Law on Anti-Discrimination and the Law on Protection against Domestic Violence have been only partially implemented and very few measures have been taken to implement laws regulating language rights and the rights of communities. In order to fully implement these laws, the Kosovo gov-

¹³⁵ OSCE, September 2012, Implementation Measures for Legislation Impacting Human Rights in Kosovo.

¹³⁶ Progress Report for Kosovo 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

¹³⁷ OSCE, September 2012, Implementation Measures for Legislation Impacting Human Rights in Kosovo.

ernment must take concrete measures as provided by the legal framework. This should include the establishment of a Centre for Equal Treatment, implementation of a strategy for the protection of rights of all communities, development of a strategy for the protection of cultural and religious heritage sites, and support to the Language Commission in implementing its mandate.¹³⁸ Respecting human rights principles and standards is the most fundamental precondition for the rule of law and democracy in every country.

Since February 2008, the Assembly has adopted more than 260 laws. However, the concept of the rule of law is characterized not only by the adoption of necessary legislation, but also by the proper implementation of a wider legal framework composed of subsidiary legislation.¹³⁹

The Government of the Republic of Kosovo remained maximally committed in drafting and creating the necessary legal infrastructure, policies, sustainable programs and institutional mechanisms for protecting and promoting human rights, both at central and local levels of governance. The Kosovo Government was focused to work in several areas, to ensure that human rights are being implemented and that the provisions set out in the framework of existing legislation in force are being respected and implemented. Yet, a set of serious challenges remain open for further inputs.

Although the progress was significant¹⁴⁰ in drafting and harmonization of laws with EU standards, their practical implementation still remains a challenge, as does the empowerment and capacity building of institutional mechanisms responsible for promoting, monitoring and enforcing legislation.

3.2. Observance and Protection of International Human Rights Law and Minorities in Kosovo

3.2.1. Legislation

International principles of human rights and fundamental freedoms are ingrained in the Constitution of the Republic of Kosovo. Article 22 of the Constitution ensures direct applicability of international agreements and guarantees the priority over the provisions of Laws and other acts of public institutions in case of conflict. Furthermore Article 53 of the Constitution obliges the Kosovo Authorities to interpret the provisions related to Human Right and Freedoms in consistency with the jurisprudence of the European Court of Human Rights. UN International Covenant on Civil Rights and Political Rights is envisaged in Constitution and therefore directly applicable.¹⁴¹

¹³⁸ OSCE, September 2012, Implementation Measures for Legislation Impacting Human Rights in Kosovo.

¹³⁹ Ibid.

¹⁴⁰ Report on implementation of the Strategy and Action Plan for Human Rights in the Republic of Kosovo, Period (January 2011 - December 2011).

¹⁴¹ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf

3.2.2. Analysis of the Legislation

Taking into account that Kosovo is not a member of UN and other mechanisms, it does not have the possibility to ratify international conventions for human rights. However, the Republic of Kosovo has embedded in its Constitution (Chapter II Fundamental Rights and Freedoms) international agreements and instruments that guarantee the Principles and values of Human Rights and Fundamental Freedoms.¹⁴² This creates a satisfactory legal framework for human rights instruments in Kosovo to be applicable and Laws implemented. In addition, this implies that Kosovo has obligations to ensure that its own legislation, policies and practices meet the international requirements. The 2012 European Commission Communication on a Feasibility Study for SAA¹⁴³ between the EU and Kosovo¹⁴⁴ reveals that Kosovo has a solid legal basis for the protection of human and fundamental rights, thus this implies that commitments and Law obliges Kosovo institutions that the promises, already enshrined in Kosovo's constitution, be implemented.

3.2.3. Achievements and Challenges

Kosovo's human rights situation improved slightly in 2011 and 2012, amid faltering negotiations with Serbia and tensions between Serbs and Albanians at the northern border of Kosovo that sometimes led to violence. The justice system remains weak, despite efforts to prosecute individuals for corruption and war crimes. Kosovo's Roma, Ashkali, and Egyptians¹⁴⁵ remained marginalized and vulnerable to discrimination.¹⁴⁶ The EU urges Kosovo institutions to continue its campaign for the rights and empowerment of women in all sectors through supporting legislation, and fighting against gender-based violence and marginalization.¹⁴⁷

In its Constitution, the Republic of Kosovo has included key international instruments

¹⁴² http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

¹⁴³ Stabilization and Association Agreement.

¹⁴⁴ Retrieved from website: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_analytical_2012_en.pdf

The constitution lists the main international agreements and instruments directly applicable in Kosovo including the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and its Protocols. In case of conflict, the latter take precedence over domestic laws. This is an important mechanism, as Kosovo is not a member of the UN or of the Council of Europe, due to status considerations. Therefore, it is the constitution that provides individuals with the right to refer violations by public authorities of their individual rights and freedoms, guaranteed by the constitution, to the Constitutional Court. The EU reaffirms its commitment to the promotion and protection of all human rights, whether civil and political, or economic, social and cultural.

¹⁴⁵ An Albanian speaking group with supposed origins in Egypt.

¹⁴⁶ <http://www.hrw.org/world-report-2012/serbia>.

¹⁴⁷ Retrieved from website: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf.

which refer to the protection and respect for human rights and which are directly applicable. Subsequently, with this action the Kosovo institutions expressed its readiness and political will to respect and fulfil international obligations in order to ensure and guarantee the realization of all fundamental, universal and inalienable rights for all citizens of Kosovo, and to report to international mechanisms regarding the implementation of these instruments.¹⁴⁸

3.3. Promotion and Enforcement of Human Rights

Protection and promotion of human rights in Kosovo is one of the key priorities for its institutions and civil society. It requires a functioning judicial system and effective human rights protection mechanisms. Therefore, all domestic and international stakeholders involved in enhancing the human and minority rights, work with Kosovo institutions, including the law enforcement agencies, to promote their compliance with international human rights standards and rule of law principles.¹⁴⁹

A special attention is given to community rights, including property restitution, returnees and their reintegration, protection of cultural heritage, as well as access to public services and the use of official languages.

3.3.1. Legislation

The Office of the Prime Minister is the mandated institution responsible for safeguarding and promoting the principles of human rights and fundamental freedoms by ensuring that these principles and values are reflected in the Kosovo legislation and implemented accordingly.¹⁵⁰

3.3.2. Analysis of the Legislation

Kosovo is a member of neither the UN nor the Council of Europe. Consequently, it is not in a position to ratify the relevant international human rights instruments. Kosovo is not subject to the frameworks set up by these international bodies for regular reporting and cooperation on human rights (including the European Court of Human Rights).¹⁵¹

The Office for Good Governance, Human Rights and Equal Opportunities within the Office of Prime Minister, is the main mechanism mandated with preparation of reports on the implementation of international conventions. OGG/OPM together with Human

¹⁴⁸ Report on implementation of the Strategy and Action Plan for Human Rights in the Republic of Kosovo, Period (January 2011 - December 2011).

¹⁴⁹ <http://www.osce.org/kosovo/76507?download=true>.

¹⁵⁰ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

¹⁵¹ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf

Rights Units at central and local level, have drafted first reports on implementation of international conventions in close cooperation with UN Agencies, HCHR, UNICEF, OSCE and other international mechanisms and submitted these reports to the UN.¹⁵²

3.3.3. Achievements and challenges

OGG/OPM in cooperation with international mechanisms operating in Kosovo has provided trainings to the Municipal Human Rights Units on the importance of practical implementation of European Convention for Human Rights and Fundamental Freedoms, Convention against Torture and Convention on Civil and Political Rights. Moreover, Kosovo Judicial Institute provides continuous legal training and education to judges, prosecutors, future Lawyers and advocates, including training modules on the Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁵³ However, promotion and enforcement of human rights remain a challenge. Set of trainings has been organized within municipal and central levels in order to build up the capacities of the human rights units. The enforceability of such legal and administrative remedies for human rights remains challenge and needs to be improved. The range of institutions and bodies dealing with human rights at central and municipal levels is at certain levels dysfunctional and overlapping. Despite of trainings which are in due process, the government staff is not properly qualified with respect to all domestic and international instruments of human rights, therefore this reflects their incapability of implementing the action plan on human rights.

Another institution that is mandated to “receive and investigate complaints from anyone in Kosovo who believes that his/her rights are violated by a local public authority in Kosovo” is the Ombudsperson. He conducts investigations, issues reports and provides legal services. Despite the comprehensive approach and appropriate recommendations about the violation of human rights which the Ombudsperson primarily addresses to the Assembly of Kosovo, this institution is challenged by lack of budget and political interference, but also with inadequate coordination between central and local units that deal with violations of human rights.

The government of Kosovo has set some priorities in the implementation of legislation related to human rights, such as:

- Simplification of advocacy, promotion and institutional implementation of human rights. Adequate resources must be allocated. Ensuring full respect for human rights is a key priority within the European Partnership.¹⁵⁴
- According to an official of the Office for Good Governance, the dialogue with international mechanisms which monitor the implementation of international law

¹⁵² Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf

¹⁵³ Ibid.

¹⁵⁴ Progress Report 2011 for Kosovo 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf

has started for some time now. Also according to him, the priority of the Government is drafting of legislation, policies and creation of mechanisms, as well as organization of awareness campaigns regarding the area of human rights.

- Government is developing a strategy for the inclusion of civil society. This strategy is expected to be finalized during 2013.
- Furthermore, the European Commission has supported the project in which the Government and the Ombudsperson will harmonize a regulation and organize and structure human rights units.
- In order to improve the communication and coordination between government authorities and the LGBT community, members of this community have held meetings with the Prime Minister's Office for closer cooperation, whereas with various organizations they shall organize joint projects.

3.4. Civil and Political Rights

3.4.1. Fighting impunity

Kosovo has achieved some progress with regard to the prison system. Living conditions in Kosovo's detention facilities have improved. The first steps have been taken to establish a sustainable mechanism for monitoring local detention centers, and to coordinate the efforts of the various local organizations and institutions monitoring detention centers. However, as international and local organizations are suggesting, some outstanding issues need to be addressed. Only a small number of the approximately thirty sub-legal acts to implement the law on execution of penal sanctions have entered into force. The Correctional Service continues to face difficulties securing funds for refurbishment, while construction of the high-security prison needs to be finalized.¹⁵⁵ The number of reported cases involving police and prison staff has decreased. EULEX is monitoring and following allegations of possible ill-treatment at Dubravë/Dubrava prison and working closely with the Kosovo Correctional Service intervention team.¹⁵⁶

The Rehabilitation and Research Centre for Torture Victims provide the following recommendations in its 2011 report:

- Improve the work conditions of KCS staff working in correctional and detention centers and their particular working conditions be taken into account.
- Recruitment of qualified professional staff based on accurate criteria.
- Relationships between the staff and prisoners have to be established on basis of respectful, dignified and professional interaction.¹⁵⁷

In general, The Kosovo Rehabilitation Centre for Torture Victims in February reported on inadequate conditions and a lack of professional staff in mental health institutions

¹⁵⁵ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

¹⁵⁶ Ibid.

¹⁵⁷ http://www.tacso.org/doc/HR_Report_on_Correctional_Institutions_2011.pdf.

and that women detained in Pristina Psychiatric Clinic were kept tied to their beds.¹⁵⁸

Although the construction of facilities for the years 2012-2016 is part of the strategic development plan of the Ministry of Justice and Correctional Services, according to officials of the Kosovo Correctional Service, there are still many challenges to overcome and they include the following:

- Overcrowding in correctional centers.
- High number of foreigners who are in correctional service and this creates problems. Albania is in first place with 41 persons detained coming from this country.
- Capacity development of staff working with prisoners and their continuing professional training.
- Lack of facility for juveniles who are imposed with educational / correctional measures.
- High number of staff in proportion to the prisoners. By 2016 it is planned to have one staff member and two prisoners.
- Reduction of dangerousness and increase of security.

Whereas in establishment of the dialogue between civil society and the Government—there was no proper involvement of the civil society. Points of view of the members of Thematic Roundtable for DLS who participated in the workshop in the area of human rights argue the following:

- In some cases, the Government prefers to collaborate with organizations that are less critical to public institutions.
- There is a lack of use of alternative dispute resolution methods, whereas several laws which refer to mediation were adopted.¹⁵⁹
- Another challenge is existing laws which provide a good framework and alternative options for mediation and which do not hinder enforcement of the law.
- Lack of awareness for the benefits which mediation and other alternative methods bring, such as, knowledge and practice in increasing the efficiency of access to justice and the rehabilitation of convict.

The Police on the other hand face challenges which include:

- Treatment of persons detained by the police for not obeying orders from the police during crowd control and violent protests.
- Treatment of detained persons who have been violent towards police.
- Treatment of detainees suspected of ordinary crimes in the police investigation procedures to secure material evidence and items obtained by crime.
- Selection and training of individuals from Police on communication and mediation, where emphasis is put on communication with persons who are directly and on a large scale threatening the security.

¹⁵⁸ <http://www.amnesty.org/en/region/serbia/report-2012>.

¹⁵⁹ Shukrije Gashi, Director of NGO 'Partners Kosova'.

- Serious threats to the life of the individual, kidnappings, hijackings, acts of sabotage, and
- Implementation of the strategy and action plan for the Community Police.¹⁶⁰

3.4.2. Access to Justice

3.4.2.1. Legislation

Access to justice is provided and guaranteed to all citizens of the Republic of Kosovo by its legislation in force. The Right to a fair trial is envisaged by the Constitution of the Republic of Kosovo Art.31. Access to justice is provided and guaranteed to all citizens of the Republic of Kosovo by its legislation in force.

The respective structures for victim protection and integration to judiciary, previously within Ministry of Justice, were transferred to relevant institutions such as Kosovo Prosecutorial Council and Kosovo Judicial Council. Their aim is at providing all preconditions for fair trial and access to justice, taking into consideration KPC's and KJC's scope and competence.¹⁶¹

Although, Kosovo has undertaken important steps for establishing a justice system, and further efforts for consolidation of the justice system are ongoing, in establishing justice system and justice institutions, it is crucial to have engagement and joint efforts of all stakeholders in Kosovo society, including academia in order to enhance the functioning of the justice system. The current legislation framework contains many laws that provide for equality of all citizens without any distinction as per ethnicity, gender, age or political affiliation.¹⁶²

An improved Law on free Legal Aid needs to be adopted and enter into force as soon as possible in order to provide assistance for marginalized and vulnerable groups in Kosovo.¹⁶³ According to the Ombudsperson, roughly 33% of complaints received during the 2011 were directed to Courts.¹⁶⁴

¹⁶⁰ Communication Officer from the Kosovo Police.

¹⁶¹ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

¹⁶² http://www.kipred.org/advCms/documents/46382_ACCESS_TO_JUSTICE_IN_KOSOVO.pdf.

¹⁶³ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

¹⁶⁴ https://ritdml.rit.edu/bitstream/handle/1850/15077/Kryeziu_Arberita_CapstoneProject-Report_5-16-2012.pdf?sequence=2.

3.4.3. Freedom of Expression

3.4.3.1. Legislation

Protection of freedom of media and freedom of expression is guaranteed by the Constitution of the Republic of Kosovo Art.40 and Art.42 as well as with other relevant Laws. The Constitution, namely Art.40, envisages freedom of expression as a guaranteed Right to Express, Disseminate and Receive Information, Opinions and messages without impediment. Further, Art.42 guarantees freedom and pluralism of the media, prohibiting censorship and dissemination of information or ideas through media cannot be prevented, save the cases where necessity arises from preventing incitement of violence, hostility or hatred based on racial, national, ethnic or religious grounds.¹⁶⁵

3.4.3.2. Analysis of the legislation

Kosovo Criminal Code of 2004, Art.188 provides that 'defamation' is a criminal offence; however at later stage the matter is regulated by civil Law against Defamation and Insult No.02/L-65 which is in force since 2007. Moreover, on February 20th, 2012 Kosovo Supreme Court issued a stance No.AG.K.94/2012 clarifying that from entrance into force of the civil Law on defamation and insult, Art. 188 and Art.187 foreseeing defamation and insult as criminal offences within Criminal Code shall not be applied and these acts as such are decriminalized therefore all cases treating the matter shall be tried under the civil Law on defamation and insult.¹⁶⁶

3.4.3.3. Achievements and challenges

- The transparency of media ownership is guaranteed by a law and the law is properly enforced.
- The Independent Media Commission delivered the media monitoring of the election campaign for the first time.
- The ministerial human rights units have received training on the law on access to public documents. Enforcement of this law requires that the roles and responsibilities of the ministries involved be clarified.
- Five media professionals and one mayor were indicted for alleged threats and defamatory comments towards an independent investigative journalist.
- Journalists continue to face political pressure and intimidation, which is threatening the still fragile investigative journalism.
- The amendment to the Criminal Code putting an end to defamation as a criminal offence still needs to be adopted.
- The professional standards in journalism need to be enhanced. Kosovo continues to face considerable challenges in this area, including political interfer-

¹⁶⁵ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA. pdf.

¹⁶⁶ Ibid.

ence.¹⁶⁷

- In general and in terms of freedom of expression, EU progress report 2011 states that limited progress was achieved.

The European Court of Human Rights has made clear in its case-law that national courts should refrain from applying criminal sentences, particularly imprisonment, for defamation. Such sentences endanger the very core of the freedom of expression, function as censorship for the entire media and obstruct the press from acting as a public watchdog, the court has said.¹⁶⁸

3.4.4. Freedom of Assembly and Association

3.4.4.1. Legislation

Knowing the importance of the cooperation with civil society and its participation in political life in general and decision making process in particular, the Government provides access and participation in policy making and Government strategies. Special attention is paid and space given for non-Governmental sector in public consultation process, as well as their role in designing and monitoring the implementation of strategic documents and policies. In order to further advance this process, OPM has published Guideline for Public Consultation which enables representation of civil society in various inter-ministerial mechanisms such as steering committees, committees and working groups.

3.4.4.2. Analysis of Legislation

Draft strategy for cooperation between Government and Civil Society envisages creation of a national grant scheme for developing civil society. So far, Government has supported and co-financed various projects, yet, lack of clear definition and rules for funding as well as selection of Civil Society Organizations in policy-making and providing services, has made more than necessary initiation of drafting the Strategy for Cooperation between Government and Civil Society.¹⁶⁹

The strategy for cooperation between the Government and civil society, initiated by the Office of the Prime Minister/Office for Good Governance and CiviKos, is in the process of being finalized. This draft strategy ensures strengthened participation of civil society in the formulation and implementation of policies and legislation. This strategy represents a basis of the Government's cooperation with civil society and this strategy will establish a regular communication between Government and civil society sector, partnership and transparency in the political process and it will always ensure and preserve

¹⁶⁷ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

¹⁶⁸ <http://www.hrw.org/news/2012/05/10/kosovo-draft-criminal-code-undermines-media-freedom>.

¹⁶⁹ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

the independence of the civil society sector. Priorities which the strategic document will address are: good governance, transparency and accountability to citizens.¹⁷⁰

It is exactly the necessity to encourage building of a participatory democracy, active citizenship, as well as best European and international methods and practices of cooperation between Government-civil society organizations in decision-making, which have prompted the Government to take the initiative for the development of this Strategy. Also the need to create a spirit of openness and partnership between Government and civil society, where this strategy will ensure:

- Strengthened participation of the civil society in the formulation and implementation of policies and legislation;
- Developed system of contracting of public services for civil society organizations;
- Developed system and established criteria for financial support to civil society organizations.

3.4.4.3. Achievements and Challenges

Although the constitution and law provide the freedom of association, and the government generally respects this right in practice, the institutions need to find ways to ensure a more structured cooperation with civil society. Public understanding of the role of civil society remains low. According to the 2008 Human Development Report published by UNDP, one of five Kosovars is engaged in one way or another in a civil society organization, and volunteering has recorded a growth rate since 1999. CSOs have scored relatively low on accountability, where many respondents were of the opinion that their decisions were influenced by donors. It is clear that there is still room for improvement in outreach of civil society to citizens. Exercise of the monitoring activities and provision of services that the Government cannot provide were two functions which the respondents cited as most important to be realized by CSOs.¹⁷¹

It is a concern that civil society is subject to undue political pressure and intimidation if its activities do not correspond to the views of authorities. Overall, there has been a mixed progress on efforts to fully guarantee freedom of assembly and association. The environment in which NGOs operate needs to be improved. The government, the assembly and municipalities need to cooperate more effectively with civil society.¹⁷²

¹⁷⁰ Habit Hajredini- Head of the Office for Good Governance, OPM.

¹⁷¹ Human Development Report 2008, http://hdr.undp.org/fr/rapports/national/europecei/kosovo/NHDR_2008_Kosovo_AL.pdf.

¹⁷² Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

3.4.5. Freedom of Thought, Conscience and Religion

3.4.5.1. Legislation

According to the Constitution of the Republic of Kosovo Art.8, Kosovo is a secular state. Rights and Fundamental Freedoms on the other hand are guaranteed by the Constitution Chapter II and Art.38.1 which stipulates that Freedom of belief, conscience and religion are guaranteed. Furthermore, Law on Freedom of Religion No.02/1-31 Art.3 stipulates that “Religious equality of all persons, regardless of their religion or belief, affiliation to a religious community or participation in rituals, are equal in front of the Law and are entitled to equal civil, political, economic, social and cultural rights’. All natural and legal persons enjoy equal rights according to this Law.¹⁷³

3.4.5.2. Analysis of Legislation

In the Republic of Kosovo, Law on Pre-University Education No.04/L-032 does not allow religious education in its public schools. According to Art.3 paragraph 7 of these Law—Public educational institutions shall refrain from religious instruction or any other activities which propagate a particular religion.¹⁷⁴

The 2004 Anti-Discrimination Law, promulgated by UNMIK regulation no. 2004/32, was designed to prevent and combat discrimination, including those based on religion or belief, to promote effective equality and to apply the principle of equal treatment. Its article 6 provides that all persons exercising a public function shall ensure that those parties to whom they award a public contract, loan, grant or other benefit, will sign a document which states that they will act in compliance with the 2004 Anti Discrimination Law and will respect and promote a non-discrimination policy when carrying out their obligations related to such a public contract, loan, grant or other benefit.¹⁷⁵

UNMIK, by its regulation no. 2006/48, promulgated effective the Law on Freedom of Religion in Kosovo, adopted by the Assembly of Kosovo on 13 July 2006. However, UNMIK also revised article 5, paragraph 4, of the law to read as follows: “All religions and their communities in Kosovo including the Islamic Community of Kosovo, the Serbian Orthodox Church, the Roman Catholic Church, the Jewish Religious community and the Evangelical Church shall be afforded every protection and enjoyment of the rights and freedoms provided by this law.” While this change should have been reflected in the final official text, the Special Rapporteur was informed that the full text of the 2006 Law on Freedom of Religion in Kosovo, as available online at the website of the Assembly of Kosovo, still reflects the initial version of Article 5, paragraph 4.¹⁷⁶

¹⁷³ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

¹⁷⁴ Ibid.

¹⁷⁵ <http://www2.ohchr.org/english/issues/religion/docs/A-HRC-13-40-Add3.pdf>.

¹⁷⁶ Ibid.

3.4.5.3. Achievements and challenges

Following the declaration of independence by the Kosovo authorities in February 2008, the Assembly of Kosovo passed a constitution for Kosovo on 9 April 2008, which entered into effect on 15 June 2008. The Secretary-General noted in a recent report that Kosovo authorities continued to act on the basis of the “Constitution of the Republic of Kosovo” and made public statements, asserting that they had no legal obligation to abide by Security Council resolution 1244 (1999). At the same time, the Government of the Republic of Serbia as well as many Kosovo Serbs rejects the authority of Kosovo institutions derived from the “Constitution of the Republic of Kosovo”. The United Nations has adopted a position of strict neutrality on the question of Kosovo’s status.¹⁷⁷ The progress on freedom of thought, conscience and religion has shown a slight improvement.

The transfer of responsibility for protecting religious and cultural sites to the police is in due process. Tolerance towards religions remains fragile. Lack of respect towards symbolic sites and believers, irrespective of religion, persists.¹⁷⁸ A Commission is being established to review the most advanced European practices around wearing of a headscarf in public institutions, and it is expected that this commission will provide clear recommendations on this subject to the Ministry of Education and other relevant institutions.

3.5. Social and Economic Rights

3.5.1. Women’s Rights and Gender Equality

Distribution of population based on gender is practically the same in urban and rural areas of Kosovo, as 50.1 percent are men and 49.9 percent are women in urban areas, whereas 50.2 percent are men and 49.8 percent are women in rural areas.¹⁷⁹ According to the last census in Kosovo, the total is 49.74% of women whereas 50.26% are men.

Women play a significant role in the socio-economic development of the province although they are frequently underrepresented and excluded from opportunities to engage fully in the economy and society generally.

The Government in 2005 has established the Agency on Gender Equality—institutional mechanism which monitors the implementation of the Law on Gender Equality. AGE is an independent institution within the Office of the Prime Minister, which has appointed gender equality officers in all ministries and municipalities. Factors affecting the establishment of this agency were: unequal treatment of women and discrimination in access

¹⁷⁷ Ibid, p.15.

¹⁷⁸ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

¹⁷⁹ Taken from <http://www.shqiperia.com/lajme/lajm/nr/13319/Statistikat-ne-Kosove-me-shume-meshkuj-se-femra>.

to services and employment, low number of women in decision-making positions and other work places, discrimination and violence which is common practice in society and at home. Sexual harassment is not uncommon.¹⁸⁰

According to the report of the Kosovo Center for Gender Studies, asked about the presence of sexual harassment in public institutions of Kosovo, respondents have expressed the following views: 35.6% think that sexual harassment is “present”, 41.6% say it is “somewhat present”, 12.9% responded as “not present” and 9.7% responded with “do not know”. Findings from this study indicate that the vast majority of civil servants are of the view that the phenomenon of sexual harassment is present.¹⁸¹

Public institutions of Kosovo have so far not undertaken any sufficient advocacy measure to address the issue of sexual harassment. Access to education and health are the main problems for women. It is more likely that women in Kosovo are unemployed and economically inactive (in terms of obtaining any income) than males, as a result of their inadequate education and gender discrimination. From the total number of 1060 regular academic staff, 297 (28%) are women and 763 (72%) are men, marking an increase of 2% in the participation of women in this category. Regarding formal academic qualification, with PhD degrees there are 72 women (15%), which compared with the academic year 2007/2008 marks an increase of 3%. In the category of administrative personnel there are 148 women (45%) to 181 (55%) men, which indicates an increase of 3% compared with the previous academic year.

In Master studies, (43%) are women, whereas the number of students graduating under the old system at the University of Pristina in 2008 was (42%) of women.

Number of students enrolled in the Bachelor studies according to the Bologna process for the same period is 2973, of whom 53% are women.¹⁸² These are just some of the indicators of increased level of education of women in Kosovo.

However, despite the progress indicators by MEST in 2008, many women lack the basic skills, a great number of them is prevented from participating in regular economic and social activities, leaving them vulnerable to exploitation.¹⁸³ Women in rural areas are particularly disadvantaged. Poverty seriously affects women in society, and limits their opportunities, and cultural and public perception of women as expressed in the media

¹⁸⁰ The Law Against Discrimination, in its Article 2.6 provides that: “Harassment and sexual harassment are considered as gender discrimination”.

¹⁸¹ Perceptions of civil servants regarding sexual harassment in the workplace. Kosovo Centre for Gender Studies, f. 10.

¹⁸² Taken from the MEST, Statistics on Higher Education for 2008: http://www.masht.gov.net/advCms/documents/Barazia_gjinore_n%C3%AB_arsim.pdf.

¹⁸³ In Kosovo, the level of education among men and women is not discriminatory. Same as men, women get educated equally. Statistical data show that significant differences in education inherited from the past have been limited.

and elsewhere is poor. This reality results in a drastic reduction of development opportunities for women, but also contributes to maintenance of the conservative structure of society, thus hindering comprehensive change and economic development.¹⁸⁴

3.5.1.1. Legislation

Law on Gender Equality No.2004/2: ensures protection; while it treats and sets forth gender equality as a fundamental value of the democratic development of Kosovo society, providing equal opportunities for women and men, their participation in political, economic, social and cultural life.¹⁸⁵ A number of laws were adopted by the Assembly of Kosovo, and initially by the Constitution of the Republic of Kosovo, and later on other laws such as: Criminal Code, the Law on gender equality, Law on Anti-discrimination, Law on labor, Law on inheritance, etc. Lately also the Law on elections, no.03/L-07 was adopted, Article 27 of which guarantees the right of vote and to be voted without discrimination based on race, ethnicity, color, language, gender, religion or political view, education, social status or other similar criteria. Moreover, the law guarantees a quota for women's representation, which is 30%. The Law on Protection against Domestic Violence, no.03/L-182, aims protection against all forms of domestic violence for every member of the family who are victims of such violence, through appropriate legal measures.¹⁸⁶

Kosovo institutions have incorporated relevant international law concerning gender equality into its legal framework. Article 22 of the constitution accepts the direct applicability of numerous international agreements and instruments, including the ECHR, the ICCPR and CEDAW. Article 7 describes gender equality in terms of fundamental values: "... Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life."¹⁸⁷

3.5.1.2. Analysis of Legislation

Legislation in Kosovo provides a good basis for encouraging and supporting the participation of women in the work process and decision-making positions. Legislation in Kosovo strongly promotes the principle of gender equality, setting the measure of 40 percent of participation of one gender in specific social areas as a condition for achieving gender equality. Achieving gender equality and participation of women in decision-making positions remains a challenge. The Law on Gender Equality has not yet found full applicability. The woman is still underrepresented in leadership positions both in public and private institutions. Data for decision-making positions does not show favourable position of women: In 2011, in executive level we have 13.10% of women com-

¹⁸⁴ http://www.entwicklung.at/uploads/media/Kosovo_Country_Programme_2008_2011_02.pdf.

¹⁸⁵ http://www.unmikonline.org/regulations/2004/re2004_18.pdf.

¹⁸⁶ Të drejtat e njeriut – përgjigje në pyetësorin për përgatitjen e studimit të fizibilitetit për MSA. Pdf.

¹⁸⁷ <http://www.osce.org/kosovo/74760>.

pared to 86.90% of men, whereas on managerial level we have 25.70% women compared to 74.33% of men.¹⁸⁸

The labour law extended the right to maternity leave. In implementing this law, attention needs to be paid to the vulnerability of women in the labour market.

Implementation of the law on protection against domestic violence has continued. Also, AGE has drafted a Program against Domestic Violence and the Action Plan 2011-2014. The program was approved by Government Decision no. 08/34 dated 25 August 2011. The relevant legislation needs to be implemented and monitored.¹⁸⁹

3.5.1.3. Achievements and Challenges

Slight positive changes occurred and minimal progress is made in regard to empowering women in society. The position of women in politics has improved with the election of the Kosovo President and the appointment of three women as Deputy Prime Ministers, including the negotiator in the Belgrade/Pristina dialogue, Minister for Trade and Finances, and Minister for EU Integration.

In the course of the implementation of the Law on Gender Equality, the Kosovo government drafted the Kosovo Program for Gender Equality 2008–2013¹⁹⁰ which was approved by the government in March 2008 and by the Assembly in June 2010. This Program for Gender Equality aimed at analyzing the existing situation and to identify necessary actions which need to be taken in the fields of economic and social life in Kosovo.

AGE¹⁹¹ is in charge, of monitoring implementation of the Law on Gender Equality, drafting gender equality policies and making proposals to central-level institutions to ensure equal participation of men and women. AGE has been the main leader of the processes for drafting of the KPGE, Law on protection from domestic violence, leader of the process of drafting the Action Plan against Domestic Violence 2011-2104; it has drafted an action plan for economic empowerment of women 2011-2013. It has conducted three surveys: Safety starts at home in 2009, Women in the process of work and decision-making in 2011 and Women in print media in 2012.

Agency for Gender Equality has funded the realization of two documentary films that address important issues such as inheritance “Request inheritance find trouble” and on prevention of early marriages of girls from Roma, Ashkali and Egyptian communities. From 2005-2012 AGE has organized awareness raising campaigns on domestic violence, and partly funded (through subsidies), projects of NGOs working in the area of gender

¹⁸⁸ Agency for Gender Equality, OPM.

¹⁸⁹ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf

¹⁹⁰ Ibid.

¹⁹¹ Agency for Gender Equality, OPM.

equality. For two consecutive years it has awarded scholarships for master level studies for women in the civil service, continuing their employment. AGE also provides training for LGE, CEDAW and the applicable legislation that promotes gender equality. AGE also reports its findings annually to the Government, and upon request, to the Assembly.

The Agency for Gender Equality and the Kosovo Judicial Institute has provided training to legal staff on the protection from domestic violence. A very few public debates on this issue were held. Leaflets were also published. At municipal level, trainings have been provided and capacity enhanced.

Domestic and gender-based violence continues to be a challenge in Kosovo. AGE with the Ministry of Health and the Ministry of Labour and Social Welfare should draft sub-legal acts addressing the psychosocial treatment of perpetrators of domestic violence. To date, AGE has cooperated with the Ministry of Labor and Social Welfare in drafting the Administrative Instruction for Determining the place and mode of Psychosocial Treatment of perpetrators of domestic violence. The Government has approved this Administrative Instruction with the decision no. 02/91, dated: 09.12.2012, while the progress has been most successful in developing a program to support victims of domestic violence.¹⁹² On the other hand, services for victims of domestic violence and trafficking are partially funded by the government but remain heavily dependent on donor funding. The long-term reintegration of victims, including their economic stability and access to justice, needs to be provided. Positive measures need to be enforced to empower women as victims of trafficking and domestic violence.

High drop-out rates amongst girls and the underrepresentation of women on the labor market, including in the public sector, require undertaking concrete actions by authorities. The Agency for Gender Equality has continued facilitating, promoting and monitoring implementation of the Gender Equality Program (2008-2013).¹⁹³

Regarding the representation of women in decision-making, from official statistics of the MPS / DCSA, it appears that the employment rate in the central and municipal level and in leadership and managerial positions, between women and men, is very different, and figures leave much to be desired if compared from year 2008 to 2011. The data since 2011 shows the highest representation of women in decision-making positions in public institutions at around 13.10%.

Furthermore, women parliamentarians were successful in working closely with civil society. Considered as a very important segment for the sustainable human development, the active involvement of the civil society in decision-making, implementation and monitoring of other activities enables an increase of the degree of transparency and

¹⁹² <http://www.osce.org/kosovo/94360>, p. 13.

¹⁹³ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

also the strengthening and better use of existing capacities.¹⁹⁴

The law relating to civilian victims of war on the other hand did not include provisions, proposed by NGOs, for women raped during the war to be afforded civilian victim status and appropriate compensation.¹⁹⁵ There is movement in this direction where one of the objectives of the action plan for implementation of the 1325 Convention is access to transitional justice. AGE will present a draft action plan for approval to the Government in January 2013.

As per gender balance in Judiciary, the OSCE report from 2010 reports on some slight positive changes that have taken place in regard to empowering women in judiciary. The overall gender composition for judges remained unchanged with 28 % women, in some courts with greater jurisdiction, such as district courts, the appointment process indicates a modest upward trend. For other courts, such as municipal courts, there was an overall downward trend. However, within the municipal courts, women court presidents increased from 13 to 32%. The overall gender composition for prosecutors increased from 24 to 30 % women, with no women chief municipal prosecutors in 2009, to 29 % women chief municipal prosecutors after the 2010 appointments.¹⁹⁶

3.5.2. Children's Right

The Convention on the Rights of the Child approved by the United Nations defines the basic principles which have been ratified by most of the countries in the world. Being aware of the importance children's rights have, the Government of the Republic of Kosovo is making serious efforts in raising the level of a quality life for all children in Kosovo, perceiving them as a fundamental standard of democratic and developed society. The Republic of Kosovo has included the Convention on the Rights of the Child in its Constitution, which constitutes the widest point of legal reference on children's rights, and with this step it has expressed its readiness and political will to undertake the fulfillment of international obligations which ensure the realization of all fundamental and inalienable rights for all the children of Kosovo.¹⁹⁷

3.5.2.1. Legislation

A significant progress has been made in putting in place legislation to protect Rights of the Child, where during the drafting process the Convention on the Rights of the Child is being consulted and its principles included such as: non-discrimination, child participation, developing full potential of the child and the best interest of the child; ILO Convention 182 which treats Worst Forms of Child Labor; other instruments and inter-

¹⁹⁴ Women Caucus Gorup/Newsletter, Republic of Kosovo, Assembly, January 2012.

¹⁹⁵ <http://www.amnesty.org/en/region/serbia/report-2012>.

¹⁹⁶ <http://www.osce.org/kosovo/74760>.

¹⁹⁷ http://www.kryeministri-ks.net/zck/repository/docs/Strategy_and_National_Action_Plan_on_Childrens_Rights_2009-2013.pdf.

national standards. With the purpose of enforcing legal framework in practice, strategic documents have been developed and are in process of implementation such as:¹⁹⁸

- a. Strategy and Action Plan for Children's Rights 2009-2013;
- b. Strategy and Action Plan for Preventing and Eliminating Child Labor;

These strategic documents identify issues that are a priority and need an immediate intervention in ensuring child protection, necessary care for the development and welfare of a child.¹⁹⁹

3.5.2.2. Analysis of Legislation

While there has been important progress in the drafting of primary laws, the drafting of secondary laws, institutional mechanisms and programs necessary for the implementation of these laws have been slow. The primary laws due to their nature are of a general form. The implementation of legislation in reality requires additional laws, instructions, structures and necessary institutional resources.²⁰⁰ On the aspect of the incorporation of existing legislation, the Convention on the Rights of the Child is included in the list of international instruments which are part of the Constitution of the Republic of Kosovo, and despite some shortcomings, most of the new legislation includes the principles and legal provisions of the Convention on the Rights of the Child.²⁰¹

3.5.2.3. Achievements and Challenges

Access to the issue of disability based on the area of human rights and the development process, has significant impact on the way in which education is provided. Teachers tend to classify students with disabilities on the basis of their disability. In this way, students with disabilities are placed in special schools of residential type, with attached classes, or are excluded from any educational opportunity on the grounds that they are «severely disabled». This naturally results in illiteracy and low skills levels, particularly among adults with disabilities, thus contributing to the high rate of unemployment and poverty.²⁰² Kosovo institutions are looking into the possibility of adopting practices of developed countries related to alternative ways of integrating children with disabilities, in order to include them in the process of acquiring knowledge, and to reduce their stigmatization in society.

¹⁹⁸ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

¹⁹⁹ Ibid.

²⁰⁰ http://www.kryeministri-ks.net/zck/repository/docs/Strategy_and_National_Action_Plan_on_Childrens_Rights_2009-2013.pdf.

²⁰¹ Ibid.

²⁰² This 'Survey on Disabled People in Kosov' that was published in December 2011. The survey was conducted by the OPM in cooperation with UNDP, organizations dealing with protection of people with disabilities.

On the other hand, while Kosovo already has legislation for provision of health services for them, there is no legislation on mental health, and only 2.3 percent of the overall budget of the Ministry of Health is reserved for mental health services. Conditions of families with children with physical disabilities also remain as a considerable concern, since in most cases they do not receive any material support. If social services are in such a state, there is a need for financial assistance to families that have one or more members with physical disabilities and which are living in poverty.²⁰³

Children with disabilities should enjoy equal rights-as stipulated in the Convention on the Rights of the Child of the United Nations-and equal opportunities as other children. Young people with disabilities are also a vulnerable group in our society. They still face a number of obstacles in their access to all aspects of life. Specific problems faced by children and young people should be studied in greater depth in order to design and implement well-informed policy within a broad spectrum of policy areas.²⁰⁴

Protection of children's rights has improved with the implementation of the juvenile justice code and its monitoring process.²⁰⁵ The Council for Child Protection and Justice for Children are established. What needs to be done is, to focus more on implementing the strategy and action plan for children's rights for 2009-2013.

Kosovo institutions opened learning centres in different municipalities which aims at fighting against drop-out among the minorities: Roma, Ashkali and Egyptians and must make more efforts in implementing the actions. Consequently, after the consultation process and taking account the budgetary constraints, the social assistance scheme is being revised. Yet, child protection in Kosovo remains weak and the child poverty rate is over 58%. Children in general and those among the Roma, Ashkali and Egyptian communities in particular are at greater risk of poverty than the general population. Poor maternal care and lack of child nutrition and healthcare are biggest challenges reflected in the high level of child mortality. And most visible child abuse in Kosovo is the forced begging in the streets by children. This reaffirm Kosovo needs to strengthen its child protection system.

Mechanisms and processes need to be developed to enforce children's rights. Child protection needs to benefit from a functional multi-sectorial approach.²⁰⁶

²⁰³ Ibid

²⁰⁴ National Action Plan for Persons with Disabilities of the Republic of Kosovo 2009-2011, taken from: <http://www.handikos.org/trunk/modules/news/files/Plani%20Kombetar%20i%20Veprimi%20per%20Personat%20me%20Aftesi%20te%20Kufizuara%20i%20Republikes%20se%20Kosoves%202009%20-%202011.pdf>.

²⁰⁵ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

²⁰⁶ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf

3.5.3. Socially Vulnerable Persons and Persons with Disabilities (people with special needs)

3.5.3.1. Legislation

As for the Rights of the Disabled Persons, Ministry of Labour and Social Welfare, within social sector, safeguards the rights of the persons with disabilities as well as providing social services through institutional-residential care. Legal framework in force, regulating social protection are the following: Family and Social Services Law, Law on Financial Assistance to the Families with Disabled Children aged 01-18 years, Law on Disabled Persons aged 18-64 years, Law on Social Scheme, Law on Vocational Training and Employment of Disabled Persons.

Law on Family and Social Services No.02/L-17 and Administrative Instruction No.06/2011, clearly provides instructions on protection of the disabled persons, clear criteria on the conditions to be met by a child or an adult requiring 24 hours services in base Institute of Shtime or in one of the seven (7) Community Houses. Currently 24 hour care and services are provided to 130 mentally disabled persons within the Institute in Shtime and two Community Houses as well in Shtime, one in Ferizaj, one in Vushtrri, one in Gracanica, one Kamenica and one in Decan.²⁰⁷

Law on Financial Assistance to the Families with Disabled Children No.03/L-022 provides for concrete financial assistance to the families where total number of beneficiaries is 2,941 children with permanent disabilities and monthly amount per child is € 100.

Law on Pensions for Disabled Persons No.2003/23, persons with disabilities aged 18-64, regulates pension scheme for disabled persons with inability to work. Currently beneficiaries from this scheme reach 18,121 people and monthly amount is € 45 (first category).²⁰⁸

3.5.3.2. Analysis of Legislation

During the implementation of monitoring visits by KRCT professional team, some progress was reported in relation with the implementation of some of the findings and recommendations from the last report. However, during 2011 there are gaps observed in the functioning of these institutions, whether in services or infrastructure. The preliminary findings were shared in the December Conference, where were present representatives of the monitored institutions and centers, representatives of the MoH²⁰⁹ and MLSW²¹⁰, and other representatives of local and international institutions.²¹¹ The OSCE

²⁰⁷ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf

²⁰⁸ Ibid.

²⁰⁹ Ministry of Health.

²¹⁰ Ministry of Labour and Social Welfare.

²¹¹ http://www.tacso.org/doc/HR_Report_on_Mental_Health_Institutions_2011.pdf.

expanded its activities and included local institutions in the project with an aim to lobby as many potential employers as possible, thus the OSCE teamed-up with local institutions and managed to have more people employed for at least three days in government ministries and local municipalities.”²¹²

3.5.3.3. Achievements and Challenges

According to the Office for Good Governance’s Broad Survey of Persons with Disabilities in Kosovo (2011), there are approximately 150,000 people living with various disabilities in Kosovo who suffer from discrimination in their everyday lives. One major area of exclusion is within the workforce.²¹³

Limited progress has been achieved on socially vulnerable persons and/or persons with disabilities. Training sessions in this area enhanced the administrative capacity and need to continue. The Council for Persons with Disabilities was established to coordinate enforcement of legislation. The first report on the implementation of the action plan for people with disabilities (2009-2011) was published. This plan and the law on vocational training and employment for people with disabilities need to be better enforced, and their implementation monitored. Adequate actions at municipal level are also required.²¹⁴

In general, more efforts need to be done in order to improve the daily life of socially vulnerable groups and persons with disabilities.²¹⁵ Awareness raising campaigns needs to be organized by both institutions and civil society in order to reduce the social stigma about the Persons with Disabilities. According to representatives of Handikos, at the workshop held in Tirana on 15 November 2012, it was suggested that the European Commission did not take into account the contributions of NGOs related to the challenges faced by persons with disabilities. According to them, the legislation is complete, but there are delays to its full implementation: “The ministry of Labor and Social Welfare reserves the right to financial support, but it is not only this ministry that should deal with persons with disabilities...whereas the law on persons with disabilities is not implemented, and the law on administrative instructions for conditions for persons with disabilities is a competency of the local authority, and also it is not being implemented”.

3.5.4. Anti-Discrimination

Anti-Discrimination Law was introduced in 2004/3. The Law provided for the establishment of a Centre for Equal Treatment to ensure equal treatment and administer pay-

²¹² <http://www.osce.org/kosovo/84985>.

²¹³ <http://www.kosovo.undp.org/en/News-/People-Disability-in-Kosovo-Integrating-Diversity-in-the-Workplace-1306>.

²¹⁴ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

²¹⁵ Ibid.

ments collected as pecuniary sanctions. The Law also authorized the Ombudsperson Institution in Kosovo to receive and investigate complaints concerning alleged violations of rights based on discrimination. In the process of implementing the Law, OPM issued AI²¹⁶ No. 2006/04 on the Implementation of the Anti-Discrimination Law. The AI aims to set practical rules; establish structural and physical facilities necessary for the enforcement of the Law and to promote equal treatment. The AI foresaw two bodies for the promotion of equal treatment: the Advisory Office on Good Governance, Human Rights, Equal Opportunity and Gender Issues (AOGG), and the HRU²¹⁷ in the Kosovo ministries. As explained in Section 3.1, the establishment, structure and competencies of the HRUs in the ministries are regulated by sub-legal acts of the OPM, while the MLGA has established HRUs in the municipalities and regulated their structure and competencies; the Centre for Equal Treatment has yet to be established, eight years after it was provided for by the Law.²¹⁸ The practice in different municipalities though proves that such HRU are not very functional due to lack of professional training and short budgetary funds.

The local NGOs keep supporting the municipal officers in advocacy and awareness raising related to the Anti-Discrimination Laws and its implementation.

3.5.4.1. Legislation

Anti-Discrimination laws

- Constitution of the Republic of Kosovo
- Anti Discrimination Law of Kosovo Law No.2004/3
- Law on Gender Inequality in Kosovo Law No.2004/2
- Administrative Instruction No 2005/8 on Determination of Competence and Description of Duties of Officers for Gender

Equality in Municipalities, the Constitution prohibits discrimination on the basis of sexual orientation of a transgender (LGBT) community. Yet, practical enforcement of the legislation remains a challenge. There is a very limited knowledge and understanding on the part of law enforcement officers about the rights of this community, thus this implies that more training should be provided for government officers, in order to better understand the LGBD rights, and apply it in conformity with the Laws. It is understandable that having a different sexual orientation requires more political commitment. To date the members of the LGBT community face threats or the risk of violence in Kosovo.

²¹⁶ Administrative Instruction.

²¹⁷ Human Rights Units.

²¹⁸ <http://www.osce.org/kosovo/94360>, p. 15.

3.5.4.2. Analysis of Legislation

Chapter II Fundamental Rights and Freedoms of the Constitution of the Republic of Kosovo Article 24:

1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.
2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.
3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.

Based on above mentioned set of principles, the purpose of the law is to prevent and combat discrimination, promote effective quality and put into effect the principles of equal treatment of the citizens of Kosovo under the rule of Law.²¹⁹

The rule of law must be primary and implies a clear commitment which ensures the rule of law in Kosovo, in particular in the implementation of rights. The courts and justice system should be seen as the primary defenders of rights, including minority rights, while the implementation of laws in practice remains the biggest challenge.

3.5.4.3. Achievements and Challenges

According to Action Plan (2013-2015) due to implement Anti-Discrimination Law, its main objectives consist in organizing public campaigns; disseminating information regards Anti-Discrimination Law and promoting its implementation as well organizing debates and round tables. On November 3rd 2011 Government organized a formal meeting with representatives of LGBT (Lesbian, Gay, Bisexual and Transgender community), aiming to understand and how to provide an effective protection and promotion of the rights of LGBT which are guaranteed by the Constitution, Anti-Discrimination Law and various policies and strategies dealing with human rights and anti-discrimination. This was the first meeting of its kind, between institutions and the community with participation of 9 representatives. Ultimate goal of the meeting was exploring forms and modalities of better cooperation as well seeking ways for joint activities and projects for a democratic society, equality and without discrimination on the grounds of sexual orientation. Office of Good Governance, Human Rights and Equal Opportunities invited members of the LGBT to be part of the working group in drafting the Action Plan for implementation of Anti-Discrimination Law as well participation in awareness raising campaigns intended for human rights and non-discrimination based on sexual orientation. In order to cooperate and efficiently promote the rights of the community, the

²¹⁹ http://www.kosovo-legalaid.com/tmp/images/stories/ECMI_Kosovo_-_Kosovo_legal_framework_on_discrimination_-_English.pdf.

Office of Good Governance is determined to conduct regular meetings with the LGBT community, taking onboard their concerns and address specific recommendations of the relevant institutions mandated with protection and promotion of their rights in conformity with applicable legislation.²²⁰

3.5.5. Ombudsperson

Constitution of the Republic of Kosovo defines the role and powers of the Ombudsperson to oversee and protect the rights and freedoms of citizens of the Republic of Kosovo from discriminatory actions of public authorities. The Ombudsperson institution conducts investigations, provides recommendations, publishes reports, and provides services of free legal aid and public advocacy for all citizens of Kosovo. In cases where investigations of the OI legal advisors result in findings of violations of human rights, the Ombudsperson institution may request additional information from the public authorities, as well as make recommendations to the relevant authorities and publishes reports on various issues. The media are the good instrument through which the Ombudsperson can advocate.

However, the functioning of independent institutions is an important element for the functioning of democracy in Europe. As such, the institution of the Ombudsperson in Kosovo is facing major challenges of a financial nature, but also the political interventions and pressures.

Also, cases were recorded when the courts themselves have ignored the requests of the Ombudsperson, where there has been no answer to the institution, following requests for clarification from the Court and other institutions. Also, the Progress Report gave objections to the manner of functioning of the OI in Kosovo, saying: - "Continuous weakening of the Ombudsperson institution should be addressed. The authorities must ensure prompt response to all requests and recommendations of the Ombudsperson".²²¹

Ombudsperson institution is faced with the significant lack of capacities ranging from financial ones to those human and technical.

In addition, communication and cooperation between the various institutions and bodies dealing with human rights on the central and local level and with the Ombudsperson is weak. Human rights units in the municipalities should be reorganized in order to be more efficient and their mandate should be clarified, in order to have better use of their limited expertise and resources. Although training has been organized to build the capacity of human rights units, the enforcement of legal and administrative remedies for violations of human rights must be improved at all levels.²²²

²²⁰ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

²²¹ Progress Report 2010 for Kosovo, Democracy and Rule of Law, p.8.

²²² Progress Report 2011 for Kosovo: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

3.5.6. Labor and Trade Union's Rights

3.5.6.1. Legislation

Labour and Trade Union Rights Law: The right on employment is regulated by Labor Law, No.03/L-212, whereas the right to association in trade unions is regulated by the Law on Trade Unions, No.04/L-11: a. Labor Law regulates the rights and obligations arising from employment, or between employers and employees.

With the adoption of the Law on Labor on 1 November 2010 an important step was taken to solidify the trade union rights situation in Kosovo. The new Law recognizes the right to freedom of association – a right already guaranteed by the 2008 Constitution – as well as the right to strike, but provides that these rights shall be further regulated by special laws.

The Law on Strikes was adopted on 22 July 2010, while the Law on Trade Union Organizations was adopted on 28 July 2011 and Law on Social and Economic Council was adopted on 21 July 2011.²²³

3.5.6.2. Analysis of Legislation

The provisions of Labor and Trade Union Rights shall apply to employees and public employers as well private sector. Key issues that are guaranteed by provisions of the Labour Law are: prohibition of all types of discrimination, creation of employment relation, employment contract, content of such contract, placement of employees in the workplace, working hours, holidays and absences from work, protection, and safety of employees, salaries and benefits of employees, termination of employment, procedures for fulfillment of labor rights and relations, social dialogue as well other important matters concerning employer and the employee. To ensure implementation of the Labor Law fully, 11 Regulations were issued.

b. Law on Trade Unions aims at regulating and determines the rights and freedoms of employees to establish and organize free and voluntary labor and trade unions, in order to protect economic, social and professional interests. Matters regulated and rights guaranteed by this Law are: the right to union membership and organization, membership in labour unions, union elections, ceasing of the unions, criteria and conditions for registration of trade unions, trade union legitimacy, structure of the union, financial resources and the right to organize union federations and confederations, as well other matters related to this matter. Ministry of Labor and Social Welfare has issued one secondary legislative act with a purpose of implementing this Law.²²⁴ The Law on Labor and Law on Trade Union Organizations regulate the conclusion of collective contracts at the enterprise, branch and state level, but fail to explicitly prohibit anti-union

²²³ <http://survey.ituc-csi.org/Kosovo.html?lang=en#tabs-3>.

²²⁴ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

discrimination.²²⁵ However, there is stagnation in the implementation of collective contracts. Labor law should serve not only to regulate the relationship between employers and employees, but also in combating informal economy. In Kosovo informal economy is very much present, thus here the Labor Inspectorate should play an essential role in identifying unregistered businesses. This helps employees and has a positive impact on the overall economy of Kosovo.²²⁶

3.5.6.3. Achievements and challenges

According to the EU Progress Report on Kosovo in 2011, some progress has been achieved. By adopting the law on labor in November 2010, this improved working conditions particularly in terms of work-contracts. It also introduced a paid maternity-leave up to 9 months. The Socio-Economic Council became operational and the law on the Socio-Economic Council was adopted regulating its organization, mandate, and actions. Labor inspectorates were reorganized, but they lack the necessary capacity to monitor labor conditions throughout Kosovo. The law on trade-unions was adopted clarifying the employees' rights to establish and participate in trade unions. There are concerns as to the alignment of the law on strikes with the European Charter for Fundamental Rights and international standards. In general, labor and trade union rights are largely guaranteed. The implementation of the existing legislation will be crucial to make changes tangible.²²⁷

3.6. Property Rights

3.6.1. Legislation

A number of laws adopted have improved legal framework (Law on cadaster, the Law Amending the Law on the Establishment of the register of ownership rights over real estate, Law on real property tax, the Law on granting for use and exchange of municipal property, and the Law which amends the Law of expropriation). Municipality of Pristina has issued a regulation by which it has initiated the process of legalization of illegal constructions. Government of Kosovo has appointed its coordinator for property rights to improve implementation of the law in this area. The project which has supported the Kosovo Cadastral Agency in registration of apartments in Kosovo's major cities has been completed and the process of general registration of apartments in Kosovo is continuing to be done by the Municipal Cadastral Offices. All municipal land registry offices are now linked to the Central Kosovo Cadastral Agency, and data is available both in the central and municipal offices.²²⁸

²²⁵ <http://survey.ituc-csi.org/Kosovo.html?lang=en#tabs-3>.

²²⁶ <http://www.gapinstitute.org/repository/docs/GAPLigjiPunes.pdf>.

²²⁷ Kosovo Progress Report for Kosovo 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

²²⁸ Ibid.

Also the Law for the sale of apartments to which there is a housing right, is adopted. This law entered into force on 28 January 2012 and its implementation immediately began.

3.6.2. Analysis of Legislation

Resolution of property claims arising from the war is a necessary process that affects the stability of a post-war society. The return of private property which is lost as a result of the war is necessary for the protection of human rights.²²⁹ Lack of return of property to those who are affected by war prevents the process of return and negatively affects the human rights of all communities in Kosovo.²³⁰

Housing and Property Directorate (HPB), founded and led by the United Nations Interim Administration Mission in Kosovo (UNMIK), was in part inherited by the Kosovo Property Agency (KPA) established by UNMIK Regulation No. 2006/50. KPA is an institution which has the mandate to deal with the settlement of property claims for private immovable property, including agricultural and commercial property arising out of the conflict. In addition to this primary mandate, KPA has inherited a part of the mandate of the Housing and Property Directorate to implement the pending decisions, property management, the implementation of a voluntary scheme of rent and compensation cases. The success of the KPA in dealing with property claims related to the conflict is very important for easing tensions in Kosovo. With the Law approved by the Assembly of the Republic of Kosovo, no. 03/L-079, dated 13 June 2008, UNMIK Regulation 2006/50 on the settlement of claims relating to private immovable property, including agricultural and commercial property, was amended. A new law amending the Law on Property Agency has been drafted and approved by the Government on 12 November 2012 and its adoption by the Assembly is expected.²³¹

Kosovo Property Agency has received a total of 42,318 claims. Agency is maximally engaged on reducing unresolved claims and enforcement of the decided claims. Until now 35,120 claims were resolved and 15,100 decisions were implemented through repossession, property management or closure of the case at the request of a party. Number of properties under administration is 8016, of which 960 properties are leased. From the implementation of the rental scheme about 3.7 million euros were collected, of which 2.8 million were paid to the owners.

Challenges in property related issues are as following:

- Lack of implementation of Commission decisions and rental scheme in northern part of Kosovo. Despite the efforts of the Agency and scheduling of evictions every week for repossession or for non-payment of rent for the property in the northern part of Kosovo, they could not be implemented due to lack of support

²²⁹ <http://www.osce.org/kosovo/80435>.

²³⁰ Ibid.

²³¹ Human Rights-answers to the questionnaire for preparation of the feasibility study for SAA.Pdf.

- from local and international security bodies.
- Inability of implementation of the decisions of compensation cases. According to Housing and Property Claims Commission decisions in 143 cases (apartments) right of possession has been returned to the applicant A whereas the applicant C under Article 4 of UNMIK Regulation, on which decisions are based, is eligible for compensation. Criteria and procedures for compensation were approved, but these decisions cannot be implemented due to lack of funds. The international community and all stakeholders involved in the return process should advocate strongly for the creation of a bridge over the gap between legal and physical return of the property.
- Insufficient budget.
- Re-usurpation of property after eviction. There are cases when evicted property through physical expulsion are re-usurped in most cases by the same person, thus the Agency is obliged to conduct several times physical expulsion from the same properties, especially in those under the administration of the Agency, and to initiate criminal proceedings in cases of re-usurpation.

KPA deals exclusively with property disputes for immovable property that occur as a result of the 1998-1999 war in Kosovo. Its mandate is not the return of displaced persons and refugees, but the fair and speedy settlement of claims which positively affects the return of displaced persons and refugees to Kosovo. By the fact that many properties evicted through expulsion are not re-possessioned by the owners, the finding that lack of property release is a delay in the return of displaced persons and refugees, is not sustainable.

KPA has equal approach to all citizens and parts of Kosovo and does not give priority to settlement of claims of certain persons or certain community. The fact that the agency cannot enforce the decisions of the Commission or the rental scheme in the northern part of Kosovo, creates a public perception that the Agency has dual criteria, but in reality this is a consequence of the situation prevailing in that part of Kosovo and the inability of the action of law enforcement bodies in that part.²³²

3.7. Respect for and Protection of Minorities' and Cultural Rights

3.7.1. Legislation

The Framework Convention provides communities with substantive protection of their rights in all areas of economic, social, political and cultural life and promotes the conditions to allow them to express and preserve their culture and identity. As such it is an important tool against which to measure progress by Kosovo institutions in protecting and promoting the rights of communities. However, while there is a comprehensive legislative framework in place to protect and promote the rights of communities in Kosovo, implementation of the relevant laws is not sufficient to provide real and meaningful protection to all communities. In many areas, stronger commitments by the central- and

²³² Interview with Xhevat Azemi-Deputy Director of the Kosovo Property Agency.

local-level institutions are required in order to meet the relevant local and international standards.²³³

3.7.2. Analysis of Legislation

To implement the Law on Communities, the Communities Consultative Council (CCC) was established and its statute was adopted in 2008 by presidential decree. However, four years after the Law entered into force, the government has neither published an annual comprehensive strategy for the promotion and protection of the rights of all communities and their members, nor has it presented an annual comprehensive report to the Assembly. A code of conduct for community representative organizations has not been issued.²³⁴

3.7.3. Achievements and Challenges

Decentralization and support for the newly-founded Serb-majority municipalities are positive developments. This process needs greater attention and political will to solve outstanding issues, such as land management. The work of the Communities Consultative Council has continued. Its members have contributed to the review of government activities and policies affecting communities, especially via its working groups on education and on issues concerning the Roma, Ashkali and Egyptian communities. Recently, a Kosovo Croat was appointed to the Council, thus making the forum more representative. The Council is increasingly consulted by executive bodies. The number of incidents affecting the minority population has increased as a consequence of events that triggered tensions between Kosovo and Serbia.²³⁵

Roma, Ashkali, and Egyptians continued to face persistent discrimination – particularly in housing and access to public services – and the highest unemployment, school dropout, and mortality rates in Kosovo.

In terms of deportations, that continued to disproportionately impact Roma, Ashkali, and Egyptian communities, with most returnees living in informal settlements and lacking basic utilities such as running water and electricity. The UN Children’s Fund reported in August that most Roma, Ashkali, and Egyptian children returned to Kosovo were now on the national registry, giving them a legal right to access education and other social services. Three-quarters still do not attend school due to poverty, curriculum differences, and language barriers.²³⁶

No specific programs or initiatives were adopted to tackle direct or indirect discrimina-

²³³ <http://www.osce.org/kosovo/92244>.

²³⁴ <http://www.osce.org/kosovo/94360>.

²³⁵ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

²³⁶ <http://www.hrw.org/world-report-2012/serbia>.

tion with regard to employment of vulnerable communities, especially Kosovo Roma, Ashkali and Egyptian communities. However, nondiscrimination clauses have been included in employment legislation, and there are reserved quotas for employment of community members in public institutions.²³⁷

Roma, Ashkali and Egyptians experienced cumulative discrimination including in access to education, health care and employment; few enjoyed the right to adequate housing. In May 2012, the OSCE reported that “Kosovo institutions fall short of fulfilling their commitments to create appropriate conditions for the integration of Roma, Ashkali and Egyptian communities.”²³⁸

Overall, the return and reintegration process remains a major challenge, in particular for municipalities. Where municipal returns strategies have been adopted they are often only partially implemented, and during the implementation of relevant policies, strategies and projects, municipalities are confronted with persistent problems relating to budgetary constraints, lack of political will or commitment by the municipal leadership, lack of capacity among relevant municipal officials, and problems of coordination.²³⁹

3.8. Refugees and internally displaced persons (IDPs)

3.8.1. Legislation

The Government of the Republic of Kosovo, through the Ministry for Return and Communities has developed and adopted the Strategy for Communities and Return 2009-2013, whereas policies to create conditions for sustainable return and re-integration of refugees and Internally Displaced Persons (IDPs) are developed according to this strategy. It addresses the overall vision to contribute towards the development of a multi-ethnic, prosperous and democratic society with equal rights. To achieve this vision, the strategy focuses on three primary goals such as stable community, sustainable return and reintegration of IDP's as well as economic reintegration of communities.²⁴⁰

3.8.2. Analysis of Legislation

As a result, following improvements are made in areas such as:

I. Strengthening and Stabilization of Communities in Kosovo:

- a. Strengthening of community rights and ensure the implementation of the current Law on Protection and Promotion of Community Rights

²³⁷ <http://www.osce.org/kosovo/94360>, p.18.

²³⁸ <http://www.amnesty.org/en/region/serbia/report-2012>.

²³⁹ <http://www.osce.org/kosovo/92244>.

²⁴⁰ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

- and their Members in Republic of Kosovo;
- b. Ensure social participation and access of communities to all public services.

II. Sustainable return of displaced persons from Kosovo

- a. To offer support to all returnees in Kosovo;
- b. To ensure that displaced persons and potential returnees have sufficient information on conditions of return and their rights;
- c. To provide adequate conditions at place for sustainable return and reintegration of returnees.²⁴¹

3.8.3. Achievements and Challenges

The government needs to step up its efforts to take the lead in addressing the issue of IDPs. The municipalities alone are still not able to respond to the immediate and long-term needs of IDPs and returnees, due to a lack of will and funds allocated for that purpose. There is an inconsistency between municipal return strategies and the action plan prepared by the Ministry for Communities and Returns. IDPs continue to face a number of obstacles, particularly lack of personal identity and property documentation, deplorable living conditions and lack of access to basic socio-economic rights. Moreover, the non-recognition of administrative documents between Kosovo and Serbian institutions further affects access to services and property restitution for IDPs. Attacks on returnees are rare. If they happen, they are not always subject to proper follow-up by the police and the judiciary. A clear strategy to tackle the caseload of IDPs is needed. In terms of the return process, the main challenges are the continued and heightened socio-economic problems, education and property ownership issues, lack of funding, inter-ethnic tensions in some of the areas and lack of commitment on the part of the institutions.²⁴²

The Special Rapporteur remains concerned about the situation of internally displaced persons who are members of religious minorities. A recent UNHCR report indicates that most of the 210,000 internally displaced persons from Kosovo are from minority communities (Serbs, Roma, Ashkali and Egyptians) and in addition almost 20,000 people are still displaced within Kosovo itself, with some 2,200 living in collective centers. The Representative of the Secretary-General notes that the number of returns to, and within, Kosovo has been disappointingly low, even though a considerable section of the internally displaced persons population still seems willing to exercise their right to return. While security and freedom of movement for minority communities in Kosovo has improved, today's chief obstacles to sustainable returns are lack of access to employment and livelihoods and too few schools for minorities.²⁴³

²⁴¹ Ibid.

²⁴² Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

²⁴³ <http://www2.ohchr.org/english/issues/religion/docs/A-HRC-13-40-Add3.pdf>.

While registration improved, returnees without documentation remained effectively stateless. In the absence of a case-management system for forcibly repatriated people, only a small percentage of a 2.4 million euro “re-integration fund” was spent. Many returnees were denied basic rights and remained at risk of cumulative discrimination amounting to persecution. Returned children continued to be denied access to education.²⁴⁴

3.9. Cultural Heritage

3.9.1. Legislation

The Constitution of the Republic of Kosovo, in Art.58 paragraph 5, envisages: The Republic of Kosovo shall promote the preservation of religious and cultural heritage of all communities, as part of the heritage of Kosovo. It will have as special duty to ensure effective protection and integrity of the buildings and monuments of cultural and religious communities. Further, same article in paragraph 6 states that: The Republic of Kosovo shall take effective action against all those hampering fulfilment of the rights of the communities ‘members. It shall also refrain from policies or practices aiming at assimilation against the will of the communities ‘members and shall protect these members from any such action. Moreover, Art.59 paragraph 12, guarantees that: Members of the communities enjoy unhindered contacts among themselves within the Republic of Kosovo, to establish and maintain free and peaceful contacts with persons in other states, especially with those sharing an ethnic, cultural, linguistic or religious identity, common cultural heritage in accordance with international Law and standards.²⁴⁵

Special attention is given to the buildings and facilities that belong to religious communities and that are dedicated for religious rituals. Therefore these buildings and facilities are considered intact as regards the intervention of Government authorities, and can be accessed only with the consent of the appropriate religious institution, unless an injunction is issued because of illegal activities and/or in cases of danger to life or health. With regards to financing, religious communities enjoy customs and tax privileges for economic activities that are specific for the financial sustainability. Those privileges include import and purchase of essential products for manufacturing, materials, equipment and livestock and export of these products (Customs and Excise Code of the Republic of Kosovo, no. 03/L-109 Annex D).²⁴⁶

Law on Prizren, and Hoca e Madhe were adopted in a non-democratic form, and here there was no cooperation with the local NGO’s.²⁴⁷

²⁴⁴ <http://www.amnesty.org/en/region/serbia/report-2012>.

²⁴⁵ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

²⁴⁶ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

²⁴⁷ Behxhet Shala, Executive Director of CDHRF.

3.9.2. Analysis of Legislation

The Republic of Kosovo has not ratified the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, although the willingness and readiness was expressed by the Kosovo side to ratify the Convention. Provisions for ratification and recognition of the Convention envisage that ratification can be made by UNESCO member states or UN member states, and so far the Republic of Kosovo is only a member of International Monetary Fund and the World Bank, but has not received, yet, an invitation by the General Conference of UNESCO. The comprehensive list of cultural heritage sites qualifying for protection, as provided for by the law on cultural heritage, has still not been adopted. As a result, many historically protected items remain vulnerable. Implementation of the legislative framework governing protection of cultural heritage remains weak.²⁴⁸

3.9.3. Achievements and Challenges

The comprehensive list of cultural heritage sites qualifying for protection, as provided for by the law on cultural heritage, has still not been adopted. As a result, many historically protected items remain vulnerable. This results in breaches of the law. A stronger commitment for cultural heritage spatial planning needs to be given by government institutions. EU progress report states that only a limited progress on cultural rights has been achieved. Even though Kosovo has improved coordination and brought new structures into operation, yet, implementation of the legislative framework does not take place.²⁴⁹

To date, the strategy for the effective protection of cultural and religious heritage of all communities had not been developed. However, in 2008, the Assembly approved Laws on Special Protective Zones and Cultural Heritage, which overlap with some of the protections envisaged in the Law on Communities.²⁵⁰

3.10. Official Languages

3.10.1. Legislation

The Constitution of the Republic of Kosovo, in its article 5 paragraph 1 establishes that: Official languages of the Republic of Kosovo are Albanian and Serbian language', it goes on in paragraph 2 of the same article that: ' Turkish, Bosnian and Romani language enjoy the status of the official language at municipal level and/or other level in accordance with the Law', that is, with Law on Languages No.02/L-37.²⁵¹

²⁴⁸ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

²⁴⁹ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

²⁵⁰ <http://www2.ohchr.org/english/issues/religion/docs/A-HRC-13-40-Add3.pdf>, p. 17.

²⁵¹ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

Law on Languages aims at regulating:

- a. Use of official languages and the languages of the communities, whose mother tongue is not an official language in Kosovo institutions, public enterprises and other organizations providing public functions or services;
- b. The right of the communities in Kosovo to preserve, protect and promote their linguistic identity;
- c. The multilingual character of Kosovo society as a whole in representing its unique spiritual, intellectual, historical and cultural identity.²⁵² Consequently, the official languages in Kosovo have an equal status in its institutions.

Whereas at local level, if at least 5% of the municipality's inhabitants has as mother tongue other than the official languages than the native language shall be official language at municipal level as well enjoys equal status of use as official languages. Moreover, if at least 3% of the municipality's inhabitants have as mother tongue other than the official languages than the native language shall enjoy the status of language in official use at municipal level; in addition, the same treatment is given to languages that are traditionally spoken in a given municipality.²⁵³

3.10.2. Analysis of Legislation

There were some shortcomings in implementation of the current Law on Use of Languages. In this regard, the Prime Minister of the Republic of Kosovo, on 4-th of April has signed the Regulation No.07/2012 on Office of Commissioner for Languages that aims to protect and promote official languages and their equal status in the Republic of Kosovo and all municipalities as well as to ensure protection of community languages that are not among official languages. A working group for reform of the Office of Commissioner on Languages was established. In this regard, taking into consideration that the Government has adopted the Regulation No.07/2012 that covers the field of use of official languages and made progress in addressing shortcomings, there is no need for amending the Law on Use of Languages.²⁵⁴

The Government of Republic of Kosovo has adopted the Regulation no. 07/2012 on establishment of the Office of Commissioner for Languages (OCA) and its objective is establishment of the Board on language policies that is represented by various institutions of the Republic of Kosovo, a work-plan of this working group was approved. OCA has coordinated the process of appointment of representatives of the Board on language policies.²⁵⁵

²⁵² Ibid.

²⁵³ Ibid.

²⁵⁴ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

²⁵⁵ Ibid.

3.10.3. Achievements and Challenges

Full implementation of the language rights of all communities throughout Kosovo is a prerequisite to their equal access to services and effective participation in public life. Yet, it can be assessed that the Law on Use of Languages has been only partially implemented.²⁵⁶ Finances for language services remain low. The board for language policy was established and vacancy was opened for the recruitment of language commissioners. In this way the implementation of the law on languages will be enabled.²⁵⁷

3.11. Missing Persons

One of the most serious consequences of the war-time period is the issue of missing persons.²⁵⁸ Disappearance of persons is a result of a gross violation of human rights, in breach of all international conventions, Laws and warfare customs. Families of missing persons have filed their claims and requests with the International Committee of the Red Cross in Kosovo, and the total number of missing persons reached at 6,020. As of April 2012 according to the provisional list of ICRC, which is based on the work of Working Group on Missing Persons (a group established as forum for dialogue between Prishtina and Belgrade, chaired by ICRC), the number of missing persons is at 1,780. Since after the war in 1999, in charge of missing persons was UNMIK and held the exclusive powers on the issue of locating, exhumation and identification, until Kosovo's declaration of independence. Up to 2012 the ICTY was involved in the identification phase and in gathering of the evidence of war crimes committed in Kosovo. Whereas throughout the process of resolving the fate of the missing persons, other bodies and mechanisms were involved such as International Committee of the Red Cross, International Commission on Missing Persons, KFOR, OSCE, ICMP and from 2008, the EULEX.²⁵⁹

From 2003 all identification is made through DNA analysis (established by the Memorandum of Understanding between UNMIK and ICMP) therefore exact number of identification made prior to that date is difficult to be determined due to different modalities used in identification process. Based on the available information gathered, approximately 2,000 persons were identified for the period 1999-2002.²⁶⁰ The missing persons file requires greater political commitment, supported by financial and technical resources provided by the government to ensure adequate engagement. Unless adequately ad-

²⁵⁶ <http://www2.ohchr.org/english/issues/religion/docs/A-HRC-13-40-Add3.pdf>.

²⁵⁷ Qëndresa Beqiri, OPM officer for community affairs.

²⁵⁸ Conceptual framework of Dealing with the Past consist of four components: 1) the right to know, 2) the right to justice or to trial, 3) the right to compensation, and 4) the right on non-repetition of conflicts. The Right to Know for the families of missing persons is paramount for their rehabilitation.

²⁵⁹ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA. pdf retrieved from the website: http://www.meiks.net/repository/docs/Answers_to_the_questionnaire_on_the_preparation_of_the_Feasibility_Study_for_a_Stabilisation_and_Association_Agreement.pdf.

²⁶⁰ Human Rights - Answers to the Questionnaire on the preparation of the Feasibility Study for a SAA.pdf.

dressed, the issue will continue to fuel resentment, hinder reconciliation and adversely affect the overall political climate in Kosovo.²⁶¹

3.11.1. Legislation

Kosovo adopted a law on missing persons. It is the first legal framework that guarantees recognition of the right-to-know and right-to-reparation to the families of the missing, as well as the legal status of the missing persons. The Working Group on Missing Persons, a bilateral forum that brings together the Belgrade and Pristina delegations for dialogue and exchanges of information on missing persons in Kosovo, has remained the framework within which the Pristina authorities have pursued their commitments.²⁶²

3.11.2. Analysis of Legislation

The Law on the Establishment of the Kosovo Department of Forensic Medicine (DFM) entered into force in August 2009. The Secondary legislation for the Law on the Establishment of the Department of Forensic Medicine is being drafted. The Law on Forensic Medicine Procedures has entered into force in June 2010. The law was considered a significant success and a very important step to create a legal framework for legal medicine and associated disciplines. The Kosovo forensic resources are now centralized under the Department of Forensic Medicine (with the exception of KP forensic police unit), enabling a more coherent management and eventual growth. Signs of political interference and poor management in this department were reported in 2010. DFM early technical constraints resulted in a lack of quality service delivery, while staff capacity building continues to be neglected.²⁶³

3.11.3. Achievements and Challenges

An estimated 1,797 missing persons remain unaccounted for. Families of missing persons in both Kosovo and Serbia are still waiting for the bodies of their relatives to be exhumed, identified and returned to them for burial. Even where the bodies have been found and returned to their families, few of the perpetrators of these enforced disappearances and abductions have been brought to justice.²⁶⁴

Excavation and de-mining work has continued at the Zhilivoda/Žilivode and Kosharë/Košare sites, where human remains of ethnic Serbs are allegedly buried. Most of the work is being carried out by the Kosovo Security Force with the involvement of the

²⁶¹ Ibid.

²⁶² Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

²⁶³ <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20ProgrammeReport%202011.pdf>.

²⁶⁴ <http://www.amnestyusa.org/news/news-item/balkans-thousands-still-missing-two-decades-after-conflicts>.

Government Commission on Missing Persons, an inter-ministerial body. Experts from the EULEX Department on Forensic Medicine, in cooperation with the Kosovo Security Force, conducted site assessments at Lake Livoq/Livoc and near the village of Zhilivoda/Žilivode. The operation at Lake Livoq/Livoc found no remains of missing persons. Kosovo authorities need to provide new information from their own sources on the alleged gravesites. The unidentified human remains stored at the Pristina morgue continue to be a cause for concern. The lack of a formal agreement between Kosovo and Macedonia is an obstacle to clarifying allegations related to unidentified human remains in Macedonia.²⁶⁵

3.12. Conclusions

Kosovo has established its core institutions for protection of human rights such as courts, Ombudsperson and the Constitutional Court that has enormous importance. However, despite these achievements and constitutional guarantees for protection of human rights, its protection in practice remains rather unsatisfactory, and in particular in fulfilling EU human rights conditions.

Some progress has been made in protecting certain rights, yet, the rights regarding the implementation of law on discrimination, on the access to public documents, freedom of expression, and right of women in decision making processes, rights of RAE communities, and rights of LGBT community remain at standstill. Although most of the mechanisms for implementing human rights are set, they lack proper functionality and suffer from a weak performance being in central and/or municipal level.

The findings of this chapter reflect the situation of human rights in Kosovo still as challenging, and not as a priority of the Government of the Republic of Kosovo. The judiciary is still weak because it allows political interference and thus affects its independence and impartiality. Ombudsperson, as the only national institution for human rights, is challenged due to the lack of political and financial support. Laws are not well implemented in practice, and lack of coordination between all human rights mechanisms, such as: the courts, the Ombudsperson, the Office for good governance, human rights units in ministries and municipalities, and NGOs dealing with human rights, is evident.

The general conclusion for the area of human rights in Kosovo is that proper implementation of the legislation and the strengthening of mechanisms for the protection, promotion and monitoring of the implementation of legislation requires more support, guidance, expertise and adequate human and financial resources.

²⁶⁵ Kosovo Progress Report 2011: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

The challenges identified in the area of human rights are as following:

- Communication and cooperation between the various institutions and bodies dealing with human rights on central and local level and with the Ombudsperson is weak.
- Human rights units in the municipalities are not effective and their mandate should be clarified, in order to have better use of their limited expertise and resources.
- Although training has been organized to build the capacity of human rights units, the enforcement of legal and administrative remedies for violations of human rights must be improved at all levels.
- Problems related to the independence of the judiciary continue to have a negative impact on the rule of law and access to justice in Kosovo.
- Lack of implementation of Commission decisions and rental scheme in northern Kosovo.
- Lack of implementation of the decisions of the cases of compensation by the Kosovo Property Agency.
- Lack of working conditions of the Kosovo Correctional Service staff who work in correctional and detention centers.
- Freedom of expression is limited, in particular in cases of pressures on investigative journalism and lack of sufficient professional standards in journalism.
- Human rights activists feel threatened by verbal and physical attacks against them as well as the prohibition of freedom of expression and thought about amending the law no.04/L-054 on the status and rights of the martyrs, invalids, veterans, members Kosovo Liberation Army, persons raped during the war, civilian victims of war and their families.
- Unsatisfactory level of cooperation between civil society organizations with governmental institutions, Assembly and municipalities.
- Regarding the process of return, key challenges remain increased socio-economic problems, property and education issues, inter-ethnic tensions in some areas and the lack of commitment by the institutions.²⁶⁶
- Lack of use of alternative methods for dispute resolution.
- Low level of representation of women in decision-making and unsatisfactory level of involvement of women in the areas of employment, education, etc.
- Lack of necessary legislation to treat children with disabilities, mental health services, conditions of families with children with physical disabilities, etc.
- Unsatisfactory level of institutional care for people with disabilities, and socially vulnerable groups;
- Partial implementation of the law on the use of official languages in Kosovo;
- Lack of enforcement of legislation dealing with cultural heritage;
- Lack of strategy for effective protection of cultural and religious heritage of all communities;
- Insufficient implementation of the law against discrimination, in particular with cases dealing with LGBT community;
- Ombudsperson institution is faced with the significant lack of capacities ranging from financial ones to human and technical.

²⁶⁶ EC Progress Report 2011 for Kosovo: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

Recommendations:

This chapter concludes with a series of recommendations to address the gaps, challenges and strengths that should be thoroughly discussed on how to apply human rights laws and regulations which have already been adopted.

The recommendations are divided into three specific areas:

Civil rights:

- Functionalization of all institutions and bodies dealing with human rights, in the central and municipal levels, and increased coordination between all units in vertical and horizontal plane;
- Prioritization of increase of skills (capacity building) of municipal staff for human rights;
- Finding of mechanisms by which the Assembly and the Government of the Republic of Kosovo shall ensure practical implementation of adopted laws;
- Coordination of advocacy activities between government units and civil society regarding the rights of LGBT community and gender equality;
- Increased efforts in the implementation of the witness protection program;
- The Ombudsperson of Kosovo should revise its approach to the public and to ensure its proper functioning and financial interdependence;
- Office of the Prime Minister of Kosovo should establish a mechanism tasked with ensuring that the law on access to public documents is being genuinely and consistently implemented in all government institutions. Such a mechanism should also be responsible for monitoring the performance of public officials who deal with requests;
- Creation of a special fund for services to victims of domestic violence where this fund would be partially financed by the government, donors and the business community;
- Creation of mechanisms to implement the rights of children. Protection of children should benefit from a functional multi-sectorial approach;
- Implementation of the law on vocational training and employment for persons with disabilities, and close monitoring of its implementation.

In the area of Mediation:

- Inclusion of alternative methods and mediation in educational programs for prison staff and prisoners, in order to humanize the lives of prisoners, reduce conflicts between them, with the aim of their easier re-socialization and integration into society;
- Training on communication skills, dialoguing, gender sensitive facilitative mediation;
- Inclusion in the training program in the area of project design, implementation and management.

For rehabilitation centers:

- Signing of protocols between countries for the transfer of prisoners;
- Increase of financial resources for the Municipality of Lipjan;
- Financial support and regulation of the legal infrastructure;
- Creation of conditions for visits of monitoring mechanism without prior notice;
- Take measures for equal treatment of detainees/ discrimination;
- Create the conditions for prisoners according to international standards.

Mental health centers:

- To regulate the legislation related to inheritance matters of persons with mental disorders.

Freedom of expression:

- Harmonization and supplementation/amendment of all regulations with EU legislation and policies.

Police:

- The Law on Inspectorate should be amended in regard to the disciplinary measure.

Social and Economic Rights:

- Government should ensure the inclusion of children with disabilities in educational institutions
- Legislative framework regarding the rights of persons with disabilities in social, health, labor, education, physical infrastructure areas should be reviewed and new laws should be adopted that are based on the needs and rights of persons with disabilities based on EU standards;
- The Law on paraplegics and quadriplegics, as one of the most vulnerable categories of persons with disabilities, should be drafted and adopted in accordance with EU standards;
- The Law on Personal Assistants for persons with disabilities should be drafted and adopted;
- Secondary legislation needs to be adopted to cover assistive devices for persons with disabilities.

Property rights:

- Develop a strategic document for the property sector which will determine policies of this sector;
- Review of legislation in the area of property and drafting of new laws for areas not covered by existing legislation, according to the policies set by the strategic document (i.e., the definition of the type of properties Kosovo, the definition of

the status of certain categories of properties, re-definition of certain categories of property, restitution of nationalized property, etc);

- Support the Property Agency in the implementation of the decisions of the Commission and rental scheme in the entire territory of Kosovo, especially in its northern part;
- Support the Property Agency to obtain financial resources for the realization of compensation cases;
- To provide the necessary support to KPA in the implementation of its mandate, and in cooperation with governmental institutions and civil society, to organize awareness rising campaigns to reduce the re-usurpation of the property which has been evicted after expulsion proceedings.²⁶⁷
- Create opportunities to support the Agency in obtaining financial resources for the implementation of compensation cases.

Cultural rights:

The use of official languages:

- It is recommended that in primary and secondary schools learning of official languages should be an elective course;
- Undertake capacity building in public administration about learning the official languages;
- To strengthen the complaints mechanism, for lack of implementation of official languages in Public Administration as well as the monitoring mechanism;
- Municipalities that have Roma community and where the Romany language was traditional, are recommended for its incorporation as official language;
- Undertake licensing of interpreters in Public Administration;
- Provision of best possible training of the staff in the administration which provides citizens with documents.

The issue of the rights of Roma, Ashkali and Egyptian communities:

- Each municipality should adopt the municipal action plan for the implementation of RAE Communities Strategy and approve the budget for its implementation;
- Capacity building for teaching staff for Roma community;
- Preparation and vocational training in various areas, which facilitate and open employment prospects for RAE communities;
- Regulation of informal settlements;
- Municipalities should allow late registration for Roma, Ashkali and Egyptian communities.

The issue of education of minority communities:

- To increase the educational capacity of minorities and the construction of new

²⁶⁷ <http://www.osce.org/kosovo/80435>.

- educational facilities;
- Approval of educational plans for communities that lack education plan;
- Publication of textbooks in the respective languages pursuant to the education plan;
- Undertaking of measures to prevent elementary school dropout of students from communities.

The issue of cultural heritage:

- Promotion and raising the awareness of citizens on protection of cultural heritage;
- Implementation of law on prohibition of construction of facilities near historical monuments, which is in violation of the architecture of the historical monument.

The issue of the return of communities:

- To ensure necessary conditions and security for the return of minority communities to their properties;
- Increase the budget for the construction of houses for the returnees;
- Adoption of secondary legislation for return by the Ministry for Communities and Returns;
- Drafting of a harmonized strategy for the Return and Reintegration.

4. Protection of Personal Data

4.1. General Overview

Kosovo marked some progress in terms of protection of personal data and privacy rights in the period from 2011-2013. The progress could be measured against the complete absence of public awareness on their rights before the adoption of the legislation (in 2010) and, in particular, before the establishment of the National Agency for Protection of Personal Data (NAPPD). In other words, the progress turned from “absence of awareness” into “limited awareness’.

The NAPPD has managed to consolidate its initial capacities yet, it struggles to develop further as a consequence of limited budget allocated to the Agency and insufficient office resources. There is a sound interaction with the relevant Committee of the Kosovo Assembly where the Agency submitted the annual reports on time. There is a considerable progress being evidenced in terms of appointing the data protection officers in leading public institutions though there is still limited understanding among some institutions to accelerate the procedures of appointments. The problems are more evident in the local level. With the exception of some major private companies, there is limited general understanding among the private sector, too.

Public awareness remains one of the main challenges in the field of data protection. The Agency did not manage to reach the citizens in all regions and, in particular, the challenges prevail as for the awareness of citizens in the rural areas. Media was used as a tool in awareness raising but not to a satisfactory level. There seems to be limited interest among the media to cover this topic.

4.2. Legislation

The protection of personal data in Kosovo is a fundamental right guaranteed by the Constitution of the Republic of Kosovo. Article 36 of the Constitution specifies that privacy and family life, the inviolability of the dwelling, secrecy of correspondence, telephone and other communications, and protection of personal data are guaranteed for every individual (Constitution of Kosovo 2008: Art. 36). Furthermore, the Constitution and Law guarantees implementation of some of the key international and European conventions embedding personal data protection. Such conventions are: The Universal Declaration of Human Rights; European Convention for the Protection of Human Rights; Fundamental Freedoms and Protocols; 108/EC Convention and additional protocols²⁶⁸; EU Directive 95/46/EC²⁶⁹ and Directive 2006/24/EC²⁷⁰. Since Kosovo is still not member of relevant international organisations it is consequently not a signatory party and therefore the conventions are applied unilaterally (NAPDP, 2011).

The Law No 2010/03-L-172 on Protection of Personal Data (LPPD) was adopted in April 2010 and as such was predominantly in line with the European Directive on the protection of personal data (Directive 95/46/EC). While there are increasing efforts of the European Union to modify the existing directive in accordance to future circumstances, the existing Law in Kosovo is advanced thus potential modification of EU directive shall not require major modification of Kosovo law. However, it was a request required in the EU Communication on “Feasibility Study for a Stabilisation and Association Agreement between European Union and Kosovo” (2012) that the legislation on personal data protection needs to be further harmonised with EU standards. NAPDP, with the support of international expert, initiated an analysis of the LPPD to assess the prospective alignment of the Law with EU standards. The existing law has some loopholes in specifying the duties and obligations of the institutions during the processing of personal data, which potentially leads to misinterpretation (Demiri 2013). Further, the modified law needs to be in line with other domestic legislation in particular the Criminal Code of Kosovo, which entered into force in January 2013. The legislative agenda for 2013

²⁶⁸ Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows, 08.11.2008, link: <http://conventions.coe.int/Treaty/en/Treaties/Html/181.htm>.

²⁶⁹ The Data Protection Directive, link: <https://www.dataprotection.ie/viewdoc.asp?DocID=90&m=>.

²⁷⁰ on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, 13.04.2006, link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0054:0063:EN:PDF>.

includes the amendment of LPPD within this year. However, these changes shall not influence implementation of the existing legal provisions.

The Law on Protection of Personal Data (LPPD) determines the rights, responsibilities, principles and measures with respect to the protection of personal data. The Law further sets up an institution responsible for monitoring the legitimacy of data processing (LPPD, 2010). The law provisions the establishment of the National Agency for Personal Data Protection (NAPDP), defining it as an independent body under the direct supervision of Kosovo Assembly, which is in charge of overseeing the implementation of data protection legislation (LPPD, 2012). Furthermore, the law specifies that the Agency shall in particular provide advice to public and private bodies on data protection related questions; decides on complaints of the data subject; carry out inspections and audits; inform the public about issues and developments in the field of data protection; and promote and uphold the fundamental right to data protection (LPPD, 2012).

There are some efforts in drafting the secondary legislation. NAPDP in partnership with the Kosovo Police and Kosovo Prosecutorial Council have established a joint working group that is working on drafting administrative instruction that aims to harmonise the procedures for proceeding and systematisation of data collected by Kosovo Police (KP) and Prosecution. The aim of this working group is to have a uniform database, which is in line to the provisions of LPPD and the EU regulation for proceeding criminal data. In addition to working group on criminal data, the NAPDP is also evaluating compatibility of the data processing procedures of Civil Registration Agency (CRA) with LPPD.

4.3. Track of practice (2011-2013)

According to the LPPD, the National Agency for Personal Data Protection (NAPDP) is the main state authority mandated to monitor and implement the LPPD. However, the prolonged process of establishing NAPDP has caused implications in consolidating its capacities. The delays were caused by the parliamentary crises that resulted in extraordinary elections and changes of legislature and Government in the outset of 2011.

The NAPDP was established only in June 2011. The NAPDP was found immediately on the situation in which it had to consolidate its initial structures from scratch. In addition to that, the Agency had to consider some cases retroactively especially those that violated the LPPD dispositions. This because some of important data collection processes such as: national census of population and properties as well as registering of owners of mobile phone numbers took place exactly during this period of institutional vacuum whereas the LPPD entered into force by June 2010. The majority of citizens feared on potential violation of data protection since both processes involved major collection and processing of data (KCSS 2011).

Since its establishment in mid 2011, the NAPDP has managed to promptly consolidate its initial capacities and thus marked some major achievements to date. Firstly, according to National Agency for Personal Data Protection (NAPDP), a particular importance

was paid to reaching agreements with other regional countries in exchange of expertise and mass communication.²⁷¹

The agreements with other countries are essential since this allows the transfer of data from country to another under the conditions of ensuring protection of personal data. Within less than 18 months, NAPDP has managed to sign agreements for exchange of personal data with the entire Western Balkans countries, with the exception of Serbia and Bosnia and Herzegovina which refuse to sign official agreements with the state of Kosovo. Agreements were also signed with some EU Member States. Since the establishment of NAPDP the research witnessed significant progress in implementation of LPPD however, the efforts to date are not sufficiently enough to improve substantially the situation in the field. The European Commission in its “Communication on Feasibility Study for a Stabilisation and Association Agreement between European Union and Kosovo” launched in 2012, highlighted that the personal data protection in Kosovo is not fully guaranteed and that Agency needs to focus more on implementation, drafting secondary legislation and strengthening capacities (EU Feasibility Study: 2012). However, accelerated steps in implementing the legal provisions in the field of protection of personal data shall be gradually established in accordance with the capacities and realistic period. There are some criteria provided in the EU Visa Roadmap for Kosovo. It requires further capacity building in the field of data protection and awareness rising. According to NAPDP officials, the request for developing and launching a Code of Ethics has been already fulfilled.

The overburdening agenda was the issue of interception and leak of wiretap. According to legal framework, the Agency is authorized to investigate the interception cases if there are evidences showing violation of the provisions of LPPD or in case if it contradicts with European and other international standards for data protection. However, the case of interception is being handled by the justice and security institutions directly, while the NAPDP does not have any particular role in monitoring these investigations. Currently, the Agency is investigating a complaint submitted by a citizen who claims that Kosovo Police has violated his right of privacy during an interception process. After the completion of investigations, the NAPDP will decide whether there are enough proves to continue with this case.

4.4. Institutional Capacities

Institutional capacities of NAPDP are increasing and there is a satisfactory level of performance to date. The Agency still did not have the necessary number of staff while part of those already employed need further skills and competence in the field of personal data protection. The majority of staff is overburdened with purely administrative tasks while there is lack of expertise in financial and procurement issues (Demiri 2013). There is a small number of staff supporting state supervisors especially when perform-

²⁷¹ Set times, Interview with Ruzhdi Jashari, link: http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/08/16/feature-04 accessed: 10th January 2013.

ing direct inspections and controls. As regarding the trainings and capacity building, the direct beneficiaries until now were state supervisors and there was limited space for supporting staff (Demiri 2013). The Agency has organised trainings for up to 700 participants during 2012.²⁷²

There is a small amount of budget allocated to the Agency. The total budget for 2012 was only 189.780€ which according to the NAPDP is highly insufficient to implement all of its objectives (NAPDP 2011). As a result, due to the budgetary constrains the Agency could not implement many of its objectives such as organizing different seminars, workshops and other capacity building events for its staff. Further, the Agency is challenged by limited office space. It is located in a private rented house with no proper conditions. This makes difficult the organisation of any public event with the purpose to inform citizens on protection of privacy and personal data based on the existing resources.

Within the period of July 2011 - January 2013, the NAPDP has managed to increase the institutional capacities in the public institutions as well as key private companies. The NAPDP contacted the relevant public institutions where most of them appointed an officer in charge with data protection in the respective institution. The NAPDP created the structures of data protection in the security sector where the Kosovo Security Force (KSF) and Kosovo Police (KP) (both institutions involving more than 10.000 members) are following the rules of NAPDP on data protection. Until January 2013, most of the Ministries and state agencies have appointed the data protection officer. Major efforts were made in appointing data protection officer in the local level. Also, the Agency seemed to be very active in liaising with private companies in particular those involving a significant number of employees as well as huge number of clients (such as banks).

The NAPDP seemed to be very active in submitting the regular reports to the Kosovo Assembly. The Committee on Internal Affairs, Security and KSF is responsible to oversee the Agency and its work. There were number of meetings held between the NAPDP and the parliamentary committee. In 2012, the Committee happened to visit the NAPDP once. The overall parliamentary oversight of the Agency is consistently being exercised.

4.5. Awareness

Citizen's awareness on their rights of privacy and personal data protection is very limited. This is heritage of the socialist system and the post-conflict myriad of problems that hampered the incentives to develop further the human rights concept. As such, the protection of personal data was seen as "luxury" topic in light of the ongoing problems of the society in Kosovo. While the awareness among citizens turned from "absence of awareness" into "limited awareness" the positive trend seems to be driven by the European agenda which highlights the data protection and privacy rights. The findings shows that the NAPDP have managed to conduct basic awareness in the period of 18

²⁷² Speech of Ruzhdi Jashari, Head of State Supervisors of the Agency, Data Protection Day, 28.01.2013.

months since its establishment.

The limited awareness in the public could be measured against small number of appeals received in the NAPDP (Demiri 2013). This might be also the result of lack of confidence that citizens have in state institutions, when taking into account previous experiences with other state institutions and institutions infectivity responding to appeals (Demiri 2013). Media is one of the tools the NAPDP used in outreach and promoting the citizens rights to protection of personal data. However, the awareness campaign is in its infancy due to limited capacities and budgetary constrains the Agency is facing. Media seemed not to be interested in addressing this area in a more educational manner.

Awareness within the central level institutions has shown satisfactory results. Almost all these institutions have appointed data protection officer as a legal obligation for the public sector. In this period, the Agency has performed informational meetings and awareness workshops about the LPPD and about all the obligations deriving from it with most of these institutions, in order to create a new approach to the importance.

Compared with the central level, when it comes to raising awareness for the need of protection of personal data at the municipal level results are limited. Although in different forms, the appointment of internal officials for the protection of data was required, a large part of the municipalities did not respond in respecting this legal obligation. The Agency did not reach the rural areas where there is a tremendous lack of understanding of their rights concerning data protection and privacy.

Awareness of the importance of lawful processing of the personal data and without violating human rights and privacy has also occurred in the private sector. Success in this regard is noted particularly in banking sector and mobile phone operators, which have shown increased interest for this matter. To date, banks and mobile operators have constantly contacted the Agency on different matters related to data protection, in order to implement the LAPPD correctly. The representatives of leading private companies expressed their willingness to implement the provisions of the law.

4.6. Strategic Challenges of Data Protection in Kosovo

There are three strategic challenges identified in the field of data protection in Kosovo:

- **Resources** - Lack of sufficient budget and limited human resource capacities. No particular priority expected to be provided to the Agency in the near future;
- **Competence/Skills** - Very limited number of skilled and competent officers in the public and private sector in the field of protection of personal data. Absence of academic and professional platforms in the near future;
- **Awareness** - Public awareness will remain one of the major challenges due to very limited understanding of citizens' right to protection of personal data in the urban areas and, almost absence of knowledge in the rural areas.

Recommendations:

- The Agency shall continue the efforts to address the recommendations for harmonising further the existing Law on Protection of Personal Data. It is essential that the amended law is adopted by the Kosovo Assembly in 2013, as foreseen with the legislative agenda for 2013;
- Kosovo Assembly should seriously consider the requests of Agency in increasing its budget in light of growing activities and the need for capacity building. There shall be a top up of the budget in 2013 while the upcoming years shall mark increase;
- The Agency should further increase its administrative/professional capacities for effective protection of personal data within the limits of existing resources;
- The Agency shall complete the appointment of data protection officers' at all public institutions, by the end of 2013. The positive trend of cooperation with the leading private companies shall be consistent;
- The Agency, in conjunction with other institutions shall ensure a national wide awareness campaign so the citizens could receive more information on their rights in data protection.

5. Border Management and Migration Management

5.1. Border Management

5.1.1. EU Acquis and standards on Integrated Border Management

The main legal framework aiming to provide basis for secure borders and ensure freedom of movement is embraced within the Lisbon Treaty. In particular, its article 2, refers to creation of area of freedom, security and justice and ensure freedom and movement. Specifically, article 2 stipulates that ‘the Union shall offer to its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons, is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime’. In addition, article 62 of the Lisbon Treaty refers to absence of internal border controls for persons and framing a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals.

Further provisions on border management are regulated through the Regulation (EC) No 562/2006 of the European parliament and of the Council of 15 March 2006 of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). Provisions of the Schengen Code refer to crossing of external borders and conditions for entry, control of external borders and refusal for entry, staff and resources for border control and cooperation between Member States, specific rules for border checks, abolition of border control at internal borders and temporary reintroduction of border control at internal borders.

Key requirements as defined by the Schengen Code can be summarized as following:

- There is a need to ensure effective control of the EU’s external borders by specialised trained professionals.
- All persons crossing the external borders must be checked in a systematic way, and effective border surveillance must be ensured between authorised border crossing points. This presupposes sufficient staffing by duly trained personnel, the number of which will depend on the nature of the border concerned (land border, sea border, airport), its geographical location, and the volume of border crossing traffic.
- Proper co-ordination between authorities, as well as close co-operation between Member States and neighbouring third countries, is of crucial importance.
- An equal degree of control at external borders is required, carried out in accordance with uniform principles set out in the Schengen acquis. This will require also having the capability to exchange data with the Schengen Information System.
- Member States should furthermore be in line with the international standards in relation to the security of travel documents and be equipped with the necessary

technical devices for detection of counterfeit and falsified documents²⁷³.

The European Commission IBM concept for the Western Balkans covers coordination and cooperation among all the relevant authorities and agencies involved in border security and trade facilitation in order to establish effective, efficient and integrated border management systems in order to reach the common goal of open, but controlled and secure borders.

Traditionally, the strategic goals at the state level in relation to border management lie in the protection of the borders against threats to national security, the national economy and public health, but also in the prevention of cross-border criminal activities and unlawful entry into or exit from the state. Border services, including border guards as well as customs, veterinary and phytosanitary inspection services, all play an important role in this regard²⁷⁴.

In addition the concept of IBM refers to national and international coordination and cooperation among all the relevant authorities and agencies involved in border security and trade facilitation to establish effective, efficient and integrated border management systems, in order to reach the objective of open, but well controlled and secure borders.

Main Legal Documents are as following:

Border Guard: The main legal document dealing with border guard issues is Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community code on the rules governing the movement of persons cross-borders (Schengen Borders Code).

- Schengen Convention (Convention implementing the Schengen Agreement of 14 June 1985);
- Council Regulation (EC) No. 2007/2004 of 26 October 2004 (European Agency for the Management of Operational Cooperation at the External Borders);
- Council Regulation (EC) No. 693/2003 of 14 April 2003 (Facilitated Transit Documents).

EU Customs Blue Print:

- Community Customs Code: Council Regulation (EEC) No. 2913/92;
- Commission Regulation (EEC) No. 2454/93;
- Council Directive 92/12/EEC, general arrangements for subjects to excise duty;
- Commission Regulation (EEC) No. 2719/92 on the accompanying administrative document (AAD);

²⁷³ Main Administrative Structures required for implementing Acquis, 2005, page 77.

²⁷⁴ Guidelines on Integrated Border Management in Western Balkans, 2007, page 17.

- Commission Regulation (EEC) No. 3649/92 on the simplified accompanying document (SAD);
- Commission Regulation (EC) No. 648/2005 on security.

Phytosanitary Inspection:

- EU Directive 2000/29/EC codifies the whole range of Community measures against the propagation and introduction of harmful organisms
- Part of the general framework laid down by the International Plant Protection Convention, which regulates the movement of plants and plant products and their protection against harmful organisms.

Veterinary Inspection:

The legislative basis of veterinary border inspection and the cooperation procedures are formed by two Council directives: Directive 91/496/EEC laying down the principles of veterinary checks on animals and Directive 97/78/EC laying down the principles of veterinary checks on products.

A “positive list” of foodstuffs and other products of animal origin that shall be inspected by border veterinarians can be found in European Commission Decision 2002/349/EC, which includes a list of products to be examined at veterinary BIPs under Council Directive 97/78/EC. This Decision will be repealed in the near future and replaced by a document laying down the list of products to be examined at a BIP and composite products to be excluded from veterinary checks.)

5.1.2. Legislative and Policy Framework on IBM

In the field of integrated border management, Kosovo has managed to largely develop and consolidate its legal framework. The European Commission Communication on Feasibility Study for a Stabilization and Association between the European Union and Kosovo has concluded that ‘the legal and institutional framework (Kosovo Border Police, Kosovo Customs and Food and Veterinary Agency) to protect borders are mainly satisfactory regulated’²⁷⁵.

The main law that regulates the area of Integrated Border Management (IBM) in Kosovo is the Law No. 04/L-072 on Control and Surveillance of the State Border, which entered into force in January 2012. It abrogated the 2008 Law on Integrated Control and Surveillance of the State Border. This law establishes the regulatory framework on control of the state border, the scope of responsibilities of the three IBM agencies (Kosovo Police’s Border Police, Kosovo Customs and the Veterinary and Food Agency), as well as cooperation and coordination among them and other state bodies that have responsibilities

²⁷⁵ The European Commission Communication on Feasibility Study for a Stabilization and Association between the European Union and Kosovo, October 2012, p. 13.

indirectly related to the area of IBM. In particular, such a scope includes preventing and detecting: (1) border-related criminal activities and perpetrators, (2) illegal migration and (3) trafficking in human beings, as well as (4) other threats to the public peace and order, legal order, national security and Kosovo's international relations.

In addition to this Law, in carrying out their tasks and responsibilities, the IBM agencies also implement and enforce specific IBM-related provisions contained in Kosovo Criminal Code No. 04/L-082, Law No. 04/L-076 on Police, Law No. 03/L-003 amending the Kosovo Provisional Procedure Code No. 2003/26, Law No. 03/L-126 on Foreigners, Law No. 03/L-066 on Asylum, Customs and Excise Code No. 03/L-109, Law No. 2004/21 on Veterinary, Law No. 03/L-016 on Food and Feed, Law No. 02/L-10 on Animal Welfare, Law No. 2003/22 on Sanitary Inspection, and Law No. 03-L-188/2010 on Medical Products and Devices.²⁷⁶

Agencies involved in integrated border management have developed and approved additional implementing legal provisions in line with IBM concept for Western Balkans such as:

- AI No. 21/2010-MIA on Issuing Visas at the Border Crossing Points (adopted on 7 September 2010);
- AI No. 03/2010-MIA on Prohibition of Entry in the Republic of Kosovo (adopted on 15 January 2010);
- AI No. 03/2010 on Border Line Marking (adopted on 12 August 2010);
- AI No. 04/2010 on Border Accidents (adopted on 12 August 2010);
- AI No. 05/2010 on Constructions within the Border Crossing Zone (adopted on 12 August 2010);
- AI No. 07/2010 on Categories of Border Crossing Points (adopted on 12 August 2010);
- AI No. 09/2010 on Banning and Restricting Activities within the State Border Line (adopted on 12 August 2010);
- AI 08/2010 on the Form, Content and Placement of Warning and Written Signs (adopted on 12 August 2010);
- AI on the National Border Management Centre
- AI No. 13/2012 on Functioning, Duties and Responsibilities of the National Border Management Centre (Government Decision 02/92 of 19 September 2012)
- AI No. 30/2012-MIA on Rules of Local Border Traffic and Local Border Traffic Permits (5 September 2012).²⁷⁷
- Regulation No. 10/2011 on Official Controls Performed to Ensure the Verification of Compliance with Feed and Food Law, Animal Health and Animal Welfare Rules (adopted on 30 September 2011);
- Regulation No. 11/2011 on Hygiene of Food Products (adopted on 30 September 2011);
- Regulation No. 12/2011 Laying down Specific Rules on Hygiene of Food of Ani-

²⁷⁶ First Readiness Report on implementation of Visa Liberalization Roadmap, p. 27.

²⁷⁷ Updated Readiness Report of Government of the Republic of Kosovo on visa liberalization with the European Union, February 2013, p. 13.

- mal Origin (adopted on 30 September 2011);
- Regulation No. 13/2011 Laying down Specific Rules for the Organization of Official Controls on Products of Animal Origin Intended for Human Consumption (adopted on 30 September 2011).
- SOP on Joint Profiling (adopted in April 2009);
- SOP on the National Centre for Border Control (adopted on 20 July 2011);
- SOP on Joint Usage of Equipment (adopted on 20 July 2011);
- SOP on Joint Activities (adopted on 20 July 2011);
- SOP on the First Officer of the Case (adopted on 13 March 2012);
- SOP on Smuggled Animals (adopted on 22 December 2011);
- SOP on Joint Risk Assessment (adopted on 21 May 2012);
- Inter-agency Communication Manual (adopted on 6 June 2011)²⁷⁸;
- Code of Ethics for Border Officers (of all the three agencies) (12 October 2012)
- SOP on Second Line Checks (29 January 2013);
- SOP on Joint Risk Assessment at Border Crossing Points and Along Borderlines (29 January 2013)
- SOP on the First Case Officer (amended)²⁷⁹.

Upon recommendation of the European Commission, namely the visa liberalization report published in February 2013, it was recommended to review the Law on the Control and Surveillance of the State Border and the drafting of the new Law on cooperation between the agencies IBM. Now the inter-ministerial working groups have started with revision and the draft-laws are in the final stage of preparation.

In terms of policy framework, Kosovo has developed the National Strategy and Action Plan on Integrated Border Management that was adopted by the Government on 19 of September 2012. This strategy represents the main policy framework of the Republic of Kosovo on Integrated Border Management²⁸⁰. In line with the IBM concept, the policy framework established by the current strategy consists of three pillars: intra-service cooperation, inter-agency cooperation and international cooperation. Each pillar is organized in subchapters covering the following specific areas of cooperation: legal framework, organization and management, procedures, human resources and training, communication, information technology, and infrastructure and equipment.

Bilateral and international cooperation is an important component included in Kosovo's IBM Strategy as it steps up efforts and cooperation of IBM agencies regionally and internationally in preventing and combating cross-border crime, irregular migration, trafficking in human beings, terrorism and smuggling of goods.²⁸¹

²⁷⁸ First Readiness Report of the Government of the Republic of Kosovo on implementation of Visa Liberalization Roadmap, p. 28.

²⁷⁹ Updated Readiness Report of Government of the Republic of Kosovo on visa liberalization with the European Union, February 2013, p. 13.

²⁸⁰ Government Decision, 03/92 of 19 September 2012, on adoption of the Integrated Border Management Strategy; http://www.kryeministri-ks.net/repository/docs/Vendimet_e_mbledhjes_se_92-te_te_Qeverise_2012.pdf, accessed on 3 December 2012.

²⁸¹ National Strategy of the Republic of Kosovo on IBM, September 2012, p. 10.

Despite the progress achieved in legislative and strategic aspects towards consolidating IBM concept, its compliance with the 2006 Council Conclusions, the Schengen Borders Code and the Schengen Catalogue is not entirely complete. The European Commission report on Kosovo's progress in fulfilling the requirements of the visa liberalization roadmap states that 'the key elements of IBM, namely border control, crime prevention and implementation of the four-tier access control model, are missing from this strategy, and training is inadequately covered'²⁸².

In order to address the recommendations coming from the European Commission's report of February 2013 on Kosovo's progress in the visa liberalization process and that has to do with the strategic part of IBM, the inter-ministerial group is now established with participation all IBM agencies. This working group is reviewing and evaluating the recommendations of the European Commission that will be incorporated in the revised version of the IBM strategy and the same will be submitted to the Government of the Republic of Kosovo approval by the end of April 2013.

5.1.3. Institutional Framework and Capacities

At the level of institutional development and capacities, as required by the legislation and SOPs outlined above, the concept of IBM established by the Strategy and Action Plan set out effective mechanism of coordination and cooperation among all the authorities and agencies in charge of this area (mainly the three IBM agencies, at the operational level, as well as with other relevant law enforcement agencies), with a view to facilitating trade while ensuring open, controlled and secure state borders²⁸³.

In line with the legal and policy framework in place in this area, responsibilities among the three IBM agencies are, in general lines, divided as follows:

- The Border Police is in charge of management, control and overseeing of BCPs and blue and green border lines; prevention of illegal border crossing; checking travelers and transport means entering, exiting and passing through Kosovo's BCPs in order to ensure legal border crossing; security at the international airports (in cooperation with airport operators and other relevant authorities); procedures related to legal entry of foreigners into the territory of the Republic of Kosovo (including issuance of temporary border crossing documents, in cooperation with other IBM agencies and counterparts of neighboring countries); and of procedures in the area of migration and asylum (in coordination with the relevant bodies), as well as of undertaking measures required to manage any possible emergency that might involve refugees or conflict situation that might disturb order at the borders (including prevention and fighting cross-border crimes).

²⁸² European Commission report on progress by Kosovo in fulfilling requirements of the visa liberalization roadmap, February 2013, p. 7.

²⁸³ First Readiness Report on implementation of Visa Liberalization Roadmap, p. 28.

- The Kosovo Customs is part of the central state administration under the Ministry of Finance of the Republic of Kosovo. The powers and responsibilities of the Customs and customs personnel are defined in the Customs and Excise Code, and other normative acts in force for the functioning of the state administration and other internal Customs legal acts. Kosovo Customs is responsible for collecting taxes in all customs territory, customs duty, VAT and excise tax; facilitating the legitimate trade, preventing and combating cross-border crime/smuggling of goods, and combating and investigation the money laundering, intellectual property protection, combating drugs trafficking, weapons, weapons of mass destruction and other prohibited goods. All these tasks are based on the activities of the Customs Strategic Framework (2013-2015), Action Plans, Customs Blueprint (Document of the European Commission) and other strategic documents.

- The Food and Veterinary Agency is, in addition to other responsibilities, in charge of controlling animal and herbal food entering, exiting or passing through Kosovo's BCPs.

With regard to institutional capacities, the total number of staff dealing with IBM is 1,386 in total (both managers and those dealing with IBM on daily basis at the BCPs, and green and blue border surveillance lines): 1,305 Border Police staff, 43 Kosovo Customs staff and 38 Food and Veterinary Agency staff²⁸⁴.

The 2012 annual budget of the Food and Veterinary Agency is €200,000 in total, out of which €100,000 is allocated to the Veterinary Border Inspectorate and €100,000 for the Phyto-sanitary Inspectorate. Lastly, the Kosovo Customs have been allocated €100,000 for this 2012 the purpose of IBM-related activities²⁸⁵.

On inter-agency cooperation and coordination, together with the IBM Strategy and Action Plan, the Government of Kosovo, through its Decision No. 08/60, adopted on 4 April 2009, established the coordinating structure in the area of IBM. This structure consists of three levels of inter-institutional bodies: a Political and Decision-making Steering Body, an IBM Executive Board, and Working Groups (3) and Sub-Working Groups (4). The Political and Decision Making Steering Body is chaired by the Deputy Minister of Internal Affairs (serving in the capacity of the IBM National Coordinator) and consists of the following top managers of the respective institutions: Assistant General Director (namely the Border Police Director), Director General of Kosovo Customs, CEO of the Veterinary and Food Agency and General Secretary of the Ministry of European Integration (formerly CEO of the OPM Agency for Coordination of Development and European Integration), and representatives of other relevant institutions, as needed (such as General Secretaries of the Ministries of Health, Infrastructure, Foreign Affairs, etc.). Similarly, the IBM Executive Board is chaired by the IBM National Coordinator and consists of Border Police Director, Kosovo Customs Director General, CEO of the Veterinary and Food Agency and General Secretary of the Ministry of European Integration.

²⁸⁴ Ibid, 29.

²⁸⁵ Ibid, 31.

Lastly, the Working Groups (WGs) are the following: WG on Intra-agency Cooperation, WG on Interagency Cooperation and WG on International Cooperation, and the Sub-Working Groups (SWGs) are the following: SWG on Legal Framework and Procedures, SWG on Organization and Management, Human Resources and Training, SWG on Communication and Information Technology, and SWG on Infrastructure and Equipment. All these structures are supported by a Secretariat, which is based in MIA premises and is directly accountable to the IBM National Coordinator.

In the context of cooperation between agencies involved in IBM, the information trainings for border officials 236 3 agencies at all border crossing points were held. These trainings were held for a period of 2 months and are managed by three agencies officials IBM and covered topics relating to the Code of Ethics for officials the border and visits planned and unplanned visit will continue aimed elimination of negative occurrences that may arise.

5.1.4. Regional and International Cooperation

Kosovo has achieved to sing agreements with neighbouring countries such as Macedonia and Albania in the area of integrated border management. Agreement on Joint Communication Centre with Albania will be finalized during April 2013, with headquarters in Vërmica.

An agreement was signed with Albania on joint patrol along state border on 10 March 2013.

There is an agreement in place with Macedonia on joint synchronized patrols as well as the agreement on joint trainings as well as the agreement for the Joint Communication Centre, agreement on police cooperation, and agreement for rail traffic control. Challenge remains implementation of agreements with Macedonia, as was the case last year when the donation supporting the border point in Stanqiq.

An agreement on trilateral Communication Centre between Kosovo, Albania and Montenegro is finalized, whereas working groups are in the process of drafting SPO's.

Joint Communication Centre with Montenegro will be built in the Bogë. Although there is no agreement with Montenegro, there is cooperation in exchange of information as well as synchronized patrols.

Implementation of these agreements has given results in practice. In this regard, during 2012, 110 joint patrols took place with Albania, 39 with Montenegro and 79 with Macedonia.²⁸⁶

²⁸⁶ Annual Kosovo Police Report for 2012.

As regards to cooperation with Serbia, Kosovo has reached an agreement on freedom of movement and a protocol on joint border control.

Regarding the demarcation with Montenegro, on 26 March 2013 in Podgorica, a meeting of government commission on demarcation of the border between Kosovo and Montenegro took place.

Cooperation between Kosovo and Serbia on the implementation of the integrated border management at all border crossings between the two countries is at the satisfactory level. This cooperation operates within the framework of the agreement on integrated management of the border between Kosovo and Serbia reached in Brussels on 2 December 2011. Construction of all border crossings between Kosovo and Serbia will be supported financially by the European Commission.

In the context of international cooperation, Kosovo Customs has initiated cooperation agreements with 24 countries and to date, Customs has managed to sign agreements with 10 of them. The purpose of these agreements is to regulate matters of common interest, which contribute to trade facilitation, prevention, detection and investigation of transnational illegal activities, as well as other administrative violations. Customs has managed to sign the protocols for sharing information with countries of the region aimed at combating negative cross-border phenomena and as a result, during 2012, about 97% of the goods have crossed the border have voluntary disclosed declarations.

In 2009, there was a visit of the Border Police officers at the centre of FRONTEX in Poland and have established contacts with this organization. An agreement is reached between EULEX and FRONTEX which will include the Border Police. It is confirmed that a delegation of FRONTEX will visit Kosovo in the coming months.

5.1.5. Physical and IT Infrastructure

Joint Border Management Centre since January 2013 is placed in premises of the Ministry of Internal Affairs. Main objective of the Centre is monitoring of movement of persons, vehicles and goods through BCP as well as detect and prevent trafficking and smuggling of goods and persons as well as prevent potential corruptive cases in BCP.

From 16 BCP are 3 railway lines. Conditions on road infrastructure, facilities and equipment have improved, excluding the BCP with Montenegro and Serbia, where police activities are accomplished in containers.²⁸⁷

On the other side, Kosovo Customs as reflected in the IBM strategy is requiring review of infrastructure in BCP's and majority of existing premises in BCP's make coordination and cooperation difficult, therefore construction of new building must remain priority.²⁸⁸

²⁸⁷ Strategy on IBM, 2012, p. 32.

²⁸⁸ Ibid, p. 37.

From the perspective of Agency for Food and Veterinary, situation of infrastructure in Border Inspection Points was minimally improved. There are no BIP's facilities that are in line with EU requirements. They also don't have conditions for cooperation within the agency and with other agencies.²⁸⁹

From the IT aspect, Kosovo Police is using Border management System per registration of entry-exit of people in all BCP, that is not fully functional and there still technical problems. Border Police is also using SIPK that enables them to receive and disseminate information on all activities within the KP.

Kosovo Customs has operationalized the new system on using automatically of customs procedures ASYCUDA World. One of the main criteria integrated in the system is support to IBM and the Single Window.

Whereas, Agency for Food and Veterinary possesses software (INTERTRACE), where all data on animals are recorded in the system, that enables smuggled animals to be identified therefore inspectors in the field can verify data of each registered animal. Software is developed in WEB, therefore maintenance of the software shall remain priority for AFV.²⁹⁰

5.1.6. Conclusions

Kosovo has achieved progress in terms of developing necessary legislative and policy framework in the area of border management and implementation of the concept of IBM. Of particular importance is the agreement reached between Kosovo and Serbia in the framework of Technical Protocol for implementation of IBM of 2-nd of December. This will remain the main challenge alongside demarcation of the border with Montenegro.²⁹¹ As the latest report by a Kosovar NGO found that relations with Serbia on border management will remain a challenge and will hinder Kosovo's effort for fulfilling conditions as laid down in visa liberalization roadmap. An important challenge for Kosovo is border management and control, particularly in regard to the demarcation and integrated management of Kosovo's border with neighbouring countries, Serbia in particular. The most urgent consideration in this vein appears to be the unresolved border issue with Serbia (particularly 'prevention, detection and investigation of cross B/B crime'). Moreover, this is related to the inability of Kosovo's Government, EULEX, and KFOR to exercise effective authority in the Northern Kosovo. As the ability to effectively exercise border control at all crossing points with other countries is one of the most imperative conditions of the Roadmap, the progress towards final liberalisation appears to be dependent upon the progress of relations between Prishtina and northern Kosovo.²⁹²

²⁸⁹ Ibid, p. 40.

²⁹⁰ Ibid, p. 41.

²⁹¹ Expert assessment mission on visa liberalization of 22-24 October 2012, border management report.

²⁹² Policy Report 05/2012, Kosovo and visa free travel regime, Group for Legal and Political Studies, November 2012.

Capacities of the Kosovo Police, including Border Police have improved as a result of reorganization of the Police. This had an impact on strategic development of capacities of the Border Police to take over from KFOR the responsibility of control and oversight of the green and blue border line with Albania, Macedonia and Montenegro. This transfer has been gradual and based on a detailed strategy, while during this time the Border Police has been jointly working with KFOR, including through joint patrolling and checkpoints.²⁹³

Following that, joint synchronized patrols with Albanian and Macedonian counterparts, and joint patrolling with Macedonian ones, are regularly conducted. Only during 2012, Border Police Department has conducted 402 operative plans in total and 159 joint plans with other agencies. Moreover, 76 joint patrols have taken place with KFOR, Kosovo Customs and K-9 Unit, whereas 100 patrols were realized with Albanian Police, 39 with Montenegro Police and 79 with Macedonian Police.²⁹⁴

Identified Challenges:

- Implementation of cooperation agreements signed between Kosovo and Macedonia, taking into account the negligent approach by the Macedonian authorities;
- Lack of secondary legislation for implementation of the Law on Food 03L/016 of 2009, which has caused difficulties in implementation of this Law. This Law is in the process of amendment;
- Lack of infrastructure, facilities and equipment for FVA official in border points;
- Signing of initiated negotiation on Customs agreements as well as full implementation of finalized agreements;
- Electronic exchange of data on pre-arrival with Serbia;
- Membership in International Customs Organization and regional organization in law enforcement – SELEC, although there is some interaction in the last 2 years;
- Advancement of cooperation with FRONTEX;
- Law on cooperation between agencies involved in IBM that may cause legal uncertainty with other laws and may complicate already established practices between the agencies.

²⁹³ First Readiness Report on implementation of Visa Liberalization Roadmap, p. 34.

²⁹⁴ Annual Report of the Kosovo Police for 2012, p. 16-17.

5.2. Migration Management

5.2.1. Legislative and Policy Framework

Republic of Kosovo has built the legal framework with regards to migration management. A considerable number of legal acts were drafted to regulate this field.

The main legal act that regulates entry into the territory of the Republic of Kosovo is Law on Foreigners No. 04 L- 069. It regulates the entry into the territory of Kosovo departure as well as stay of foreigners in the Republic of Kosovo. More detailed arrangements regarding rules and procedures for Foreigners are established via the following by-Laws: Administrative Instruction No. 02/2010 – MIA on the content, form, issuance and cancellation procedure of residence permit; Administrative Instruction No. 03/2010-MIA on banning entry into Republic of Kosovo; Administrative Instruction No. 19/2010-MIA on the procedure of notifying the residence or stay; Administrative Instruction No. 20/2010 - MIA on the form and content of the dwelling and emplacement register ABCD records register and guests register; Administrative Instruction No. 22/2010 - MIA on issuing of travel documents for foreigners; Administrative Instruction No. 23/2010 - MIA on maintaining and managing foreigner's records; Administrative Instruction No. 31/2010 – MIA on identity cards for foreigners; Administrative Instruction No. 01/2010 - MIA on establishment of review committee and appeal committee; Administrative Instruction No. 21/2010 - MIA for issuing visas at crossing border points²⁹⁵.

On the other hand, Law on Readmission No 03/L 208 sets forth the rules and procedures for readmission of a person who is either a citizen of the Republic of Kosovo or a foreigner, who does not fulfil or who no longer fulfils the requirements for entry or residence on the territory of the requesting state. For the implementation of this Law the following Administrative Instruction is in place: Administrative Instruction No.09/2011 for the implementation of the Law on Readmission²⁹⁶. Furthermore, Kosovo has concluded 18 bilateral readmission agreements, mostly with EU Member States and neighbouring countries. Negotiations on bilateral readmission agreements were completed with Estonia and Croatia and proposals were submitted to other 9 countries.²⁹⁷

Other laws that contribute to the Kosovo's migration are: Law on Control and Surveillance of the State Border, Law on Asylum, Law on Civil Status, Law on Citizenship, Law on Dwelling and Emplacement, Law on Issuing Work Permit and Employment of Foreign Citizens in Republic of Kosovo.²⁹⁸

Law on Employment of Foreign Nationals started to be implemented in March 2010,

²⁹⁵ Answers to the questionnaire on the preparation of the Feasibility Study for a Stabilisation and Association Agreement, June 2012, p. 227.

²⁹⁶ Ibid, 228.

²⁹⁷ Expert assessment mission on visa liberalization of 22-24 October 2012, migration management and asylum.

²⁹⁸ Draft-strategy on migration 2013-2018, p. 7-8.

and two regulations were issued for the implementation of this law. This law will be incorporated within the Law on Foreigners which is currently being amended. Foreigners can also benefit from other laws such as the Labor Law, Law of Evidence of Jobseekers and various social schemes.

After receiving the roadmap for visa liberalization from the European Commission, a group of legal experts have evaluated the compliance of national laws in the area of migration with EU legislation. In this regard, the Law on Foreigners, Asylum Law and the Law on Employment of Foreign Nationals are included in the Legislative Strategy 2013, aiming their amendment. Relevant working groups were established to amend these laws even before the publication of the report of the European Commission for visa liberalization in February 2013. In these working groups are also involved experts from the supporting projects of the EU, ICITAP and international organizations.

Kosovo has developed the policy documents regarding Migration, whereas the Government of Kosovo has adopted its National Strategy on Migration 2009-2012 and the Action Plan. This Strategy aims at preventing illegal migration and promoting legal migration. Currently this Strategy and the AP are being revised.²⁹⁹ The new strategy on migration 2013-2018 has been finalized, however it should take into account the recommendations from the EC's report on Kosovo's progress in fulfilling visa liberalization roadmap, in particular the one referring to migration strategy, stating that: 'a new strategy and an action plan on migration are currently being drafted. This strategy should provide a comprehensive framework for migration management, including legal and irregular migration, in line with international best practices. It should set clear goals; define roles and responsibilities; clarify the scope of cooperation with third countries; and develop a migration profile for Kosovo.'³⁰⁰

The Government has adopted on May 2010 the Revised Strategy on Reintegration of Repatriated Persons which aims at full reintegration of this category of citizens with special focus on their social and educational needs. For this purpose, the Government has allocated €3.170.000,00 and has established the Executive Board for the management of this fund and other coordination and implementing structures such as the Reintegration Department.

5.2.2. Institutional Framework and Capacities

Department for Citizenship, Asylum and Migration (DCAM) is the competent policy making body monitoring legal and irregular migration. Within this Department, the Division on Foreigners, Visa and Residence Permits deals with registration and managing cases related to foreigners. Within MIA, two commissions have been established to

²⁹⁹ Answers to the questionnaire on the preparation of the Feasibility Study for a Stabilisation and Association Agreement, June 2012, p. 228.

³⁰⁰ European Commission report on progress by Kosovo in fulfilling requirements of the visa liberalization roadmap, February 2013, p. 9-10.

handle the requests for residence permits in the Republic of Kosovo. The first instance commission, namely the Commission to review foreigners' applications on temporary and permanent stay, and for the denial, suspension and revocation of 229 residence permits, is composed of one officer from the DCAM, one from the Legal Department of the MIA and one officer from the Directorate for Migration and Foreigners of Kosovo Police. The requests are initially handled by the first instance commission, meanwhile the second instance commission, namely the Commission to review the foreigners' appeals, handles the appeals against the decisions of the first instance commission. This Commission as well is composed of one representative from DCAM, one from MIA Legal Department and one representative from the Directorate for Migration and Foreigners. Directorate for Migration and Foreigners ensures the deportation of a foreigner from Kosovo, according to the court verdict.³⁰¹

Department of Migration and Foreigners within the Kosovo Police has close cooperation with all other departments of the Kosovo Police and the DCAM-in. Moreover, the Kosovo Police has the Extradition Unit with 20 members, consisting of close protection who escort during the expulsion of foreigners.

Within DCAM, the Division for Return and Readmission deals with the readmission requests received by states that the Republic of Kosovo has concluded readmission agreements with and in accordance with the Law on Readmission. This division undertakes the necessary procedural measures in cooperation with the Ministry of Foreign Affairs and Directorate for Migration and Foreigners (KP) for the return of the illegal migrant when denied the status of asylum.³⁰²

As far as human capacities of institutions in the area of foreigners are concerned, the Division of Migration, Visa and Residence Permits, in addition to its head, employs five (5) officers in charge of receipt of applications and completing the procedure of issuing residence permits, entry permits (substitute for visas) and documents to foreigners. Out of the five, one (1) officer is in charge of entry permit procedures (substitute for visas).³⁰³

Kosovo has signed readmission agreements with 18 EU member states and the countries of the region. In the final stage of negotiations and awaiting the signing of readmission agreements are with countries such as Croatia, Estonia, Italy and Latvia. Agreements are being negotiated with Macedonia, while Kosovo has initiated negotiation of a readmission agreement with Turkey, UK, Portugal, Lithuania and Poland.

³⁰¹ Ibid, 229.

³⁰² Ibid.

³⁰³ First Readiness Report on implementation of Visa Liberalization Roadmap, p. 52.

5.2.3. Conclusions

Kosovo has made progress with regards to developing necessary legal and institutional framework on legal migration and preventing irregular migration. However, European Commission in its published Feasibility Study reiterates that ‘the necessary administrative instructions and standard operating procedures on migration still have to be adopted and Kosovo’s legislation in this area conflicts with the legislation on work permits.’³⁰⁴ It further emphasizes that Kosovo does not have a comprehensive data collection mechanism in place, calling for strengthening of administrative capacities and enhance inter-institutional cooperation and coordination. It further says that ‘a migration profile for Kosovo needs to be developed.’³⁰⁵

In the last two years, MLSW with the support MPMS has opened regional centers aimed to inform citizens about the possibilities of regular migration and such initiatives should continue to practice.

On the other hand, readmission and reintegration are important to keep Kosovo in its path towards fulfilling obligations deriving from the visa liberalization roadmap for Kosovo. Although Kosovo has achieved progress in developing necessary legislation, policies and institutional capacities, further efforts are needed in terms of further strengthening capacities of the Readmission Division within the DCAM in prompt communication with countries that Kosovo has signed readmission agreements. Kosovo has to continue negotiating and signing readmission agreements with remaining countries. The lack of readmission agreements with countries of origin or transit, and the lack of application of the readmission law, is also a concern.³⁰⁶

Around 5000 Kosovars are repatriated annually in compliance with the Readmission Law and bilateral readmission agreements. In 2010, 5198 persons were repatriated, in 2011, 4488 persons, whereas in 2012, 4187 persons. From statistics reported by the Department for Citizenship, Asylum and Migration, it can be noticed that majority of repatriated persons are of age 20 to 35. This situation overloads Kosovo authorities in ensuring proper sustainable reintegration for them.

Irregular migration is not tackled properly by the Kosovo authorities, although latest amendments in legislation related to human smuggling and information campaigns organized by the Ministry of Internal Affairs shows signs of progress in this field. The newly strategy on migration should further focus on prevention of all sorts of irregular migration and human smuggling, taking into account that Kosovo and the whole region of the Western Balkans remain transit route for their citizens and others using this route for migrating to EU member states for economic reasons, in particular. Further efforts are needed in the contexts of law enforcement agencies cooperation at regional and Eu-

³⁰⁴ Commission Communication on a Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo, October 2012, p. 31.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

ropean level to tackle the problem of irregular migration, in particular in the context of border management. Further bilateral, regional and international cooperation in this respect is of high importance.

The latest EC report assessing Kosovo's progress in visa liberalization process has suggested further legal amendments in the Law for Foreigners that entered into force at the beginning of 2012, in particular in provisions related to issuing temporary stay permits and issuing work permits. It further reiterates that there are no provisions on the employment of persons who have been granted a stay permit on humanitarian grounds, for family reunification or for studies or research, and the clauses on family reunification do not meet EU standards. The report further emphasizes that the law on foreigners regulates the return of irregular migrants and detention prior to removal. However, it does not define procedures for a fair and transparent return policy, including provisions on return decisions, removal, entry bans, absconding, voluntary departure and vulnerable persons. The return procedure is unclear; procedural safeguards are missing. This law does not lay down specific rules on the return of vulnerable persons, unaccompanied minors or victims of trafficking. The possibility of extending voluntary departure or postponing return is missing. There are no penalties for employers employing illegally-staying third-country nationals'.³⁰⁷

By beginning of 2011, Kosovo has developed a draft of migration profile. It is expected that the Government of Kosovo to established working group to develop an extended migration profile. DCAM has provided two new positions that will coordinate and monitor the development and regular updating of the profile migration.

Kosovo has made continued efforts for cooperation and membership in regional initiatives such as in MARRI. Correspondences were exchanged and several meetings have been held about this membership, but although this tends to delay by some countries in the region, Kosovo's membership to MARRI is expected to occur in the near future.

Challenges identified:

- The adoption of laws that are in the process of amendment in migration related issues;
- Develop strategy for migration, in accordance with the best practices standards and international;
- Develop and create profile migration monitoring mechanism;
- Interlinking DCAM database with other databases of institutions such as MLSW in module of work permits and Labour Inspectorate about the punishment of employers who illegally employ foreigners;
- Implementation of the Migration Code of Ethics for all officials involved;
- Building the Detention Centre, for foreigners illegally residing in Kosovo;
- Representation in regional initiatives in the field of migration, as well as Euro-

³⁰⁷ European Commission report on progress by Kosovo in fulfilling requirements of the visa liberalization roadmap, February 2013, p. 9.

- pean and international organizations related to migration issues;
- Increased penalties for employers who hire illegal foreigners in the new Law on Foreigners;
- Lack of readmission agreements with third countries, in particular those where the number of asylum-seekers is bigger such as Afghanistan, Palestine, Somalia, Iraq, Algeria, Tanzania, Pakistan, Syria, Iran, etc;
- Lack of inter-state agreements hinders the promotion of circular migration and seasonal employment;
- Harmonization of legislation in the field of migration that interlinks responsibilities of various ministries as MLSW, MTI, MIA;
- Bureaucratic and cumbersome procedures and documents for business registration of foreign businesses and employment of foreigners in Kosovo.

5.3. Reintegration Policy / Reintegration of Repatriated Persons

5.3.1. Legal and Policy Framework

Reintegration of repatriated persons as governmental policy was developed since 2007, hence strategy and action plan for reintegration of repatriated persons were developed. Implementation of this strategy was not at the satisfactory level as funds and coordination mechanisms were lacking³⁰⁸. Since 2010, reintegration of repatriated persons as governmental policy results in increase in importance in the framework of visa liberalization agenda, hence European Commission sets main preconditions for launching visa dialogue, those of readmission and reintegration. European Commission Progress Report for Kosovo 2010 highlights that reintegration is a challenge for Kosovo, in particular as regards to communication between central and local level.³⁰⁹

Through a expert assessment, weaknesses were identified within the strategy and the same was revised including the action plan. These documents were approved by the Government of the Republic of Kosovo in May 2010. In addition, in May 2012, the Government approved the Regulation of Reintegration Fund, whereas at the local level, responsibilities of municipalities in reintegration process are regulated through the Regulation 02/2010, approved on August 2010.³¹⁰

Regulation on Programme Management, competent authorities, procedures and criteria for the benefit from the Reintegration Fund is in the process of revision, where comments waiting from the twinning project of the European Commission, before forwarded to the Government for approval.

Continues increase of importance with regards to repatriated persons, on August 2012,

³⁰⁸ Readiness Report for European Commission in the framework of visa liberalization roadmap, September 2012, p. 10.

³⁰⁹ Progress Report 2010 for Kosovo, October 2010, p. 51.

³¹⁰ Readiness Report for European Commission in the framework of visa liberalization roadmap, September 2012, p. 11.

the Government took a Decision 08/84 on establishment of the Reintegration Department within the Ministry of Internal Affairs.

5.3.2. Institutional Framework and Capacities

Institutional framework for reintegration of repatriated persons consists of reintegration Department within the Ministry of Internal Affairs, established through a Government decision on August 2012. This department replaces the Office for Reintegration and Reception Office at the Airport. This department has a staff of 45 engaged at the central level and cooperate with municipalities as regional coordinator. In the last two years, coordinators have worked on service contracts.

As per the Government Regulation for Municipal Offices for Return and Communities of 2010, these offices have responsibility of reception and offering counselling and referral services to repatriated citizens, the one belonging to particular municipalities and in accordance with the strategy for reintegration of repatriated persons. Their functioning is one the most important in the entire process. These offices are functional almost in each municipality. Around 250 MOCR's were trained in topics relevant to the strategy for reintegration of repatriated persons in two training cycles between September - November 2011.

Executive Board and Secretariat are inter-ministerial mechanisms that ensure coordination of activities between the relevant institutions, while Executive Board itself established in April 2010 is mandated to monitor the implementation of reintegration policies.

With the new Regulation for re-integration which is being amended, there will be an inter-ministerial committee consisting of seven ministries who will make decisions on all applications dealing with reintegration, thus replacing responsibilities decision making from the Executive Board.

Important coordination mechanisms at municipal level are Municipal Committees for Reintegration with participation of the main directorates that have responsibilities in implementation of the strategy for reintegration of repatriated persons. Such Committees were established in Skenderaj, Fushë-Kosovë, Obiliq, Deçan, Gjakovë, Suharekë, Rahovec, Prizren, Shtime, Lipjan, Ferizaj, Viti, Mitrovicë, Vushtrri, Drenas and Novobërdë.³¹¹

5.3.3. Conclusions

Kosovo has developed policies and established necessary coordination and implementation mechanisms for reintegration of repatriated persons. Strategy for reintegration of repatriated persons supported by a significant Fund of 3.5 million Euro per year and

³¹¹ Ibid, p. 12.

sufficient institutional structures (central and local) are indicators that such policies for implemented at satisfactory manner. Around 2950 repatriated persons have benefited from the Reintegration Fund and 2.800.000 euro was spent for purposes of the Reintegration.³¹² In the first two years, spending Reintegration Fund was insufficient due to lack of implementation mechanisms and insufficient capacity.

However, the European Commission in its latest assessment report on implementation of criteria by Kosovo on visa roadmap highlights that only 11% form Reintegration Fund was spent, mostly on emergency services. In the first quarter of 2012, Kosovo authorities have allocated around 58% of the Fund (1.8 milion euro) on reintegration, including 1 million on sheltering, 360.000 Euro on income generation schemes and the remaining on emergency services.³¹³ The amount of Reintegration Fund spent of only 11% for 2012 referred to in the Report of the European Commission, is challenged by institutional authorities and this information is not in accordance with official data consumption Reintegration Fund.

Challenge in implementing reintegration policies remains on moving from emergency phase into sustainable reintegration. As well as capacities, in particular the ones in municipalities are not sufficient to offer advice and support to repatriated persons as regards to developing plans for professional development and sustainable employment generation for this category of the citizens.

Construction and re-construction of houses for repatriated persons has commenced, and in this regard, 48 projects for housing construction and 42 projects for renovation of houses are in the process. There is a problem with regards to construction and re-construction of the houses, since the same property investment in construction of houses can be sold by the beneficiaries and this is contrary to best practices. In this regard the possibility to build collective settlements owned municipal authority or similar should be looked as alternatives. In this regard, the Swiss Embassy will engage a team of experts that will make an assessment of the social housing.

Identified Challenges:

- Challenge remains the duration of assistance for repatriated persons, that is up to one year, and after one year, responsibility for their care belongs to the respective municipality. For some of repatriated persons, this is the integration process and not re-integration after being born in the sending country and the environment in Kosovo is totally new, both in terms of education, cultural one, etc.
- A new trend is the return of persons who need special treatment, especially those who need special psychosocial treatment. Hence there is the need to develop special programs to address these categories.
- In the past, there was a lack of ideas regarding developing projects for income generation.

³¹² Kosovo contribution to SAPD on JLS subcommittee meeting, March 2013.

³¹³ Readiness Report for EC in the framework of visa liberalization roadmap, September 2012, p. 4.

Recommendations for addressing the challenges:

- Revision of the approach of supporting the repatriated persons, in particular regarding the category of housing assistance, treatment for special categories and income generation projects.
- Strengthening the role of municipalities in the process of reintegration of repatriated persons, in particular during the phase of expiring of 1 year of housing through the rental scheme.
- Orientation of assistance for repatriated persons towards sustainable reintegration, specifically on socio-economic reintegration.

5.4. Visa Policy

5.4.1. Legal, Policy and Institutional Framework

Kosovo still hasn't got a fully functional visa regime. Indeed, Government of the Republic of Kosovo has taken decision No. 12/108 on establishing visa regime on 14 December 2012. Implementation of this decision will commence on July 2013. Countries, subject to this regime are listed under two annexes. This decision assigns Ministry of Foreign Affairs and Ministry of Internal Affairs in drafting necessary secondary legislation for its prompt implementation.

Even without a visa regime into effect yet, the Republic of Kosovo has developed legal framework regulating the right of foreigners to enter the Republic of Kosovo through the Law on Foreigners No. 04/L- 069 that entered into force on 12 of January 2012. This Law repeals the Law on Foreigners n. 03/L-126 as well the Administrative Instruction no. 19/2009-MPB on Penalty Provisions of the Law on Foreigners. In addition, according to the Constitution of the Republic of Kosovo, Chapter II, Article 35 on the Freedom of Movement, the right of foreigners to enter the Republic of Kosovo and reside in the country shall be defined by Law.³¹⁴

The new Law on Foreigners No. 04/L- 069, provisions the entry in the territory of Kosovo, departure as well as stay of foreigners in the Republic of Kosovo. Chapter III of this Law refers to the visa policy and foresees the arrangements for the following issues: Visa issuance, validity of visas, types of visas, procedure for visa issuance, visa extension, non-issuance of visa, competencies of the body for state border control and carriers' responsibility.

Secondary legislation was developed to ensure implementation of provisions deriving from the Law on Foreigners such as:

- Administrative Instruction no. 21/2010 on the procedure for visa issuance at the

³¹⁴ Answers to the questionnaire on the preparation of the Feasibility Study for a Stabilisation and Association Agreement, June 2012, p. 225.

- border crossing points
- Administrative Instruction on the procedure for visa issuance by the consular offices of the Republic of Kosovo, approved on 7 September 2012; and
- Administrative Instruction no. 08/2012 – Regulation on Kosovo visa information system, approved on 7 September 2012.³¹⁵

As per the current institutional framework, Division for Foreigners, Visa and Residence Permit at the Department for Citizenship, Asylum and Migration is the main institution that issues approval for entry in Republic of Kosovo for foreigners.

5.4.2. Conclusions

Visa policy has been recently introduced through approval of the Government decision that will enter into force in July 2013. European Commission through its regular assessment of Kosovo's progress in EU integration through progress reports has continuously emphasized that Kosovo doesn't have visa regime and its importance to regulate entry of foreigners in the territory of Kosovo in line with EU acquis.³¹⁶ However, political developments related to recognition of the Republic of Kosovo might have hampered to some extent initiation of such a policy earlier.

Government decision of 14th of December, 2012 that will begin its implementation by July 2013 will mark a challenge for institutions, namely the Ministry for Internal Affairs and of Foreign Affairs in developing necessary secondary legislation and then proper implementation of visa policy. An advantage to this regard may be the agreement that Kosovo has signed with Albania on consular representation, considering that Kosovo has not sufficient number of Consular services to issue visa to foreigners applying for such visa.³¹⁷

Implementation of the visa regime as envisaged with the Government decision No.02/74, may more likely delay as the necessary IT infrastructure have not yet been put in place and training for border police officers and consular staff has not been provided yet.³¹⁸

In this regard, the completion of technical preparations and infrastructure puts in doubt the application of the visa regime as provided by Government Decision no. 02/74, as well as at later stages on issuing visas by consulates in countries where there is representation.

³¹⁵ Updated Kosovo Government readiness report on visa liberalization, February 2013, p. 14.

³¹⁶ European Commission in its regular progress reports for Kosovo.

³¹⁷ Feasibility Report for SAA with Kosovo, European Commission, October 2012.

³¹⁸ Expert assessment mission on visa liberalization of 22-24 October 2012, migration management and asylum.

5.5. Asylum

5.5.1. EU Requirements on Asylum

The Geneva Convention of 1951 and its protocol of 1967 represent the key legal document in defining who is a refugee, their rights and the legal obligations of states. Article 1 of the Convention as amended by the 1967 Protocol provides the definition of a refugee: “A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”³¹⁹ The Convention Relating to the Status of Refugees is the foundation of international refugee law and sets minimum standards for the treatment of persons who are found to qualify for refugee status.³²⁰

Council Directive 2003/9/EC on laying down minimum standards for the reception of asylum-seekers contains provisions aimed to establish a common policy on asylum, including a Common European Asylum System, therefore, introduction of minimum conditions of reception of asylum seekers would be a further step towards a European asylum policy. Provisions of this directive regulate reception conditions, in particular ones related to residence and freedom of movement, families, medical screening, schooling and education for minors, employment and vocational training.

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted contains provisions on assessment of applications for international protection, qualification for being refugee, refugee status, qualification for subsidiary qualification, subsidiary protection status and administrative cooperation between member states.

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status contains provisions related to establishment or maintain of examination procedures, competent authorities, procedures for withdrawal of refugee status, appeals procedure, basic principles and guarantees.

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, contains provisions related to duration and imple-

³¹⁹ United Nations High Commission for Refugees. (2012).

³²⁰ Refugee protection, a Guide to International Refugee Law, http://www.ipu.org/pdf/publications/refugee_en.pdf.

mentation of temporary protection, obligations of the Member States towards persons enjoying temporary protection, return and measures after temporary protection has ended and administrative cooperation between Member States in implementing temporary protection.

5.5.2. Legal Framework

Republic of Kosovo has adopted, the Republic of Kosovo has new Law on Asylum No. 04/L-073 on December 2011 that entered into force on 12 of January 2012. The purpose of this Law is to regulate granting of asylum and recognition of status of refugee, granting the status of additional or temporary protection to persons who need it as well as their return in the country of origin, descent or in a third country³²¹. It further regulated asylum procedures in Kosovo, competent bodies in inclusion of international organizations during the hearing sessions. This Law has repealed the Law on Asylum no. 03/L-066 adopted in May 2008.

A number secondary legislation were drafted and adopted lying down in more details the asylum procedure, such as: 1. Administrative Instruction No. 04/2010, on the Procedure and Standards for Admission and Initial Treatment of Asylum seekers in Kosovo; 2. Administrative Instruction No 05/2010 – MIA on the rights and obligations of asylum seekers; 3. Standard Work Procedure (SWP) and 4. Standard Operating Procedure (SOP) for Asylum seekers at the Directorate for Migration and Foreigners of the Kosovo Police.³²²

Although, the legal framework in asylum is developed, it has to be further aligned with international standards and the EU acquis. Lack of information on the origin of asylum-seekers and lack of identity documents prevents removal of asylum seekers that request for international protection was not granted. Official operational procedures for removal of asylum-seekers are necessary to be approved.³²³

The EC report on progress made by Kosovo in fulfilling the requirements of the visa liberalization roadmap assessed that Law on Asylum in not fully compliant with EU acquis and the 1951 Geneva Convention referring to definitions on asylum-seekers, vulnerable persons, foreign citizens and stateless persons. In addition, the definitions of safe countries of origin and safe third countries are not in line with the Asylum Procedures Directive.³²⁴ It further underlines incompliance on provisions of the Law on Asylum related to needs of vulnerable persons with the reception Conditions Directive and the Qualification Directive. In addition, the role of UNHCR is not in line with the

³²¹ Law on Asylum of the Republic of Kosovo, Chapter 1, Article 1, published on 12 January 2012.

³²² Answers to the questionnaire on the preparation of the Feasibility Study for a Stabilisation and Association Agreement, June 2012, p. 227.

³²³ Feasibility Report for SAA with Kosovo, European Commission, October 2012, p. 30.

³²⁴ Report from the European Commission to the European Parliament and the Council on progress by Kosovo in fulfilling the requirements of the visa liberalization roadmap, 8 February 2013, p. 10.

Asylum Procedures Directive or the Geneva Convention as well as unclear provisions on temporary protection and procedural guarantees as concerns the examination of applications.³²⁵

5.5.3. Institutional Framework

Department for Citizenship, Asylum and Migration is the competent body to decide on granting or refusing asylum as well as for removal of asylum seeker from Kosovo as stipulated in article 9 of the Law on Asylum No. 04/L-073. This Department consists of the Asylum Division and Centre for Asylum Seekers.

The Asylum Division is responsible for conducting the asylum procedure such as handling the requests for asylum, conducting interviews and deciding on the first instance.³²⁶ Moreover, the Government of Kosovo with its Decision No. 04/70 has established the National Commission for Refugees (NCR) as a body handling the request on the second instance. Finally, judicial review can be requested by the Supreme Court of the Republic of Kosovo, regarding the legality of the decisions taken by NCR.

Directorate for Migration and Foreigners within the Kosovo Police, conducts the preliminary procedure including: application, preliminary interview, obtaining fingerprints and picture. Other stakeholders involved in the asylum matters are: Ministry of Education, Science and Technology, Ministry of Health, Ministry of Labour and Social Welfare and UNHCR.

In addition, MEST is in charge of inclusion of persons who have obtained the status of asylum (and asylum-seekers) in the education, MoH in charge of healthcare services, and MLSW in charge of social welfare services.

The Asylum Centre is responsible for receiving and accommodating asylum seekers during the asylum procedure.³²⁷ This centre currently employs three (3) staff: the Head, one officer in charge of social affairs and one technical support staff. Activities related to receiving and accommodation of asylum seekers are aimed at providing the necessary means and care for living to such persons. Conditions for asylum seekers have been improved since March 2012, following opening of the new Asylum Centre in Magurë (Lipjan), which has the capacity of accommodating up to 70 asylum seekers. The DCAM integrated database will substantially improve management of asylum seekers.

The National Refugees Commission (NRC) is the second-instance body, in charge of reviewing appeals against first-instance decisions. This commission consists of a Chairman, a Deputy Chairman and five regular members who must be practicing lawyers in

³²⁵ Ibid.

³²⁶ Administrative Instruction No. 16/2010-MIA on internal organization and structuring of MIA, of 25 June 2010.

³²⁷ Ibid.

the relevant state administrative bodies and must have at least five years of professional experience. An UNHCR representative also attends, in an observer status. With a view to ensuring impartiality and independence of the NRC, the new Law on Asylum (Article 92) requires exemption of bodies involved in the first-instance procedure from its proceedings.

The KP Border Police is in charge of executing the initial procedure, which includes submission of request, initial interview, taking fingerprints and photographs, and transfer of asylum seekers to the Centre.

5.5.4. Capacities

Asylum Division within DCAM functions in total with 5 officials including the Head of Division.

The Asylum Center in Magure is managed by the Head of the Center and employs 5 additional staff to support the work of this Centre. Accommodation capacity of the Asylum Centre is up to 70 (persons accommodated).

Furthermore, The National Refugees Commission (NRC) as the second-instance body, consists of seven members that support the asylum system with revision of appeals against first-instance decisions.

Since establishment of the new asylum system in Kosovo in 2010 considerable progress was achieved in putting necessary mechanisms, structures and procedures in place to deal with an increasing number of asylum seekers in Kosovo (31 persons claimed asylum in 2009, in 2010 this number reached 271, and there were 147 requests in the first half of 2011).³²⁸ Necessary institutions were developed to receive and deal with applications and accommodate asylum-seekers. Legal framework is in place and required procedures were developed. Kosovo authorities have taken steps to increase awareness about the rights and obligations of the asylum seekers.

5.5.5. Conclusions

Kosovo is used as a transit country for asylum seekers and irregular migrants, mostly arriving via the Macedonia and continuing towards the EU. This is the reason that majority of the decisions regarding asylum requests are negative decisions in absentia (the asylum seeker having already left Kosovo). Up to date, there is no asylum seeker or foreigner that was granted provisional protection; therefore no ID card or travel document could be issued by DCAM.

³²⁸ Progress Report 2011.

Lack of information concerning the origin of asylum seekers and the absence of identity documents are obstacles for removing asylum seekers whose applications for international protection have been rejected.³²⁹ Formal operational procedures for the removal of rejected asylum seekers need to be adopted. A database on asylum to be functional by the end of 2012 will significantly improve the link between the Department of Citizenship, Asylum and Migration and the police responsible for the initial screening and will contain integrated data from all the institutions involved in the asylum area.

Reception and accommodation of asylum seekers have improved with opening of the Asylum Centre in Magure with capacity of accommodating 70 persons. It provides accommodation, three daily meals, clothing, hygiene packs, etc for asylum seekers. Nevertheless, challenge remains with offering close and proper healthcare services as foreseen with legislation in place by placing the medical personnel in the Centre.

Lack of proper visa system does not help the increased flow of migrants mainly from North Africa and Asian countries using Kosovo as a transit country to move to European Union countries. As per country of origin, 71% of the asylum-seekers are from Asia and 29% from Africa. The biggest single numbers are Afghans who make up 35% of the asylum-seekers in Kosovo³³⁰. However, on the 16th of May, 2012 the Government of the Republic of Kosovo has taken a Decision with regard to the visa regime, affecting 86 countries. The implementation of this decision will follow in July 2013 will contribute to improving the implementation of the asylum policies in general.

Lastly, Kosovo has advanced in readmission policies and has signed 18 readmission agreements with the EU member states as well as with countries of Western Balkans region. To regulate the flow of migrants entering Kosovo, readmission agreements with countries of origin of asylum-seekers is of immense importance. European Commission Feasibility Study for Kosovo on SAA confirms that 'the lack of readmission agreements with countries of origin or transit a concern'³³¹.

Identified Challenges:

- Identification of asylum-seekers, given the fact that most of them do not possess the documents and procedures of verification of origin are very difficult.
- Lack of proper communication with asylum seekers during the interview procedures.
- Use of Kosovar asylum system by asylum seekers as a transit route to move to EU countries.
- Lack of readmission agreements with countries of origin of asylum-seekers.

³²⁹ Feasibility Report for Kosovo, 2012.

³³⁰ <http://www.economist.com/blogs/easternapproaches/2012/03/asylum-seekers-serbia-and-kosovo>.

³³¹ Commission Communication on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, October 2012, p. 31.

6. Police Cooperation and Fight Against Organized Crime

6.1. General Overview

Fight against all forms of organised crime, trafficking in human beings and narcotics remains the main challenge for Kosovo in its path to European integration. Such challenges in Kosovo and Western Balkans in general have taken place throughout the last decade given the circumstances as a country in transition, thus making it a prolific ground for the growth of organised crime. However, in order to make progress in the process of accession Kosovo should undertake certain measure to comply with the EU requirements.

6.2. Police Cooperation

This section of the chapter covers the reforms as regards policing in general and international police cooperation in particular. Initially it will be elaborated the terms and definitions regarding police cooperation.

International police co-operation means different acts, which are performed by police organs with intention to share and request different kind of information from foreign police organs, needed to perform police duties. The purpose of police co-operation is information exchange about the perpetrators and criminal acts, to share experience, new methods of investigative approaches, education, exchange of different other data.

6.3. EU Acquis and standards on Police Cooperation

The European Union is continuously promoting the concept of police cooperation among the member states and encouraging the candidate countries to enhance the cooperation with law enforcement agencies. Such efforts were made with the entry into force of the Treaty of Lisbon and abolition of the pillars, where 'the European Union gave more resources to promote police cooperation'³³². The main instrument for cooperation is the European Police Office (EUROPOL), complemented by customs cooperation.

According to this, the legal basis for establishing police cooperation with the European Union is the Lisbon Treaty.³³³ In particular, within the area of freedom, security and justice, the aim of police and judicial cooperation in criminal matters is to ensure a high level of safety for EU citizens by preventing and combating crime, racism and xenophobia. It is dealt with in Title V of the Treaty on the Functioning of the European Union (Chapters I, IV and V).³³⁴ In practice, it mainly deals with serious forms of crime (organ-

³³² Andreas-Renatus Hartmann, March 2011, Police Cooperation: http://www.europarl.europa.eu/ftu/pdf/en/FTU_4.12.7.pdf.

³³³ Ibid.

³³⁴ Glossary - Police and judicial cooperation in criminal matters. Available online at: http://europa.eu/legislation_summaries/glossary/police_judicial_cooperation_en.htm.

ised crime, drug trafficking, trafficking in human beings) and terrorist activities. Police and judicial cooperation in criminal matters takes the form of:

- Cooperation between national police forces;
- Cooperation between national customs services;
- Cooperation between national judicial authorities.

Cooperation under Title V also involves the approximation of rules on criminal matters in Member States and the development of mechanisms for the mutual recognition of judgments and judicial decisions in criminal matters. Initially, Title VI of the Treaty on European Union contained provisions establishing cooperation on justice and home affairs. However, the Treaty of Amsterdam reduced the number of matters covered by Title VI by transferring several of them to the Treaty establishing the European Community (first pillar), specifically to Title IV: “Visas, asylum, immigration and other policies related to free movement of persons”. The provisions on police and judicial cooperation in criminal matters remained in Title VI of the EU Treaty (third pillar). Together, therefore, these titles formed the legal basis for an area of freedom, security and justice. Having eliminated the third pillar, the Lisbon Treaty regroups these provisions in the Treaty on the Functioning of the European Union under Title V: “Area of freedom, security and justice”.³³⁵

6.4. Cooperation between law enforcement agencies in Kosovo

Cooperation between law enforcement agencies in Kosovo is primarily stipulated with the Criminal Code and Criminal Procedure Code. In addition, Article 6 of the Law on Police stipulates that Kosovo Police shall apply the orders and instructions lawfully issued by a public prosecutor or competent judge.³³⁶ Cooperation between Directorates within Kosovo Police is mainly regulated and harmonized via Administrative Instructions, Manuals of Work Principles and Standard Operating Procedure.

As for the cooperation between Police and other Law enforcement agencies, Kosovo Police has signed a number of Memorandums of Understanding with different agencies, such as Anti-Corruption Agency Kosovo Central Bank Kosovo Customs Property Agency Kosovo Judicial Council – State Prosecutor Kosovo Privatization Agency and Kosovo Correctional Service.³³⁷ With the aim of improving the exchange of information between the Kosovo Police and Financial Investigation Unit, a Memorandum of Understanding will be signed between these bodies. In practice, Kosovo Police cooperates on daily basis with judges and prosecutors for case-related matters. Furthermore, senior officers of the Kosovo Police hold regular monthly meetings with prosecutors and judges.

³³⁵ Ibid.

³³⁶ Law 04/L-76 on Police <http://www.assembly-kosova.org/common/docs/ligjet/Law%20on%20Police.pdf>

³³⁷ Kosovo Answers to the questionnaire on the preparation of the Feasibility Study for a Stabilisation and Association Agreement. Available online at: www.mei-ks.net.

Kosovo Customs as a law enforcement agency has established sound cooperation with the Kosovo Police. In this regard, with the aim of strengthening cooperation between both agencies three Standard Operation Procedures have been drafted and put in place, such as: SOP for the National Joint Centre for Border Control; SOP on the usage of joint equipments; SOP on joint activities.³³⁸ When it comes to cooperation in the area of border management and control, Kosovo Border Police cooperates closely with all the involved agencies as well as with all the Departments operating under the Kosovo Police.³³⁹

Cooperation with international military presence is defined by the Constitution of the Republic of Kosovo, respectively by the article 153 of the Constitution. This article underlines that the international military presence has the mandate and powers set forth under the relevant international instruments, including UNSC Resolution 1244 and the Comprehensive Proposal for the Kosovo Status Settlement. Upon the Declaration of Independence the Institutions of the Republic of Kosovo welcomed the international civilian presence for supervision of the Ahtisari Plan and the EU mission for the Rule of Law.³⁴⁰

Efforts to coordinate activities in the area of rule of law exist. In this regard, the Government of Kosovo, EULEX Kosovo and the European Union Office established Joint Rule of Law Coordination Board (JRCB) for overall strategic coordination of their joint reform efforts in the broader field of the Rule of Law in Kosovo.³⁴¹ JRCB has been established and is co-chaired by the Deputy Prime Minister and the Head of Mission of EULEX, and included the heads of different EULEX components, as well as ministers of the different line ministries, such as the Ministry of Justice, Ministry of Internal Affairs, and the Ministry of Economy and Finances.³⁴² The Board provides high-level oversight of progress and coordination of the implementation of joint Rule of Law reform efforts. These reforms are based on EULEX's programmatic approach, mentoring, monitoring and advising by EULEX personnel and the Stabilisation and Association Process.

The Kosovo police have also recently enabled EULEX's access to the police information system and border management system. Such information sharing is likely to benefit the investigation of serious crimes in Kosovo, but the police and EULEX should also seek to formalise the exchange of criminal information and intelligence in a technical

³³⁸ Group for Legal and Political Studies. Policy Note: "Visa Liberalisation Process in Kosovo: An Assessment Matrix of Achievement and Challenges", NO. 2, Prishtina, February 2013. <http://legalpolitical-studies.org/download/Policy%20Note%2002%202013.pdf>.

³³⁹ National Strategy of the Republic of Kosovo on Integrated Border Management, <http://www.mpb-ks.org/repository/docs/Strategjia%20Anglisht.pdf>.

³⁴⁰ For further reference please see the Constitution of the Republic of Kosovo and Comprehensive Status Settlement Proposal.

³⁴¹ Kosovo Answers to the questionnaire on the preparation of the Feasibility Study for a Stabilisation and Association Agreement. Available online at: www.mei-ks.net.

³⁴² http://www.clingendael.nl/publications/2011/20110106_CRU_publication_mderks.pdf.

arrangement.³⁴³

Kosovo Police representative presented the main achievements regarding police reform within the framework of the thematic meeting on internal affairs. In this regard, it was stressed that the Kosovo Police has made significant progress in building its capacity, strengthening cooperation and interagency coordination and cooperation. In order to increase capacity and improve the conditions of the Kosovo Police, during this discussion was rated improved information system of KP and data integration to the police. Also of great importance is the establishment of a joint centre for Integrated Border Management.

6.5. Regional and International Police Cooperation

The Government of Kosovo developed a number of initiatives to increase its cooperation within the region, most notably in connection with its immediate neighbours on the issue of border control. The KBP actively cooperated with Albania, Macedonia, and Montenegro to establish joint information centres and develop operational cooperation through joint patrols of the land borders between the countries. Over the summer, Albania and Kosovo operated a joint border crossing point at Vermica and the two governments now have plans to operate all mutual border crossings on a joint basis. The KP also supported regional law enforcement relationships and worked with the governments of Bulgaria and Turkey on border-related issues.

As part of the efforts to extend the cooperation with other countries of the region and elsewhere, it is crucial to have increasingly fruitful cooperation and coordination for the purpose of law enforcement, between the different countries and especially between those of the Balkans region, where individual countries are encountering major difficulties law enforcement. Organised crime and corruption continue to be amongst the main challenges of these countries, including here Kosovo as well, therefore in order to fight these occurrences, it is necessary to coordinate actions of law enforcement agencies of all countries in order to have greater success in this regard.³⁴⁴

On the proposal of the Ministry of Internal Affairs, the Government of Kosovo in its second meeting held on the 2nd of March 2011, approved the decision to establish the International Law Enforcement Cooperation Unit Enforcement (ILECU) which will function as part of the Kosovo Police.³⁴⁵ This unit, as elsewhere in the Western Balkans,

³⁴³ European Commission. Report from the Commission to the European Parliament and the Council on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, Brussels, February 2013. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0066:FIN:EN:PDF>.

³⁴⁴ Publication Office of the European Parliament. Note: "New Trends on the expansion of Western Balkans Organised Crime". Directorate General for Internal Policies, Brussels, July 2012. <http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=75711>.

³⁴⁵ http://www.kryeministri-ks.net/repository/docs/Vendimet_e_mbledhjes_se_dyte_te_Qeverise_2011.pdf.

seeks to facilitate strategic and operational cooperation with the law enforcement authorities of neighbouring countries and EU Member States. As a constituent unit of the police, Kosovo's ILECU has access to all domestic databases.³⁴⁶

This unit has a primary objective of coordinating the activities between law enforcement agencies as part of the fight against organised crime and terrorism. Additionally, with the objective of coordinating the international cooperation within this unit, a cooperation agreement has been signed between the MIA, MJ, MF and State Prosecution.³⁴⁷

The Cooperation agreement objective is to functionalise the International Law Enforcement Coordination Unit, with the aim of preventing and detecting crimes that are punishable according to *ex officio* (official duty). International Law Enforcement Coordination Unit (ILECU) will coordinate activities within the scope of international and inter-institutional cooperation with operational data exchange between states, through safe communication channels. According to the agreement, ILECU will be functionalized in order to have optimal increase of international and inter-institutional cooperation, coordinated data exchange in international sphere and advancement of existing working processes.³⁴⁸

Law enforcement cooperation with neighbouring countries improved in 2012. Kosovo has strong relations with Albania and, to a lesser extent, the former Yugoslav Republic of Macedonia in police cooperation, customs cooperation and border cooperation, including joint patrols, information exchange and regular joint meetings.³⁴⁹ Kosovo and the former Yugoslav Republic of Macedonia have established a joint communication centre for police cooperation.³⁵⁰ Kosovo has a customs cooperation agreement with Montenegro and a police cooperation agreement with Croatia.

Kosovo has concluded police cooperation agreements with Austria, Sweden, Croatia, Albania and the former Yugoslav Republic of Macedonia; agreements on combating trafficking in human beings with France and the former Yugoslav Republic of Macedonia; a security cooperation with Germany; and an agreement to combat organised crime and irregular migration with Hungary. It has customs cooperation agreements with ten countries.³⁵¹

³⁴⁶ European Commission. Report from the Commission to the European Parliament and the Council on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, Brussels, February 2013. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0066:FIN:EN:PDF>.

³⁴⁷ GAP Monitor – Monitoring of Government Decisions. <http://www.gapmonitor.org/?id=5>.

³⁴⁸ Memorandum of Understanding for Coordination and Support provided for International Law Enforcement Coordination Unit. <http://www.psh-ks.net/repository/docs/ILECU.pdf>.

³⁴⁹ European Commission. Report from the Commission to the European Parliament and the Council on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, Brussels, February 2013. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0066:FIN:EN:PDF>.

³⁵⁰ Ibid.

³⁵¹ These countries include the following: Bulgaria, the Czech Republic, Germany, Ireland, Sweden, the United Kingdom, Switzerland, Canada, the United States and Saudi Arabia.

Kosovo's strategic and operational law enforcement cooperation with neighbouring countries and EU Member States works on an informal basis. Law enforcement cooperation with Albania and the former Yugoslav Republic of Macedonia is strong; relations with Serbia, via EU facilitation, and Bosnia and Herzegovina are improving. Kosovo is planning to deploy law enforcement liaison officers to Austria, Hungary, Germany, Sweden and Switzerland.

Regarding international cooperation, there are a number of cooperation agreements with different countries. ILECU has established a good basis of cooperation with other countries and international institutions. Despite the signing of several cooperation agreements with individual countries, the lack of direct communication INTERPOL and EUROPOL institutions as obstacles to KP in fighting various forms of crime. Cooperates with Interpol Kosovo through UNMIK, and that it uses the database EASF or other basis of data that uses INTERPOL.

As far as Europol, Kosovo cooperates with the institution through the EU Mission to the rule of law mission, and used contacts with member countries to exchange information with EUROPOL. FRONTEX is also another important organization with which the Kosovo Police has made efforts to cooperate through EULEX. SELECT Kosovo Police has organized several meetings, which has expressed interest in the Kosovo Customs.

Particular challenge regarding the international cooperation in combating organized is establishment of the witness protection system and amending legislation in the area of judiciary or the harmonization and alignment of the Criminal Code and Criminal Procedure Code. A major obstacle in the fight against organized crime, namely cooperation with other countries is the investigation of Kosovo legislation does not provide controlled delivery and undercover investigative measures. Also, the law on international cooperation in criminal matters does not envisage joint investigations and despite the fact that the principles of cooperation are regulated by international conventions and EU legislation should be harmonization and compliance with them.

6.6. Fight Against Organised Crime and Terrorism

Government and academia use different definitions of the terrorism and organised crime. On the other hand, there are tendencies of 'non-state actors' to give a definition to these phenomenon, but mainly resorting to similar means: hijacking, ransoming, kidnapping, bank robbery, money laundering and drug smuggling. Furthermore, the search for a universal definition of terrorism, thus title 22 of the U.S. Code, Section 2656f (d) defines terrorism as "premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents, usually intended to influence an audience."³⁵² Distinction between terrorism and organised crime is made by reference to their ends: criminals seek to profit, while terrorists have political

³⁵² U.S. Department of State, Office of the Coordinator for Counterterrorism, Country Reports on Terrorism, April 30, 2007. <http://www.state.gov/j/ct/rls/crt/>.

motives and specifically seek to weaken the state. The problem in many cases is to distinguish the political motives from political power.³⁵³

6.6.1. EU practices and legislation against terrorism and organised crime

In order to combat terrorism and for the first time in their history, the Member States obtained a harmonised and global definition of terrorism when they adopted a Framework Decision on this subject on 13 June 2002. The Framework Decision defines terrorism in relation to the intent of the act. The originality of the text is inherent in the fact that in the future the ultimate political goal constitutes the basic criteria for distinguishing a terrorist offence from offences in common law. The Framework Decision nevertheless limits the definition to a series of offences such as kidnapping, hostage-taking and hijacking airplanes or the use of firearms or explosives.³⁵⁴

Organised crime is a threat to European citizens, businesses, state institutions as well as the economy as a whole. The EU continuously adapts its response in relation to the growing complexity of the situation. This is also reflected in the development of specialised EU agencies, such as Europol, Eurojust and CEPOL. European Union has developed a handful of strategies and legislation in relation to fighting organised crime. In this context, the EU has developed the so-called “Administrative approach”, which can best be described as a combination of tools at administrative level to prevent organised crime from infiltrating the public sector, the economy or key parts of the public administration. Preventing such infiltration is equally important as fighting organised crime with the tools of the criminal justice system.

Following the Madrid Attack of 2004, the European Union is making substantial efforts to strengthen all aspects of its fight against terrorism, including financing of terrorist attacks and of terrorist networks. The European Commission has adopted specific measures to fight financing of terrorism: improve cooperation in the exchange of information, enhance traceability of financial transactions, and greater transparency of legal entities.³⁵⁵

Other EU measures to fight terrorism and its financing include the Commission Communication to the Parliament and the Council “the Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector.”³⁵⁶ This communication seeks to solve problems among of na-

³⁵³ Wardlaw, Grant (1988). ‘Linkages between Illegal Drugs, Trafficking and Terrorism’. Conflict Quarterly, journals.hil.unb.ca/index.php/JCS/article/download/14808/15877.

³⁵⁴ http://www.europarl.europa.eu/comparl/libe/elsj/zoom_in/40_en.htm

³⁵⁵ Fight against Terrorist Financing: exchanging information, transparency and traceability of financial transactions. http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_terrorism/133254_en.htm.

³⁵⁶ http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2005&nu_doc=620.

tional-level coordination of the structures engaged in this fight (the different ministries, authorities, and other actors concerned). It also provides policy orientation regarding the vulnerabilities of the non-profit sector to the financing of terrorism and other criminal abuse.

The EU response towards terrorism include the 2005 EU Counter Terrorism Strategy, which commits the Union to combating terrorism globally, while respecting while respecting human rights and allowing its citizens to live in an area of freedom, security and justice. It is built around four strands: prevent, protect, pursue and respond.³⁵⁷ This Strategy defines terrorism as a threat to all States and to all peoples. It poses a serious threat to our security, to the values of our democratic societies and to the rights and freedoms of our citizens, especially through the indiscriminate targeting of innocent people. Terrorism is criminal and unjustifiable under any circumstances.³⁵⁸

6.6.2. Legal and policy framework against terrorism and organised crime

Enforcement of the legal framework for the fight against various forms of organized crime remains an important challenge. European Commission in its report on Feasibility Study for a Stabilisation and Association Agreement with Kosovo, underlines that concrete evidence of results in fighting organised crime needs to be given as a matter of priority in order to meet the its obligations for a Stabilisation and Association Agreement. Furthermore, it states that Kosovo needs to continue strengthening and implementing legislation particularly on prevention and fighting against trafficking in human beings, drugs, their precursors and weapons trafficking.³⁵⁹

The Government of Kosovo put in place key pieces of legislative and strategic framework on prevention and fights against all forms of organised crime, including terrorism. This legislation includes several articles that address terrorist acts, terrorist financing, and support for terrorism. The new articles substantially increase the penalties for terrorism offences and aims to enhance cooperation among law enforcement agencies, to better control its borders and individuals entering the country as part of an integrated border management (IBM) plan.

Initially, this is primarily regulated with Chapter I; Article 7 of the Constitution of the Republic of Kosovo, Chapter I, and article 7 which provides for that one of the main principles of country's constitutional order is the principle of rule of law.³⁶⁰ Further-

³⁵⁷ EU Counter Terrorism Strategy.

³⁵⁸ Ibid.

³⁵⁹ European Commission, Communication of the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, Brussels, 10.10.2012, p. 8.

³⁶⁰ Constitution of the Republic of Kosovo.

more, a new criminal code was adopted in April 2012 and entered into force in January 2013. It contains provisions, inter alia, on the smuggling of migrants, trafficking in human beings, the production and trafficking of drugs, organised crime, corruption and arms trafficking. Its provisions respect the exclusive and subsidiary competences of the Special Prosecution.³⁶¹ Criminal Code and Criminal Procedure Code and other legislation refer to organised crime and other criminal activities more thoroughly. Article 274 of the Criminal Code underlines that main forms and prosecutions for participation in a organised criminal group, as well as commitment of a serious crime as part of organised criminal group, whereas articles 109-113 of the Code defines the terrorism, its forms and the prosecutions/punishments for such criminal activities.³⁶²

Article 213 of the Criminal Procedure Code envisages the temporary detention when a person is suspected for terrorism or organised crime whereas article 257 of this code sets out the procedure for clandestine and technical measures of surveillance and investigation in support of terrorism or organised crime.³⁶³ Kosovo has adopted the Law on Money Laundering and Financing of Terrorism, this law sets out measures, competent authorities and procedures for detection and prevention of money laundering and financing of terrorism. This Law was amended and adopted by the Kosovo Assembly on 11 of February 2011 with no. 04/L-178.

On the other hand, on 11 February 2013 the Assembly has adopted the Law on extended competencies for confiscation of assets acquired by criminal offense with no. 04/L-140. This Law specifies extended powers for confiscation of assets acquired by the persons who have committed a criminal offence, when the procedures foreseen in the Criminal Procedure Code are not sufficient.

The government has also drafted, with assistance provided by the EU and the Council of Europe, amendments to this law to address concerns in four areas: national risk assessment, the criminalisation framework, sanctions for non-compliance and international co-operation. These amendments seek to update the law's definitions in line with Financial Action Task Force (FATF) recommendations; strengthen the operational independence of the FIU; and refine the provisions on information exchange, customer due diligence, suspicious transaction reports, supervisory responsibilities, sanctions and casinos.³⁶⁴

In terms of strategic framework, Kosovo government adopted the National Strategy and Action Plan against Organised Crime, which reflected the current situation and challenges in the future. There are other related strategic documents which have been adopted recently, aiming at setting up main strategic and policy actions in order to fight

³⁶¹ Ibid.

³⁶² Criminal Code of the Republic of Kosovo.

³⁶³ Criminal Procedure Code of the Republic of Kosovo.

³⁶⁴ European Commission. Report from the Commission to the European Parliament and the Council on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, Brussels, February 2013. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0066:FIN:EN:PDF>.

different forms of organised crime, including the terrorism. (Please refer to Annex II – List of Strategies and Action Plans).

6.6.3. Institutional Framework

The Commission Communication to the Parliament and the Council in its Visa Liberalisation Report reaffirms the efforts of Kosovo authorities in establishing legislative and institutional framework to combat organised crime and corruption. In addition to this, the report underlines that cooperation between police, customs and prosecutors in investigating and prosecuting such crimes should further improve. Cooperation between the police and prosecution needs to improve to ensure an increase in the number of prosecutions following investigations and to ensure a pro-active approach to fighting serious crime in line with the strategy and action plan on intelligence-led policing.³⁶⁵

The Commission report, stresses as well that ‘the investigative capacity of the police is adequate, but that of customs should improve’. Cooperation between the prosecution and the Financial Intelligence Unit (FIU) should improve to ensure a pro-active approach to launching investigations into inexplicable wealth. The functioning of the FIU and its cooperation with the police improved in 2012. The foundations of a new witness protection programme were laid in 2012, but substantial budgetary allocations and capacity-building will be necessary in this field.³⁶⁶

Capacities of Kosovo Police have been increased with the support of different donors, which donated a number of mobile biometric information captures devices as part of an initiative to identify known or suspected terrorists, individuals who facilitate terrorist activities and aliens who raise terrorist concerns. Using the devices, the Kosovo Border Policy (KBP) is now able to capture fingerprints, iris, and facial images of individuals who are refused admission at the Pristina airport or at a Kosovo Border Crossing Point; arrested for attempting to illegally enter or exit Kosovo; violate customs procedures; or apply for asylum or immigration benefits.

The Department for Counter Terrorism is operational but continued to develop its capacity to fully perform functions outlined in its mandate. In 2011, the DCT focused on intelligence gathering operations and had a good working and information sharing relationship with regional partners and the U.S. government. There was good coordination between the DCT and other departments within the KP, including the KBP, and other government agencies such as Kosovo Customs and the Kosovo Intelligence Agency. There were 20 officers assigned to the DCT in 2011. Members of the department took part in a number of trainings in conjunction with U.S. funded programs, the Organization for Security and Cooperation in Europe, and European partners.

The Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF)

³⁶⁵ Ibid.

³⁶⁶ Ibid.

was adopted in 2010 and implemented in 2011. The Financial Intelligence Centre (FIC) that had operated under UNMIK auspices was recast as the Financial Intelligence Unit (FIU), and the government made progress in transferring competencies to the new agency. Reporting requirements on transactions above 10,000 Euros (U.S. \$12,400), suspicious transactions, structured transactions (repeated transactions below the threshold for reporting in an effort to avoid the reporting requirements), and most of the Financial Action Task Force (FATF) requirements were implemented. Kosovo is still working to fully implement FATF requirements.³⁶⁷

Capacities of FIU have been increased through technical assistance by different donors, mainly the US of Treasury's Office of Technical Assistance Economic Crimes Team. Technical assistance has been provided in terms of improving capacity of FIU to gather financial intelligence and identify and analyze suspected money laundering and terrorist financing; improve the capacity of the Kosovo Police Economic Crimes and Corruption Directorate to investigate and prosecute money laundering and other economic crimes; enhance the Gaming Department's ability to monitor and deter potential money laundering through casinos and other gambling houses; improve the ability of the Tax Administration of Kosovo to promote voluntary compliance with tax law by increasing its capacity to identify and prosecute criminal tax violations; and increase the capacity of Kosovo Customs to identify and interdict bulk cash smuggling.³⁶⁸

Fighting organized crime in general is an ongoing challenge for the Kosovo institutions. In this regard, during the discussion within the thematic meeting the progress achieved within the institutional reforms and legal strategy to combat organized crime was highlighted. Progress under the auspices of the draft Strategy was highlighted Led Intelligence and SOCT draft report that will enable risk assessment and forms of organized crime. Improved information technology system, or network expansion through optical fibers and digital radio system communications were discussed as important projects to strengthen the Kosovo police. Within this, construction of the integrated data and establish a system for managing evidence was considered as a further important progress. Regarding witness protections, responsibilities were transferred from UNMIK in 2012, but have not yet been signed Administrative Instruction will be signed by the Ministry of Finance.

³⁶⁷ US Department of State - Chapter 2. Country Reports: Europe and Eurasia Overview OFFICE OF THE COORDINATOR FOR COUNTERTERRORISM. COUNTRY REPORTS ON TERRORISM 2011. [HTTP://WWW.STATE.GOV/J/CT/RLS/CRT/2011/195543.HTM](http://www.state.gov/j/ct/rls/crt/2011/195543.htm).

³⁶⁸ For further information on money laundering and financial crimes, we refer you to the 2011 International Narcotics Control Strategy Report (INCSR), Volume 2, Money Laundering and Financial Crimes: <http://www.state.gov/j/inl/rls/nrcrpt/index.htm>.

6.7. Trafficking in Human Beings

Various reports developed by international organisation or the United States Department of State, when it comes to trafficking in human beings refer to Kosovo as a source, destination, and possibly a transit country for women and children who are subjected to sex trafficking, and children subjected to forced begging.³⁶⁹ The trend of trafficking women to the EU for sexual exploitation continues. Child trafficking for the purpose of begging and facilitated irregular migration, often using forged or counterfeit documents, remains matters of serious concern.³⁷⁰ Most foreign victims of forced prostitution are young women from Eastern Europe including Moldova, Albania, Poland, and Serbia. Kosovo women and children are subjected to forced prostitution, servile marriages, and forced labour throughout Europe. Kosovo Police report that traffickers less frequently exploited sex trafficking victims in bars and cafes, relying instead on private residences.³⁷¹

The government's trafficking prevention efforts continued to be very strong, incorporating broad based media appeals, focus on youth, and multi-level governmental coordination. Nevertheless, international organizations observed that the judiciary and prosecutors remained ill-equipped to prosecute trafficking cases, resulting in weak accountability for trafficking offenders. Despite several reports of government employees' complicity in trafficking, no government officials were convicted of complicity. Finally, certain trafficking protections need to be implemented, including open shelters, adequately funded social service support, and effective long-term rehabilitation options for trafficking victims.³⁷²

Therefore, having in mind the underlined situation more efforts are needed to prosecute, convict and sentence the labour trafficking offenders. Furthermore, there is a need to undertake trafficking-specific training for prosecutors and the judiciary; ensure that the social work protection for trafficking victims is fully funded. As Kosovo has adopted the National Strategy and Action Plan against Trafficking in Human Beings for 2011-2014 its implementation should have prompt results. Several other actions are needed to improve the institutional response towards the trafficking in human beings, mainly in terms of investigation, protection, and prevention.

³⁶⁹ Country Narratives: Office to monitor and combat trafficking in persons, TRAFFICKING IN PERSONS REPORT 2012 [HTTP://WWW.STATE.GOV/J/TIP/RLS/TIPRPT/2012/192367.HTM](http://www.state.gov/j/tip/rls/tiprpt/2012/192367.htm).

³⁷⁰ European Commission. Report from the Commission to the European Parliament and the Council on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, Brussels, February 2013. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0066:FIN:EN:PDF>.

³⁷¹ Country Narratives: Office to monitor and combat trafficking in persons, Trafficking in Persons Report 2012 <http://www.state.gov/j/tip/rls/tiprpt/2012/192367.htm>.

³⁷² Ibid.

6.7.1. Legislation and Institutional Framework

The Government of Kosovo improved its anti-trafficking law enforcement efforts in 2011, despite a continuing backlog of cases in the courts and problems with holding officials complicit in trafficking accountable.

The legal and institutional framework against trafficking in human beings is under development. The new criminal code contains provisions on trafficking in human beings and the smuggling of migrants. Kosovo prohibits all forms of trafficking in persons in articles 137 and 139 of the 2004 criminal code, and prescribes a maximum sentence of 12 years' imprisonment. These punishments are sufficiently stringent and commensurate with punishments prescribed for other serious crimes, such as rape. It increased penalties for the trafficking of children.³⁷³ A new Law on Trafficking in human beings is being drafted by the Government of Kosovo, and it is expected to be adopted by mid 2013.

A strategy and action plan against trafficking in human beings is in place. However, there is a need to improve efforts to combat trafficking in human beings and facilitated irregular migration, including by drafting a new law on trafficking in human beings.³⁷⁴

In terms of institutional capacities, Kosovo government restructured anti-trafficking directorate, which continued to serve as the specialist law enforcement agency on trafficking, adding expertise to trafficking investigations, though the directorate lacks adequate equipment. The Kosovo government made efforts to recruit minority Serb officers for the anti-trafficking police force and had some successes, but was hindered by underlying political tensions.

The National Strategy Against Trafficking, beside MIA defines a wide range of institutions responsible which should coordinate their actions in relation to trafficking in human beings. Combating human trafficking in human beings should not be seen only as the responsibility of the Ministry of Internal Affairs and its structures. In light of this, the drafting of the strategy was based on an inclusive participatory system that included central institutions, civil society, local and international Non-Governmental Organizations working in Kosovo, and international partners. The institutional structure for the development of the strategy consists of: i) National Anti-Trafficking Coordinator, Secretariat, and Working Groups (prevention, protection, prosecution and conviction and, the children's group).³⁷⁵

The 2012 State Department Report on Trafficking in human Beings refer to numerous

³⁷³ Law No. 03/L-002 on Supplementing and Amending the Criminal Code. http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L-002_en.pdf.

³⁷⁴ European Commission. Report from the Commission to the European Parliament and the Council on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, Brussels, February 2013. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0066:FIN:EN:PDF>.

³⁷⁵ National Strategy and Action Plan against Trafficking 2011-2014. <http://www.mpb-ks.org/repository/docs/TQNJAnglisht.pdf>.

actions undertaken by the Kosovo Police in respect to conducted investigation, however it stresses the long backlog of cases within the Judiciary which affected to convictions and sentences. According to this report, in 2011, authorities began prosecutions of 79 suspected offenders in 22 new cases; in 2010, there were 81 offenders in 28 new cases. However there are no reports of how many of these cases were sex trafficking or labour trafficking.³⁷⁶

Nevertheless, the OSCE raised concerns about the quality of trafficking investigations and prosecutions, noting that Kosovo legal practitioners often failed to properly apply the law to the established facts in potential trafficking cases. The report concluded that the judges sometimes convicted defendants on charges of “attempted” trafficking when a conviction for trafficking would have been supported by the facts. Judges and prosecutors were reportedly not well trained to prosecute trafficking cases.³⁷⁷

Kosovo has established sound cooperation with foreign governments in the area of fighting against trafficking, and that during 2011 in 16 international trafficking investigations.³⁷⁸ The Directorate for Investigation of Trafficking in Human Beings during the second half of 2012 has initiated 40 cases against trafficking in human beings, whereas 38 of them were proceeded to the prosecution. In this case 42 victims of trafficking have been identified/ Around 101 victims of trafficking have been assisted, with 16 repatriated to their countries and the other 16 reintegrated within their families.³⁷⁹

6.7.2. Protection

In terms of protection of trafficking victims Kosovo Government increased its efforts to protect victims of trafficking, employing formal guidelines for the identification of trafficking victims. The government employed “Minimum Standards of Care for Victims of Trafficking” and “Standard Operating Procedures” outlining obligations of state officials and NGOs for the care and treatment of trafficking victims. These guidelines set victim-centered standards for investigations and protection, such as the provision of a victim advocate for every victim brought to police stations. In order to improve the protection of victims of trafficking the Government has initiated and is in the process of drafting the Law against trafficking in human beings. According to NGOs and international governmental organizations, the Kosovo government referral process was generally followed. NGOs observed that children who were identified as trafficking victims were correctly treated by authorities. Children involved in begging, however, were gen-

³⁷⁶ Country Narratives: Office to monitor and combat trafficking in persons, Trafficking in Persons Report 2012 <http://www.state.gov/j/tip/rls/tiprpt/2012/192367.htm>.

³⁷⁷ Organisation for Security and Cooperation in Europe - Defining and Prosecuting the Crime of Human Trafficking. <http://www.osce.org/kosovo/83831>.

³⁷⁸ Country Narratives: Office to monitor and combat trafficking in persons, Trafficking in Persons Report 2012 <http://www.state.gov/j/tip/rls/tiprpt/2012/192367.htm>.

³⁷⁹ Kosovo Police Report for 2012. http://www.kosovopolice.com/repository/docs/ANNUAL_REPORT_2012.pdf.

erally not identified as trafficking victims. Kosovo government officials traced problems with identifying children in begging as trafficking victims to the fact that begging is classified as a misdemeanour rather than a trafficking offense; proposed revisions of the criminal code would ameliorate the classification.

The Kosovo government supported nine shelters that accommodated trafficking victims, including a government run high security trafficking-specific shelter, a specialized shelter for children, and a shelter dedicated to the long-term rehabilitation of trafficking victims. Through these shelters, the government provided care such as housing, medical care, clothing, counselling, and legal and educational assistance.

The government developed a plan for a new shelter in 2013, anticipated to offer shelter for males and trafficking victims with disabilities. The government provided funding for 50 percent of all direct services to all trafficking victims at all shelters, but not all operational costs of the NGO-run shelters. In 2011, the Kosovo government provided the equivalent of \$153,000 for trafficking victim assistance, down from the equivalent of \$216,234 provided for victim care in 2010. Following the transfer to municipal authorities of the responsibility for social work services, there has been insufficient social work capacity to support victims and victim advocates' offices are underfunded.

The Kosovo government continued to provide tax incentives to businesses that offered employment opportunities to victims of trafficking, though none were employed during 2011. Although Kosovo's criminal procedure code provides for victim restitution, which could in theory compensate victims of trafficking, it has never been funded, nor has an administrator ever been appointed to manage the fund. Similarly, although the criminal procedure code permits asset seizure, the mechanism has rarely been used. Despite a government study identifying approximately 100 children in begging, the government identified few of these highly vulnerable children in begging as victims of trafficking. The Kosovo government participated in NGO run task forces to discuss cases of children at risk, including children in begging.

6.7.3. Prevention

The Government of Kosovo demonstrated strong efforts to prevent human trafficking this year, launching an anti-trafficking hotline and continuing a number of creative public awareness campaigns. The Government of Kosovo partnered with the OSCE to launch an anti-trafficking and domestic violence help line in October 2011. Since its launch, help line operators have received around 80 telephone calls from individuals requesting information on trafficking and domestic violence and seeking referrals in potential trafficking and domestic violence cases. In September and October 2011, the Kosovo government again held an intensive month-long anti-trafficking campaign with television and radio spots, youth anti-trafficking art and essay competitions, school outreach, and poster campaigns.

In the spring of 2011, the Ministry of Education, Science and Technology continued its anti-trafficking civic education program “Skills for Life” in Kosovo schools. In August 2011, the Kosovo government adopted an anti-trafficking action plan for 2011-2014. The government collaborated with NGOs and international organizations on the development of this plan. The Government of Kosovo’s inter-ministerial working group met monthly to coordinate government efforts to combat trafficking; sub-working groups addressing prevention, protection, prosecution, and the trafficking of children also met regularly. The Kosovo government reported that it attempted to reduce the demand for commercial sex acts through its arrests of clients of prostitution.

6.8. Fight Against Drugs

6.8.1. Current Situation

This part of the chapter will treat the area of fight against drugs, current situation, legal and strategic framework as well as the measures Kosovo is undertaking in the field of prevention of the use of drugs.

Penalties for possessing, using, or trafficking in illegal drugs in Kosovo are severe, and convicted offenders can expect long jail sentences and heavy fines. The Kosovo Police continues to make arrests of persons in possession of heavy amounts of marijuana (up to 85kg) and, rarely, heroin. Western experts consider Kosovo “primarily a transit country for Afghan drugs destined for Europe.” Major shipment seizures are probably indicative of organized crime activity, but there is no evidence of narco-terrorism.³⁸⁰

Until 2010, no national estimates on problem drug users exist for Kosovo. According to the opinion of national experts, the number of heroin users is estimated to be at 3 000–5 000 persons (2010, Bahri Shala from KP Antidrug unit and Dr Shaban Mecinaj psychiatric Clinic UCCK). The lack of reliable data comes as a result of difficulties in coordinating and interacting between all respective actors involved, as well as due to the lack of expertise in carrying out estimates of problem drug users.

The most frequently cited estimate of size of drug use population is to be between 10 000 to 15 000 drug users in Kosovo, while it is considered that approximately 4 000–5 000 of them are heroin users. Some publications (United States Department of State, 2009) and reports refer to a figure of 3 000–5 000 Injecting drug users. However, during an assessment mission of the EMCDDA it was not possible to verify such a figure because there was no safe and unique methodology used to make such an estimate.³⁸¹

³⁸⁰ United States Department of State, Bureau of Diplomatic Security. Kosovo 2012 Crime and Security Report.

³⁸¹ EMCDDA, 2010 Report.

The 2008 Rapid Assessment and Response study (Brisson, Arenliu and Platais, 2009) indicated that among 19–49-year-old injecting drug users (IDUs), 85 % were men and 15 % were women. The percentage of respondents who consumed drugs during the last three months was 98 %, while 85 % reported that they had injected one drug or another in the last three months. Of those who reported injecting, the age of first injection was 14 years. On average, the interviewed IDUs started to inject at least once a week at the age of 21 (age range was 15–38).

Less than half (47 %) of the IDUs have ever been in a drug treatment or a detoxification program. Of this group, 94 % received treatment in Pristina. Of the treatment received, the most frequent treatments received included detoxification with methadone (18 %), detoxification with other drugs (21 %), and residential rehabilitation (34 %).

Although there are many entities that have information on drugs, there is no relevant comprehensive study that would indicate the true problematic dimension when it comes to drugs.

At the national level, there are no studies and research concerning drug use among the general population. In 2008, a number of studies were conducted, each using various sample sizes and targeting different age groups (mainly the youth and people without protection and/or at risk), applying different methods.

In 2008, the rapid assessments and reactions (RAR) study among young people, injecting drug users and prisoners was implemented in cooperation with the World Health Organization (WHO), the United Nations Children’s Fund (UNICEF) and the United Nations Population Fund (UNFPA) offices in Kosovo (Brisson, Arenliu and Platais, 2009). The sample size was comprised of 1 302 respondents aged between 15–24 years old. Lifetime cannabis use was more prevalent among young men (5.5 %) than young women (2.2 %) and among those aged between 20–24 years old, than those younger than 18 years (1.7 %). Most of the young people declared to have started using cannabis at the age of 17, without a significant discrepancy between the genders. Ecstasy use was reported by 0.6 % of interviewed young people while heroin and amphetamine use (or other form of doping) by 0.4 % of the sample. Approximately 0.2 % of interviewed young people admitted to having tried cocaine. Approximately 2.6 % of the interviewees reported use of illegally obtained prescription drugs, such as Trodon, Tramal, Bensedin, Fortral, Valeron and Methadone/Heptanon. Youths admitted to having started taking such medication when aged between 13–20 years old, making the average starting age, 17 years old.

No European School Survey Project on Alcohol and other Drugs (ESPAD) study has been carried out in Kosovo until 2010. However, Kosovo takes part in the 2011 ESPAD data collection on drug use prevalence rates among 15–16-year-old students.

6.8.2. Strategic and Legal Framework

The National Anti-Drug Strategy of Kosovo and the Action Plan adopted in 2009 prioritises drug prevention as part of drug-demand reduction activities. The strategy promotes care and rehabilitation of drug users; prevention of drug use and experimentation with drugs; early interventions to reduce drug-use related health and social consequences; and access to treatment, social rehabilitation and reintegration. The strategy foresees prevention interventions aimed at specific groups, pre-school and school institutions, families and society in general.

As a new state, Kosovo tried hard to incorporate international norms into its laws against drugs (all three United Nations conventions regarding drugs). In 2008, the Parliament of Kosovo approved the Law on Narcotic Drugs, Psychotropic Substances and Precursors (Official Gazette, Law No 02/L-128.2008)

Use, possession, production and trafficking of illicit drugs are considered as violations against the Criminal Code of Kosovo. These offences are prosecuted, based on Articles 229, 230, 231 and 274 of the Criminal Code of Kosovo.

Any person caught by the police for the possession, use, production and trafficking of drugs is considered to be a suspect or a drug-related offender. Such offenders are registered in the database of the Kosovo Police (Kosovo Police Information System – KPIS), indicating the number of offenders responsible for the respective offence.

Unauthorised export and import of substances that are proclaimed as dangerous, narcotic or psychotropic substances is punished by a fine and imprisonment for a term of 3 to 10 years, according to Article 229.

Unauthorised cultivation, production, possession, extracting or preparations of substances that are proclaimed to be dangerous, narcotic or psychotropic, for purposes of selling or distribution, is punished by a fine and imprisonment for a term from 1 to 10 years. Unlawful administration of narcotics, psychotropic substances or similar substances and facilitation of their supply and use through one's duties, in opposition with the law, is punished with imprisonment for a term of six months to 5 years, according to Article 231.

The punishment for organised crime offences includes a fine of up to EUR 500 000 and imprisonment for a term of 7 to 20 years, according to Article 274.

The Criminal Code of Kosovo also defines the types of special investigations that can be undertaken and the prosecutor is allowed to use various investigating means, starting from more secret measures that facilitate the revelation of such crimes related to drug trafficking.

The Kosovo Government Decision No 10/44, dated 11 June 2008, entrusted the Ministry

of Internal Affairs with the coordinating mandate to draft the Strategy and Action Plan against Drug Trafficking in the Republic of Kosovo.

The Ministry of Internal Affairs created a working group and sub-working groups for drafting an anti-drug strategy. The working group and sub-working groups were composed with representatives of different sectors. These groups included representatives from the European Union Rule of Law Mission in Kosovo (EULEX), the Organisation of Security and Cooperation in Europe (OSCE) and other European bodies. The technical support was provided by the United Nations Development Programme (UNDP).

The National Anti-Drug Strategy and Action Plan of Kosovo 2009–12 was adopted in June 2009 and is a complete document that covers both demand and supply reduction of drugs. It was drafted in close cooperation with all public institutions involved in the fight against drugs, including NGOs and in consultation with experts working for international organisations in Kosovo. The main actors are Ministry for Internal Affairs, Ministry of Health, Customs, the Ministry of Education, other government entities and the civil society organisations.

6.8.3. Institutional Framework

The National Public Health Institute of Kosovo is a main entity entrusted by the Kosovo Law on Narcotic Medicine, Psychotropic substances and Precursors (Law No 02/L-128), in Article 32, paragraph 32.3, to carry out and promote health education to prevent drug use and its consequences.

The institutional mechanism implies the role and coordination of activities of the Ministry of Internal Affairs, The Ministry of Health, the Ministry of Justice, the Ministry of Economy and Finance, the Ministry of Education, Science and Technology, the Ministry of Culture, Youth and Sports, the Ministry of Labour and Social Welfare, the Ministry of Trade and Industry, the Ministry of Agriculture, Forestry and Rural Development, the Ministry of Environment and Spatial Planning and other institutions of Kosovo that are responsible for and that play a role in preventing and fighting drug trafficking and abuse of precursors.

This mechanism is led by the National Coordinator (deputy Minister of Internal Affairs), who assumed his duties in 2009. The mandate of a National Coordinator is to coordinate, monitor and report on the implementation of policies and actions and activities related to drugs.

The Mechanism also includes the Secretariat, which is a new body in charge of collecting data and information from other institutions for the purposes of analysing and assessing such information and data, as well as preparing analytical reports for the National Coordinator. The secretariat is located in the Policy Unit of the Ministry of Internal Affairs and there is a person responsible for compilation of quarterly reports on the implementation of the Action Plan.

Most of the universal prevention activities so far have been based on spontaneous interventions of entities or individuals in cooperation with schools and, more recently, also with NGOs and the Kosovo Police. In schools, classes were held as foreseen by the curricula and national and international NGOs were also given space to conduct their activities, as foreseen, with projects mostly funded by foreign donors. This way, the Health Education Group carried out a series of educational health activities in house-schools regarding drugs before 1999 with the support of the SOROS foundation. During 2003, the 'Medico Del Mundo' organisation carried out a programme throughout Kosovo in collaboration with the National Health Institute of Kosovo, which was mostly based on the accepted peer-to-peer technique. UNICEF has also foreseen a module on drugs in its joint project with the Ministry of Education, Science and Technology called 'Skills for life'.

The local NGO 'Labyrinth', an NGO which works mostly with drug treatment and harm reduction, in cooperation with other youth NGOs play an active role aimed at prevention in the community as well as schools, as part of extra-curricular activities.

The Directorate for Investigating Trafficking of Narcotics is a department that operates within the Kosovo Police structure (investigations pillar), namely the Ministry of Internal Affairs. It represents the national body that is in charge of collecting and analysing data and information and produce national statistics related to sentences imposed for drugs and drug trafficking. In this context, the Kosovo police, border police and customs, are charged with the implementation of the law on drugs and are obliged to pass all information in cases of arrest and seizures to the above-mentioned anti-drug section. Each year, an annual report is published, both in English and in Albanian, by the 'Central Narcotics Investigation Section' (CNIS) which is a sub-department of the 'Directorate of Organized Crime' (DOC) of the Kosovo Police. The main objective of CNIS is to investigate and detect offences related to drug trafficking, as well as combating all kinds of organised crime, involving drugs that operate in Kosovo. The data regarding the arrests and the drug seizures are sent by the Regional Narcotic Investigation Section (RNIS) located in the six biggest cities of Kosovo (Pristina, Gjilani, Mitrovica, Peja, Prizren and Ferizaj).

The aforementioned report is divided into two main chapters: a section dedicated to arrests and another one to seizures. In 2008, for instance, according to this report, 203 cases related to drugs in Kosovo were mentioned. These cases concern the possession of narcotic substances, trafficking in narcotic substances and cultivation of narcotic substances (EMCDDA, 2010).

Kosovo has been on the main routes used to traffic drugs from the East (through the neighbouring countries and to the West) for many years and this caused an increase in the number of drug users, aggravating the situation that Kosovo is facing, especially after 1999.

With the new chain of events that happened in the Western Balkans, such as the violent

dissolution of former Yugoslavia and the wars fought in this territory and Kosovo itself, we noted changes that, in turn, lead to another component of the drug problem in Kosovo, which was not known in the past, and that is the more and more frequent attempts to produce narcotics, especially those that can be cultivated like farm products, such as in the case of the cannabis sativa.

6.8.4. Challenges

The KP capacity of tackling illicit drugs-related crime was also subject to EULEX scrutiny in 2009. This resulted in detecting the absence of a comprehensive strategy to deal with illicit drugs-related crime: KP needed to develop a more integrated approach to the issue, improve case handling, and the coordination of the flow of information within the KP Directorate against Organized Crime and with the KP Regional Narcotic Investigation Sections (RNI S). Weak coordination with actors such as the KP Border and Kosovo Customs (KC) was also evidenced: KP and KC are the front-line institutions for combating illegal activities, due to their role in controlling the Kosovo border and boundaries and in preventing illicit trade. Hence, their cooperation and coordination is crucial for strengthening the control over illegal activities affecting public health and safety in Kosovo.

During the thematic meeting on home affairs held with members of Roundtable, it was highlighted that with the aim of prevention and treatment of this phenomenon, the adoption of the Law on Narcotics has helped in finding legal ways for treating people addicted to drugs. In order to provide assistance to persons addicted to narcotics, efforts are needed in building institutional capacities, and to increase the involvement of non-governmental sector and provide greater support and interagency coordination in the context of social assistance, care, medical rehabilitation and re-integration. Kosovo Police in cooperation with the Ministry of Health need to develop awareness programmes on risks posed by use of drugs and the programme is to be dedicated to schools. Within the framework of treating drug addicts, starting from May 2013, the Methadone programme will commence applying. Likewise, there should be increased attention on the marketing of drugs and precursors and essential drugs list should be revised and work on prohibiting its abuse.

6.9. Trafficking of Small Arms and Light Weapons

United Nations Program of action to eradicate illicit manufacture and trafficking of Small Arms and light weapons in all its aspects states that: "Illicit trafficking" shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol.³⁸² As such this definition does explicitly mention

³⁸² Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects <http://www.poa-iss.org/poa/poahtml.aspx>.

illegal possession of weapons.

Kosovo has since 2008 a small arms control and collection strategy and action plan, which is implemented and regularly updated. An updated version of the strategy has been adopted by the Government in January 2013. The strategy is addressing cross border control, legislative and regulatory framework, Management Information, SALW awareness, SALW Collection, SALW Destruction, Stockpile management, Capacity Development, Safer Community Development, Monitoring and evaluation, Linkage to SSR.

Within the section of cross border control firearms are integrated in risk analysis at the border and OCTA report. In addition, the strategy sets out clear lines for licensing procedures for import, temporary export are in place including end user certificate, delivery verification as well as pre and post shipment verification. All imported weapons since 2012 are import marked and are dully marked according to international standards. Close cooperation is in place between Ministry of Internal affairs and Kosovo customs.

6.9.1. Legislative Framework

Illicit trafficking of Small arms is criminalized in the Criminal Code under Article 372 and can be punished with a fine of up to 7500 euro and/or imprisonment from 1 to 8 years. Other legislation in relations to SALW are the following:

- Law on Trade in Strategic Goods;
- Law on Weapons (received EU approval in progress report 2009, stating the following:
- “In September, Kosovo adopted the Law on Weapons. The law is in line with relevant EU legislation and includes adequate penalty provisions. In January 2009, the Ministry of Internal Affairs adopted a series of administrative instructions on small weapons.”
- Law on Weapons, Ammunition and Relevant Equipment for Authorized State Security Institutions.
- Law on Weapons, Ammunition and Relevant Equipment for Authorized State Security Institutions.

6.9.2. Management Information

Small Arms Registration software is operational and links the Ministry of Internal Affairs to police stations. This software is following the business processes of the law on weapons and is able to ensure a domestic tracing operation from time of import to last legal owner, lost or stolen or destruction/ deactivation.

Contains further all information on legal firearms and owners (legal entities and natural persons), import, transit and stockpile management, shooting ranges, repair shops and training centers.

Public awareness campaigns are implemented mainly during the July – August months and the December months focusing on prevention of incidents during celebratory fire and during this period targeted operation are implemented by Kosovo Police. Results for 2012 compared with 2011 were the following (period July – August):

SALW Collection in Kosovo takes part on a daily level and is implemented in the following ways: Confiscation (2011:1396 – 2012:1581, meaning an increase of 13 %, Compared to the region based on reports to UNPoA: 2011).

SALW Destruction is based on the law on weapons and a SOP of Kosovo Police. Destruction is implemented on a regular basis and based upon court decision to destroy weapons which were evidence in court cases. Kosovo possess and is implementing standards on Stockpile management.

Training for inspectors and police is ongoing since several years. The latest approach is that a focal point on tracing (meaning tracing from producer to last legal owner or to place where it was diverted or used in crime) has been assigned and the development of a new tracing database is planned as well as training for these personnel. Monitoring is implemented through the secretariat and/or the National Coordinator. Quantative analysis is done by the Department of Public Safety through development of their annual report, arms export – import report and the development of an arms crime analysis report.

As far as arms control, it was emphasized in the thematic meeting on home affairs that the legal and institutional basis exists in this area, and that according to statistics, Kosovo has the highest number of weapons seized in the region. However, the main problem lies in the fact that lack of reporting is coordinated between MIA and KP. Weapon Law there was consent by the EU in the 2009 Progress Report, highlighting the following “In September, Kosovo adopted the Law on Weapons. This law is compliant with EU legislation includes provisions and adequate punishment. In January 2009, the Ministry of Internal Affairs has adopted a series of guidelines for small arms’.

6.9.3. Conclusions

Identified challenges are as following:

- Establish direct access to INTERPOL and EUROPOL, and membership in these organizations;
- Finalizing the process of promotion and advancement within the Kosovo Police;
- Implementation of legislation in the field of combating organized crime,
- Establish a system for the protection of witnesses, the finalization of the legal framework and evaluation costs for witness protection;
- Increased efficiency in the implementation of the laws on the judiciary;
- The largest number of weapons seized in the region, but lacking a better coordination of reporting between MIA and KP, respectively empower the Department of Public Safety under the Ministry of Interior

- It is in the process of developing a database for tracking weapons;
- Review of legislation on international cooperation in law enforcement, with the aim of including controlled deliveries and undercover investigative measures.
- Judiciary and prosecution are still poorly equipped to prosecute trafficking cases, which has resulted in poor accountability for perpetrators of trafficking.
- Improving coordination of reporting in the field of arms control and collection
- Greater support for persons addicted to narcotics, institutional capacity building and involvement of non-governmental sector.
- Development of educational and awareness programs in schools to introduce students to the risks that could cause the use of drugs and narcotics.

7. Electoral Process

7.1. General Overview

The importance of addressing electoral shortcomings in Kosovo cannot be over-stated for elections are certainly among the top three most important issues in Kosovo's public affairs today (along-side dialogue with Serbia and unemployment). These are not merely criteria posed by the EU, but are of essential importance to Kosovo's political process. Most political entities did not accept the electoral results of the 2010 elections, and another set of fraudulent elections could set Kosovo to political violence.

The 2010 fraud has led to a reform process. Unfortunately, the reform was delayed and eventually deadlocked. While some progress has been marked with the technical aspect of the electoral process, they fall short of adequately regulating the process. Changes of the electoral system have also faced a political deadlock, and await a deal among the highest political leaders.

There was widespread belief among the committee that the law cannot further regulate elections. They rightfully blame the fraud on political parties which conducted them, and the courts that did not prosecute fraud. But a more detailed law could (a) reduce the discretionary power of the election administrators, (b) reduce the wiggle room for judges, (c) regulate details over which political haggling and fraud takes place.

Kosovo's elections are administered by the Central Election Commission, MEC, and PC's. The CEC is composed of 11 members, the Chairperson is a sitting judge appointed by the President. There is an Electoral Commission for Complaints and Appeals which functions as an independent organ tasked to rule on complaints and appeals related to elections.

Some parties and civil society activists expressed concern that the international community prioritises stability over democracy, giving those inclined to election fraud confidence that abuses would not be exposed by international actors focused on a bigger picture.³⁸³ But the focus of the international community is gradually shifting, and once the dialogue with Serbia normalises, governance, anti-corruption and the rule of law will become more important and impunity will be less tolerated.

All Kosovo Albanian political parties other than the PDK did not accept the 12 December preliminary results, alleging manipulations; several have asked for the entire election to be repeated.³⁸⁴

The last elections have been the worst on record, noting a significant decline of their integrity. The progress report of 2011 has noted that challenges remain with regard to implementing international standards and the simplicity of existing system, as well as with the impunity of past electoral fraud.

There was a deficiency of political will to conduct elections in line with international standards. This fuelled a culture of impunity deterring Kosovo from its democratic development.³⁸⁵ The main causes of electoral irregularities are the political parties which deviate the election process, and it can freely be said that there is little will among them to curb violations.

7.2. Legal Framework

Kosovo's elections are regulated through several legal documents. The major aspects are regulated by its Constitution.

7.2.1. Constitution

The constitution regulates most basic aspects and there is no major dissatisfaction with the Constitution. But several aspects of the Constitution may undergo change. This draft report did not delve into the election of the President and the potential to introduce a directly elected President in Kosovo. This is for two reasons, (a) does not fall in the scope of election reforms but of constitutional reforms, and (b) the political will to introduce a directly elected President has significantly diminished after the Committee for Constitutional Reforms did not suggest to expand the competences of the future Presidents.

7.2.1.1. Civil Rights

Article 45 [Freedom of Election and Participation]

³⁸³ European Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 11.

³⁸⁴ *Ibid*, p. 8.

³⁸⁵ European Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 7.

1. Every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the day of elections, has the right to elect and be elected, unless this right is limited by a court decision.
2. The vote is personal, equal, free and secret.
3. State institutions support the possibility of every person to participate in public activities and everyone's right to democratically influence decisions of public bodies.

7.2.1.2. Kosovo Parliament

There are two controversial aspects to Article 64 about the Structure of the Assembly. Some parties and international stakeholders prefer to close the list, which requires changing the Constitution. Also, community representatives insist that the reserved seats are kept as reserved and are not transformed into guaranteed seats as the Ahtisaari Package provided for. Defining the guaranteed seats precisely turns out to be somewhat of a challenge.

Article 64 [Structure of Assembly]

1. The Assembly has one hundred twenty (120) deputies elected by secret ballot on the basis of open lists. The seats in the Assembly are distributed amongst all parties, coalitions, citizens' initiatives and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly.
2. In the framework of this distribution, twenty (20) of the one hundred twenty (120) seats are guaranteed for representation of communities that are not in the majority in Kosovo as follows:
 - (1) Parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community shall have the total number of seats won through the open election, with a minimum ten (10) seats guaranteed if the number of seats won is less than ten (10);
 - (2) Parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the other Communities shall have the total number of seats won through the open election, with a minimum number of seats in the Assembly guaranteed as follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosnian community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat if the number of seats won by each community is less than the number guaranteed.

Article 66 [Election and Mandate]

1. The Assembly of Kosovo shall be elected for a mandate of four (4) years, starting from the day of the constitutive session, which shall be held within thirty (30) days from the official announcement of the election results.
2. Regular elections for the Assembly shall be held no later than thirty (30) days before the end of the mandate or, when the Assembly has been dissolved, no later than forty-five (45) days after the dissolution.
3. The President of the Republic of Kosovo shall convene the constitutive session of the Assembly. If the President of the Republic of Kosovo is unable to convene the initial session, the Assembly shall be convened without the President's participation.
4. The Mandate of the Assembly of Kosovo may be extended only in a State of Emergency for emergency defense measures or for danger to the Constitutional order or to public safety of the Republic of Kosovo and only for as long as the State of Emergency continues as regulated by this Constitution.
5. The election conditions, constituencies and procedures are determined by law.

7.2.1.3. Central Election Commission

A number of issues pertaining the Central Election Commission (CEC) have been raised, and one of them requires the change of the Constitution. Opposition groups and the civil society demand a balanced CEC, 50% for the position and 50% for the opposition, which would require the revision of Article 139(4). This change does not necessarily imply the reduction of communities' representatives.

Article 139 [Central Election Commission]

1. The Central Election Commission is a permanent body, which prepares, supervises, directs, and verifies all activities related to the process of elections and referenda and announces their results.
2. The Commission is composed of eleven (11) members.
3. The Chair of the Central Election Commission is appointed by the President of the Republic of Kosovo from among the judges of the Supreme Court and courts exercising appellate jurisdiction.
4. Six (6) members shall be appointed by the six largest parliamentary groups represented in the Assembly, which are not entitled to reserved seats. If fewer groups are represented in the Assembly, the largest group or groups may appoint additional members. One (1) member shall be appointed by the Assembly deputies holding seats reserved or guaranteed for the Kosovo Serb Community, and three (3) members shall be appointed by the Assembly deputies holding seats reserved or guaranteed for other Communities that are not in majority in Kosovo.

Article 16.3 of the Constitution explicitly provides for respect of international law. Article 22 guarantees direct applicability of key human rights instruments of the United Nations and the Council of Europe. Explicit reference is made to the UN Universal Dec-

laration of Human Rights, the UN International Covenant for Civil and Political Rights (ICCPR), the European Convention for the Protection Human Rights and Fundamental Freedoms, the CoE Framework Convention for the Protection of National Minorities, the UN Convention for the Elimination of All Forms of Racial Discrimination, and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Although Kosovo is not an officially signatory of these conventions, its unilateral adherence to such standards emanates from the Constitution, and should be taken as yardstick of compliance.

Until August 2012, the provisions of the Comprehensive Proposal (CSP) for the Kosovo Status Settlement dated 26 March 2007 took precedence over all other legal provisions in Kosovo. The CSP has ceased to apply, and it is considered that all necessary provisions have already been enshrined either in the Constitution or in the rest of the legal framework.

Elections are regulated through the Law on General Elections which was adopted on 5 June 2008 and amended hastily in November 2010, just a month before the extraordinary national elections in 2010. The CEC has gradually assumed more competences and these were the first elections after the declaration of independence. Other laws regulate specific aspects, such as the Law on Municipal Elections, the Law on Local Self-Government, the Law on Financing Political Parties, Law on Citizenship, the Law on Languages and the Criminal Code. The CEC has further issued 15 rules with the aim to clarify the implementation of the law.

7.3. International Conventions on Human Rights

Standards pertaining to elections originate on the basic human rights and freedoms. The first international document to set minimum standards for human rights came several years after the second World War, was the Universal Declaration of Human Rights. Article 21 defines the way this Declaration treats basic electoral rights as part of the human rights, stating:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.³⁸⁶

This article is interpreted to identify five basic principles of electoral democracy: legality, periodicity, secret ballot, and universal and equal suffrage. The principles enshrined

³⁸⁶ United Nations. 10 December 1948. Universal Declaration of Human Rights, General Assembly Resolution 217A (III), Article 21, Paragraph 3 (hereinafter UDHR).

above became enforceable thanks to another document approved almost two decades later, the International Covenant on Civil and Political Rights. Article 25 of the International Covenant on Civil and Political Rights (ICCPR) translates what was in principle agreed in 1945 into ‘justiciable’ norms.

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

1. To take part in the conduct of public affairs, directly or through freely chosen representatives;
2. To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
3. To have access, on general terms of equality, to public service in his country.³⁸⁷

It is interpreted that ICCPR added three further binding rules for electoral conduct: non-discrimination, direct choice, and free expression.³⁸⁸ A number of regional organizations also approved similar mechanisms.³⁸⁹ In addition to their legal force, these and other documents discussed throughout this report have strong political and moral legitimacy. While this report focuses on aspects directly elected to elections, the two documents also firmly establish the right to association and assembly.

It is important to highlight that none of the problems of Kosovo’s electoral practice pertains to the violation of basic human rights. At the most basic level, Kosovo clearly meets “suffrage that is universal, equal, and secret; and that guarantee the right to be elected, as well as the right to vote”. Kosovo meets the standards although it has not followed timing of elections strictly in the past years (the mandate which began in 2002 ended in 2007, and then in 2010). Kosovo clearly fulfils all the obvious and basic criteria, but fails on several criteria that later became standard.

7.3.1. From Human Rights to Election Standards

The above-mentioned documents were the maximum that the international community could agree upon in the immediate aftermath of the second World War, and during the Cold War. These basic principles constitute the core that established democratic elections as a human right. Elections have become part of the international democratic criteria fairly recently. Several independent initiatives attempted to collate experiences, codify good practices and tie as many nations to advance their electoral practices accordingly.

³⁸⁷ United Nations. 16 December 1966. International Covenant on Civil and Political Rights, General Assembly Resolution 2000/200A (XXI), Article 25 (hereinafter ICCPR).

³⁸⁸ ODIHR. 20 November 2002. International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice, p. 7.

³⁸⁹ Examples such as the American Convention on Human Rights, African Charter on Human and Peoples Rights, and European Convention for the Protection of Human Rights and Fundamental Freedoms.

Unlike human rights, it took the international community much longer to agree on guidelines for elections, political parties, voter registration, conduct of the ballot, and similar. The end of the eighties saw a wider array of states agreeing on more ambitious criteria and gradually includes elections as a stronger criterion. Starting from early nineties, some rules started to emerge, and the turning point was marked by the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE adopted on the 29 June 1990:

- (3) They reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.
- (5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:
 - (5.1) – free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;
 - (5.2) – a form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate;
- (7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will
 - (7.2) – permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;
 - (7.4) – ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;
 - (7.5) – respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;
 - (7.6) – respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;
 - (7.8) – provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;
 - (7.9) – ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.
- (8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place.
- (26) The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions.

They will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavors and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following (inter alia):

- Constitutional law, reform and development,
- Electoral legislation, administration and observation,
- Establishment and management of courts and legal systems,
- The development of an impartial and effective public service where recruitment and advancement are based on a merit system,
- Law enforcement,
- Local government and decentralization,
- Developing political parties and their role in pluralistic societies,
- Developing other forms of free associations and public interest groups,
- Journalism, independent media, and intellectual and cultural life,
- The teaching of democratic values, institutions and practices in educational institutions and the fostering of an atmosphere of free enquiry (list shortened for the purpose of this report).

A statement adopted in 1994 by the Inter-Parliamentary Union Declaration on Criteria for Free and Fair Elections, further defines obligations of states for free and fair elections. This declaration affirms the rights of voters, and lists obligations that states must meet to ensure that rights are not violated. While Kosovo fulfils most criteria listed above, it is struggling on some. The standard is that:

“State authorities should ensure that the ballot is conducted so as to avoid fraud or other illegality, that the security and the integrity of the process is maintained, and that ballot counting is undertaken by trained personnel, subject to monitoring and/or impartial verification.”³⁹⁰

In Kosovo, authorities hardly ensure fraud-free elections and the personnel implementing elections are poorly trained and ill-informed and ill-equipped with procedural details. The document further provided that every voter has the right to equal and effective access to a polling station in order to exercise his or her right to vote. Due to inadequate voter lists and problems with addresses, numerous voters in Kosovo do not see this right fulfilled.

7.4. European Integration

European nations were clearly among the main proponents of improved electoral practice worldwide. A number of European countries first agreed to treat electoral rights as a regional principle which appeared in Article 3 of the First Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It provided:

³⁹⁰ Inter-Parliamentary Union. 1994. Declaration on Criteria for Free and Fair Elections, p. 4.

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

It is European nations that push the principles further by adopting the Copenhagen declaration discussed above.

Democracy is one of the three pillars of the European constitutional heritage, as well as of the Council of Europe. Democracy is inconceivable without elections held in accordance with certain principles that lend them their democratic status.³⁹¹

The observation of these principles constituted what came to be known as “European electoral heritage” as an aspect of the European constitutional heritage.

This heritage comprises two aspects, the first, the hard core, being the constitutional principles of electoral law such as universal, equal, free, secret and direct suffrage, and the second the principle that truly democratic elections can only be held if certain basic conditions of a democratic state based on the rule of law, such as fundamental rights, stability of electoral law and effective procedural guarantees, are met.³⁹²

In 2002, the European Commission for Democracy through Law (Venice Commission) during its 51st session it adopted Guidelines on Elections adopted by the Venice Commission.³⁹³ The five principles underlying Europe’s electoral heritage are universal, equal, free, secret and direct suffrage. Furthermore, elections must be held at regular intervals.³⁹⁴ Although all these principles are general, their implementation raises a number of questions that require deeper review.

7.4.1. From Electoral Rules to Conditionality

The right to live in a representative democracy had gradually lead to the development of a clear set of electoral rights. It is not new that holding democratic elections has become a condition of membership in various international and regional organizations. Proper elections today are seen also as a source of legitimization among government in the state community.

Kosovo exceeds the basic standards that the EU could agree as equal common denominators. Some of the obligations pertain to the rights of communities, which Kosovo

³⁹¹ European Commission for Democracy Through Law (Venice Commission). 9 October 2002. Code of Good Practice in Electoral Matters. Adopted Guidelines and Draft Explanatory Report, p. 12.

³⁹² European Commission for Democracy Through Law (Venice Commission). 9 October 2002. Code of Good Practice in Electoral Matters. Adopted Guidelines and Draft Explanatory Report, p. 12.

³⁹³ Commission for Democracy Through Law (Venice Commission). 10 July 2002. Guidelines on Elections adopted by the Venice Commission at its 51st session, p. 2.

³⁹⁴ Ibid.

exceeds in legislation.

From the category of political criteria, elections fall in the category of Democracy:

Functional democratic governance requires that all citizens of the country should be able to participate, on an equal basis, in the political decision making at every single governing level, from local municipalities up to the highest, national, level. This also requires free elections with a secret ballot, the right to establish political parties without any hindrance from the state, fair and equal access to a free press, free trade union organizations, freedom of personal opinion, and executive powers restricted by laws and allowing free access to judges independent of the executive.

Countries with the ambition to join the European Union are expected even higher criteria.

Membership requires that candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

Most expectations on the proper conduct of elections are not part of the formal standards. However, various documents are seen as best practices, and country-specific expectations require that nations seeking membership must adhere to.

There is little specific guidance, and the degree of implementation remains up to interpretation. The EU also expects that such 'domestic issue' is addressed through pressure for higher standards by the citizens and civil society.

Elections are one of the key obstacles to European Integration. Consecutive progress reports and statements of EU officials repeatedly highlight Kosovo's challenges and the importance of addressing them. Elections have been criteria for the whole Western Balkans:

To meet its obligations under an SAA, Western Balkans countries need to have credible engagement to undertake democratic reforms and free and regular elections.

Some of the persistent problems that affect Kosovo point to deeper-rooted challenges pertaining to past traditions. The Venice Commission foresees that some countries may face more serious challenge than others.

In some countries the implementation of democratic practices requires a radical change of attitudes, which must be actively promoted by the authorities. In this respect some measures have to be taken to control the habits and reflexes dating back to the totalitarian period. These “habits” and “reflexes” have a negative impact on the elections. Most of these irregularities, such as “family voting” occur during the voting procedure.³⁹⁵

Due to its status, Kosovo has not been scrutinized as closely, and some missions, such as the OSCE ODIHR, cannot observe Kosovo’s elections, the same standards are expected. The Kosovar authorities should realize that standards expected from the fledgling authorities in Kosovo will increase over time until Kosovo is able to be treated as a consolidated European democracy.

7.4.2. Criteria for Kosovo

Kosovo’s reform challenge is not small, requiring a radical change of course. Some of the improvements will involve cultural change, e.g. family voting. Kosovo needs a comprehensive reform and in this regard, the insistence of the international community (seeking for political stability) for a quick fix has left the electoral system and process with serious deficiencies and possibility for manipulation.

Only the most basic criteria pertaining to elections are part of the *acquis*. Most of the constitutional and electoral principles common to the whole continent do not figure in international texts, and are usually mentioned in detail in the national constitutions.³⁹⁶

Most of the standards that aspirant countries must meet (despite their non-inclusion in the *acquis*) have been codified by the Venice Commission. While Kosovo is not a member and it cannot formally subscribe, it is highly advisable that it unilaterally meets these standards. Other standards can further be found in various documents, e.g. guidelines for electoral observation that the EU uses to instruct its observers what to watch when it observes elections.

The conditions for establishing contractual relations with the Western Balkans countries are set in the Council Conclusions of April 1997. The main elements include a credible engagement to undertake democratic reforms, respect and protect human rights, minorities and freedom of expression, and free and regular elections.³⁹⁷

³⁹⁵ Commission for Democracy Through Law (Venice Commission). 9 October 2002. Code of Good Practice in Electoral Matters. Adopted Guidelines and Draft Explanatory Report, p. 20.

³⁹⁶ Commission for Democracy Through Law (Venice Commission). 9 October 2002. Code of Good Practice in Electoral Matters. Adopted Guidelines and Draft Explanatory Report, p. 13.

³⁹⁷ European Commission. 10 October 2012. Communication from the Commission to the European Parlia-

Elections remain one of the specific milestones that are expected from Kosovo on its transformation as a European nation. In the feasibility study for Kosovo, the European Commission listed elections in the first category of reforms that Kosovo must undertake. The Feasibility Study of 2012 states that:

the last general elections in 2010/2011 were marked by serious shortcomings and technical difficulties. It is important that the legislation better reflects best practice in the EU and implementation is also in line with international standards.³⁹⁸

The EU specifically expects this from the Assembly as part of Kosovo's electoral reform. The problems of the 2010 electoral cycle can be found in greater detail in the various reports that observer organizations issued subsequently. A general assessment by an international consultant on behalf of the European Commission concluded:

While the electoral legal framework is conducive overall for the conduct of elections in line with international standards, room for improvement to establish full compliance with international standards for democratic elections remains. This is particularly relevant to aspects of the election system intended to augment women's participation in politics and to the use of sanctions and restrictions of rights that are not proportional to offences committed. The election system is complicated and difficult to understand, and does not allow for prompt and accurate determination of election results.³⁹⁹

A more detailed review is conducted throughout the remainder of the document.

7.5. Main Improvements

By its nature, this document does not dwell on praises and repetition of issues that have been addressed properly. The Feasibility Study recognizes that:

Kosovo has held elections regularly at both central and municipal levels. The system is based on a competition of political parties and voters can choose freely between them. Over the past three years, there have been different coalition governments and new parties, including those highly critical of the governing coalition, could enter the Assembly.⁴⁰⁰

ment and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, p. 4.

³⁹⁸ European Commission. 10 October 2012. Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, p. 5.

³⁹⁹ Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 6.

⁴⁰⁰ European Commission. 10 October 2012. Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the

Kosovo generally has satisfactory legal framework and some aspects are particular satisfaction in the recent years:

1. Higher turnout among Kosovo Serbs;
2. Some improvements in the mayoral by-elections in Ferizaj and Kacanik;
3. Greater rate of arrests and court cases after the 2010 violations (although still low);
4. The amended draft-law has addressed some aspects; most notably it has streamlined the complaints and appeals process;
5. Kosovo inclusive approach has adopted positive discrimination for communities, including (a) treating Kosovo as a single district, (b) proportional representation, (c) set-aside seats in the legislature, (d) no threshold for communities;
6. Gender representation has guaranteed a quota of at least 30%;
7. The law mandates the election administrators to engage in civic and voter education, exceeding minimum expectations and in accordance to international best practice;
8. Secrecy of the vote is fully ensured in Kosovo, and political parties are able to fully express and campaign freely. The principle of non-discrimination is also well-established and respected.

Strategic challenges:

A number of issues are of high importance, and are of strategic priority. These range for key issues pertaining to legal framework, policy framework, institutional development and capacities, as well as implementation and enforcement on the ground. Media access to elections has not been treated, assuming it should be treated during a review of media in general.

7.6. Legal Framework

Kosovo has changed its rules too frequently, which may have confused voters in the past, contrary to best international practice.

Rules which change frequently – and especially rules which are complicated – may confuse voters.⁴⁰¹

This is not a warning against renewed changes, for improvement is clearly needed. The recommendation is for a proper and ambitious process that makes serious improvement so not to necessitate changes too soon. There is serious legal vacuum that is not regulated by law, or that is regulated by secondary legislation. ODIHR summarizes international best practice as follows:

European Union and Kosovo, p. 5.

⁴⁰¹ European Commission for Democracy Through Law (Venice Commission). 9 October 2002. Code of Good Practice in Electoral Matters. Adopted Guidelines and Draft Explanatory Report, p. 25.

A clear and detailed legislative framework for conducting elections must be established through statutory law, either in a comprehensive code or through a set of laws that operate together consistently and without ambiguities or omissions.⁴⁰²

A consultant of the European Commission comes up with similar recommendation:

CEC rules should be part of written law include, *inter alia*, regulating registration and deregistration of political parties and candidate lists for the Kosovo Assembly, and development of election day procedures.⁴⁰³ It is regrettable that the LGE does not specifically oblige the CEC to develop and publish detailed guidelines, with appropriate examples, for the implementation of the election system. Such guidelines would have contributed significantly to fill lacunae in the legal provisions and explain existing ambiguities. This was of particular concern in view of the complicated election system and the fact that representatives of political parties and institutions offered conflicting views on this issue.⁴⁰⁴

Overall, the election legislation is inconsistent, and fails to regulate a number of important matters at all, and some inadequately. According to EU EEM, transparency of the process is restricted because the law enables the CEC to draft rules on important issues which should be part of written law. The recommendation to integrate much of the secondary legislation as part of an enhanced Law on Elections, be it as a Code of Elections, or through a set of consistent laws that regulate all elections (including a Law for the CEC).

There is no law for the registration and functioning of political parties, and it is inadequate to regulate this through a CEC regulation. The CEC is not a legislative body although it carries out this role. There is a need for two laws, one that regulates political parties and one for the CEC. Another alternative is based on the premise that Kosovo needs a comprehensive reform, hence it needs an Electoral Code, an all-encompassing piece of legislation that address all matters and is sufficiently detailed. Other issues to be addressed are: (a) remove the legislative powers from the CEC, (b) strengthen the CEC Secretariat, (c) address the lack of transparency of the CEC, and (d) ensure automatic update of data in the voters list. Kosovo should add the Convention on the Rights of Persons with Disabilities as applicable law in Kosovo's legislation.

⁴⁰² ODIHR. October 2003. Existing Commitments for Democratic Elections in OSCE Participating States. Office for Democratic Institutions and Human Rights, Article 2.5, p. 13.

⁴⁰³ European Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 6.

⁴⁰⁴ *Ibid*, p. 21.

7.6.1. Right to Get Elected

The eligibility conditions to stand as a candidate for member of the Kosovo Assembly are provided by LGE Article 29.1. This provision defines a series of incompatibilities for mayoral candidates. However, it also restricts the right to stand, contrary to the principle of proportionality by declaring ineligible such citizens who “were found guilty of a criminal offence by a final court decision in the past three years”, LGE Article 29.1.q. This restriction is imposed for *any* criminal offence and is therefore disproportionate. Similar restrictions apply for prospective members of the CEC. Further to that, it would appear that if someone was found guilty by a final court decision earlier than the “past three years” for a serious crime, he or she could still be a candidate.

Another unreasonable restriction of the right to be elected as member of the Assembly is provided for by LGE Article 29.1.r. According to this provision, if a prospective candidate has failed to obey an order of the ECAP, or has failed to pay a fine imposed by the ECAP or the CEC, such a person is not eligible to become a candidate. Restriction of fundamental civil and political rights should not be possible unless it is decided for by a court of law and is proportional to the offence committed.⁴⁰⁵

International standards provide for proportional measures and candidate ineligibility as identified above is inadequate and should be softened.

7.6.2. Central Election Commission

The most serious problem is the considerable discretion granted to the CEC, which is tasked to draft numerous substantial rules to clarify the law. This effectively enables the CEC to legislate which does not accord with good practice.

It also lessens transparency as it could prevent broad and timely understanding of election rules by voters and candidates alike.⁴⁰⁶ Transparency of the process is restricted because the law enables the CEC to draft rules on important issues which should be part of written law.⁴⁰⁷

Important issues of the electoral process are not regulated by law. Some of these are regulated by secondary legislation, but since the CEC is a body composed of political nominations, leaving important matters to its discretion is problematic.

The law should be amended to include key provisions currently provided for by CEC rules. This recommendation is relevant, in particular, to regulation of certification of candidates, the election campaign and election day procedures including voting, counting and tabulation of results (EU EEM 2011: p. 64).

⁴⁰⁵ Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 22.

⁴⁰⁶ European Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 26.

⁴⁰⁷ Ibid, p. 6.

International standards provide for two broad types of electoral administrations:

‘operated by the government through civil servants, with or without a supervisory body overseeing the process’.

‘the administration may be operated solely by a body independent from the government. This form of administration may involve a balanced number of members from political parties. However, where election administrations include political parties, structural provisions should be implemented to ensure that representatives of minority and opposition parties have full access to meaningful participation’.⁴⁰⁸

Kosovo has followed the second model, and this broad choice should be maintained. However, despite the theoretical political balance, voting at the CEC has seen consistent outvoting, to the degree that its role as an election arbiter is endangered.

International standards provide for “neutral, impartial or balanced mechanism for the management of elections”.⁴⁰⁹ Regardless of how election administration is constituted, it is important that it function in an impartial manner, and be perceived by the electorate as administering election processes in an impartial manner.⁴¹⁰ If outvoting continues, there is a growing risk of political boycott of opposition parties.

An idea has been floated by the civil society and the opposition, to introduce a CEC which is balanced between the coalition and opposition. This model stresses the importance of consensus and agreement with some of the opposition in order to have trust of a wide political spectrum in the CEC. Potential for deadlock may be reduced if the chair is given the decisive vote in case of a tie. This change is only an option as part of constitutional amendments for it implies the amendment of Article 139.4.

The CEC is composed of party nominees who may recall them at any time. This runs against international practice, which foresees that “bodies that appoint members to electoral commissions should not be free to recall them, as it casts doubt on their independence.”⁴¹¹ Kosovo’s legislation should change in this regard to ensure that members of the CEC enjoy greater independence.

CEC has had serious issues with transparency. NGO’s which monitor its work report serious problems in accessing documents, getting notification of meetings, and numer-

⁴⁰⁸ ODIHR. 20 November 2002. International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice, pp: 12-13.

⁴⁰⁹ Parliamentary Union. 1994. Declaration on Criteria for Free and Fair Elections, p. 4.

⁴¹⁰ ODIHR. 20 November 2002. International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice, p: 13.

⁴¹¹ European Commission for Democracy Through Law (Venice Commission). 9 October 2002. Code of Good Practice in Electoral Matters. Adopted Guidelines and Draft Explanatory Report, p. 27.

ous meetings in other formats outside the public view. International practice is clear in this regard:

The meetings of the central electoral commission should be open to everyone, including the media (this is another reason why speaking time should be limited). Any computer rooms, telephone links, faxes, scanners, etc. should be open to inspection.⁴¹²

It is clear that the level of transparency foreseen by the Venice Commission has not been met by the Central Election Commission in Kosovo.

The mandate of the members of the CEC has not been regulated. The legal framework only regulates the mandate of the Chairperson of the CEC and not that of the members. The Parliamentary Committee for Election Reforms recommended a mandate of four years, to coincide with the mandate of each consecutive Parliament. This follows the logic of the CEC members serving the political parties directly. A more independent model should foresee a mandate of 5+5 years and limit to two mandates. The mandate should not follow the political mandate to avoid their politicization. Despite the fact that they are nominated by political parties, once appointed, they should serve as professionals.

On a technical level, the CEC has marked serious failure. As EU EEM finds:

The CEC's failure to ensure the quality of UV lamps and indelible ink led directly to the Supreme Court's ordering of a repeat election in Mitrovicë/Mitrovica, which further protracted the election process.⁴¹³

Various reports assess the training and capacity of CEC staff during the election process as weak, including that of polling station commissioners on Elections Day. Adequate training is foreseen by various standard-setting documents, such as "Ensure that those responsible for the various aspects of the election are trained and act impartially, and that coherent voting procedures are established and made known to the voting public."⁴¹⁴ The electoral law should specifically require that the CEC train electoral commissions and establish the chain of responsibility to prevent omissions of neglect and management.

It is essential to empower the Secretariat in this regard. It is standard international practice the election institutions are assisted by a professional secretariat, which is preferably also autonomous.⁴¹⁵ The competences of the Secretariat should be enhanced and it

⁴¹² European Commission for Democracy Through Law (Venice Commission). 9 October 2002. Code of Good Practice in Electoral Matters. Adopted Guidelines and Draft Explanatory Report, p. 28.

⁴¹³ European Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 6.

⁴¹⁴ Inter-Parliamentary Union. 1994. Declaration on Criteria for Free and Fair Elections, p. 4.

⁴¹⁵ ODIHR. October 2003. Existing Commitments for Democratic Elections in OSCE Participating States. Office for Democratic Institutions and Human Rights, Article 4.3, p. 14.

gradually gains competences to become a professional body with sufficient insulation from the CEC. Kosovo already has the practices of insulated (at least legally) general secretaries in each Ministry who cannot be discharged by the Minister to whom they report to. The recruitment of the CECS Chief Executive Officer should not be left to the CEC's whim.

7.7. Voters List

Voter lists are closely associated with equal suffrage. Due to its post-conflict environment, Kosovo has adopted an approach so inclusive that one could vote without being a citizen of Kosovo. As ODIHR states:

*“only persons who have the right to vote can vote, and that all persons who do have the right to vote are able to vote”.*⁴¹⁶

But inclusivity has come at a price, that hundreds of thousands of ineligible voters are included in the lists. Even municipalities with no minorities report inaccuracies of 20-40%, depending on interpretation. International standards demand to “Ensure the registration of voters, updating of electoral rolls and balloting procedures, with the assistance of national and international observers as appropriate.”⁴¹⁷

The authorities maintain that since 2009, significant work has been devoted to cleaning up voters list and that nearly 90% of names of deceased persons have been cleaned up. Another problem lies with the category persons who have UNMIK ID cards, but have not replaced them with a Kosovo ID. There are arguably between 300,000-350,000 individuals who are officially Kosovo residents but do not own an ID card.

Many cite the diaspora as problematic, with 28% of the voters lists belonging to the diaspora and whose names can be abused through voting on their behalf. Similarly, EU support is merging hitherto two separate databases of the civil registry and the civil service. Municipalities will need to conduct a better verification of death certificates to address the problem of deceased persons appearing in the civil registry.

The improvement of the address system has begun since 2010 through an EU-funded project that is to create a unique system of addresses. But the way the process is being designed, it will not ask for each person to clarify if one's main residence is in Kosovo or abroad. If this is not addressed, its help to the voters list will be limited. Overall, there is a need to clarify the role of all institutions with regard to the voters list. More specifically, there are two possible courses of action to pursue.

⁴¹⁶ ODIHR. 20 November 2002. International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice, p. 21.

⁴¹⁷ Inter-Parliamentary Union. 1994. Declaration on Criteria for Free and Fair Elections, p. 4.

Proposal 1: Introduce an active registration system and introduce a separate voters list from the civil registry. This proposal is the second best and only recommended if proposal 2 is deemed unrealistic for it would amount to a significant challenge for the CEC, duplicating efforts of the MIA with the civil registry.

Proposal 2: Merge the civil status with the civil registry and embark on a major initiative to address shortcomings. Kosovo's quest for visa liberalization requires addressing the civil registry, as well as introducing an effective system of street addresses. Practices also need to improve the rate of death reports by family members (either by dropping fees for death certificates), and to make it mandatory to report an address change.

Another proposal is to mark names of Kosovar citizens who live abroad so that they are included in a separate voters list. While the diaspora has the right to vote (although this right should be curtailed for municipal elections), it should be placed in a separate list which is made available to respective diplomatic representations abroad.

It is also becoming a widespread practice to enable foreigners to vote in local elections after a certain period of residence,⁴¹⁸ which Kosovo should consider.

Voter lists are closely related to the secrecy of the vote. While international practice treats the secrecy of the vote as pertaining to the actual vote, Kosovo has observed challenges with intimidation and pressure of turnout.⁴¹⁹ International practice states:

It shall not be allowed to gather, publish, or disseminate personal information about voters who have or have not taken part in the voting.⁴²⁰ Moreover, since abstention may indicate a political choice, lists of persons voting should not be published. Violation of the secrecy of the ballot must be punished, just like violations of other aspects of voter freedom.⁴²¹

It is important that administration searches for ways to prevent those sheets of signatures that identify turnout not to be used to exercise pressure on voters who may not turn out.

⁴¹⁸ Commission for Democracy Through Law (Venice Commission). 10 July 2002. Guidelines on Elections adopted by the Venice Commission at its 51st session, p. 2.

⁴¹⁹ Malazogu, Leon and Selatin Kllokoqi. December 2012 (forthcoming). Observation Report of the Kacanik and Ferizaj Elections 2012. Election Series No 4. Democracy for Development.

⁴²⁰ European Commission for Democracy Through Law (Venice Commission). 11 September 2003. Convention on Election Standards, Electoral Rights, and Freedoms. European Commission for Democracy Through Law (Venice Commission), p 4.

⁴²¹ European Commission for Democracy Through Law (Venice Commission). 9 October 2002. Code of Good Practice in Electoral Matters. Adopted Guidelines and Draft Explanatory Report, p. 23.

7.8. Electoral System

There is no single electoral system that is suited to all countries. Systems and processes are subject to historical, political, cultural, religious, and other factors, whatever the system chosen. The system is one of the aspects that is influenced most by the local context and specificities and as such it must be made in Kosovo. Elections must result in a legislature representative of the country's main political forces. The limitations are few, and ODIHR merely states that:

In choosing an electoral system, states should take into account to what extent it gives effect to the will of the voters, preserves political pluralism, and protects the interests of minorities and other groups in society.⁴²²

Whereas the international practice informs most other aspects, the system should find inspiration in the vision of the people for their democracy in the long-run. It is interesting to note that it is the international community which insisted that Kosovo introduces the preferential vote, as indicated by a report of the Venice Commission.

One of the reasons why the international community intervened to secure preferential voting in Bosnia-Herzegovina and Kosovo was to ensure that electors were not forced to follow the choices made by party leaders.⁴²³

Now some voices in the civil society perceive that the international community has given up to the party leaders.

According to the recent amendments of the LGE, voters are issued a single ballot, where voters choose one political entity and may also choose up to five candidates from that entity. If a ballot is marked for more than five candidates only the vote for the political entity shall be counted. The possibility to have up to five preference votes was introduced with a view to enhancing the election of women candidates by merit.

It is precisely the preferential vote that is generally blamed for massive intra-party fraud and will certainly not be found in the amended law in Spring 2013.

7.8.1. Two Definitions of Simplicity

The EU Office in Kosovo insists that Kosovo introduces a simple system. As per the EU EEM report, "the current electoral system is too complicated to enjoy broad and easy understanding among the Kosovo electorate."⁴²⁴ This specific guidance does not follow

⁴²² October 2003. Existing Commitments for Democratic Elections in OSCE Participating States. Office for Democratic Institutions and Human Rights, Article 2.4, p. 13.

⁴²³ European Commission for Democracy Through Law (Venice Commission). 9 October 2002. Code of Good Practice in Electoral Matters. Adopted Guidelines and Draft Explanatory Report, p. 34.

⁴²⁴ European Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 25.

from best international practice which mostly provides for 'simple voting procedures.'⁴²⁵ It is clear that 'simplicity' refers to the voting process and less to the electoral system.

It is best if Kosovo can simplify both, (a) the system for the election administration, and (b) the voting procedure for the voter, and ideally without sacrificing the quality of representation and participation. The main conflict that an observation report finds is that:

The LGE attempts to counterbalance the deeply rooted gender inequality with a provision that at least 30% of the *elected* candidates of each political entity should be of the lesser represented gender. While running contrary to international standards, this provision has assisted a number of women to build political careers and gain public recognition who otherwise would not have gained a foothold in politics. Yet the quota also introduces distortions. Most have owed their positions to being positioned in political entity candidate lists by a male-dominated political leadership in a non-transparent process. Few women Assembly members get into the Assembly presidency or government.⁴²⁶

This argument is used to diagnose that each male candidate who is dropped in favour of a female one with fewer votes constitutes a violation of the principle of one-person one-vote rule. The case is based on a number of cases which have reached the European Court of Human Rights in Strasbourg.⁴²⁷ There are models that reach both objectives, but are not very simple for administration. The EU maintains that that the open lists are incompatible with the gender quota and that Kosovo should do away with one or the other (preferring to close the lists). Although States have a wide margin of appreciation in electoral systems, electoral rules should not violate the basic principles of universal and equal suffrage. The problem with this aspect of the election system is that, depending on the "partially open" list choices expressed by voters, distribution of seats can be determined by gender and not by the choices expressed by voters through their preference votes.

The counter-argument comes from a document of the Venice Commission which states that "Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they

⁴²⁵ European Commission for Democracy Through Law (Venice Commission). 10 July 2002. Guidelines on Elections adopted by the Venice Commission at its 51st session, p. 6. And European Commission for Democracy Through Law (Venice Commission). 9 October 2002. Code of Good Practice in Electoral Matters. Adopted Guidelines and Draft Explanatory Report, p. 20.

⁴²⁶ EU EEM. Page 17.

⁴²⁷ The following cases of the European Court of Human Rights are of relevance: *Bompard v. France*, Application No. 44081/02 (4 April 2006); *Mathieu-Mohin and Clerfayt v. Belgium*, Application No. 9267/81 (2 March 1987); *Py v. France*, Application No. 66289/01 (6 June 2005); *Ždanoka v. Latvia*, Application No. 58278/00 (16 March 2006), www.echr.coe.int.

have a constitutional basis.”⁴²⁸ The Convention on Election Standards, Electoral Rights, and Freedoms, adopted by the Venice Commission does not consider affirmative action as discriminatory or contrary to the Convention. As Measures Not to Be Considered Discriminatory or Contrary to this Convention it includes:

special measures, including the legislative allocation of a quota of deputy mandates, taken to ensure an adequate representation of some part of a country’s population, primarily national minorities and ethnic groups, which, owing to political, economic, religious, social, historical and cultural conditions, is deprived of a possibility to enjoy the political and electoral rights and freedoms on an equitable basis with the rest of the population, as well as additional guarantees assuring equal possibilities for the realization of the electoral rights and freedoms to separate categories of voters, primarily women, persons with physical and other disabilities (infirmities), including such possibilities for inclusion on lists of candidates of political parties (coalitions),⁴²⁹

Exceptional circumstances, such as the need to provide more effective representation for women, national minorities, or other groups, may justify measures to provide them enhanced voting rights.⁴³⁰

The EU maintains that this is not a counter-argument to the EU EEM’s argument cited earlier as the Venice Commission speaks of “Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary....” The EU EEM report is not referring to the quota on candidates but to the 30% quota on the seats for women.

IFES disagrees with the position drafted by the EU EEM and upheld by the EU Mission in Kosovo. Uncomfortable with the argument on the violation of standards, all of the cases were struck down by the European Court of Human Rights. The principle justifies the positive discrimination if conducted for a legitimate aim and if it is proportional to the objectives sought.⁴³¹

It is widely observed that the level of administration complexity is not a problem. EU EEM’s recommendations to simplify the system have mostly focused on ways to make the system easier for the CEC to handle.

⁴²⁸ European Commission for Democracy Through Law (Venice Commission). 10 July 2002. Guidelines on Elections adopted by the Venice Commission at its 51st session, p. 5.

⁴²⁹ European Commission for Democracy Through Law (Venice Commission). 11 September 2003. Convention on Election Standards, Electoral Rights, and Freedoms.

⁴³⁰ ODIHR. October 2003. Existing Commitments for Democratic Elections in OSCE Participating States. Office for Democratic Institutions and Human Rights, Article 5.2, p. 15.

⁴³¹ IFES. Letter to the European Commission. Via e-mail correspondence.

EU EEM also considers simplicity from the voter's angle, but this does not seem to be its primary consideration. If there is only one mark on the ballot this makes the voting simpler as well as the counting, the observation and the results production. So simplicity should be the guiding principle for the entire process as it enhances the overall transparency of the process.

Simplicity should primarily be sought with regard to the voter. Kosovo should conduct a more detailed legal analysis and deliberation to this effect. A mixed system with proportional results should be considered, and this has been introduced with countries with fewer capacities than Kosovo.

The debate between closed and open lists cannot get any guide from EU practice. However, it is closely linked to internal party democracy. There are mixed rationales depending on the point of view. One point of view sees value in making political parties more compact, while a competing view believes that the party scene needs further transformation, hence consolidating them in their current shape will postpone the needed transformation for a long time. Little solace can be found in the internal party dynamics. As the EU EEM report finds out:

The two largest parties to date, PDK and LDK, held snap leadership election congresses to qualify under CEC rules for contesting the election. The PDK congress was conducted in contravention of its own statute.⁴³²

The conduct of party primary elections could be a substitute for preferential voting, but there is widespread assessment that this is unrealistic.

Geographic representation has also been part of the debate in the last decade in Kosovo. Main arguments for highlight (a) better accountability, and (b) possibility to remove the preferential vote given open lists and without to have ballots with names. Arguments against are that (a) Kosovo is too small for districts, and (b) that agendas at the National Assembly will follow more local issues, neglecting matters of national importance. It districts are seriously entertained; international standards foresee the respect of the following principles:

The election system must provide for the organization of electoral units (voting districts). This includes establishing boundaries of electoral units and involves determining the (1) frequency, (2) criteria, (3) degree of public participation, (4) respective roles of the legislative, judicial, and executive branches of government, (5) allocation of the ultimate authority for choosing the final plan for electoral units, and (6) delineation of circumstances when the size of an electoral unit might deviate from the established criteria.⁴³³

⁴³² European Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 5.

⁴³³ ODIHR. 20 November 2002. International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice, p. 12.

Districting is a political issue and in whichever way it is decided it is not in contradiction with European best practice. The only standard that emanates from the recommendations of the Venice Commission is not to change districting at least one year before elections.

Various models have been recommended so far, from 1 to 100. A detailed review of all the options is beyond the scope of this report, hence a superficial analysis. A high number of districts (anything more than 8) is eliminated for mixed reasons, from technical to the unproportional results, and the difficult for women and ethnic communities to get elected. Models with 5-7 districts should be considered as golden middle.

7.9. Election Process

7.9.1. Electoral Campaign

Election spending has been disputable and the starting time of the pre-campaign period should be clarified to mean from the date when elections are announced. The period of the electoral silence should also be specified in the law. The start of the campaign should also be clarified specifically. Fines for the involvement of public officials in the campaign should be introduced. As an institution composed of party nominees, the CEC lacks the will to enforce rules during the election period. Campaigns routinely start ahead of time, and see violations which are rarely taken up by the CEC to the degree it is responsible.

As per international standards:

Polling procedures should ensure a calm and orderly atmosphere within the polling station and, to the extent possible, in the immediate vicinity. Voters must not be subjected to any form of harassment, intimidation, or coercive influence.⁴³⁴

There are numerous reports of crowds (in hallways in at least half of polling centers)⁴³⁵ which enable an environment of intimidation. The role of the school director, number of accredited observers, and the role of law enforcement agencies should be clarified in the new law.

7.9.2. Multiple and Proxy Voting

Fraud by commissioners, or at least by their consent, has enabled multiple voting and voting on behalf of others. Particularly worrisome is the role of the commissioner who

⁴³⁴ ODIHR. October 2003. Existing Commitments for Democratic Elections in OSCE Participating States. Office for Democratic Institutions and Human Rights, Article 8.5, p. 21.

⁴³⁵ Malazogu, Leon and Selatin Kllokoqi. December 2012 (forthcoming). Observation Report of the Kacanik and Ferizaj Elections 2012. Election Series No 4. Democracy for Development.

checks ID cards and signature, and the allocation of this role should be particularly cautious. Various international documents provide for special care in this regard:

“Ensure the integrity of the ballot through appropriate measures to prevent multiple voting or voting by those not entitled thereto”⁴³⁶ Applicable laws and regulations shall provide that all voting must be personal, and no exceptions should be made by election workers to permit any form of non-personal voting (including group, family, or informal proxy voting).⁴³⁷

One recommendation that civil society has proposed is to allocate commissioners of various parties proportionally through all the roles. A number of other technical tools should be introduced to prevent voting on behalf of others or undue influence on family members. Zero tolerance should be adopted against family voting, offering instead to employ voting with assistance, as the law already provides. Voter identification, position of observers and placing commissioners in municipalities other than their own are some of the mechanisms that should be considered.

7.9.3. Conditional Voting

Conditional voting is suspected to be a source of fraud, adds to the expense of elections, and erodes the trust in the system. There is consensus to do away with conditional voting, but this is only possible if the voters' lists are fixed. If not, despite the widespread willingness, the conditional vote may not be able to be done away with for it may violate the basic human right to vote. Pressure on authorities to address shortcomings in the voters list should continuously be exercised.

Very few Kosovars exercise their right to vote from abroad using the by-mail system. The cost of this option is very high considering that only around one thousand voters use this opportunity for most previous election cycles. The same logic that beckons for foreigners to vote for municipal elections (pay some local taxes), argues against participation of the diaspora.

Apart of the financial cost, there is another related cost, leaving their names in their original place of residence increases the space of manipulation.

Kosovo should do away with by-mail voting, and introduce voting of the diaspora through Kosovo's diplomatic representation and placing them in a separate voting roster. This option (a) eliminates their names in their original place of residence in Kosovo (removing their names reduces the space for proxy voting), (b) will likely increase the turnout and affiliation of the diaspora with Kosovo.

⁴³⁶ Inter-Parliamentary Union. 1994. Declaration on Criteria for Free and Fair Elections, p. 4.

⁴³⁷ ODIHR. October 2003. Existing Commitments for Democratic Elections in OSCE Participating States. Office for Democratic Institutions and Human Rights, Article 8.8, p. 21.

7.9.4. Persons with Disabilities

Discrimination, ignorance, poverty, and neglect all contribute to the political and electoral disenfranchisement of persons with disabilities. Kosovo does not mandate that all polling centers to have ramp access for disabled voters. While the use of the Braille alphabet has enabled the blind to vote with secrecy, the lack of ramps in over half of polling centers prevents persons with physical disabilities from exercising their right to vote in secrecy.

7.9.5. Documents for Identification

Due to political sensitivities related to ethnic communities, Kosovo has allowed in the past a wide variety of personal documents. Such lack of clarity always enabled an inclusive policy days before the polls took place. Voters turned to vote with bank cards, birth certificates, and doubts among election administrators as per which documents are eligible, leading to occasional use of ineligible documents.

To introduce the obligation to obtain a Kosovo document is tricky since numerous members of the Serb community still refuse to obtain Kosovo ID cards. However, those who do not wish to obtain such documents are even less likely to take part in Kosovo's elections. For the purpose of reducing fraud, Kosovo should seriously consider reducing the possibility to vote with Kosovo IDs only. An exception may be made should northern Kosovo decide to take to Kosovo polls for the municipal elections in the Fall of 2013.

7.9.6. Observation

A number of problems have been observed by the various observation missions. Against international practice, observers were not provided with copies of results forms at any level of the election administration.⁴³⁸ Moreover, the high number of observers accredited per each political entity enables crowds in hallways of voting centres, who use this presence to exercise pressure on voters, create a climate of intimidation.

Observation is not regulated by as there is little jurisprudence in this regard. To repair, one should turn to several international guidebooks and to specific recommendations of observation groups.

“As shown by election observation reports compiled by international organizations in the field, there are some practices that are to be recommended, as well as practices to be avoided.”⁴³⁹ The monitoring capacity of NGOs is increasing, but remains limited.⁴⁴⁰

⁴³⁸ European Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 6.

⁴³⁹ ODIHR. 20 November 2002. International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice, p. 22.

⁴⁴⁰ EU EEM, p. 18.

An improvement was made with regard to mayoral by-elections in Ferizaj and Kaçanik whereby observers were allowed to sit behind commissioners. This principle has improved the process tremendously and should now be enshrined in the law.

7.9.7. Counting

The counting of votes has been debated consistently especially in the past year.

During the counting of the ballots in the polling station, there were reports of disrespect of procedures, identification of fake signatures on the voter lists and ballot stuffing. The requirement to post result forms at the polling stations was at times ignored.⁴⁴¹

The current reforms have been split, but most participants have considered that counting should take place in municipal or regional centres (where cameras can be placed) instead of polling stations.

As per international standards, Kosovars are searching how to “Ensure the integrity of the process for counting votes.”⁴⁴² But standards claim that “Counting should preferably take place in polling stations.”⁴⁴³ The Venice Commission concluded that:

The votes should preferably be counted at the polling stations themselves, rather than in special centers. The polling station staff are perfectly capable of performing this task, and this arrangement obviates the need to transport the ballot boxes and accompanying documents, thus reducing the risk of substitution.⁴⁴⁴

7.9.8. Tabulation of Results

The CEC does not publish all the results as per best international practice.

All tabulations of results should be available in tables or a similar format that allows observers to trace the results of each counting location or polling station up through all levels of aggregation to the final results. This information should also be broken down for alternative methods of voting, such as postal or mobile voting.⁴⁴⁵ Published results should include a table contain-

⁴⁴¹ European Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 7.

⁴⁴² Inter-Parliamentary Union. 1994. Declaration on Criteria for Free and Fair Elections, p. 4.

⁴⁴³ European Commission for Democracy Through Law (Venice Commission). 10 July 2002. Guidelines on Elections adopted by the Venice Commission at its 51st session, p. 6.

⁴⁴⁴ European Commission for Democracy Through Law (Venice Commission). 9 October 2002. Code of Good Practice in Electoral Matters. Adopted Guidelines and Draft Explanatory Report, p. 22.

⁴⁴⁵ ODIHR. 20 November 2002. International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice, p. 28.

ing a complete breakdown of the vote by constituency (district) and region (in the event votes are consolidated by an intermediate election body), as well as by polling station (precinct).⁴⁴⁶

While not a criteria, it is a standard practice to require that:

‘all relevant electoral documents be publicly accessible, including election protocols, tabulation and tally sheets, and decisions determining or affecting election results’.⁴⁴⁷

7.9.9. Ethnicity

The Comprehensive Status Proposal is clear in the distinction that it makes between set-aside and guaranteed seats. However, the Law on General Elections does not explicitly distinguish the “arrangements for the first two terms of the Assembly and those for the terms to follow, there could be a perception of a conflict of legal provisions.” Such ambiguity creates confusion and is not in line with good electoral practice.

Contesting reserved or guaranteed seats forces a party to declare that it stands for the interest of a particular community. Ethnically based parties do not run against international standards, but they also fail to uphold the development of political parties across ethnic dividing lines.

The requirement that political entities should declare their ethnic affiliation may turn into an obstacle in the development of Kosovo-wide political entities.⁴⁴⁸ The EU EEM argues that “consideration should be given to remove the requirement to declare ethnic affiliation,”⁴⁴⁹ it is difficult to see how can this change as long as there are seats which are guaranteed.

In addition, the legal framework is silent with regard to potential coalition candidate lists between parties representing communities that are not in the majority in Kosovo, as well as between parties representing the majority community and communities that are not in the majority. Although it may be seen as positive in the sense that the law should not disqualify any candidate on the basis of ethnicity it may open the possibility for majority political entities to run for and win seats reserved for non majority communities.⁴⁵⁰

⁴⁴⁶ ODIHR. October 2003. Existing Commitments for Democratic Elections in OSCE Participating States. Office for Democratic Institutions and Human Rights, Article 9.5, p. 22.

⁴⁴⁷ 20 November 2002. International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice, p. 28.

⁴⁴⁸ EUEEM 2011: p. 24.

⁴⁴⁹ EUEEM 2011: p. 63.

⁴⁵⁰ ENEMO 2011: p. 7.

7.9.10. Electoral Justice

Courts have not completed their work appropriately with regard to the manipulations during elections, and the rare fines were minimal. In 2012 38 cases were received and 21 have resulted with effective fines (imprisonment). There are 133 more unfinished cases in courts, but this depends on the overall reorganisation of courts.

A culture of impunity has developed in the past several years, encouraging electoral fraud to unprecedented levels. The culture of impunity is widespread although there are some modest signs of improvement. Electoral violations are now treated as grave crimes to be tackled by a special department.

While there are some improvements, all agree that much more must be done. International documents expect that the state must publish all kinds of electoral fraud, and it must pursue it vigorously.⁴⁵¹

The experience of the 2009 municipal elections diminished public trust in the election process. Although the Criminal Code envisages prison sentences of up to five years for election fraud, there was only one case of prosecution for alleged abuse during the 2007 or 2009 elections with a final court decision still pending. Some civil society, media and political parties expressed the view that the international community had prioritised stability, Kosovo Serb participation and the forthcoming Kosovo-Serbia dialogue over democracy, thereby encouraging election fraudsters to believe they would not be held accountable.⁴⁵²

After 2010, the issue has somewhat improved, but the rate is still minute compared the scale of fraud. But a trend of improvement has been noted.

The phrase “defend the vote” has consolidated in Kosovo’s lexicon since the 2009 elections, usually meaning the need to take action at polling station level to prevent manipulations by activists of opposing parties. It contains the risk of escalating confrontation between rival party supporters.⁴⁵³

It is a standard practice that the appeal body has the authority to annul elections in case of irregularities at a level that can influence the outcome. In Kosovo, the CEC cancelled the results in a limited number of polling stations without ordering repeat elections there, an option which is not established by the LGE.⁴⁵⁴ This confusion that arises by the possibility that the CEC can expand on ECAP decisions must be addressed in the new law.

⁴⁵¹ European Commission for Democracy Through Law (Venice Commission). 10 July 2002. Guidelines on Elections adopted by the Venice Commission at its 51st session, p. 7.

⁴⁵² EU EEM. P. 4.

⁴⁵³ EU EEM. P. 11.

⁴⁵⁴ European Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 8.

The collective fines that the Law on General Elections allows for criminal proceedings against political parties are inappropriate as it amounts to „collective punishment“. LGE Article 14.1 assumes the possibility for criminal conviction of a political entity with the consequence of deregistration, although the Criminal Code of Kosovo does not seem to make a relevant reference. In addition, LGE Article 32.5 holds political entities accountable for “violations of the Code committed by their members, supporters and candidates”, which also seems inappropriate.⁴⁵⁵ It is widely observed that for civil proceedings, parties should still assume responsibility (e.g. covering or removing of posters), otherwise violations will further increase. Nevertheless, if collective fines are incompatible with European best practice, other ways must be found to discourage parties from being part of electoral violations.

Internal law guarantees the right to a public hearing on the complaint.⁴⁵⁶ But the practice of adjudicating electoral complaints and appeals has seen no public hearings. Procedures for resolution of election disputes remain confusing despite recent amendments.⁴⁵⁷

The complaints and Appeal Commission should continue to exist as an independent and permanent body. The Parliamentary Committee on Electoral Reform has foreseen that the appointments of the ECAC members is done as until now, and the same holds with the size of 10 members, including the Chairperson.

Deadlines for review by ECAC have increased from 24 hours to 72, which international standards caution against, for this may delay the certification of results. A host of other clarifications need to be made, mostly in line with the conclusions of the Parliamentary Committee. Relations between the CEC, ECAC, the Supreme Court need to be detailed out.

7.9.11. Party Finances

The Office for the Registration of Political Parties should not be the institutions which ensures adequate allocation of financial resources for political parties, or that oversees expenses and conducts audit. PDK seriously outstripped other parties in spending.

One of the features of fair elections is transparent finances. Kosovo does not do enough to enforce the current legislation to “require political parties and independent candidates in elections to disclose and report periodically on the campaign funds they have received and the sources thereof, as well as on their campaign expenditures and the purposes for which they were made”, as per international practice.⁴⁵⁸ Moreover, legislation needs to improve and regulate finances in greater detail.

⁴⁵⁵ EU EEM. p. 21.

⁴⁵⁶ ODIHR. 20 November 2002. International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice, p. 23.

⁴⁵⁷ EU EEM. p. 6.

⁴⁵⁸ ODIHR. October 2003. Existing Commitments for Democratic Elections in OSCE Participating States. Office for Democratic Institutions and Human Rights, Article 7.8, p. 19.

The Venice Commission has concluded that for elections to be fair, they must guarantee:

‘public, timely, and full funding of elections, election campaigns of candidates and political parties (coalitions), and disclosure of information about all expenditures incidental to the preparation and administration of elections or election campaigns of candidates and political parties (coalitions)’;⁴⁵⁹

‘candidates and political parties (coalitions) participating in elections shall, at the intervals established by law, submit to the bodies and officials designated by law, the information and reports concerning the receipt of all donations to their election funds, the donors, and all expenditures made by them from these funds to finance their election campaign. They also shall arrange for the publication of such information and reports, unless this duty is imposed by law on election bodies’.⁴⁶⁰

7.9.12. Certification & Access

The number of signatures and the monetary deposits are examples of issues that should be regulated by law and not left to the discretion of the CEC, as currently is the case.

Monetary deposits should be of a sufficient amount to discourage frivolous political parties and independent candidates, but should not be so high as to prevent legitimate political parties or independent candidates from obtaining ballot access, and should be refundable upon receiving a certain number of votes.⁴⁶¹

The law should not require collection of the signatures of more than 1% of voters in the constituency concerned.⁴⁶² The law shall fully and clearly establish the duration of the signature collection period, the deadline for submission of the signatures for verification, as well as the procedure for the verification of signatures and for pronouncing them to be bona fide or otherwise.⁴⁶³

⁴⁵⁹ European Commission for Democracy Through Law (Venice Commission). 11 September 2003. Convention on Election Standards, Electoral Rights, and Freedoms.

⁴⁶⁰ Ibid.

⁴⁶¹ ODIHR. 20 November 2002. International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice, p. 26.

⁴⁶² European Commission for Democracy Through Law (Venice Commission). 10 July 2002. Guidelines on Elections adopted by the Venice Commission at its 51st session, p. 3.

⁴⁶³ European Commission for Democracy Through Law (Venice Commission). 11 September 2003. Convention on Election Standards, Electoral Rights, and Freedoms.

Annex 1:

List of Participants, Thematic Roundtable no. 2

Abedin Mehmeti – Civil Registration Agency, Ministry of Internal Affairs

Adem Gashi – Kosovo Law Institute

Adnan Rrustemi – Central Elections Commission

Afërdita Sylja – Community Building Mitrovica

Afrimi Maliqi – HANDIKOS

Ahila Bokos - EULEX

Ahmet Gërbeshi – Kosovo Police

Alain Lapon – UNDP

Albana Merja - Group for Legal and Political Studies

Albert Avdiu – KJC, Chair of TRT 2

Albinot Bimbashi – Ministry of Foreign Affairs

Andrea Najvirtova – NGO 'ECMI Kosova

Andreë Forde – Council of Europe

Arben Osmani - Civil Registration Agency, Ministry of Internal Affairs

Arbër Gegaj – Ministry of Justice

Ardian Bajraktari – Ministry of Justice

Armen Mustafa – Kosovo Probation Service

Arsim Dreshaj – Independent Media Commission

Arsim Fejzullahu – Financial Intelligence Unit

Artan Duraku – Ministry of Internal Affairs

Artan Qollaku – GIZ

Avni Bytyqi – INPO

Azemina Calakovic – Administrative Office in North Mitrovica

Bashkim Hyseni – Kosovo Judicial Council

Bedri Bahtiri – Ministry of Justice

Behxhet Sh. Shala – CDHRF

Bekim Hoxha – Civil Registration Agency, Ministry of Internal Affairs

Ben Goldsmith – IFES

Benna Kusari – American Embassy

Besfort Rrecaj – Ministry for European Integration

Besnik Vasolli – GIZ

Bujar Reshtani – UNHCR

Chris Decker – UNDP

Çlirim Hajdini – Kosovo Police

Dardan Nuhiu – Financial Intelligence Unit

Darsej Canhasi – NGO ‘INDEP’

Dren Rogova – UNDP AGJ Project

Driton Bakraçi – Kosovo Agency for Advocacy and Development

Driton Mustafa – Kosovo Customs

Driton Qeriqi – IFES

Driton Selmanaj – Kosovo Democratic Institute

Edita Kusari – ERO / KJC

Edmond Dunga – Council of Europe

Edona Baruti – DIEKP, Ministry of Internal Affairs

Ehat Miftaraj – Kosovo Prosecutorial Council

Elona Xhaferi – Council of Europe

Emin Beqiri – Kosovo Police

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Enrico Vinsentin – EU Office in Kosovo

Eroll Shehu – Food and Veterinary Agency

Fakete Kuka – Ministry for Local Governance Administration

Fatime Gërxhaliu – Qendra Kosovare për Rehabilitimin e të Mbijetuarve

Fatimi Ismajli – Mediation Commission

Fatmir Curri – Fondacioni Kosovar për Shoqëri të Hapur

Fatmir Haxholli – GIZ

Fatmir Limani – Kosovo Police

Fatmir Rexhepi – Kosovo Judicial Council

Faton Morina – Ombudsperson Institution

Fehmi Hoxha – Ministry for European Integration

Fidan Kalaja – Lëvizja FOL

Fikrete Çoçaj – Independent Media Commission

Fisnik Rexhepi – Ministry of Internal Affairs

Fitim Zariqi – Asylum Center, Ministry of Internal Affairs

Florent Latifaj – Prishtina Basic Court

Florina Duli –

Frank Maste – EULEX

Gazmend Çitaku – Ministry of Justice

Granit Fetahu – Policia e Kosovës

Granit Gashi - YIHR Kosovo

Gresa Selimaj – Ministria e Integrimit Evropian

Habib Habibi – Organizata Ndërkombëtare për Migrim

Habibe Zeqiri - Departamenti për Shtetësi, Azil dhe Migracion, Ministria e Punëve të Brendshme

Hafiye Gas – Sekretariati i Këshillit Konsultativ për Komunitete

Halil Fejza – Policia e Kosovës

Hamdi Ibrahim – Prishtina Court

Hasan Preteni – Agjencia Kosovare Kundër-Korrupsionit

Hydajet Hyseni – Këshilli Gjyqësor i Kosovës

Ibrahim Arslan – Ombudspersoni

Ilir Begolli – Instituti Kombëtar i Shëndetit Publik

Jason Tashga – Instituti Kosovar i Drejtësisë

Jehona Brovina - Ministria e Integrimit Evropian

Jehona Lushaku – CDF, Ministria e Drejtësisë

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Leon Malazogu – D4D

Liridon Neziri – Departamenti për Shtetësi, Azil dhe Migracion, Ministria e Punëve të Brendshme

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