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Project against Economic Crime in Kosovo¹ (PECK)
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ASSESSMENT REPORT

**on compliance with international standards
in the anti-corruption (AC) area**

Cycle 1

10 June 2013

¹ This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

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This document has been produced with the financial assistance of the European Union and the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinion of the European Union or the Council of Europe.

Abbreviations

CEC	Central Election Commission
CPA	Central Procurement Agency / Ministry of Finance
CSO	Civil Society Organisation
DCSA	Department of Civil Service Administration / Ministry of Public Administration
EC	European Commission
ECHR	European Convention on Human Rights
ETS	European Treaty Series
EU	European Union
EULEX	European Union Rule of Law Mission - Kosovo
EUOK	European Union Office to Kosovo
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit / Ministry of Finance
GRECO	Group of States against Corruption / Council of Europe
IPA	Institute of Public Administration / Ministry of Public Administration
ISC	Independent Supervisory Council for Civil Service
KA	Kosovo Assembly
CAA	Kosovo Anti-corruption Agency
KBRA	Kosovo Business Registration Agency / Ministry of Trade and Industry
KC	Kosovo Customs
KDI/TIK	Kosovo Democratic Institute / Transparency International Kosovo
KFOR	NATO Kosovo Force
KIPRED	Kosovo Institute for Policy Research and Development
KJC	Kosovo Judicial Council
KJI	Kosovo Judicial Institute
KOI	Kosovo Ombudsperson Institution
KP	Kosovo Police
KPC	Kosovo Prosecutorial Council
KTA	Kosovo Tax Administration
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism / Council of Europe
MP	Member of Parliament
MPA	Ministry of Public Administration
MTI	Ministry of Trade and Industry
NGO	Non-Government Organisation
OAG	Office of the Auditor General
OGG	Office for Good Governance, Human Rights, Equal Opportunities and Gender Issues / Prime Minister's Office
OSCE	Organisation for Security and Cooperation in Europe
PECK	EU/CoE Joint Funded Project against Economic Crime in Kosovo
PIK	Police Inspectorate of Kosovo
PMO	Prime Minister's Office
PPRC	Public Procurement Regulatory Commission
PRB	Procurement Review Body
SC	Supreme Court
SPO	State Prosecutor's Office
SPRK	Special Prosecution of Kosovo
UNMIK	United Nations Interim Administration Mission in Kosovo
WB	World Bank

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PREFACE

The joint EU/CoE Project against Economic Crime in Kosovo (PECK) – referenced under CRIS No. 2011/282-152 and CoE No. JP/2590, with a duration of 30 months starting on 1 February 2012 – is jointly funded by the European Union and the Council of Europe.

The Council of Europe is responsible for the implementation of the project and the use of the project funds under the European Community agreement with the European Union Office in Kosovo. Within the General Secretariat of the Council of Europe in Strasbourg, Directorate General of Human Rights and Legal Affairs, the Directorate of Information Society and Action against Crime and more specifically the Action against Crime Department, Economic Crime Cooperation Unit is the responsible structure for the overall management and supervision of the project. A Project Team based in Pristina supported by the Economic Crime Cooperation Unit in the Headquarters of Council of Europe is responsible for day to day implementation of the project.

PECK's overall objective is to contribute to democracy and the rule of law through prevention of corruption, money laundering and financing of terrorism in Kosovo.

The project purpose is to strengthen institutional capacities to counter corruption, money laundering and the financing of terrorism in Kosovo in accordance with European standards through thorough assessments and recommendations for improving and streamlining economic crime reform.

The project derives from the need of Kosovo for a comprehensive and structured assessment process. While reforms related to corruption and money laundering have been underway for several years, there has been no structured, longer-term process to assess their progress and impact. For the first time, a specially designed programme assumes as a purpose, strategy and resources the undertaking of periodical and thorough assessments in Kosovo on issues of economic crime and more specifically: corruption; money laundering and terrorism financing. The assessment rounds will cover institutional, legal policy and resource areas divided in separate themes mostly modelled after the Council of Europe's mechanisms (GRECO and MONEYVAL).

In accordance also with the Terms of Reference (ToR) of the assessment that have been adopted by the PECK's Steering Committee at its first meeting of 12 September 2012, the evaluation of the anti-corruption regime of Kosovo – which is one of the two components of the Project - was prepared using GRECO Methodology and covers the status of Kosovo with regards to the following standards:

- Twenty Guiding Principles for the Fight against Corruption (CM Resolution (97) 24);
- Criminal Law Convention on Corruption (ETS No. 173) and its Additional Protocol (ETS No. 191);
- Civil Law Convention on Corruption (ETS No. 174);
- Recommendation on Codes of Conduct for Public Officials (CM Recommendation No. R (2000) 10);
- Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (CM Rec(2003)4);
- United Nations Convention against Corruption (UNCAC).

The Assessment Team for this component of the Project has undertaken the work to revise and assess the regulatory and institutional framework in Kosovo, identify gaps, provide recommendations and carry out a follow-up assessment of measures taken by authorities in Kosovo. It has been assisted by the Project Team in Pristina and supported by Council of Europe Secretariat in Strasbourg (Economic Crime Cooperation Unit).

This report constitutes the assessment of Kosovo for the anti-corruption component under the 1st cycle. Because of the focused nature and scope of the assessment, the structure of the report follows to a large extent but does not fully reflect that of the reports produced by GRECO.

INTRODUCTION AND METHODOLOGY

1. The 1st Assessment Report on Anti-corruption measures (PECK anti-corruption component) deals with the following themes:

- Fundamental safeguards and corruption prevention in respect of the judiciary (judges and prosecutors), police, public administration, members of Parliament, financing of political parties and election campaigns and public procurement;
- Criminal law, law enforcement and criminal procedure: offences and sanctions, investigation and criminal procedure, confiscation and other deprivation of instrumentalities and proceeds of crime, immunities from investigation, prosecution or adjudication of corruption offences; and
- International cooperation.

2. The Assessment Team for the anti-corruption component, which carried out an on-site visit to Kosovo from 26 November to 6 December 2012, was composed by the following Council of Europe short-term international experts: Mr Flemming Denker, expert on criminal law, law enforcement, criminal procedure and international cooperation (Denmark); Mr Drino Galicic, expert on fundamental safeguards and corruption prevention in respect of judges, prosecutors, police and public administration (Bosnia and Herzegovina); Mr Jean-Christophe Geiser, expert on corruption prevention in respect of members of Parliament and financing of political parties and electoral campaigns (Switzerland) and Mr Edmond Dunga, PECK Project Advisor. The experts reviewed the legal framework (relevant laws, regulations, guidelines and other requirements), policy framework, institutional framework and systems in place to prevent and combat corruption as well as examined the capacity, implementation and effectiveness of systems and mechanisms in place.

3. The Assessment Team met with officials from the following governmental organisations: Kosovo Anti-Corruption Agency (KAA), Ministry of Internal Affairs (MIA), Kosovo Police (KP), Police Inspectorate (PI), Kosovo Academy for Public Safety (KAPS), State Prosecutor's Office (SPO), Kosovo Special Prosecution Office (SPRK), Kosovo Prosecutorial Council (KPC), Kosovo Judicial Council (KJC), Constitutional Court (CC), Ministry of Justice (MoJ), Agency for Managing Seized and Confiscated Assets (AMSCA), Kosovo Business Registration Agency (KBRA/MTI), judges from Basic and Municipal courts of Pristina, Kosovo Tax Administration (KTA), Kosovo Customs (KC), Kosovo Intelligence Agency (KIA), Central Election Commission (CEC) / Office for Registration and Certification of Political Subjects, MPs from political parties represented in the Assembly (PDK, LDK, AAK), Kosovo Assembly (KA), Office for Good Governance /Office of the Prime Minister (OGG/OPM), Office of the Auditor General (OAG), Ministry of Public Administration (MPA), Independent Supervisory Council for Civil Service (ISC), Institute of Public Administration (IPA), Kosovo Ombudsperson Institution (KOI), Public Procurement Regulatory Commission (PPRC) and Procurement Review Body (PRB). Moreover, the Assessment Team met also with the following representatives: European Union Office in Kosovo (EUOK), European Union Rule of Law Mission in Kosovo (EULEX), OSCE, Kosovo Institute for Policy Research and Development (KIPRED), Kosovo Democratic Institute/Transparency International Kosovo (KDI/TIK) and Society of Certified Accountants and Auditors of Kosovo (SCAAK).

4. A written questionnaire based on existing international and European standards (see above in paragraph 1) and GRECO and MONEYVAL-methodology has been prepared, adopted and disseminated to Kosovo relevant authorities through the coordination of Kosovo Anti-corruption Agency during the period from 13 September to 12 November 2012. The present report was prepared on the basis of replies to the questionnaire by Kosovo authorities and the information provided during and after the on-site visit. The main objective of the report is to evaluate the measures adopted by the Kosovo authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 1 above. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted and addressed to Kosovo in order to improve its level of compliance with the provisions under consideration.

EXECUTIVE SUMMARY

Background and general information

5. This report provides a summary of anti-corruption measures in place in Kosovo as at the date of the on-site visit (26 November – 6 December 2012) or immediately thereafter (up to 31 January 2013). It describes and analyses those measures, and provides recommendations on how certain aspects of Kosovo's AC system could be improved and strengthened.

6. This is the 1st assessment of Kosovo vis-à-vis international anti-corruption standards.

7. Although Kosovo has undertaken different anti-corruption measures, corruption remains a major problem that jeopardises the economic growth and represents a threat to the social and political development. To address this challenge, the authorities have since few years introduced policy and strategic measures, adopted legislation and set up institutional framework and measures.

8. From a general perspective, a commendable progress has been made in adopting new legislation and amending existing legislation as well as in addressing institutional needs and measures. However, the proper and effective implementation of the legislation and measures defined in anti-corruption strategic documents including their monitoring still remain a challenging task ahead for authorities in Kosovo.

9. The limited co-operation and coordination by the various authorities responsible for detecting, investigating and prosecuting corruption offences and the lack of a proactive approach in investigating corruption offences appear to be some of major obstacles to effectiveness and the main reasons for a very low number of convictions for corruption.

10. Preventive checks of forms and typologies of corruption presence are still lacking. Cross-analysed aspects of corruption and other criminal related offences or the associated ethical and integrity issues are not in place. Corruption risk analysis tools of at least the most vulnerable sectors with the prospect to be further extended are still at the initial stage and should be further encouraged and become periodical. In addition, periodical assessment of corruption, prior to any further revision of the anti-corruption strategic documents as well as a more integrated approach of ethical aspects and an extension of preventive measures to the entire public sector, including transparency, publication and further needed measures are recommended to be a necessity.

Fundamental safeguards and corruption prevention in respect of judges, prosecutors and police

11. Issue of prevention of corruption in Kosovo has been addressed in a more comprehensive manner only recently. It appears from the extensive study of the legislative and institutional framework and findings from the practice that the preventative measures regarding judges, prosecutors and police are apprehended mainly through the mechanism of conflict of interest and declaration of assets (which also apply in the same way to the entire public administration and senior public officials), while disciplinary measures and ethics are still at an early stage of development. Although the prevention through the conflict of interest is in detail laid down in law, sometimes in disparate legal acts and not necessarily harmonised, the approach that authorities have adopted to give effect to legal provisions had changed several times in recent years. The debate should have been closed by the adoption of the new Criminal Code in early 2013, which criminalised further some aspects of the conflict of interest, but it brought yet another dilemma of whether the criminal and administrative proceedings, i.e. prevention and repressive approaches are mutually exclusive or not. Therefore, specific recommendations tried to call for more integrated approach of prevention, whereby the legal and institutional framework as well as operational proceedings of various institutions could be further streamlined and harmonised, in order to avoid potential grey zones and legal uncertainty in application.

12. The relevant provisions of laws and by-laws regarding prevention of corruption of judges and prosecutors, and certain operational mechanisms are to a large extent similar and even identical in some instances. Nevertheless, there is still room for better regulation of procedural safeguards of ethical conduct and prevention of misconducts, such as criteria for approving accessory activities, random allocation of cases, vetting of candidates, tackling the excessive length of court proceedings and investigations, transparency of the work of courts, etc., supplemented by the necessary strengthening of human and technical capacities of the respective Judicial and Prosecutorial Councils. Despite initial legislative steps that paved the way to more targeted

preventative measures, the big impediment to an overall positive opinion remains of the constitutional nature, i.e., the role of the President of Kosovo in appointment of judges and prosecutors and the initial 3-years period prior to final confirmation of appointment. As the experience has shown, it may lead to undue interferences in fundamental safeguards of the independence of the judiciary. Therefore, a debate on how to apprehend this problem should be reopened as soon as possible, but the practical solution is a long term one. The same is also valid with regard to the composition of the Kosovo Judicial Council.

13. Regarding the prevention of corruption in the Police, the disciplinary mechanisms seem to provide first results and the track record of disciplinary and/or criminal actions against police officers who were caught in violation of rules has been established. The need for improvement is in the area of appointment procedures of the highest police officials, including the Director General and his deputies that must provide for additional guarantees of transparency and objectiveness, in the interest of professionalism and autonomy of police services. The guidelines for approving exceptional activities outside the work time, as well as post-employment restrictions are yet to be adopted and should complete the necessary framework for prevention of corruption.

14. Overall, the rules in place provide for a reasonably solid legal and institutional framework for preventing conflicts of interest, and ultimately corruption that has been built over the last years in Kosovo. The monitoring mechanisms are rather well developed, but they nevertheless warrant further improvement, namely regarding the operational interaction between multitudes of actors. They all operate in a very complex framework for such a small jurisdiction, thus undermining the effectiveness of the system of prevention. More importantly, it seems that there is no clear understanding of interlink between the conflict of interest and illegal enrichment, i.e., controlling the origin of property. Associating the tax administration in the overall picture of prevention of corruption, particularly regarding the declaration of assets appears to be strongly desirable. In addition, the current ethical codes are too general to provide clear guidance for specific situations. Therefore, the existing legal and ethical standards should be further refined along above-mentioned lines, and specific training activities on these standards be provided so that judges, prosecutors and police officers have available to them confidential counselling on possible conflicts of interest and related matters.

15. The authorities of Kosovo are invited to engage proactively in preventing corruption in line with the specific recommendations included in the present report. Such further progress is also likely to contribute to further strengthening the level of trust the public have in the judiciary and police, which still appears to be low despite an extensive legislative and organisational activity in recent years. More generally, the prevention of corruption being a new phenomenon for Kosovo, permanent evaluation of causes of corruption, conducting assessment of risks and resetting overall policy of sanctions appears necessary in order to increase the dissuasiveness of preventative measures.

Corruption prevention in the Public Administration

16. As far as public administration is concerned, there are different shortcomings that need to be addressed besides other structural reforms and processes that go beyond the scope of this report.

17. Access to public information is still at the early steps of implementation whereas the lack of effective use of such right by citizens has as immediate impact a wide lack of trust in public institutions and insufficient level of accountability as well as a very high perception of corruption. The recent legal framework in this regard is followed by the lack of public awareness/knowledge and the still very low implementation. Enhancement of transparency measures in general in the majority of public institutions and adequate access to information in particular call for further implementation and sustainable efforts and priority.

18. The organisation and strengthening of internal audit is still an issue in Kosovo institutions due to insufficient capacities, resources and risk management mechanisms. There are important opportunities to enhance accountability for value for money, results and impact.

19. Although there are legal and institutional efforts to introduce procedures aiming to ensure a merit-based recruitment to the civil service, public administration in general and the civil service in particular suffer from a high level of politicisation and a low level of professionalism that do not offer yet important opportunities and effective mechanisms for efficiency and accountability. Transparency deficit and impartiality shortcomings in recruitment and promotion of public servants through proper announcement of vacancies, fair competition, avoidance of conflict of interest and undue interferences; appropriate screening/vetting procedures, avoidance of parallel routes of

entry into the civil service and increase of supervision and monitoring mechanisms should be seriously addressed in order to significantly improve the compromised credibility of the merit-based system.

20. Implementation of strategic reforms in the public administration needs to attract more focus and priority. Strategic reform in the public administration as well as the adoption of sublegal acts have taken few years to be in place and they are not yet producing expected results.

21. In the view of the current applicable legal framework but also due to little knowledge and ownership of ethical rules, adoption of updated ethical rules applicable to civil servants and the extension of such rules to uncovered categories of officials are necessary together with practical tools and increased awareness for the implementation of ethical standards. Also, clear guidelines concerning the behaviour and conduct of public officials towards gifts have to be introduced.

22. The controlling capacities of declarations of assets and interaction between institutions should be strengthened. Adequate conflict of interest standards, including improper migration to the private sector have to be extended at every level of public officials. The detection of conflict of interest situations and the prevention of its risks remain low and hence the impact of the deterrence is not sufficient. In this respect, capabilities of individual institutions to prevent and detect conflict of interest and their increased proactive role have to be further enhanced. Moreover, wider use of rotation in sectors that are particularly exposed to risks of corruption should be considered.

23. A better balance needs to be found between the large level of decentralisation and discretion of recruiting public institutions and common and standardised practical implementation of legal and sublegal framework in the public administration. Central and periodical reporting and statistics system related to the enforcement of disciplinary procedures and sanctions in the public administration need to be set up or adequately operate.

Corruption prevention in respect of members of the Parliament

24. Transparency in parliamentary procedure appears to be essentially guaranteed. Kosovo Assembly is considered to be one of the most transparent institutions in Kosovo.

25. The concept of "conflict of interest" is defined by the Law on Preventing the Conflict of Interests for Public Officials. There is also a Code of Conduct for Members of the Assembly setting out possible conflicts of interest especially for MPs. As regards the acceptance of gifts by MPs, the legal framework looks quite sufficient. However, there is insufficient awareness of ethical requirements and the absence of on-going counselling/advice and tailor-made training programmes regarding ethical and corruption related issues.

26. While the private interests and assets that are declared by MPs are published, they seem to be incomplete. Several reasons may explain that situation: some interlocutors mentioned that, because of the economic situation in Kosovo, some MPs can hesitate to make public their assets with the risk to be unpopular. But other reasons, less admissible, may be listed. Another problem is that the MPs set themselves the estimated value of their assets. No external control is possible. The lack of information available to the public referring to the detailed income is also a problem. Adequate assessment of declared assets by the KAA – or another official body, in collaboration with the tax administration – should be ensured.

27. According to GRECO practice and requirements developed during previous evaluations rounds, rules introduced regarding conflicts of interest and the declaration of assets and income should be accompanied by enforcement mechanisms and effective, deterrent and proportionate sanctions. Kosovo legislation does not fulfil these requirements. The lack of a specialised body (like the Anti-Corruption Agency) in charge with the control of the declarations of assets / interests seems a major gap.

Financing of political parties and election campaigns

28. Kosovo's legislation on political financing is rather complete and covers a range of core issues and fulfils at least on paper most of the requirements contained in Recommendation (2003)4 of the Committee of Ministers of the Council of Europe. However, it is possible to identify three main areas in which Kosovo could improve its legislation:

- aspects of formal and methodological nature (legislative technique);
- aspects of material nature (choice of measures, transparency);
- application of legislation (supervision, control and sanctions).

29. From the formal and methodological approach (legislative technique), the dispersion of regulations on party funding over a number of laws is particularly pronounced in Kosovo: Law on Financing of Political Entities (LFPE), Law on General Elections (LGE), Law on Local Elections and draft Law on Election of the President, Law on Kosovo Budget for public funding. This dispersion of legislation may be a hindrance to a coherent concept for legislation in this field. There are therefore different legislative solutions depending on the level of elections, which is not particularly satisfactory. On a terminological level, there are also different notions referring to the same phenomenon. The absence of an Electoral Code is often mentioned as an issue to be considered for a comprehensive, clear and harmonised legal framework. Specifically, a comparison of regulations governing elections at local and national level and for the presidency should be undertaken in order to identify the differences and examine their validity and justification. It would be worthwhile to conduct a global appraisal of legislation with a view to make the legislation more coherent at a material and terminological level.

30. Concerning the accessibility of regulations and disclosure of accounts (transparency), the website of the CEC provides information about legislative framework and regulations. The website could be improved with commentaries or guides to their application, and more specifically with a clear and accessible disclosure of accounts of political parties. The website of the UK's Electoral Commission (<http://www.electoralcommission.org.uk>) which provides access to regulations by type of user (candidate, party, voter) could serve as a model.

31. With regard to the application of legislation (supervision, control and sanctions), Article 2 of Recommendation (2003)⁴ defines a donation to a political party as "any deliberate act to bestow advantage, economic or otherwise, on a political party". This definition is not present in the listing of Article 2 LFPE. In Kosovo, "donation to a political party" seems to include only the contributions that are directly received by the party in form of property (assets) or financial resources; and does not include the donations in form of service, as well as to donations in form of property or financial resources that are not directly received by political parties. LFPE ought to be completed in this respect.

32. The publication of accounts is a key element in the process of overseeing party funding and electoral campaigns. As required by Article 13 of the Recommendation (2003)⁴, states should require political parties to make their full accounts publicly available at regular intervals, at least annually. At the very least, parties should present a summary of their accounts including records of donations and expenditures. Kosovo legislation fulfils the minimum standards in this regard. But the implementation of the legislation is insufficient in Kosovo. The requirement to identify the donor is not fulfilled. And the violation of the provisions in this matter is not sanctioned.

33. In Kosovo, several authorities oversee the activities of political parties

- the Central Election Commission (CEC);
- the Office of Political Entities Registration and Certification (established by the CEC);
- the Tax Administration of Kosovo (as concerns the observation of the requirements established by the tax legislation).

34. For obvious reasons, the Tax Administration cannot be considered as "independent" as required by the Recommendation (2003)⁴. An independent control authority has a key function in the implementation of the legislation. It must have sufficient resources and adequate means of inquiry.

35. The CEC should have the necessary staff. More specifically, the staff of the Office of Political Entities Registration and Certification is quite insufficient: only three persons are working there, and the salary of the members of the Office are rather bad in comparison with other comparable positions

36. Auditing is "outsourced" to expert auditors. The supervision and control of the auditors and the specific competences of the auditors in the field of party funding are not assured. The control of the auditors is too formal. A specialisation would be necessary. An effort could also be made at the level of the prosecuting authorities to raise awareness of legislation on political parties and their obligations to report (any breaches) through in-service training programmes. The provisions of the legislation on political parties should be strengthened to include the duties of the auditors and the CEC and in relation to civil and criminal offences. The independence of the expert auditors does not seem to be a problem.

37. Kosovo should deal with the question of the adequacy and proportionality of the sanctions for violations of the provisions of Article 21 of the Law on Financing of Political Entities. The

amounts of the fines in Article 11 of the Rule No 16/2011 on Funding of Political Entities are not dissuasive enough, and not proportionate to the gravity of the offences.

38. The level of enforcement of the legislation may be a problem, and not only in terms of the legislation itself. It seems that the nature of the control of the CEC is very formal: it consists of a mere check on whether the report is complete and submitted on time.

39. Effective enforcement of the legislation requires a more material analysis. In the course of its work, the CEC and other bodies come across prima facie evidence of breaches of regulations. The CEC should be under a statutory duty to investigate breaches which seem to be systemic or serious. The CEC ought to be in a position to mount effective investigations; but that in itself is not enough. The CEC must obtain the organisational capacity to discharge this responsibility. The CEC must develop the core expertise needed to launch and run investigations, to determine whether breaches have been committed and to learn lessons for the future. At the very least it should have access to trained investigators and specialised lawyers. For example, if companies were mostly to make donations to political parties in-kind, for example by employing people who then go to work for the party, or by directly paying the party's bills, it would not necessarily come to light in an audit (and certainly not in a review of the financial report of a political party).

40. Specific training of the various entities involved in investigations (prosecution authorities, team of the Office of Political Entities Registration and Certification) should be organised.

Corruption prevention in the public procurement

41. Despite frequent changes of respective legislation and efforts to significantly increase the compatibility with EU standards, public procurement is considered by a lot of stakeholders to be one of the most corrupted sectors in the public service. Structural problems of the economy as well as the still general underdeveloped situation of foreign investments, private market and initiatives that makes the Government in general the unique big stakeholder and client of the local market could also partially explain such situation.

42. Insufficient efficiency and level of competence of responsible actors, shortcomings of transparency requirements, unsatisfactory implementation rate and the frequency of violations, lack of proper institutional oversight operating mechanisms are some of key deficiencies that continue to be special challenges of public institutions in the public procurement area and are at the origin of abuses and corruption-related perceived and/or discovered since a certain number of years.

43. Kosovo should create conditions for enhanced transparency and equality in competition, in order to minimise the risk of corruption opportunities in public procurement and privatisation fields.

44. Some of the shortcomings identified with regard to the public procurement system in general concern *inter alia* the need to minimise corruption risks and opportunities by ensuring further streamlining of Public Procurement rules and procedures; the introduction of central purchasing; enhancement of monitoring, supervision and review capacities and mechanisms; review of the complex procedures related to reporting of public procurement violations and offenders and enhancement of exchange and treatment of information and horizontal interagency cooperation, notably between public procurement, audit, anti-corruption, tax and other law enforcement bodies.

45. With regard to the responsible personnel in the public procurement field, Kosovo is recommended to introduce coherent staff policies and treatment in the public procurement system in order to avoid changes of staff; to clarify and strengthen procedures that ensure objective criteria for conclusion of contracts and reduction of external undue interferences in decision-making process. Moreover, authorities should further promote training and specialisation focused on prevention and detection of corruption practices.

Criminal law, law enforcement and criminal procedure

46. The assessment team found that the Kosovo legislation meets to a large extent the requirements of international standards in the anti-corruption area. Having said that it was recommended that Kosovo should take the legislative measures to make third beneficiaries directly covered in the Articles about active bribery and to criminalise private corruption in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS No. 173).

47. Concerning corporate liability Kosovo was recommended to take the necessary legislative steps to ensure that legal entities could be held liable not only in situations where a responsible natural person could be punished including situations where the liability was based on lack of supervision, but also in situations where it was not possible to find a natural person liable for the offence. At the same time, the assessment team found that the Registry of Enterprises should strengthen its controlling functions in order to ensure that both natural and legal persons establishing companies are checked and monitored with respect to possible criminal records and professional disqualifications or if there was any other pertinent information on legal persons in the registration process.

48. There was no doubt that Kosovo had a severe problem concerning corruption and that lots of efforts were carried out to combat corruption. On the other hand, it was obvious to the assessment team that there was a great possibility for improvement of the cooperation between the involved counterparts. It was therefore recommended to strengthen the Special Anti-corruption Department both in relation to the competence of this department but also in relation to increasing the resources and the cooperation between prosecutors, investigators and experts. Besides that it was recommended to establish (i) an entity within the existing structure with particular reference to identification, tracking and freezing proceeds of crime, and (ii) to enhance the effectiveness of the system through introducing mandatory benchmarks for law enforcement in pursuing illicit funds in the case of any investigation of a proceeds-generating offence.

49. As regards investigation and criminal procedure the assessment team found the maximum two and a half-year time limit for the investigations of large bribery cases too short, given the complexity of the cases and the difficulty in identifying perpetrators. It was also recommended that Kosovo should ensure that objects intended to be used in a criminal offence could be confiscated and that the scope of the provisions on confiscation of instrumentalities and proceeds of crime was enlarged in order to provide for better possibilities of using confiscation effectively in cases of corruption. Furthermore it was found necessary to ensure that the injured party had the right to file a complaint about the termination of an investigation.

50. Generally statistics were missing. It was therefore recommended that Kosovo undertakes steps to collect appropriate and detailed information and statistics including all angles of a corruption case from the beginning to the end in order to assess the efficiency of the investigation/prosecution. A similar recommendation was given in the area of mutual legal assistance.

1. GENERAL OVERVIEW OF THE CURRENT SITUATION OF CORRUPTION

51. Kosovo is located in the south-eastern Europe in the central Balkan Peninsula, and it covers 10,908 km². Kosovo shares land borders with Montenegro, Serbia, “the former Yugoslav Republic of Macedonia” and Albania. Kosovo has an estimated resident population of 1,739,825 million according to the last census of 2011, of which approximately, 92% is Albanian and 8% from other minorities (Serb, Bosniak, Gorani, Roma, Turk, Ashkali and Egyptian minorities). The Kosovo population is one of the youngest in Europe with an estimated 40 percent of its citizens being below the age of 20. The official languages in Kosovo are Albanian and Serbian. At the municipal level, the Turkish Bosnian and Roma languages have the status of official languages.

52. Kosovo has a GDP of 6,300 billion US dollars in current prices while GDP based on PPP is 13,513 in international dollars (2012 data). The GDP grew yearly in average by around 4.5% in 2008-2012, culminating at 6.9% in 2008. In 2011 it increased by 5%, whereas in 2012 rose by 3,8%².

53. UN Security Council Resolution 1244 (1999) placed Kosovo under a transitional administration, the UN Interim Administration Mission in Kosovo (UNMIK), pending a determination of Kosovo's future status. An UN-led process began in late 2005 to determine Kosovo's final status. The negotiations ran in stages between 2006 and 2007, but ended without agreement between Belgrade and Pristina. On 17 February 2008, the Kosovo Assembly declared Kosovo independent. At the end of 2012, 98 countries have recognised Kosovo, and it has also joined the International Monetary Fund and World Bank and is to become a member of the European Bank for Reconstruction and Development (EBRD). In October 2008 Serbia sought an advisory opinion from the International Court of Justice (ICJ) on the legality under international law of Kosovo's declaration of independence. The ICJ released the advisory opinion in July 2010 affirming that Kosovo's declaration of independence did not violate general principles of international law, UN Security Council Resolution 1244, or the Constitutive Framework. The opinion was closely tailored to Kosovo's unique history and circumstances.

54. As in other post-conflict countries, democratic governance in Kosovo poses important challenges for the domestic authorities and the political leadership. The sense of challenge is further accentuated by the necessity to build-up from the current institutional system characterised by inadequate infrastructure and scarce available resources, mainly due to financial and capacity constraints.

55. Kosovo faces other challenges, aside from those posed by its struggle for further international recognition. The reported unemployment level is still very high.

56. Kosovo has a parliamentary system and the form of government is unitary. The government is proposed by the Prime Minister, whereas the Prime Minister is proposed after elections by the Kosovo President and approved by the Kosovo Assembly. Kosovo has a civil law based legal system, where the Constitution is the highest legal act.

The phenomenon of corruption and its perception in Kosovo

Characteristic features of the corruption phenomenon in Kosovo

57. Kosovo is a fragile democracy that suffers from weak government accountability and transparency. Corruption is one of the most pressing problems and remains a wide spread phenomenon in Kosovo in the view of many surveys, different non-government stakeholders on domestic level as well as of various international stakeholders. International surveys on perception of corruption also show that the perception has remained at the same low level or worsened. The Corruption Perception Index 2011 of Transparency International gives a score of 2.9 (high corruption, position 112 out of 182 included countries) on a zero (highly corrupt) to ten (very clean) scale³. Over the last years, there were several reports, both local and international, that

² International Monetary Fund, World Economic Outlook Database, October 2012 & GDP Data.

³ The TI CPI 2012 shows some little progress since Kosovo gets a score of 34 (up to 100) and it is ranked at the 105th place among 174 included countries. Kosovo was included for the first time in the CPI 2010 with a score of 2.8.

Freedom House (“Nations in Transit” corruption scores) ranks Kosovo at 5.75 for any year during the 2008-2012 period (1 representing the highest progress and 7 the lowest).

have attracted attention about the perception that levels of corruption are damaging the domestic development as well as Kosovo's image on the international scene. The year 2010 began with reports of bursting levels of corruption and organised crime at the highest levels. The lack of political will to establish law and order is continuously damaging Kosovo by reducing its chances to become an attractive environment for foreign investors⁴. Corruption is considered to be one of the most serious threats for Kosovo, impeding *inter alia* business growth.

58. In the Transparency International Global Corruption Barometer 2010, political parties are perceived and identified as the area which is most affected by corruption in Kosovo, since 55% of the surveyed households assess it as 'extremely corrupt'. According to the same source, 57% of households believe that the government's fight against corruption is 'somewhat/very ineffective'. Significant weaknesses in all levels of government accountability, effectiveness of the judiciary and law enforcement, public enterprises, public procurement and concessions are identified as some of the most notable shortcomings and critical sectors in this regard. The tendency seems to be of many investigations on corruption and related offences, but few cases subject to trial.

Connection between corruption and organised crime

59. Several international and local stakeholders, including mainly media and civil society have reportedly cited organised crime and corruption as worrying threats that Kosovo authorities have to address in a comprehensive and efficient way⁵. From the institutional level perspective, combating organised crime and corruption have been *inter alia* dedicated to a particular investigative body – the Special Prosecution Office – as well as to the European Union Rule of Law Mission in Kosovo (EULEX). However, the level of corruption and organised crime in Kosovo is ambiguous as often supported by anecdotal information due to lack of consolidated track records of investigations, prosecutions and convictions for corruption and organised crime offences⁶. Moreover, corruption is reported to be prevalent in different areas in Kosovo as well as to be perceived and considered as a serious concern by different international and domestic stakeholders.

60. Discussion about corruption has been more and more active in Kosovo since several years. After unemployment and poverty, corruption is perceived as a main challenge by citizens⁷. Certain sectors appear more vulnerable than others. Those particularly affected include public procurements, the judicial system, privatisation, customs, health care, central administration, taxes, municipalities, etc. Besides adoption and review of relevant legal and institutional framework, the daily periodical debate on this issue, besides the rhetorical one, is more focused on perception aspects or different specific cases reported mainly by media and some reports or sponsored surveys that remain mostly focused on corruption in general. There is less focus on understanding forms of the phenomenon based on practical data and statistics due to lack of coherent statistical and reliable data on the scope and characteristics of corruption. In this respect, keeping regular, integrated and reliable statistics by main administrative and law enforcement agencies on corruption related issues (from administrative/disciplinary and criminal aspects) is a real challenge in Kosovo⁸. With few exceptions, executive agencies and monitoring bodies and

2006	2007	2008	2009	2010	2011
38.5	25.2	32.5	31.1	31.1	30.8

* WB indicators are based on 0 – 100 rank, where 0 represents the lowest and 100 the highest rank.

⁴ <http://www.kdi-kosova.org/publications/NIS2011en.pdf>, page 52.

⁵ See among others, Strengthening the Rule of Law in Kosovo : The Fight against Corruption and Organised Crime, KIPRED, 2010: http://www.kipred.org/advCms/documents/40064_RoL_fight_against_corruption.pdf

⁶ It seems from some domestic sources that no clear data of investigation and conviction of corruption or organised crime cases have been reported during several years besides around 150 criminal cases being unresolved for years. On 16 November 2012, the Kosovo Prosecutorial Council has adopted a Strategic Plan on Inter-Institutional Cooperation in the fight against organised crime and corruption, 2013-2015.

In 2009, only 1 corruption case and 4 organised crime cases have been reported.

See p. 51 of EULEX Judges Annual Report 2009, at <http://www.eulex-kosovo.eu/docs/justice/annualreport2009/ANNUAL%20REPORT%20English%20FINAL.pdf>

Statistics on corruption convictions refer to 103 persons in 2009; 78 in 2010; 80 in 2011; and 52 in 2012. Moreover, there were 219 prosecuted persons in organised crime cases in 2009; 268 in 2010; 426 in 2011; and 290 in 2012. See page 24, footnote 135 in http://www.kipred.org/advCms/documents/56243_A_Comprehensive_Analysis_of_EULEX.pdf

Furthermore, in the period 2008-2011, statistics of municipal and district courts show 48 convicted persons for passive bribery and 58 for active bribery, but no one for trading in influence. For organised crime, 29 persons have been convicted for the period 2009-2011.

⁷ See Public Pulse Report 4, UNDP Kosovo, 2012, p. 11:

http://www.kosovo.undp.org/repository/docs/PULSE_ENG_409069.pdf

⁸ Moreover, there appears to still be no common agreement between law enforcement agencies and the courts as to which criminal offences fall within the scope of corruption.

inspectorates have not yet been enough able to carry out preventive checks and risk analysis of forms and typologies of corruption presence.

61. In addition, co-ordination between the different monitoring bodies appears very poor, particularly when reports and experience of corruption and other related offences could be cross-analysed from different administrative, disciplinary, judicial and financial aspects. So far, besides some contributions from the Kosovo Anti-corruption Agency, regular analyses of corruption risks are not carried out and the associated ethical issues are not dealt⁹. It should be noted however that there has been for the first time an initial positive step within the draft anti-corruption strategy for the period 2013 – 2017 by attaching an annex to it (Annex 2, Evaluation Timeframe - Matrix) that is related to corruption risk assessment in priority sectors as provided within the Evaluation Framework of the new draft Anti-corruption Strategy for 2013-2017. The introduction of corruption risks analysis as a required activity covering at least the most vulnerable sectors and in perspective all public institutions should be encouraged further and a periodical review is necessary because authorities may be enabled to adapt and prioritise efforts and interventions against corruption to changes in the public service environment and growing demands for effectiveness and efficiency through a co-ordinated preventive approach.

62. In view of the above, it is recommended **(i) to undertake a periodical assessment of corruption risks, prior to any further revision of the strategic documents (Anti-corruption Strategy and Action Plan); (ii) to adopt a more integrated approach of ethical aspects through adequate integrity plans, with a view to extend preventive measures to the entire public sector, including local government; and (iii) to publish respective findings and thus, to further define/adapt strategic priorities.**

Media report on corruption issues

63. The debate on corruption is widespread in the context of media. The role of media in referring to corruption cases and practices has been periodical and very active since several years ago. A good point is that the media report in a rather open way about corruption. The independence and the professionalism of media as well as the improvement of relations between public institutions and media or threats and impediments of media activities and reports are still an issue in Kosovo. Abolition of some criminal incriminating provisions against media representatives from the recent New Criminal Code has been a positive step following a political debate¹⁰.

64. Some international institutions emphasise some lack of freedom of media. And the lack of funds and foreign investments make the newspapers weak on the front of public pressure and particular groups of interest. On the other hand, the public opinion seems resigned and considers corruption almost like a normal phenomenon for a post-conflict society. In such a situation, the fight against corruption ought to be a main concern of the politicians. But there is obviously not a general will to take the appropriate measures in this matter.

65. In April 2012, a web-based platform to fight corruption was launched as an innovative civil society approach to tackle corruption through social media. Just like other social media sites, this interactive site provides opportunities for citizens of Kosovo to freely report corruption cases that they face and exchange comments about corruption. Responsible bodies in the Government follow-up on reported cases and these reported cases will then appear as either "verified" or "unverified". The online platform www.kallxo.com¹¹ provides the possibility for any Kosovo citizen to report cases of corruption, organised crime, fraud, conflicts of interest, and other cases of abuses of official capacity, neglect, inaction, infringement of rights of Kosovo citizens, or infringement of general interests. Reports of corruption can be made in all areas, including central and local administration, education, healthcare, courts, economy, etc. The www.kallxo.com team, in cooperation with reporters of *Jeta në Kosovë* (Life in Kosovo) and *Drejtësia në Kosovë* (Justice in Kosovo) do monitor the actions by such relevant institutions in resolving reported cases. Identity of

⁹ Figures from the KPC for the first half of 2012 show that the overwhelming number of "corruption prosecutions" (approximately 83%) were for abuse of official duty. Around 36% of all "corruption prosecutions" were being conducted by the District Prosecution Office of Pristina. About 10% of corruption offences are dealt with by SPRK.

¹⁰ Articles 37, 38 and 39 of the new Criminal Code (adopted by the Law No. 04/L-082 of 20 April 2012 and establishing criminal liability of chief editors, publishers, printers or manufacturers in cases of criminal offences being committed through the publication of information) have been abolished by the Law No. 04/L-129 of 19 October 2012. The initial confusing adoption of the new Criminal Code by the Assembly including such contested provisions that may seriously limit media rights and freedom has been the source of resignation of Minister of Justice and Deputy Prime Minister who initiated and was defending the draft Criminal Code.

¹¹ The Albanian word "kallëzo" means in English "report", "denounce" or "tell".

citizens reporting cases is confidential. It also gives citizens the opportunity to voice concerns, share discussions and experiences online and make corruption and related cases visible to the wide public.

66. BIRN combines investigative reporting with public service monitoring, and, through its show *Jeta në Kosovë* mobilises public opinion by broadcasting *inter alia* abuses found through its monitoring project. The most notable contribution in the field of anti-corruption has been in judiciary, where the monitors from BIRN have helped in discovering a number of corrupt cases. Within this platform, BIRN has organised a series of public debates in 23 Kosovo municipalities before last local elections¹².

67. In addition, most of the electronic media (including TV Channels and on-line portals) and the written media do report about corruption. However, as in other neighbouring countries, investigative journalism is still under development in Kosovo. Different pressures on media activities, vulnerability of journalists to partisan and ownership interests and the political interference are reportedly underlined to be matters of concern.

Anti-corruption policies, institutions, initiatives and assistance

General anti-corruption policies

68. Anticorruption policies and initiatives have been under the focus of legal and institutional efforts undertaken since few years in Kosovo. Some progress in tackling corruption challenges has been noticed by interested stakeholders, notably by starting to address some of the corruption cases and improving the legislative framework and structures in place to deal with corruption. However, the prevalence of corruption in many areas, the very negative perception towards its wide presence, the still incomplete level of legislative framework, insufficient efforts to tackle this challenge more proactively, in particular by law enforcement and judiciary have been underlined as the key shortcomings.

69. The Anti-Corruption Strategy and its implementing Action Plan have been repeatedly adopted in cycles of 3-4 years since 2004¹³. Recognising the political will as key prerequisite to implement its objectives, but also using a comprehensive approach to introduce anti-corruption measures for a wide range of state bodies, media and civil society, the KAA has drafted in 2011 a new strategic framework. Based primarily on an evaluation of the previous strategic cycle (2009-2011), and in order to reinforce accountability of responsible institutions, a new set of documents was also for the first time based on a corruption risk-assessment and an evaluation framework. In January 2012, the Kosovo Government adopted the Anti-Corruption Strategy and Action Plan for 2012-2016 and forwarded to the Kosovo Assembly for final adoption. However, in April 2012, through a negative vote, the Assembly returned strategic documents back to the Government for review. After some adjustments (amongst others to set a new validity date: 2013-2017), the Government re-adopted the text of the Strategy and Action Plan and re-submitted to the Parliament.

70. The implementation of the anticorruption strategy on central and local levels is monitored by the Kosovo Anti-Corruption Agency (KAA)¹⁴. Institutions responsible for implementation of measures report to the KAA on a 6-month period basis and whenever required, whereas the KAA submits an annual report to the Assembly. One prosecutor was assigned within the Office of Basic Prosecution of Pristina to deal exclusively with corruption related cases¹⁵. Steps have been taken to establish a Special Anti-corruption Department¹⁶ within the Special Prosecution Office, composed

¹² Civil Society Against Corruption, Lejla Sadiku,

http://www.againstcorruption.eu/uploads/rapoarte_finale_PDF/Kosovo.pdf

¹³ The first anti-corruption strategy covered the period 2004-2007; the second one concerned the period 2009-2011. The first requirement to have an anti-corruption strategy has been initially mentioned in the Law on suppression of corruption (No. 2004/34 of 22 April 2005), Article 23.

Currently, Law on Anti-corruption Agency (No. 03/L-159 of 29 December 2009) regulates in Chapter IV (Articles 16 and 17) the strategy against corruption and action plan. The AC strategy is drafted by the KAA in cooperation with the Government and other relevant institutions. It is submitted through the Government to the Kosovo Assembly for approval (Article 16). An Action Plan against corruption supports the implementation of the AC strategy. A periodical reporting every 6 months is required to be made by the responsible institutions to the KAA that monitors the implementation of the Action Plan (Article 17).

¹⁴ According to Article 5, 1.4 of Law on Anti-corruption Agency (Law No. 03/L-159 of 29 December 2009), the KAA monitors and supervises the implementation of the Strategy against Corruption and Action Plan.

¹⁵ This number was increased up to 3 prosecutors by KPC decision since April 2013.

¹⁶ Established by the Government Decision No. 02/110 of 26 February 2010.

primarily of 8 prosecutors (5 domestic and 3 international prosecutors) and to ensure that seconded police officers (30 (thirty) investigating police officers) and appointed experts (5 experts) will be able to contribute effectively.

71. The Assessment Team notes with satisfaction that Kosovo has launched an inter-institutional debate on corruption and has undertaken, since several years, various measures on policy, legal and institutional levels to address the challenge of widespread corruption. Different developments have been noticed to bring the legislation into line with the relevant anti-corruption European and international standards and good practices.

72. However, the draft anti-corruption strategy and action plan, after their adoption by the Government at the beginning of 2012 have not been quickly adopted in the Assembly. After the Assembly returned back these strategic documents to the Government in April 2012, their further review took several months without any outcome. Slightly reviewed, such documents have been adopted again by the Government in November 2012 and finally by the Assembly on February 11th 2013¹⁷. Some reasons, sometimes contradictory, have been advanced about such delay. The fact is that one year has been lost without any concrete progress. At the moment, therefore, there is a strategic framework against corruption that has been just adopted after an excessive delay. Moreover, many measures from the previous Action Plan (2010-11) remain unimplemented, and only few of them could be incorporated into the current Action Plan. Therefore, it is recommended **to ensure proper and effective implementation and monitoring of the new strategic framework against corruption for 2013-2017, as well as to implement the key outstanding measures from the previous Action Plan 2010-2011.**

Institutions in charge of anti-corruption policies

73. On 14 February 2012, the President of Kosovo Atifete Jahjaga issued the decree No. DKKK-001-2012 related to the establishment of the National Anti-Corruption Council, serving as a consultative coordination body for the main stakeholders involved directly or indirectly in the fight against corruption. The Council is chaired by the President of Kosovo while the other members of the Council are the Heads of the following institutions: Anti-corruption Agency, Auditor General of Kosovo, Parliamentary Committee on Legislation, Parliamentary Committee on Budget and Finance, Parliamentary Committee on Oversight of Public Finances, Kosovo Judicial Council, Kosovo Prosecutorial Council, Supreme Court, Consultative Council for Communities, Ministry of Justice, Ministry of Internal Affairs, Ministry of European Integration, Ministry of Local Governance Administration, Kosovo Police and Financial Intelligence Unit. Moreover, other institutions may be invited depending on the agenda of the meeting. The Council meets regularly at least four times per year. Other meetings may be convened by the Chair or other Members may request the Chair to convene a meeting. The Council has consultative role with some of its functions being to coordinate the activities for preventing and fighting corruption, to identify and coordinate the activities supporting the implementation of the national strategy in the fight against corruption, to define the priorities and policies for the implementation of the legislative agenda in increasing the efficiency in the fight against corruption, to coordinate the activities of the responsible institutions in strengthening the existing mechanisms in fighting corruption, to increase the awareness of the society to prevent and fight corruption¹⁸.

74. As part of the government's anti-corruption efforts, the Anti-Corruption Task Force is the latest anti-corruption entity to be established (after KAA, the Office of Good Governance (OGG) at the Prime Minister's Office, and the Special Prosecution service)¹⁹. In August 2011, several new anti-corruption laws were adopted: Law on Declaration, Origin and Control of Property for Senior Public Officials and on Declaration, Origin and Control of Gifts for all Public Officials (No. 04/L-050), Law on Protection of Informants (i.e., whistleblowers, No. 04/L-043) and Law on Prevention of Conflicts of Interest in Discharge of Public Functions (No. 04/L-051).

75. Kosovo Anti-corruption Agency (KAA) is an independent institution established in July 2006. It started to be operational in February 2007. Its staff is composed of 35 persons and it is

¹⁷ The Assembly discussed it on plenary session on January 24, 2012, however nobody from the Cabinet was present. The Anti-corruption Strategy has been finally adopted by the Assembly in its plenary session of 11 February 2013 (54 votes in favour, 45 against and 2 abstentions).

The text of the Anti-corruption Strategy recognises the lack of sufficient political will to tackle and fight corruption in Kosovo.

¹⁸ Decree No: DKKK-001-2012, on the Establishment of the National Anti-Corruption Council (Published in the Official Gazette 16.02.2012), available at: <http://gazetazyrtare.rks-gov.net/SearchResults.aspx>

¹⁹ There is also an Ombudsperson Institution of Kosovo, however without a major role in anti-corruption institutional framework.

expected to be 40 persons during 2013. The KAA annual budget is around 400,000 EUR. It is headed by a Director who is elected by the Assembly for 5-year term with the right to be re-elected once. The KAA submits an annual report to the Assembly and the Agency Oversight Committee of the Assembly.

76. The KAA duties and competences include investigation²⁰, corruption prevention and education. Its powers were initially regulated by Law on Suppression of Corruption (No. 2004/34, 04/2005). The current specific legal framework related to KAA competences includes: Law on Anti-corruption Agency (No. 03/L-159, 12/2009); Law on Assets Declaration as well as Law on Prevention of Conflicts of Interest. According to KAA data, 292 criminal reports against around 800 public officials have been forwarded to law enforcement authorities since its establishment (2007-2012). So far, KAA has signed memoranda of understanding with the following counterparts: EULEX Chief Prosecutor's Office, Independent Judicial and Prosecutorial Commission, Financial Intelligence Centre/Unit, Ombudsperson Institution, Kosovo Customs, Public Procurement Regulatory Commission, Kosovo Police, State Prosecutor's Office²¹, Tax Administration of Kosovo and Office of Disciplinary Prosecutor.

77. Although the Assessment Team noted various efforts to establish, adapt and strengthen the institutional framework, nevertheless, from the anti-corruption policy standpoint and preventive approach, it seems there is a lack of clear vision as well as a need of clarity and coherence in terms of cooperation, co-ordination and communication mechanisms. Sometimes, there is an overleaping between different stakeholders present and involved in anti-corruption efforts. The KAA is one of the main stakeholders in this area in accordance with its respective powers as laid down in Article 5 of the KAA Law. However, in its coordination role it faces both institutional and practical difficulties. On the Government level, the Office for Good Governance at the Prime Minister's Office (OGG/PMO) exists since 2003. Although its terms of reference that remain similar since its establishment refer to some supervisory and advisory role concerning policy and government transparency aspects, its role and powers concerning Government coordination on anti-corruption and related issues remain ambiguous and unclear²². In February 2012, an Anti-corruption Council has been set up under the initiative and the leadership of the President of Kosovo. Besides any positive outcome to serve as a forum for exchange of information, its functions are rather general and therefore its influence seems to be limited and formal. Although some Government representatives (ministries) seat in this Council, it has been argued that Government is vested by Constitution and law to play the primary role in the anti-corruption agenda. On the other side, the Assessment Team notes that account had not yet been taken of involvement of municipalities as well. The Anti-corruption strategy for the period 2009-2011 had a limited implementation score, and therefore low impact that was due to a large extent to lack of inter-institutional cooperation and coordination. Certain bodies or departments appear to lag behind as far as prevention is concerned.

78. On the other hand, although apparently complete, the new anti-corruption set of legislation seems far from introducing clarity and legal certainty. First, an amalgam can be noticed between the still valid Law on Suppression of Corruption (No. 2004/34 - 2005), which contains, *inter alia* a definition on corruption and KAA powers, and Law on Anti-Corruption Agency (No. 03/L-159 - 2009) which also regulates the same matters. Thus, the general provision of the latter (Article 25) on "repealing all contrary legal provisions" is confusing, as there is no reference on which concrete law/provision(s) it refers. As a consequence, the definition of corruption, powers of KAA and other may be legally valid under two or more sets of laws (in addition to the definition of corruptive related offences under the New Criminal Code)²³. Second, Law on Declaration, Origin and Control

²⁰ In general administrative investigation aiming to enforce the Law on Declaration of Assets and the Law on Conflict of Interest as well as corruption "preliminary investigation" based on complaints received (with potential criminal follow-up by law enforcement bodies).

²¹ The question of the MoU signed with the State Prosecutor's Office has been subject to a request submitted by an NGO but rejected by the Constitutional Court in its decision KI 03/11 of 6 March 2012.

²² The Assessment Team was informed after the on-site visit that as a result of the adoption of the Regulation on organisational structure of the Prime Minister Office on 5 April 2013, the terms of reference of the Office for Good Governance, Human Rights, Equal Opportunities and Anti-Discrimination have been reviewed and further clarified. Besides advisory, coordination and some other related responsibilities, the role of serving as the Government Secretariat of different boards and committees in *inter alia* the good governance area, the consultation role with various groups of interest, the coordination role for civil society involvement in policy and decision making are some examples of new responsibilities of the OGG.

²³ Although the authorities argue that in practical implementation of these laws there is no space for concern, the inconsistency between subsequently amended legislation and imprecise legislative drafting made this specific case particularly vulnerable. This is particularly the case with the issue of the "control" of origin of assets, where besides clear mentioning in the title of the Law, the implementing authority has no real power to carry out the 'control' of the origin of assets.

of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials (No. 04/L-050 - 2011) has abrogated the Law No. 03/L-151 of 2010, on Declaration and Origin of Property and Gifts of Senior Public Officials. Also, Law on Prevention of Conflicts of Interest in Discharge of Public Functions (No. 04/L-051 - 2011) has abrogated the Law No. 02/L-133 on Prevention of Conflicts of Interest in Discharge of Public Functions and Law No. 03/L-155 on Amending and Supplementing Law No. 02/L-133 on Prevention of Conflicts of Interest in Discharge of Public Functions. Furthermore, in the context of the adoption of the New Criminal Code, which criminalises some aspects of the conflict of interest, the delimitation of investigative competences and actions of the KAA and the State Prosecutor (or Special Prosecutor for corruption) when it comes to implementation of these laws has far from being clarified.

79. In the view of the Assessment Team, there is a real need for a more comprehensive approach to prevent corruption and a greater and real involvement of decision-makers. In addition, a concerted approach by simplifying the institutional framework and avoiding overleaping of responsibilities should help to clarify and strengthen existing institutional arrangements and encourage exchanges of knowledge and experience and a more proactive operational activity. Also, overleaping of legal provisions particularly between Law on Suppression of Corruption (No 2004/34) and Law on Anti-corruption Agency (No 03/L-159 - 2009), as well as the new Criminal Code should have been addressed. Consequently, it is recommended **(i) to streamline the legal framework related to the prevention of conflicts of interest, by harmonising relevant legislation with the newly adopted Criminal Code; (ii) to review and clarify the institutional framework for the prevention of conflicts of interest, by adopting a set of guidelines which would enable efficient action during both the minor offence and criminal offence proceedings; (iii) to initiate debate on the re-definition of the KAA competencies, in light of the need for more efficient and effective prevention of corruption; and (iv) to progressively include tax authorities in the verification of declared assets, in order to improve the control of origin of assets and thus reduce the space for illegal enrichment.**

Initiatives of civil society for the prevention and fight against corruption

80. Civil society organisations generally function freely, although decreasing donor funding in recent years has led many to cease operations. Among around 6,000 registered non-governmental organisations in Kosovo, only a small number are active in relation to anti-corruption issues. Despite its plurality, Kosovo's civil society faces a developmental lag in stability, financial sustainability²⁴, and independence. In general, as reported by Freedom House, civil society organisations have an *ad hoc* cooperation with the Government, their reaction is often reactive and they act in an unfriendly environment.

81. In the field of anti-corruption, the civil society sector is marked by a few organisations which are very present in the public and relatively strong but their impact on actual policy changes remains mixed. These organisations tend to specialise in different tools rather than different aspects of corruption. Some analysts argue that civil society organisations can be separated into two major groups: organisations that deal with institutional transparency and advocacy, such as the Kosovo Democratic Institute and the Youth Initiative for Human Rights which monitors enforcement of legislation, mainly Law on Access to Official Documents. The second group deals with high level corruption, where two organisations have made a considerable contribution: Çohu (Stand up) and the Balkan Investigative Reporting Network Kosovo (BIRN.) Çohu relies more on advocacy and whistleblowing, while BIRN uses mainly naming and shaming²⁵. Other important civil society organisations active in the anti-corruption field include: the Fol (Speak up) Movement, the Initiative for Progress (INPO) and the Forum for Civic Initiative. These organisations are known for their innovative use of traditional tools (for example, protests with performance elements), educating the public and increasing citizen involvement in policy making processes. There are not many organisations working in the anti-corruption sector. The overall contribution of civil society organisations has been rather modest; but, with well-targeted projects, led by enthusiastic leaders (and often in coalitions) has had a positive impact²⁶.

82. Another important program is that of Kosovo Democratic Institute Organisation, called Transparency and Anti-Corruption (TAC) program. As reported by KDI, this program was established with the aim to sway for promotion of anti-corruption culture, eliminating corruptive practices and create an environment where high integrity institutions dominates, and that are able

²⁴ The vast majority depends on private and, in particular, foreign funding, only a few receives government assistance.

²⁵ Lejla Sadiku, Civil Society against Corruption, September 2010.

²⁶ KDI, Report, Assessment of Institutional Integrity

to undertake effective anti-corruption measures in public and private organisations²⁷. Moreover, the organisation called "Çohu" is another active civil society organisation focused on activities against corruption. In 2007, "Çohu" and other organisations established the Coalition for a Clean Parliament, which created a public roster of allegedly corrupt candidates running for the Assembly and municipal elections.

83. Cooperation between public institutions and civil society organisations has had limited effects. A draft strategy on cooperation between the Government and civil society for the period 2013-2017 is under finalisation process by the OGG. Its main objectives are *inter alia* to reinforce civil society participation in development and implementation of policies and legislation, to enable contracting of public services for CSOs or to provide financial support for CSOs²⁸.

Main international actors involved in anti-corruption assistance and technical cooperation

84. In the anti-corruption area the principal institution – the Kosovo Anti-Corruption Agency is currently not receiving any major technical assistance following the end of 2009-2010 EU funded project. The major objective of the latter was to provide assistance and legal advice on certain areas of KAA's operation as well as an assessment of the existing anti-corruption legal framework (criminal legislation, whistleblowers etc.), and on strengthening the institutional and operational capacity of a number of law enforcement bodies to develop policies and measures to systematically tackle corruption.

85. In fall of 2011, the Council of Europe, through its anti-corruption co-operation programme provided a long term expert to the KAA to support drafting of the new Anti-corruption Strategy and Action Plan along with performance measuring tools and risk analysis. In addition, UNDP is under preparation to launch a project in the area of anti-corruption²⁹.

86. Some other related projects that have been undertaken through technical assistance during last years have been *inter alia* as following:

- Kosovo Special Prosecutor's Office (IPA 2010, €1.0 million): Increasing the independence and improving the performance of the judiciary by developing the professionalism, independence and efficiency of the Kosovo Prosecutorial and Judicial Councils.
- Combating corruption in Kosovo's institutions (IPA 2007, €1 million): building the capacity of the recently established Kosovo Anti-Corruption Agency; the assessment, development and enforcement of anti-corruption policies and accompanying legal frameworks, in line with EU standards and best practice approaches in the region; enhancing inter agency cooperation in investigating and prosecuting corruption cases; and the launch of public awareness campaigns.
- During the period 2009-2011, a project on "Kosovo Partnership for Anti-Corruption (KPAC) has been implemented by the UNDP office in Kosovo with the support of the Government of Japan aiming to support a sustainable network for anti-corruption in Kosovo (including technical and capacity development support to anti-corruption bodies in Kosovo, strengthening the institutional integrity and increasing the public awareness on corruption).

²⁷ KDI, <http://www.kdi-kosova.org>

²⁸ After the on-site visit, the authorities informed the Assessment Team concerning different activities co-organised by the OGG/PMO and CiviKos Platform on central and local level, current public consultation process and the intention to have the strategy adopted by the Government by June 2013.

²⁹ Support to anti-corruption efforts in Kosovo (SAEK), 2012-2015.

2. FUNDAMENTAL SAFEGUARDS AND CORRUPTION PREVENTION

2.1. Separation of powers

87. The principle of separation of powers (between the legislative, executive and judicial powers) and the checks and balances among them is enshrined in Article 4 of Kosovo Constitution. Thus, the Assembly exercises the legislative power; the President represents the unity of people and is the guarantor of the democratic functioning of the institutions whereas the Government is responsible for implementation of laws and state policies under the parliamentary control; the judicial power is unique and independent and is exercised by courts.

2.2. The Judiciary – Judges / Prosecutors

a) *Corruption Prevention in respect of Judges*

Overview of the judicial system

Categories of courts and jurisdiction levels

88. The foundations of the judicial system of Kosovo are laid down in the Chapter VII of the Constitution entitled "Justice System" (Articles 102 to 111). Article 102(1), (3) of the Constitution envisages that the judicial power is exercised by the courts that adjudicate based [solely] on the Constitution and the law. The courts constitute a separate power and are independent of other branches of power. Law on Courts has introduced a reform of the judicial system. Starting with January 2013, a new streamlined courts structure is effective that includes the Supreme Court, the Court of Appeal and Basic Courts³⁰. Specialised courts may be established by law when necessary, but no extraordinary court may ever be created (Article 103.7 of the Constitution). The judicial proceedings involve at least two instances. The Constitutional Court does not form part of the judicial system.

89. As stated above, Kosovo is under a process of reforming the judiciary and streamlining the organisation of the common courts system. The previous structure of courts which was operational until January 1, 2013 included the Supreme Court of Kosovo, District Courts (several municipal courts), Municipal Courts (one or more municipalities) and Minor Offence Courts³¹. The system comprises 26 Municipal Minor Offence Courts (first instance), 1 High Minor Offence Court (appellate instance), 26 Municipal Courts (first instance), 5 District Courts (first or appellate instance), 1 Commercial Court (first instance) and the Supreme Court (third instance, appellate and first instance court).

90. According to the new structure of court system that started to be in place from January 1, 2013, the judicial power is exercised by Basic Courts (first instance), one unique Court of Appeal (appellate or third instance), and the Supreme Court (third instance appellate court, appellate and first instance)³². Article 8 LC envisages that within the territory of a Basic Court, branches shall be established. Within the Court of Appeals and the Basic Courts, Departments and Divisions may be established for more efficient operation of the respective court (Articles 8 & 12 LC). As of January 1, 2013 Kosovo has seven Basic Courts (in Prishtina, Gjilan, Prizren, Gjakova, Peja, Ferizaj and Mitrovica). All these Basic Courts will have their own Branches in the Municipalities they cover³³. The Law establishes a Department for Commercial Matters as well as a Department for Administrative Cases both operating in the Basic Court of Pristina for the entire territory of Kosovo. While all other basic courts will have one Department for Serious Crimes operating at the principal seat of each Basic Court and one General Department operating in each Basic Court and in each

³⁰ The Constitution does not regulate the structure of the courts in Kosovo. Article 103 (1) states that "Organisation, functioning and jurisdiction of the Supreme Court and other courts shall be regulated by law". See Article 4 of LC.

³¹ As defined by Article 9.4.4 of the Constitutional Framework for provisional Self-Government in Kosovo promulgated by UNMIK Regulation No.2001/9 of 15 May 2001. See Law No. 21 of 28 April 1978 on regular courts (Official Gazette of the SAPK).

The minor offences courts have jurisdiction over traffic tickets and cases where the offence is punishable by a fine or imprisonment of no more than 60 days. The Commercial Court of Kosovo is located in Pristina and has Kosovo-wide first instance jurisdiction over disputes between private business entities, bankruptcy proceedings, and certain commercial criminal offences.

³² Article 4 & 8 LC.

³³ However, not all municipalities host a branch of the Basic Court. Some branches have jurisdiction over more than one municipality. There are 20 branches for all Kosovo.

branch of the Basic Court as well as one Department for Minors, operating within the Basic Courts. Divisions for minor offences have to be established as well in all 7 basic courts. The KJC may adopt regulations for further internal organisation of the courts.

91. The Court of Appeal having its seat in Pristina and general jurisdiction throughout the territory of Kosovo will be organised in 5 departments (covering general issues, serious crimes, commercial matters, administrative matters and minors' issues)³⁴. It is composed of around 34 judges.

92. The common courts administer justice in all matters except for those statutory reserved for other courts³⁵. The material, territorial and functional scope of the common courts as well as relevant proceedings are defined in Law on Courts (LC), new Criminal Procedure Code (CPC), Law on Contested Procedure (LCP)³⁶, the Juvenile Code (JC)³⁷, Law on Administrative Conflicts (LAC)³⁸ and a series of other or specialised acts³⁹. Pursuant to their provisions, the common courts adjudicate in civil, family, juvenile, labour, social security, commercial, bankruptcy, criminal and enforcement supervision cases and mortgage and land register's litigations.

93. Kosovo legislation foresees two categories of judges: professional and lay judges. The judicial decisions of judges and lay judges are taken based on the Law on Courts.

94. There are no military courts in Kosovo.

95. The Supreme Court of Kosovo is the highest judicial authority having jurisdiction over the territory of Kosovo⁴⁰. Based on litigations it handles, the Supreme Court administers justice by reviewing the legality of decisions adopted by lower courts. By allowing for a cassation of valid and final judgements delivered by second instance courts, the Supreme Court acts as an extraordinary legal remedies against final decisions of the courts, Kosovo Property Agency cases and Privatisation Agency of Kosovo or Kosovo Trust Agency cases in its Special Chamber⁴¹. The Special Chamber is composed of up to twenty (20) judges, twelve (12) of whom are Kosovars and eight (8) international judges. At least two (2) of the judges who are citizens of Kosovo are from minority communities⁴². With the starting of courts organisation reform from January 1, 2013 the Supreme Court will not exert anymore first instance and appellate functions.

96. At least fifteen percent (15%) of the judges of the Supreme Court, but not fewer than three (3) judges, shall be from Communities that are not in the majority in Kosovo. The Supreme Court includes the Appeals Panel of the Kosovo Property Agency and the Special Chamber of the Supreme Court on Privatisation Agency related matters which is part of the Supreme Court in accordance with Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatisation Agency Related Matters.

97. The Supreme Court may call a General Session of all its judges to issue decisions that promote unique application of laws. All decisions of the Supreme Court are public documents and they shall be published on the website of the Kosovo Judicial Council.

98. Kosovo does not have administrative courts. Nevertheless, as mentioned above, there is an Administrative Department in the Basic Court of Pristina which has competencies for all the territory of Kosovo to adjudicate and decide on administrative conflicts according to complaints against final administrative acts and other issues defined by law⁴³.

³⁴ Article 17 LC.

³⁵ Article 11.1 LC.

³⁶ Law No. 03/L-006 of 30 June 2006.

³⁷ Law No. 04/L-123 of 13 December 2012 on Criminal Procedure Code (CPC); Law No. 03/L-006 of 30 June 2008 on Contentious Procedure (LCP); Law No. 03/L-193 of 8 July 2010 on Juvenile Code.

³⁸ Law No. 03/L-202 of 16 September 2010.

³⁹ See, *inter alia*, the Law on Out Contentious Procedure (No. 03/L-007 of 20 November 2008), Law on the Special Chamber of the Supreme Court of Kosovo on Privatisation Agency related matters (No. 04/L-033 of 31 August 2011); Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (No. 03/L-053 of 13 March 2008), Law 2002/4 on Mortgages, UNMIK Regulation 2001/5 on Pledges, Law 2002/5 with subsequent amendments on the Establishment of an Immovable Property Rights Register.

⁴⁰ Article 103 of the Constitution and Article 21 LC.

⁴¹ Article 22 LC.

⁴² Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatisation Agency Related Matters.

⁴³ Article 14 LC.

99. The Constitutional Court is the supreme authority for the interpretation of the Constitution and the conformity of laws, decrees, regulations, municipal statutes, Assembly's decisions, proposed referendum, state emergency declaration and actions and constitutional amendments with the Constitution⁴⁴. It is independent in the performance of its responsibilities. It also rules on individual complaints concerning constitutional infringements of their rights and freedoms by decisions of regular courts, conflicts of competencies between constitutional authorities (Assembly, President and Government), violations of the Constitution during the election of the Assembly or committed by the President. The Constitutional Court of Kosovo was established in January 2009.

100. According to its annual report, during 2012, the Constitutional Court received 139 new referrals and decided on 165 referrals. It published 158 decisions⁴⁵. Since its establishment, the Constitutional Court has decided on some very important cases, including the cases of Presidents. Thus the Court found that the President Fatmir Sejdiu had violated the Constitution by holding the position of the President of his Party while being the President of Kosovo. As a result of this decision and interpretation the President resigned. In the other case related to the election of the new President Behgjet Pacolli, the Court found that his election was contrary to the Constitution since the Kosovo Assembly did not have the required constitutional quorum of two thirds of its members to vote. These decisions and a number of other important decisions made the Constitutional Court to be perceived as one of the most respected, impartial and independent institutions.

101. EULEX judges are introduced in the national judicial structure in order to assist authorities in developing and strengthening the judicial system, and to ensure that it is free from political interference and adheres to international and regional standards and best practices. In addition to their judicial functions, they should monitor, mentor, and advise Kosovo judges⁴⁶. EULEX judges technically ought to be fully integrated in the Kosovo judicial system although in practice they operate under the authority of EULEX Head of the Justice Component. They are managed and regulated by the Assembly of the EULEX Judges, which is composed of judges appointed by the EULEX Head of Mission and is charged with being a watchdog of judicial independence⁴⁷.

102. Key changes of the new LC are: the most important novelty is the complete reorganisation of Kosovo's court system starting with 2013 which will result in clarifying and simplifying the system of appellate jurisdiction; a major improvement taking effect on January 1, 2011 has been the significant increase of judges' salaries in order to correspond to the equivalent levels within the executive branch; after the transitional period ending on January 1, 2015, judges of the Court of Appeal and the Supreme Court, as well as of specialised departments within the basic courts, will be required to have prior judicial experience to qualify for appointment, rather than simply prior legal experience; provisions of the judicial ethics code will be incorporated as judicial duties; judges will specifically be allowed membership in professional organisations that promote judicial independence, enhance judicial education, and encourage the effectiveness of the courts; all judicial decisions will have to be in writing, and decisions of the Supreme Court and the Court of Appeal will be required to be published on the KJC's website and otherwise be made available to the public; a more decentralised management of the daily operations of the courts will lie with the court presidents.

103. Principal ongoing or recent changes: According to the LC and the CPC, from 1 January 2013 there will be no more lay judges in the criminal system⁴⁸. Their experience in the past has proven to be ineffective in this regard. This change will have as immediate effect the retrial of pending cases. Around 70% of existing judges are recently appointed in the court system. In Ferizaj and Gjakove that didn't have in the past district courts, basic courts are recently established for the first time. Finding available premises which are not sufficient (some premises are rent), especially in Pristina, ensuring the transfer of judges in accordance with the new established structure and setting up new registers in the court system are the main challenges faced by the courts and the KJC. In addition, there are some other difficulties as well, such as finding adequate judges for

⁴⁴ Article 113 of the Constitution; see also Law No. 03/L-121 of 16 December 2008 on Constitutional Court, hereafter "LCC".

⁴⁵ Constitutional Court: Annual Report 2012:

<http://www.gjk-ks.org/repository/docs/RAPORTI%20VJETOR%202012.pdf>

⁴⁶ Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, Article 2.4 (Law No. 03/L-053 of 13 March 2008, hereafter "EULEX Jurisdiction Law").

⁴⁷ Ibid. Article 4.

⁴⁸ Article 28, § 1 LC foresees that lay judges will serve only where required by Law. The Juvenile Justice Code is still one of the examples of legislation that refers to lay judges.

serious crimes departments within some basic courts (Gjakove, Ferizaj, Peja or Mitrovica) and filling reserved positions to other communities/minorities (around 33 positions).

Independence of the judiciary

104. The principle of independence of judges is ensured in a number of constitutional and legal provisions. The Constitution provides that the judicial power is independent, fair, apolitical and impartial. Within the exercise of their functions, judges shall be independent and impartial and shall adjudicate based on the Constitution and the law⁴⁹. A number of constitutional and legal safeguards ensure the judges' independence⁵⁰, namely remuneration consistent with the dignity of the office and the scope of their duties; non-removability excepting strict conditions as provided by law; the prohibition to transfer judges to another court or position against their will; the ban on membership of a political party and on pursuing public activities incompatible with the principle of independence of courts and judges or any other activity prohibited by law; judicial immunity. Detailed provisions on the status of a judge and further safeguards are contained in the LC and in some different other provisions. Thus, Law on Courts sets out the duties of judges and is even more straightforward: "Judges shall act objectively, impartially and independently"⁵¹. There are also a number of other provisions in different laws referring to the judicial independence. This is the case with the Criminal Procedure Code, expressly referring to the judicial independence⁵².

105. At the end of 2012, there were 348 judges in Kosovo whereas the administrative staff in the judicial system included 1 294 employees. During 2012, 113 judges and 83 employees out of 126 announced positions have been appointed.

Supervision over the administrative activities of courts

106. The internal supervision of administrative (management and operations) activities of the Court of Appeal is pursued by its President Judge. The internal supervision of administrative activities of a basic court is executed by its President Judge. The internal supervision of administrative activities of a basic court's branch is carried out by the Supervising Judge who is responsible to the President Judge of the respective Basic Court. Supervision entails, *inter alia*, assigning all judges to the branches of the respective Basic Court upon consultation of the Kosovo Judicial Council, assigning judges to departments and designate heads of departments and presiding judges of panels to ensure efficient operation of the court, temporarily reassigning judges among branches and departments to address conflicts, resolve backlogs⁵³ or ensure the timely disposition of cases, examining the efficiency of proceedings in individual cases by all branches and departments of the court, overseeing and managing the activities of all court offices to ensure effective and timely service delivery, ensuring the efficient adjudication of cases, and ensuring the even distribution of work. Where there have been infringements, the court president may approve the request of the court administrator to initiate disciplinary proceedings against a non-judicial employee of the court⁵⁴. The President Judge of a court submits an annual report and quarterly reports to the KJC on the implementation of the previous case management plan.

107. The external supervision includes the analysis and assessment of the correctness and efficiency of the aforementioned internal supervision exercised by presidents of courts, as well as performing acts which are necessary in view of the infringements in the administrative activities of courts. The KJC oversees the functioning of the courts in Kosovo and determines the policies and strategies for the efficient and effective functioning of the courts. The KJC Chairperson is the chief administrative official of the courts. The KJC has to adopt rules, procedures and directives for the exercise of supervision over the courts⁵⁵. The Court Performance Review Unit functions under the

⁴⁹ Article 102 of the Constitution (§§ 2, 3 and 4) and Article 3 of Law on Courts No. 03/L-199 of 22 July 2010 (hereafter "LC"). Article 3 of LC requires that "during the exercising of their function and taking decisions [judges] shall be independent, impartial, uninfluenced in any way by natural or legal person, including public bodies." Article 34 of LC is more straightforward by requiring that "judges shall act objectively, impartially and independently."

The independence of a judge implies independence both vis-à-vis the state authorities and litigant parties.

⁵⁰ See Articles 104, 106, 107 and 108 of the Constitution; Articles 29, 31, 34 and 35 LC.

⁵¹ Article 34 LC.

⁵² See the Criminal Procedure Code, Articles 2 and 8.

⁵³ At the beginning of 2011, an important backlog of around 210,000 unresolved cases were reported as inherited from previous years in the judicial system of Kosovo.

⁵⁴ Articles 12.2, 20.2-3, 21, §§ 5 and 7 LC. See also Articles 24 and 25 of the KJC Law and section I of the Manual on Court Management and Standard Operating Procedures.

⁵⁵ Article 21 and 29 of Law No. 03/L-223 of 30 September 2010 on Kosovo Judicial Council (hereafter "KJC Law") that entered into force six months after its promulgation (3 May 2011).

KJC authority and assesses the work of courts and proposes to the KJC policies or directions for reforming or improving the work of the courts. In accordance with Article 35 of the KJC Law, disciplinary proceedings against a judge are initiated by the KJC Disciplinary Committee upon recommendation of the Office of Disciplinary Counsel.

Consultative and decision-making bodies

108. Moreover, the Kosovo Judicial Council (KJC) is responsible to oversee the functioning of the courts in Kosovo and to determine the policies and strategies for the efficient and effective functioning of the courts. The Chairperson of the KJC is the chief administrative official of the courts and, together with the KJC, is responsible for the efficient and effective operation of the courts. The Chairperson may make appropriate delegations of authority.

109. The KJC is the governing body of the judiciary. It has a constitutional mandate to ensure the independence and impartiality of the judicial system⁵⁶. The KJC is an independent institution in the performance of its functions with the purpose of ensuring an independent, fair, apolitical, accessible, professional and impartial judicial system⁵⁷. According to the Constitution, it consists of 13 members who are elected for a term of 5 years that is renewable once: five members are elected by their peers, the remaining eight members are appointed by the Kosovo Assembly, four of them being judges. The membership of the KJC does not contain any more a member of the executive branch. In fact, the exclusion of Government's representatives from the composition of the KJC is the most important difference between the previous KJC and the one after the entry into force of the Constitution⁵⁸.

110. The Chairperson and Vice-Chairperson of KJC shall be elected from the members of the KJC for a term of three (3) years. Their election shall not extend the term of a KJC member. The Chairperson serves as a full-time member of KJC⁵⁹.

111. The Constitution and the KJC Law⁶⁰ specify a large range of competencies assigned to the KJC, *inter alia*, recruiting and proposing to the President candidates for appointment and reappointment and dismissal of judges; issuing regulations on transfer, disciplinary procedure for judges and internal regulations for courts; proposing to the President the appointment of the President of Supreme Court, President Judges of the Court of Appeal and Basic Courts; appointing Supervising Judges in compliance with Law on Courts; organising and managing the proper functioning of courts; providing for the regular periodic assessment of the caseloads of the courts and implementing a case allocation system to ensure the efficient functioning of the courts; transferring and conducting disciplinary proceedings of judges; overseeing and conducting judicial inspection, and administration; developing court rules in accordance with the law; hiring and supervising court administrators; preparing, submitting and overseeing the budget of the judiciary; announcing the public competition for judges and lay judges; determining the number of judges in each court and branch; making recommendations to the Assembly for the establishment of new courts or branches; administering the judiciary and its personnel; issuing the code of professional ethics for its members, for judges and lay judges as well as for the supporting administrative staff; in cooperation with the Kosovo Judicial Institute, organising the preparatory examination for the qualification of judge candidates; determining policies, standards and instructions related to and overseeing training of judges, lay judges and other judicial personnel; providing and publishing information and statistics on the judicial system; cooperating with individuals and organisations; reporting to the activities of the judiciary and issuing annual reports; approving the rules of procedure for the functioning of the KJC and its committees; filling vacancies or reserving seats for members of the Communities that are not majority in Kosovo; promulgating a uniform schedule of court fees.

112. In addition, KJC shall oversee the functioning of the courts in Kosovo and shall determine the policies and strategies for their efficient and effective functioning. The Chairperson of the KJC shall be the chief administrative official of the courts and, together with the KJC, shall be responsible for the efficient and effective operation of the courts. The Chairperson may make appropriate delegations of authority. The KJC adopts decisions by simple majority of the members being present in an open vote provided there is a quorum of 9 members. KJC decisions on

⁵⁶ Article 108 of the Constitution.

⁵⁷ Articles 108(6) of the Constitution and Article 3 of the KJC Law.

⁵⁸ In the previous KJC, the Minister of Justice was *ex officio* member of the KJC but this is not anymore the case.

⁵⁹ Article 108(7) of the Constitution and Article 6 of the KJC Law.

⁶⁰ Article 108 of the Constitution and Article 4 of the KJC Law.

individual cases that relate to a permanent relocation or a transfer that exceeds 6 months may in principle be appealed to the Supreme Court.

113. The Conference of President Judges and Supervising Judges is an advisory body established by the KJC that is entitled to advise it on matters related to the operations of the courts. It is composed by presidents and supervising judges of all levels of common courts. The Conference or its individual members may be invited to attend KJC's meetings if appropriate⁶¹.

114. Having regard to the KJC composition rules, the Assessment Team shares nevertheless the view to emphasise that composition of the bodies responsible for judicial (or prosecutorial) independence has to reflect the wide range of institutions, while ensuring that the majority is representing professional community. In case of KJC, although the majority of members (9) are judges, only 5 are elected by the professional community, while remaining 4 by the Kosovo Assembly. As a result, an important majority (8 of 13) of the members is appointed by political bodies. However, in fragile democracies, such over-representation of the members elected through a political body may often lead to unnecessary politicisation of the judiciary. According to European standards related to the institutional aspects of the independence of the judiciary⁶², the composition of such bodies should ensure minimum institutional checks and balances, while the professional community should have a prevailing role in election of members⁶³. In light of such background, it is recommended **to review the composition of the KJC in order to fully reflect the standard of independence of the judiciary as well as checks and balances between institutions.**

Recruitment, career and conditions of service

Requirements for recruitment

115. Candidates for appointment as a professional judge in Kosovo are required to meet the minimum qualifications that are established by LC (Article 26) and the KJC regulations and procedures. Thus, a person who is a citizen of Kosovo; is at least twenty five (25) years of age; has a valid university degree in law recognised by the laws of Kosovo; has passed the bar examination; has passed the examination for judges in compliance with Law on Judicial Institution; is of high professional reputation and moral integrity; has not been convicted of a criminal offence; has at least three (3) years of legal experience; and has successfully passed a process of evaluation as established by the KJC may be appointed as a professional judge in a General Department of a Basic Court⁶⁴.

116. Furthermore, in addition to the minimum qualifications above, there are some other additional criteria⁶⁵ regarding the working experience: to serve as a Judge in the Serious Crimes Department, 3 years of experience as a judge and 6 years of experience in the legal field are required; moreover to serve as a judge in the Commercial or Administrative Matters Departments, at least 6 years of experience in the legal field are necessary. While to serve as a judge in the Court of Appeal, the candidate shall have at least ten (10) years of legal experience. Concerning the Supreme Court, the candidate shall have at least fifteen (15) years of legal experience.

117. Candidates for a judge in the Constitutional Court must be citizens of Kosovo who are distinguished lawyers with the highest moral character and excellent professional reputation, have at least 10 years of professional experience, have full legal capacity, and who have not been convicted of a criminal offence⁶⁶. Preference is given in particular to professional experience obtained in the field of public and constitutional law, including professional previous positions as judges, prosecutors, lawyers, civil servants, university professors, or "other relevant working experience in the legal field"⁶⁷. International judges appointed to the Constitutional Court may not

⁶¹ Article 26 of the KJC Law.

⁶² See the Venice Commission Report on the Independence of the Judicial System Part I: The independence of judges, CDL-AD(2010)004, adopted at the 82nd Plenary Session (Venice, 12-13 March 2010).

⁶³ After the on-site visit, the Assessment Team was informed that upon initiation of the Ministry of Justice, the Government has passed during 2012 amendments to the Constitution which were also confirmed on 31 October 2012 by the Constitutional Court concerning *inter alia* the issue of the KJC composition. Nevertheless, this amendment did not obtain the required two thirds of votes cast in the Assembly.

⁶⁴ Article 26 LC and KJC Regulation, § 6.1.

⁶⁵ Article 26, §2 LC. For further details concerning additional qualifications that will be applicable in the period 2015-2020, please refer also to Article 27 LC.

⁶⁶ Article 114 (1) of the Constitution, LCC article 4.

⁶⁷ LCC, Article 4(1)(2).

be citizens of Kosovo or any of the neighbouring countries⁶⁸. To serve as a lay judge, one must be a citizen and a resident of Kosovo, be at least 25 years old, have successfully completed training required by law, meet criteria as required by relevant regulations established by the KJC, not have been convicted for criminal offences with the exception of minor offences and have high moral integrity⁶⁹. It is not clear what qualifications are used for the appointment of EULEX judges.

Appointment procedure

118. Judges are appointed, reappointed and dismissed by the President of Kosovo upon the proposal of the KJC. Proposals for appointments of judges must be made on the basis of an open appointment process, on the basis of the merit of the candidates, and the proposals shall reflect principles of gender equality and the ethnic composition of the territorial jurisdiction of the respective court. All candidates must fulfill the selection criteria provided by law⁷⁰. The KJC has to develop and implement procedures for recruiting and nominating candidates for appointment as judges and lay judges that comply with the Constitution and applicable law. In particular, all appointment procedures have to be transparent through public advertisement. In addition to minimum qualifications required by Article 26 LC (see § 115 above) when making recommendations for appointment or reappointment, the KJC must also take into account the following criteria: (a) professional knowledge, work experience and performance, including an understanding of, and respect for, human rights; (b) capacity for legal reasoning as proved through professional activities in the legal field, including as judges and public prosecutors, academic written works, other professional activities; (c) professional ability based on previous career results, including participation in organised forms of training in which performance has been assessed; (d) capability and capacity for analysing legal problems; (e) ability to perform impartially, conscientiously, diligently, decisively and responsibly the duties of the office; (f) communication abilities; (g) relations with colleagues, conduct out of office, and integrity; and (h) in relation to the positions of court presidents, managerial experience and qualifications⁷¹. All proposals have to be justified in writing. Moreover, before making a proposal for appointment or reappointment, the KJC consults with the respective court to which the candidate is being proposed. In case of refusal to appoint or reappoint any candidate, the President of Kosovo is required within 60 days to provide written reasons for his refusal to the KJC that may resubmit again the refused candidate or propose another candidate to the President⁷².

119. Despite the extended set of guarantees, in the opinion of the Assessment Team there are still potential grounds for undue political interference with the principle of independence of judiciary through the mechanism of "presidential appointment". As explained earlier, the President of Kosovo appoints judges and prosecutors upon the proposal of the Kosovo Judicial and Prosecutorial Councils. Experience already demonstrated that the President may use this constitutional prerogative to refuse appointment of the proposed candidate for a judge or prosecutor, which was once declared unconstitutional⁷³. But in general, the proposal to appoint a judge or prosecutor is returned to the respective council, which re-submits either the same or a new candidate. In theory, these simultaneous proposal-refusal referrals may end up in a vicious circle, since neither the Constitution nor the law provide for an end term. In addition, there is no list of reasons on which the President may ground his/her decision. Therefore, the President, while exercising its constitutional competences, may be led to interfere unduly with independent and merit-based decision of the respective judicial or prosecutorial councils. Keeping candidates' files without appointment or rejection and, in particular, without any transparency in general and follow-up communication to the proposing body have been the main concerns already raised in the recent past. Therefore, it is recommended **to adopt clear and transparent criteria based on which the President can refuse a nomination of a judge or prosecutor as well as the grounds for appealing this decision.**

120. According to Article 105 of the Constitution the initial term of office for judges shall be three years. In case of reappointment, the term is permanent until the retirement age as determined by law or unless removed in accordance with law. The criteria and procedures to reappoint a judge shall be determined by the KJC and they may be different in degree from the

⁶⁸ Article 152(4) of the Constitution.

⁶⁹ LC Article 28.

⁷⁰ Article 104 (1)-(3) and 108 (4) of the Constitution.

⁷¹ Article 17.4 KJC Law.

⁷² Article 18 KJC Law.

⁷³ This happened when the President was in capacity of "acting President". Previously, during the wide vetting (special appointment) process, a number of proposed candidates for judges were also rejected for unknown reasons by the Office of the President of Kosovo.

criteria used for the removal of judges. Vetting procedures related to candidates for judges are determined through internal rules of KJC, including the verification of their assets. Office for Judicial Evaluation and Verification (OJEV)⁷⁴ is responsible for proper and correct conduct of professional assessment and thorough verification of the CV of candidates applying for the positions of judges, a process which in itself covers comprehensive gathering of information related to his/her knowledge, skills, performance and background, criminal record, income, and the reputation he/she enjoys wherever he/she lives and works. The OJEV has been established by the KJC in November 2010 and it has operated as a distinct body through external grants and reallocation of equivalent amounts related to some suspended positions of judges. In absence of budget support, its mandate has been extended until the end of 2013 with the intention to integrate it in the future within the KJC Secretariat.

121. The transitional provisions in the 2008 Constitution mandated a one-time, Kosovo-wide comprehensive review of the suitability for permanent reappointment of all judges, pursuant to a Special Appointment Process that was held in 3 phases from February 2009 until October 2010 and has been overseen by the Independent Judicial and Prosecutorial Commission (hereafter "IJPC"), an "autonomous body of the KJC" that submits its recommendations to the KJC⁷⁵. The IJPC initially consisted of five international commissioners appointed by the President of Kosovo (gradually increasing to ten) and proceeded to interview and vet judges in three phases. Appointment and reappointment of the Judges and Prosecutors has been one of the most important priorities of the international community in Kosovo.

122. Under the IJPC Special Appointment Process, sitting judges and other candidates who met appointment criteria were required to pass an examination on the Code of Ethics and to undergo a standard interview⁷⁶. Applicants who were not sitting judges also had to pass a Judicial Entry Examination; however, sitting judges were not required to take this examination unless requested to do so by the IJPC⁷⁷. IJPC then recommended candidates for appointment or reappointment to the KJC, which in turn proposed them to the President of Kosovo⁷⁸. Judges who were appointed or reappointed pursuant to this process will serve regular tenures, and all judges who held office for at least two years prior to appointment will be deemed appointed until retirement age⁷⁹.

123. Beginning in April 2009, each of the nearly 450 then-sitting judges and prosecutors had to reapply for their jobs. The vetting process was open to all persons, not only sitting judges and prosecutors, who fulfilled the qualifications for office. Some 898 people overall entered the process. Those that did were subject to a battery of tests, some of which were of an eliminatory nature. A substantial number – in fact, more than 50 percent of sitting judges and prosecutors – did not make it through. According to its foundational law, the Independent Judicial and Prosecutorial Commission (IJPC) was established for "the purpose of conducting a one-time, comprehensive, Kosovo wide review of the suitability of all applicants for permanent appointments [...] as judges and prosecutors in Kosovo." As a measure to bolster objectivity in the exercise, the law foresees that the IJPC be led by internationals. Indeed, it consisted only of international members during the critical initial phases, and, as the exercise progressed, international members retained a voting majority even as local legal professionals (having been vetted) joined the body. In the course of its operations the IJPC recommended to the KJC the re-appointment of over 400 persons as judges and prosecutors. Ultimately 334 judges and prosecutors were appointed. Overall, the process warranted a positive assessment, but it was not perfect, and its imperfections related to judicial independence⁸⁰. On 16 February 2011, the KJC has promulgated a Regulation on the Appointment of Judges detailing further the procedures for such appointments as well as the bodies involved⁸¹.

⁷⁴ On 18 October 2011, KJC and KPC signed a Memorandum of Understanding for the separation of the OEV that was operating for both councils in the past. Former officials of the office were split between KJC (6 employees) and KPC (3 employees). See also paragraph 156 below.

⁷⁵ Article 150 of the Constitution; UNMIK Administrative Direction No.2008/2 implementing UNMIK Regulation No.2006/25 on a regulatory framework for the justice system in Kosovo § 2.2 (17 January 2008) [hereafter "IJPC Regulation"].

⁷⁶ IJPC Regulation § 2.9, 2.11.

⁷⁷ IJPC Regulation § 3.4, 2.10.

⁷⁸ Article 150(2)-(3) of the Constitution.

⁷⁹ *Idem* Article 150(4)-(5); see also Article 27.5 LC.

⁸⁰ "Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions", OSCE Report 2012, p.14. See also the Report on the activity of the IJPC, 29 October 2010.

Around 40% of sitting judges and prosecutors were reappointed during this special process whereas the rest was composed by newly judges and prosecutors.

⁸¹ In March 2011, the KJC has promulgated 120 vacant positions for judges.

124. The President of the Supreme Court of Kosovo shall be appointed and dismissed by the President of Kosovo from among the judges of the Supreme Court for a non-renewable term of seven (7) years upon proposal by the KJC⁸². The President of Kosovo appoints, re-appoints and dismisses the judges of the Special Chamber as well who are citizens of Kosovo upon the proposal of the KJC. The appointment, re-appointment and dismissal of the judges comply with the same process and requirements that are applicable to the appointment, re-appointment and dismissal of judges of the Supreme Court.

125. The President Judges of Basic Courts and the Court of Appeal are appointed by the KJC in consultation with the judges of the respective courts. In appointing President Judges, the KJC takes into consideration specialised managerial training or experience. The KJC, in consultation with the President Judge of a Basic Court, shall appoint a Supervising Judge for each Branch of the Basic Court. The KJC, in consultation with the President Judge of a Court, may appoint a deputy President Judge who shall assist in the management of the court and serve as Acting President Judge in the absence of the President Judge. President Judges are appointed for a four (4) year term, with the possibility for reappointment to one (1) additional term. [Article 103.5 of the Constitution, Article 22.2-5 of the KJC Law]

126. Besides regular judges, the President of Kosovo also appoints and reappoints lay judges upon the proposals of the KJC and in compliance with the Constitution and the law. [Article 104 of the Constitution, Article 18 of the KJC Law]

127. The Constitutional Court is composed of nine judges who are appointed by the President of Kosovo upon the proposal of the Assembly of Kosovo for a non-renewable mandate of 9 years. The President and Deputy President of the Constitutional Court are elected from the judges of the Constitutional Court by a secret ballot of the judges of the Court for a term of three (3) years. Election to these offices does not extend the regular mandate of the judge. [Article 114.1-2, 5 of the Constitution] According to Article 6 of LCC, a Special Committee for the Review of Candidates for Appointment to the Constitutional Court is established. This Committee submits to the Assembly a shortlist of qualified candidates for judges of Constitutional Court. The Committee is composed of: the President of the Assembly or a member of the Assembly acting as his/her designated representative who acts as its chair; leaders of each Parliamentary Group of the Assembly; the President of KJC; the Ombudsperson; a representative of the Consultative Committee for Communities and a representative of the Constitutional Court. The Committee publishes an invitation/call in the written and electronic media including those widely read by the communities, the Assembly, judicial institutions, law faculties, bar, judges and prosecutors associations, political parties, and other relevant legal persons and individuals to propose candidates for the election of one or more judges of the Constitutional Court. An individual may propose himself as candidate. The Committee will review the proposed candidates who fulfil defined criteria for election of CC judges and will reject those candidates who do not fulfill those criteria. The Committee applies similar criteria as for selection and nomination of other members of the judiciary in Kosovo. The Committee conducts an interview with proposed candidates and submits to the Assembly a short-list of qualified candidates that may include up to 5 candidates for one vacant position including reasons of priority orders. The procedure for determining the short list is instituted by the Committee.

128. EULEX judges are nominated through an EU procedure (either by secondment or via a contract) and hold office for one-year renewable terms. The final decision on appointment is entrusted to the Head of Mission.

129. Although sophisticated, the appointment system which envisages the 3 – year initial period raises some concern. First, the President of Kosovo intervenes twice during that short period of time (first appointment and confirmation within 3 years), which represents an increasing disproportion between roles of executive (political) and judicial powers. Second, the 3-year initial “testing” of candidates may lead to non-equivalent position in decision making between those “probationary” judges and regularly confirmed judges. In the opinion of the Assessment Team, the probationary process may generate for new future judges and prosecutors a lack of security and risks of arbitrariness thus impeding the consolidation of judicial independence in Kosovo. On the other hand, this is not in line with relevant European and internal standards. Therefore, it is recommended **to consider reviewing the probationary system of appointment of judges and prosecutors which envisages an initial 3-year term prior to final confirmation for tenure.** With regard to vetting requirements, the Assessment Team recalls the recommendation in paragraph 209 below.

⁸² Article 103, § 4 of the Constitution, Article 21, § 5 LC and Article 22.1 KJC Law.

Evaluation and planning of the professional development

130. The KJC is the responsible authority to evaluate and promote judges. KJC establishes criteria for assessing and promoting judges and lay judges that includes *inter alia* the following: professional capacities, work experience and performance, including an understanding of, and respect for human rights; capacity for legal reasoning; professional ability, based on previous carrier results, including participation in organised forms of training in which performance has been assessed; skills and capacity for analysing legal problems; ability to perform impartially, conscientiously, diligently, decisively and responsibly the duties of the office; communication abilities; out-of-office conduct and personal integrity⁸³.

131. Moreover, if the performance of a judge or lay-judge who is a KJC member is being assessed, the judge or lay-judge may not participate in deliberations or voting of the KJC. Every judge or lay judge who is assessed shall receive the assessment results and may present written objections to any conclusions or findings.

Transfer of a judge

132. In principle, judges may not be transferred against their will unless otherwise provided by law for the efficient operation of the judiciary or disciplinary measures or to address extraordinary circumstances⁸⁴. In principle, the KJC is responsible for the transfer and reassignment of judges from one court to another which can last for a period not longer than six (6) months at a time, as per the request made by the court president. The KJC may consider the overall experience, integrity, capacity and managerial abilities of such judges in making appropriate transfer and reassignment to the courts

133. Moreover, there are few exceptional cases to the rule mentioned above. In extraordinary circumstances, the Chairperson of KJC may temporarily transfer a judge to another court or branch of the court for no more than thirty (30) days unless approved for a longer period by the KJC⁸⁵. Upon the approval of the respective President Judges, the KJC may transfer a judge into another court for a time period, not longer than six (6) months at any one time. This kind of transfer may be made in cases when the other court has insufficient judges for hearing particular cases under its competence⁸⁶. Judges may apply to the KJC to be permanently transferred to another court⁸⁷. Judges are entitled to an appeal directly to the Supreme Court against a decision of the KJC making a permanent relocation or a transfer that exceeds six (6) months. The KJC shall promulgate rules and regulations establishing the standards and procedures governing the appeals⁸⁸.

134. As a result of the reform of court structure to be introduced by LC in 2013, it is expected to have during its implementation a process of transfer and reassignment of judges to the courts established by the LC. However, the KJC shall be required to take into account and respect the appointments, especially the appointments of Court Presidents, made during the Appointment Process as provided by paragraph 1 of Article 150 of the Constitution; and the integrity, experience, capacity and managerial abilities as assessed during the Appointment Process as provided by paragraph 1 of Article 150 of the Constitution as well as the principle requiring that transfer of judges cannot be done against their will.

Termination of service and dismissal from office

135. According to Article 104 §§4-5 of the Constitution, judges may be removed from office by the President upon recommendation of the KJC for conviction of a serious criminal offence or for serious neglect of duties. A judge has the right to directly appeal a decision of dismissal to the Kosovo Supreme Court⁸⁹. Dismissal of judges is further regulated by the KJC Law. The KJC shall determine, based on disciplinary proceedings, whether the misconduct of a judge or lay judge justifies the dismissal. Every recommendation from the KJC for the dismissal of a judge or lay

⁸³ Article 19 of KJC Law.

⁸⁴ Article 104 of the Constitution, Article 20 §4 KJC Law and Article 38 LC.

⁸⁵ Article 20 § 3 KJC Law.

⁸⁶ Article 20 § 1, 2 KJC Law.

⁸⁷ Article 20 § 5 KJC Law.

⁸⁸ Article 20 § 6 KJC Law.

⁸⁹ This includes intentional violation of the law committed by the judge; however minor offences are in any case excluded. The immunity covers *inter alia* dismissal for actions taken, decisions made or opinions expressed that are within the scope of judges' responsibilities (see Article 107 of the Constitution). The serious neglect of duties should result into a valid disciplinary decision.

judge shall include the written reasons for such recommendation and the basic conclusions of the Disciplinary Committee. The recommendation of the KJC for dismissal shall, within fifteen (15) days, be submitted to the President and the judge or lay judge concerned. The President, in accordance with the Constitution and this Law, shall decide on the recommendation of the KJC for dismissal. Judges and lay judges shall formally be notified by the KJC regarding the decision of the President for the approval or disapproval of dismissal from office before such a decision is enforced⁹⁰. Removal of President Judges and Supervising Judges of the Court of Appeal and of the Basic Courts may be decided by the KJC upon the conviction of a criminal offence, with the exception of minor offences or upon a finding by the KJC of mismanagement, corruption, incompetence or a failure to fulfil the duties of the office. The opinion of judges of the respective court or branch is taken into consideration by the KJC. However the removal does not constitute dismissal from judicial office⁹¹. Judges of the Constitutional Court may be dismissed by the President upon the proposal of two-thirds of the Court's judges for the commission of a serious crime or for serious neglect of duties⁹². Judges have the right to appeal the dismissal decision. However, neither the Constitution nor the LCC provide for the right of appeal of the CC judges.

Salaries and benefits

136. Remuneration for judges and prosecutors used to be a concern for a long period. The annual salary of a judge of the District Court was around 6,600 Euros until the end of 2010. With the new Law on Courts the salaries of judges are henceforth linked to the salaries of the other branches. The provisions on salaries of judges of common courts are regulated by Law on Courts⁹³ and they entered into force on 1 January 2011. The gross annual salary of a judge in a Basic Court is approximately from 9,612 EUR (division for minor offences) to 12,360 EUR (serious offences department, not less than seventy (70%) of the salary of president of basic court), while the salary of a judge in the Court of Appeal is approximately 13,728 EUR (90% of the salary of the Court of Appeal President). The Supreme Court President's salary is now tied to that of the Prime Minister (17,316 EUR). Other judges of the Supreme Court, including its Special Chamber, receive 90% of that amount (approximately 15,252 EUR), or the equivalent salary of a Minister. The gross salary of the President of the Special Chamber of Supreme Court is 16,020 EUR. The Court of Appeal President receives a gross salary that is equivalent to the level of Supreme Court's judges while the salary of Basic Courts' presidents corresponds to the equivalent level of judges of the Court of Appeal. Supervisory judge of a basic court branch shall receive a salary equal to ninety-five (95%) with that of the basic court president (13,044 EUR). The KJC is entrusted to issue a schedule for additional compensation that recognises the unique responsibilities of judges serving in the Serious Crimes, Commercial Matters or Administrative Conflicts Departments; but in no case shall the sum of the base salary and the additional compensation exceed ninety percent (90%) of the salary of the President Judge of a Basic Court⁹⁴. The respective salaries of judges of the Constitutional Court are 1.3 times higher than the salary of Supreme Court judges⁹⁵.

137. It is provided for by the law that the salary of a judge shall not be reduced during the term of office to which the judge is appointed, except as a disciplinary sanction imposed under the authority of the KJC⁹⁶. Although readjustment of remuneration in the judiciary is recent and applicable only from the beginning of 2011, there is a draft law on salaries of high public officials that has been adopted during July 2012 by the Government and will undergo the parliamentary procedures. The aim of this initiative which has been also criticised is to set up a harmonised framework applicable for all public institutions using budgetary resources. The basic remuneration will be calculated according to a base rate to be determined by sublegal acts multiplied by a factor corresponding to each category of high public official⁹⁷.

⁹⁰ Article 38 KJC Law. Exceptionally, the dismissal of the President of Supreme Court of Kosovo may be decided by the President of Kosovo upon proposal by the KJC (see Article 103 § 4 of the Constitution).

⁹¹ Article 23 § 1 KJC Law.

⁹² Article 118 of the Constitution.

⁹³ Article 29 LC.

⁹⁴ Article 29 § 1, 1.7 LC.

⁹⁵ Article 15 LCC.

⁹⁶ Article 29 §2 LC.

⁹⁷ A table containing multipliers/factors (coefficients) appears as an Annex to this draft law. There is a decreased order of coefficients starting with 15 (for the President) and decreasing in accordance to categories of officials. As an example, the President of Constitutional Court has the same level as the Speaker of the Parliament and the Prime Minister; judges of Constitutional Court, the President of Supreme Court, the State Prosecutor, the Chief Special Prosecutor and the Director of the KAA are at an equivalent level together with some other categories. A certain criticism coming from actors in the judicial power is more related to other lower levels of judges or prosecutors and their respective ranks.

138. There are no other applicable benefits to judges.

Case management and court procedure

Assignment of cases

139. As part of the Model Courts Program supported by the USAID's Kosovo Justice Support Program, the KJC has adopted in April 2010 an administrative Manual on Court Management⁹⁸ and Standard Operating Procedures (hereafter "Court Management Manual"). This Manual which is a reference for practitioners and does not substitute any law, regulation or other secondary legislation contains *inter alia* suggestions for the development of procedures for assigning cases to judges by the collegium of judges as part of an annual work plan, as well as for the performance of the assignment functions by court registration clerks, subject to the audit by the chief clerk⁹⁹. Once a new case is registered in court, it must be assigned to the competent judge or Presiding Judge of the panel. The assignment is performed by the Registration Clerk, under the supervision of the Chief Clerk, by applying following the case assignment policy decided by the Collegium of Judges in the annual work plan.

140. In practice, assignment of cases does not follow uniform or transparent procedures in common courts. In many courts, assignments are overseen by the court president, who exercises considerable discretion. The Judicial Ethics Code does state that case assignment should not be influenced by wishes of a party or any other interested person, and that the case assignment system should be "based on drawing of lots, automatic distribution according to alphabetic order, or some similar system"¹⁰⁰. KJC has adopted a special Regulation¹⁰¹, which defines the norms of the work of judges of all levels of regular and minor offences courts in Kosovo and the Commercial Court. When the case comes to the court, depending on its administrative, civil, economic or criminal nature, it is registered with number and relevant data on the case. However, the distribution is not made randomly, based on the number of judges. After completion of the case by the judge, the case is sent back again to the registrar and after it is taken off the registry as completed and distributed to the parties. Upon return of the reply to delivery of the decision from parties, the case is archived. Cases are registered by the central registration office. Each court has a registration office which is the responsible authority to accept all communications with the court. The central office keeps the registration of the cases by registering each case according to their subject matter such as civil, criminal, administrative and other categories of the cases. The central office sends communications (letters and invitations) to all parties involved. At the end of the process all cases are archived by this office.

141. The Assessment Team was informed by different interlocutors that random assignment of cases to judges in common courts' system is not commonly and periodically applied due *inter alia* to the use of subjective considerations as well as an important discretionary role of presidents of courts. In the view of the Assessment Team, random assignment of cases based on professional and objective criteria is one of the institutional guarantees for avoiding interference with and undue influence on courts results. Moreover, the proper enforcement of objective allocation of cases has been incorporated as one of the key anti-corruption measures in the newly adopted strategic documents (Action Plan). Lack of such system functioning properly could entail a risk of misuse in politically sensitive cases, including corruption cases. Consequently, it is recommended **to ensure the appropriate functioning of random assignment of cases as provided in the Regulation on internal organisation of courts.**

The principles of public hearing and of hearing cases without undue delay

142. The lack of transparency of the activities of the judiciary is one of the factors that influence the negative perception of citizens and lack of trust in the judicial system. Besides different memorandums of understanding signed by the KJC with the purpose of court hearing monitoring, there are no other measures in place focused on access to courts and transparency requirements. According to an OSCE report, judges, particularly those hearing civil cases, hold hearings in their offices. In many instances the use of one's office is born of necessity, as courtrooms are unavailable. However, even when courtrooms are available, some judges choose to conduct proceedings in their offices. While it may be convenient to do so, holding court processes in such a

⁹⁸ The Manual has been superseded by the KJC Regulation on Internal Organisation of Courts that is in force since 4 January 2013.

⁹⁹ See Chapter III, Section 3, page 73.

¹⁰⁰ CEPCJ, III.B.5.

¹⁰¹ Regulation on defining the norms of the work of judges available at http://www.kqjk-ks.org/repository/docs/Rregullore-per-Norma_ENG-janar-2012_760161.pdf

location makes them more prone to interruption, limits public access to what should be public proceedings, and fosters a sense of informality¹⁰².

143. Pursuant to Article 31 of the Constitution, everyone has the right to a fair and impartial public hearing of his/her case within a reasonable time by an independent and impartial tribunal established by law. Besides the important backlog of cases in the judicial system (see above) statistics show that out of the total number of complaints received by the Office of Disciplinary Counsel, the neglect of judicial functions in forms of delays represents an average of approximately 40% of the total number of received complaints.

144. As underlined above, the Assessment Team considers that current efforts aiming to increase transparency of the activities in the judicial system remain insufficient. Although accessible, KJC reports (quarterly, annual, statistical or other reports) include data and statistics of the activities of courts, however their utility for public information and transparency purposes is inappropriate or even minimal. The general trend of such reports is to refer to global data and procedural steps of cases, but there is no information on material aspects, typology of cases and criminal offences, ways of solving cases (dismissals, convictions, etc.)¹⁰³. In addition, even KJC decisions but also reports of other KJC structures (i.e. Office of Disciplinary Counsel, Court Performance Review Unit and OJEV) seem to be not accessible or periodically published¹⁰⁴. Moreover, besides the Constitutional and Supreme Courts, regular courts decisions of other levels are in general not yet accessible to the public, besides interested parties, are neither published nor posted on the Internet. It is also important to mention that current data and statistics related to judicial activities remain fragmented. While activities of courts in Kosovo are presented in the KJC website and few specific courts websites, activities and decisions that are under jurisdiction of EULEX judges appear on the EULEX webpage and no links exist between them. The answers provided by domestic authorities, discussions during the on-site visit as well as information collected after the visit reinforced the Assessment Team's opinion regarding a critical level of incompatibility of statistics, besides their deficiency, handled by different responsible authorities (KAA, police, prosecution services and courts). In the Assessment Team's view, despite the fact that such statistics do not match to a large extent, the current situation reflects important gaps of coherent management and interaction between responsible institutions and do not ensure an adequate level of management of the operational chain from the criminal reporting, investigation, prosecution up to adjudication of a certain corruption case. Further, following the recent positive example of the Supreme Court, the initiation of case management mechanisms in other levels of the judicial system by giving a particular priority to enhanced transparency and assistance towards citizens would be a necessary step aiming to improve the general perception and to increase the public trust in the judicial system and activities. Publication of court proceedings and availability to the general public of agenda, schedule and eventual reschedule have also to be ensured for all courts, taking due account, however, of the need for protecting fairness and integrity of the case, the privacy or safety of a victim or witness, or the identity of particularly vulnerable persons. On this background, it is recommended **(i) to establish a transparent and unified system of maintaining and accessing information on case files which would include all stages of investigation, prosecution and adjudication; (ii) to enhance case management, reporting and accessibility of statistics in the judicial system, especially with regard to corruption and related offences, by notably ensuring better matching with prosecutorial services; and (iii) to improve the transparency of the criminal justice system vis-à-vis the wider public and media, in particular in the context of the prevention and fight against corruption.**

Ethical principles and rules of conduct

145. Ethical principles and core values of the judicial system are regulated in the LC and respective ethical rules. Provisions of LC prescribe the following conduct for judges: they should be independent, impartial, uninfluenced in any way by no natural or legal person, including public bodies; they should act objectively, impartially and independently; they should demonstrate availability, respect for the parties and witnesses, and vigilance in maintaining the highest level of competence; they should protect the confidentiality of all non-public information; they should not comment to the media and should not engage in any *ex parte* communications with anyone

¹⁰² Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions, OSCE Report 2012, page 20.

¹⁰³ Such type of data and information are published by the Kosovo Agency of Statistics on a yearly basis based on data provided by KJC. However, only courts statistics are published (this is not the case for prosecution or police data). For further information, see: <http://esk.rks-gov.net/ENG/justice/publications>

¹⁰⁴ In the KJC website, there is no published decision for 2010, only one decision for 2011 and 2 for 2012 (last access on 11 February 2012).

concerning cases¹⁰⁵. The KJC is responsible for promulgating the code of professional ethics for judges, lay judges and judiciary administration¹⁰⁶. The Code of Ethics and Professional Conduct for Judges (hereafter "CEPCJ") applies to all professional judges in Kosovo. It generally adheres to internationally recognised basic principles that require judges to perform their judicial and extra-judicial activities in a manner that promotes public confidence in the dignity, integrity and independence of the judiciary¹⁰⁷. The CEPCJ is organised in 3 chapters (concerning general principles, specific rules of ethics and specific rules of professional conduct) and 31 sections and covers, *inter alia*, the following principles/aspects: independence, impartiality in general, impartiality and conduct of judges in the exercise of judicial functions, impartiality and extra-judicial conduct, other professional activities of a judge. The CEPCJ provides that a judge shall: observe high standards of professional and personal conduct; respect and comply with the law; perform the duties of office impartially and diligently; avoid any conduct and situation that could lead to a judge's integrity, impartiality or independence, being questioned; perform his/her duties in conformity with internationally recognised human rights standards¹⁰⁸. Judges must also apply the law without discrimination. Judges are required to act impartially and independently in all cases, to be free from any outside influence, and to perform judicial duties based on the facts and the law applicable in each case, without any restriction, improper influence, inducements, pressures, threats of interference, direct or indirect, from any quarter.

146. The CEPCJ provisions apply not only to the judge's professional activity but also to a judge's private life, when a judge's actions may impair the judge's image in the public, thus affecting the judiciary as a whole. Judges shall maintain and improve the highest standards of professionalism and legal expertise and for that purpose shall engage in continuing legal education and training as determined by the KJC, and when not incompatible with other judicial duties¹⁰⁹.

147. In the performance of judicial duties a judge shall not use words or conduct manifesting bias or prejudice and shall not allow staff, court officials and others subject to the judge's direction and control to do so. A judge shall show availability and respect for individuals, be patient, dignified and courteous to litigants, defendants, witnesses, lawyers, prosecutors other judges and lay-judges and any third party with whom he/she deals in his/her official capacity, and should require reciprocity from lawyers, staff and court officials, and others with whom he/she may come in contact during the court proceedings or who are subject to his/her direction and control¹¹⁰. As for the Constitutional Court, it is in the phase of finalising the Code of Conduct for its judges.

148. The Assessment Team acknowledges the importance of rules of ethics and professional conduct whose objective is to set up the standards of integrity and conduct to be observed by judges, to assist judges meeting those standards and to inform the public of the conduct they are entitled to expect from a judge. Interlocutors meet by the Assessment Team informed that, in October 2012, the KJC has adopted the Code of Ethics and Professional Conduct for members of the KJC that is based on the KJC Law. However, both CEPCJ and CEPCLJ (related to lay judges) are based on the legal framework that preceded the current one being into force. In addition, their preventive role seems to be rather marginal in the current context. In order to provide for a comprehensive and up to date regulatory framework on ethical issues and to raise judges' awareness, it is therefore recommended **to update rules of ethics and professional conduct for judges by including proper guidance specifically with regard to conflicts of interest and related areas (notably the acceptance of gifts and other advantages, incompatibilities and additional activities)**. The Constitutional Court is also invited to adopt ethical rules for its judges.

¹⁰⁵ Articles 3 §2, 34 and 35§1 LC.

¹⁰⁶ Article 4, §1, 1.17 KJC Law. There are no ethical rules adopted and promulgated recently in application of this legal provision. However, the Code of Ethics and Professional Conduct for Judges as well as the Code of Ethics and Conduct for Lay Judges that remain in force have been adopted on 25 April 2006 by the KJC on the basis of the UNMIK Administrative Direction No.2006/8 on the implementation of UNMIK Regulation No.2005/52 on the establishment of the Kosovo Judicial Council. Both codes contain similar rules, with a few exceptions.

¹⁰⁷ CEPCJ, I.1.

¹⁰⁸ CEPCJ, I.2.

¹⁰⁹ *Ibid*, III.3, 6.

¹¹⁰ *Ibid*, III.7-10.

Conflict of interest¹¹¹

149. Conflict of interest is defined as “a situation of incompatibility between official duty and private interest of a senior official, when he/she has direct or indirect private personal or property interests that may influence or seems to influence his/her legitimacy, transparency, objectivity and impartiality during the discharge of public functions.” The private interest includes both personal pecuniary and non-pecuniary interests of any senior official as determined by law influencing his/her decision making¹¹². Whenever an actual or potential conflict of interest occurs, the senior official has to: (i) personally prevent and solve it; (ii) consult as soon as possible his/her immediate manager or managing body who may address the case to the Kosovo Anti-corruption Agency in case of doubt¹¹³.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

150. The principle of incompatibility of judicial office with other functions in state bodies, political parties and other activities is set in Article 106 of the Constitution. Thus a judge is constitutionally prohibited from working in any state institution other than the judiciary and from involvement in political activities, illegal activities, or activities incompatible with the principles of judicial independence and impartiality¹¹⁴. In addition, a judge is prohibited to perform any duty or service that may or may be perceived to interfere with their independence and impartiality or may otherwise be incompatible with the performance of the duties of a judge or the provisions of the Code of Conduct for Judges. Examples of such prohibitions, as laid down by law and ethical rules, include, *inter alia*, prohibition from engaging in any other activity incompatible with judicial functions, including membership in a political party, movement or other political organisation as well as participating in any political activity and seeking or holding any political office; conducting other legal practice or privately carrying out any judicial or adjudicative functions (such as acting as defenders, arbiters, or mediators); using their position for personal gain for themselves or anyone else; participating in financial and business transactions that can adversely affect their impartiality or performance of judicial duties; engaging in any non-judicial activity during working hours without prior approval of the KJC and accepting any compensation for any outside activity engaged during business hours, without the KJC approval¹¹⁵. Judges may be appointed as a guardian or personal representatives only in cases provided by law¹¹⁶. Judges are forbidden from using their position or information they obtain through their position for either their own personal gain or for the personal gain of anyone else. A judge shall not personally solicit funds for an organisation or agency, allow his/her name to be used in solicitation of funds or allow the use of the prestige of judicial office for that purpose¹¹⁷.

151. According to provisions of LPCI a senior official includes also judges and prosecutors. Thus, with regard to accessory activities, a judge in his/her quality of senior official cannot be a manager or a member of a managing or of a steering body of a private enterprise. He can neither be a manager or a member of managing bodies of non-profit-making organisations. It is not possible for a senior official to exert private functions such as: advocacy, notary, licensed expert, or consultant, agent or representative of the afore-mentioned organisations. On the other hand, a senior official cannot actively exert his/her ownership rights over shares or parts of capital of a commercial company, regardless of its field of activity (obligation to transfer rights to another trusted person – blind trust).

152. The LPCI allows the possibility for judges to be a member of a steering body of a publicly owned company or of a shareholding company with public property or member of steering and monitoring bodies of other non-profit legal persons and of legal persons dealing with scientific, sport, educational, cultural and humanitarian activities, but without having right to be remunerated with a regular salary, excepting, when applicable, appropriate compensation of expenditures. In addition, a judge may exercise his/her activities in the area of science, sport, education, culture

¹¹¹ This relevant analysis of conflict of interest framework is also valid for other subsequent sections of this report as the LPCI covers all public officials, including judges, prosecutors, police, MPs, members of Government, etc.

¹¹² Law No. 04/L-051 of 31/08/2011 on Prevention of Conflict of Interest in Discharge of Public Functions (hereafter “LPCI”), Article 6 and Article 3.1.2.

¹¹³ Article 8 LPCI.

¹¹⁴ Article 106 (1-2) of the Constitution.

¹¹⁵ Article 35 LC ; CEPCJ, II.B.2, 5, 7, 8.

¹¹⁶ CEPCJ, II.B.8.

¹¹⁷ CEPCJ, II.B.6.

and humanitarian activities, unless otherwise provided for by other laws. He/she also may gain profit on bases of copyright, patent and other similar rights¹¹⁸.

153. Finally, Law on Suppression of Corruption as well refers explicitly to conflicts of interest stating that: "In case of a conflict between personal and general interests the official person is required to act according to the general interest. There is a conflict between personal and general interests when by carrying out certain official or other activity touches upon the material and other interests of the official person or the person living with him/her in the domestic relationship¹¹⁹. Law on Prevention of Conflicts of Interest provides another definition on the same matter, which overrules the former. These provisions are directly applicable for judges as well.

154. Notwithstanding the constitutional principle on incompatibility, Law on Courts envisages that judges may be engaged in so-called "professional activities" stating that judges may take part in professional organisations that promote judicial independence, enhance judicial education and encourage the effectiveness of the courts. Judges may take part in professional or scientific meetings, lectures and trainings, or other legal projects and may receive compensation for such activities provided that there is no conflict of interest and there is no violation of law, the code of judicial ethics, or other sub-legal acts. Judges may engage in professional or scientific writing but may not use or disclose the substance of court deliberations or information gathered during the judicial process that was not included in the written decision. Judges who receive remuneration for participation in activities envisaged by this Article shall disclose such remuneration to the KJC¹²⁰.

155. However, within the current legal framework, there is no comprehensive prohibition on judges earning outside income; rather, judges may not accept compensation for outside activity during working hours without the KJC's approval. For judges who obtain such permission, the compensation must be reasonable and may not exceed 25% of the judge's usual salary, nor may it create the appearance of impropriety¹²¹. Judges also should not engage in outside activities that are incompatible with confidence in, impartiality of, or independence of judges, or may impair their ability to deal with judicial matters attentively and within a reasonable period. As an exception, a judge may engage in certain outside activities, such as scholarly work, lecturing, or activities related to the law, the legal system, and the administration of justice, as long as those activities do not affect the independence or dignity of the judicial office¹²².

156. As far as judges of the Constitutional Court are concerned, they have no right to be members of a political party, movement, or any other political organisation, board members in a publicly owned enterprise, trade association or NGO, or members of a trade union, and cannot hold any other remunerated public or professional office. Exceptionally, the exercise of the function of a lecturer of legal sciences in an accredited university is allowed. Also, scientific activities without remuneration or engagement as a member in institutes or associations of lawyers, charitable, cultural, sport and other organisations without remuneration, as long as these activities are not related to the activity of any political party are not regarded as public or professional office.

157. As already explained above, the engagement of judges in external activities or the possibility to earn income outside working hours is not fully prohibited. The problem may arise when judges (also prosecutors) are earning income outside working hours, mainly in private entities, universities etc. This type of activity is rarely covered by the regulations and the KJC has no real power of supervision. In addition, there are no transparent written rules based on which this "exception" may be granted. It is recommended **that the KJC adopts transparent guidelines regarding the approval of exceptional outside engagement for judges, including clear justifications to be used when deciding to grant such exceptions.**

Recusal and routine withdrawal

158. The grounds for a judge's exclusion from trying a particular case are provided in the Criminal Procedure Code (Chapter III: Disqualification, Articles 39-43) and Law on Contentious Procedure (Articles 67-72). They include situations, *inter alia*, when a judge has been injured by the criminal offence; when a judge is the spouse, the extramarital partner, a relation by blood in a direct line to any degree or in a collateral line to the fourth degree or a relation by marriage to the

¹¹⁸ LPCI, Articles 10, 11.1 and 15 (2)-(4).

¹¹⁹ Law on Suppression of Corruption, No.2004/34, Article 24. See also paragraph 22 on the overleaping of this definition with the one contained in the LPCI of 2011.

¹²⁰ LC Article 32.

¹²¹ CEPCJ, II.B.2, 3.

¹²² CEPCJ, II.B.1.

second degree to the defendant, the defence counsel, the state prosecutor, the injured party, or his or her legal representative or authorised representative; when the judge is a legal guardian, ward, adopted child, adoptive parent, foster, parent or foster child of the defendant, the defence counsel, the state prosecutor or the injured party; when, in the same criminal case, the judge has taken part in the proceedings as a prosecutor, a defence counsel, a legal representative or authorised representative of the injured party or prosecutor or if he or she has been examined as a witness or as an expert witness; when there exists a conflict of interest as defined by respective law. In addition, a judge is excluded if he or she has participated in previous proceedings in the same criminal case excepting serving on a special investigative opportunity panel or as a member of a review panel. Exclusion is also applied in a particular case if circumstances that render his or her impartiality doubtful or created the appearance of impropriety are presented and established. The disqualification is initiated by the judge him/herself or upon request of the parties having as effect an immediate cease of further activities and it is decided upon by the President Judge of the respective court. Appeal against the rejecting decision is possible. With regard to judges of the Constitutional Court, Article 18 LCC provides for the exclusion of a judge from participation in a proceeding either *ex officio* or upon request of any party when the judge is involved in the case that is subject of consideration by the Constitutional Court; or; is in marital or extramarital relationship or family relationship with any party in the proceeding, in accordance with applicable law; or in his/her official capacity has dealt before with the case before it was referred to the Constitutional Court.

159. According to the CEPCJ, if a judge is in a situation which could cause his/her independence to be called into question, he/she is under the obligation to disclose the facts of the situation to the parties involved and inform them as to his/her possible disqualification. In any event, if a judge becomes aware of any other conflict of interest or there are any other circumstances that might raise doubts as to his/her impartiality; he/she must discontinue all activity on the case and report such circumstances to the President of the Court, unless otherwise provided by law¹²³.

Financial interests

160. The judge, who owns shares or parts of a capital of an enterprise, should transfer his/her enterprise running or managing rights to another trusted person. A judge who may be a member of a steering body of a publicly owned company or of a shareholding company with public property does not have any right to be remunerated with a regular salary¹²⁴. In addition, as envisaged by the code of ethics, a judge shall refrain from financial and business dealings that tend to reflect adversely on his/her impartiality, interfere with the proper performance of judicial duties, exploit his/her judicial position, or involve him/her in transactions with lawyers or persons likely to come before the court on which he/she serves¹²⁵. A judge has in particular the following responsibilities to avoid any potential conflict of interest based on family or social relationships as well as financial or professional relationships¹²⁶.

Gifts

161. According to the CEPCJ, a judge and his/her family shall not, under any circumstance, accept gifts, favours, privileges, or promises for material help from any person having a direct or indirect interest in a case being tried by the judge¹²⁷. Moreover, gifts are regulated in more details in the Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials. In principle, public officials should not solicit or accept gifts or other favours, neither for him/her nor for his/her close family members, that are related to the exercise of official duties and which influence or may have an influence on the exercise of official duties. Protocol gifts or casual gifts are excluded and they become the property of the institution (if there is no a personal character for casual gifts). In any case, public officials should not accept monetary gifts or more than one gift per year from the same person or institution. The public official has an obligation to inform his/her supervisor in written form, if he/she has been offered or given any gift without a previous notification or in specific circumstances. In cases when official person is a head of an institution, he/she should inform the Kosovo Anti-corruption Agency¹²⁸.

¹²³ CEPCJ, II.A.3, c-d.

¹²⁴ LPCI, Articles 14 and 15 (2-3).

¹²⁵ CEPCJ, II.B.7.

¹²⁶ *Ibid*, II.A.3.b.

¹²⁷ CEPCJ, II.B.5.

¹²⁸ Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials (hereafter "Law on Declaration of Assets and

Benefits received and register of interests

162. All received gifts and their respective value, as well as the names of persons giving gifts, should be recorded by the official person in the register of gifts designed by Kosovo Anti-corruption Agency and kept by institution, where official persons exercise their duties. Register of gifts is public. Relevant institutions are obliged to provide public access to such registers, in accordance with procedures provided for by Law on Access to Public Documents. Public institutions that are obliged to maintain registers of gifts are required to provide the Agency with copies of registries of the previous year, not later than 31 March of the following year. The KAA shall control registers of gifts¹²⁹.

163. Moreover, according to Law on Prevention of Conflicts of Interest (which, as mentioned above, covers judges as well) during the discharge of their functions, senior officials are forbidden to take the following actions:

- to solicit or receive rewards or promises for rewards pertaining to the discharge of their functions;
- to gain any right or accept promises to gain any right in cases when legal principal of equality is violated;
- to solicit, appropriate, accept valuables or rewards for himself or other persons as a compensation for his/her vote during decision making process;
- to influence the decision of any official or any public entity for personal gains or for the benefit of a person related to him/her;
- to promise employment or any other right in exchange of a gift or of a promised gift;
- to influence on contracting – awarding public works or public supplies for personal gains;
- to use confidential information on his/her possession or information obtained in good faith during the discharge of public functions for personal gains or for the gains of his/her close or trusted persons;
- to influence the decision making of legislative, judicial or executive entities, while using public function, with the intention to gain a personal profit or a profit for his/her close or trusted persons;
- to take actions which in a way shall suit to his personal interest or to the interest of close or trusted persons;
- to take actions which in a way shall suit or shall be in favour of private interest of another person but are damaging to the public interest¹³⁰.

Contracts with public authorities

164. Enterprises, where a senior official person [i.e. a judge] owns a share or parts of property, which are being managed by his/her trusted person, has no right to establish contracts with or gain assistance from central or local institutions where he/she holds a decision making position. The lack of compliance with such prohibition is a ground for the Anti-corruption Agency to request the cancellation of the contract or the return of any benefit gained¹³¹.

Post-employment restrictions

165. Judges (who are considered as senior officials by Law on Prevention of Conflicts of Interest in Discharge of Public Functions) whose public function is terminated, has no right within one (1) year to be employed or appointed to managing positions or to be involved in control of public or private enterprises, if his/her duties during the last two (2) years before the termination of public functions, have been directly connected to monitoring or controlling business activities of those enterprises¹³².

Gifts”), Article 11. According to Article 3 of this Law, Senior Public Officer includes Judges and Prosecutors, Judges of Constitutional Court and Secretary of the Constitutional Court (paragraph 1.1.10).

¹²⁹ *Ibid.*, Article 12.

¹³⁰ LPCI, Article 9.

¹³¹ *Ibid.*, Article 15 (5-6).

¹³² *Ibid.*, Article 17.

Third party contacts, confidential information

166. During the exercise of judicial functions, judges shall not engage in any *ex parte* communications with anyone concerning cases and shall discourage them¹³³. Meeting clients is generally the prerogative of the courts' presidents, while a judge may not provide legal advice and is to avoid communications with third parties, as it may compromise his/her impartiality. Upon occurrence of such communication the judge must disclose promptly the relevant information to the other parties involved and, when possible, procure their attendance. General information on the course of proceedings is provided to eligible persons by the court clerks, while media representatives obtain relevant information from public information officers or the courts' presidents. See also the section on "*Prohibition or restriction of certain activities*" above.

167. Personal contacts. Judges are forbidden from using their position or information they obtain through their position for either their own personal gain or for the personal gain of anyone else¹³⁴. See section on "*Prohibition or restriction of certain activities*" above.

168. During the exercise of judicial functions, judges shall protect the confidentiality of all non-public information. When applicable, a judge shall respect the secrecy of information entrusted to him/her and/or confidentiality of the proceedings. This implies that while a proceeding is pending in any court, the judge shall not make any public comment that might reasonably be expected to affect its outcome, impair its fairness, or undermine the judiciary's credibility, and shall require similar abstention on the part of court personnel subject to the judge's direction and control¹³⁵. Judges shall not comment to the media on the composition, evidences and decisions of any cases. When dealing with the media and the public, judges may not express preliminary legal opinions on pending cases but they may inform the media about the case management in court¹³⁶. See also the section on "*Prohibition or restriction of certain activities*" above.

Declaration of assets, income, liabilities and interests¹³⁷

169. As required by Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, judges, among other defined public officials, submit annual declarations of assets using a standard form. The declaration regarding the status of property of senior public official and their relatives contains information related to the property and their revenues such as: (1) real estate; (2) movable property in value of over five thousand (5 000) Euros; (3) possession of shares in commercial enterprises; (4) valuable letters; (5) savings in banks and other financial institutions; (6) financial obligations towards physical and legal persons and (7) annual revenues. When property of family members is separated and registered as such in relevant bodies of state or court administration, declaration is submitted separately for each member of the family with property registered on his/her name and is attached to the declaration of the person who is obliged for declaration¹³⁸.

170. In the declaration of property, revenues, material benefits and financial obligations, the senior public official shall write the amount, the type and source of each revenues, amount and type of financial obligations including here the name of creditor as a natural or legal person, whereas publication of creditor's name shall be done only when in question are legal persons¹³⁹. Besides the senior public official's assets, declarations should also cover those of their relatives (family members) that include parents, adoptive parents, spouse, children, and adopted children up to eighteen (18) years of age.

171. The asset declarations are submitted by judges (1) no later than 30 days after taking up office; (2) each year by 31 March (as of 31 December of the previous year); (3) at any time upon

¹³³ Article 34 LC, CEPCJ, III.A.7.

¹³⁴ CEPCJ, II.B.5.

¹³⁵ LC, Article 34.3; CEPCJ, III.A.6.

¹³⁶ LC, Article 34.4; CEPCJ, III.A.10.

¹³⁷ This relevant analysis of Asset and Gift Declaration framework is also valid for other sections of the report as the Law covers all public officials, including judges, prosecutors, police, MPs, members of government etc.

¹³⁸ Because of its anteriority to the initial Law on Declaration of Assets, the CEPCJ contains an obsolete provision requiring from the judge to provide disclosure to the Kosovo Judicial Council of his/her financial interests, and those of his/her immediate family members. For the purposes of this provision, a declaration of financial interest includes personal property such as bank accounts, stocks, bonds, houses and motor vehicles. A judge is required to provide bank statements upon the request of the Kosovo Judicial Council. Disclosure of bank account statements shall be made within fourteen (14) days of such request. [CEPCJ, II.B.10].

¹³⁹ Law No. 04/L-050, on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, Article 5.

request of the Anti-corruption Agency; and (3) within 30 days of leaving office. Statements are filed with the Anti-corruption Agency. Regular declarations after submitting the first one should describe only changes in the status of assets. Subject to some limitations regarding personal data (personal number, year of birth, address, family composition, etc.), other asset declarations data are published in the web page of the KAA within 60 days. Unpublished data may be accessed in accordance with the legislation on access to public documents and on protection of personal data¹⁴⁰. However such data may be used and processed further for investigation purposes only. KAA is the competent authority to administer and maintain the register. Asset declaration data have to be archived for a period of 10 years from the date of the termination of the public function.

172. Beyond very detailed legal framework on the Declaration of Assets and Gifts of judges (and other public officials), the question of capacity to control the origin of those assets and gifts by the KAA remains open. Noting that the KAA is often overwhelmed with verifications of several thousands of public officials, the Assessment Team observes that consideration be given to raise the opportunity of a separate system of control of assets for judges (and prosecutors) given the increased constitutional and legal role of KJC (and KPC) in supervision of ethical principles.

Supervision

Ethical principles

173. Control over the compliance by judges with principles regulating the professional ethics lies with the KJC which is *inter alia* responsible for overseeing judicial inspection that is carried out by the Office of Disciplinary Counsel¹⁴¹. The Disciplinary Committee within the KJC is, among others, the competent body in first instance to deal with misconduct of judges that lies to violations of the applicable code of ethics based on the Office of Disciplinary Counsel's investigations, findings and evidence (for further information, see below).

Additional employment and other activities

174. See above paragraphs 151 and 154-155.

Declaration of assets

175. The declaration forms undergo a preliminary checking and if necessary correction of material mistakes, incorrect or incomplete data before being object of respective control that is carried out by the KAA. KAA requests the declaration of property and of the property origin and may carry out controls in order to verify the accuracy of such declarations¹⁴². While controlling and verifying data contained in property declaration forms, KAA may request or use data from all natural and legal persons, in compliance with the Law on Protection of Personal Data. Upon the request of KAA, banks and other institutions exercising banking and financial activities in Kosovo, are obliged to provide data related to deposits, accounts and other transactions carried out by persons, who according to this Law, are obliged to declare their property.

Enforcement measures and immunity

176. Disciplinary liability is regulated by chapters VI and VII of the KJC Law (Articles 33 to 49). According to the KJC Law, misconduct of a judge or lay judge shall consist of the following grounds: conviction for a criminal offence, with the exception of a minor offence; neglect, failure or abuse of judicial functions; failure to act independently and impartially; violation of the applicable code of ethics. Disciplinary Committee may suspend a judge or lay-judge without pay during any period of investigation or during the disciplinary proceedings until a final decision is taken. The KJC shall issue rules that define the misconducts. The Disciplinary Committee may impose the following disciplinary measures (sanctions): (1) reprimand; (2) reprimand with a directive to take corrective actions; (3) temporary reduction of salary by up to fifty percent (50%) taking into account the nature of misconduct; or (4) recommendation on removing the judge or lay judge from office.

¹⁴⁰ Some interlocutors from the civil service raised concerns about the publication of declaration forms. Although the Assessment Team does not take a position on this solution, it recalls the fact that this has been legally regulated since few years ago,

¹⁴¹ See Article 4, 1.10 of the KJC Law. The KJC has also a special unit, the Court Performance Review Unit, which is responsible for assessing the activity of the courts (see above paragraph 107 for further information).

¹⁴² The KAA has an obligation to carry out a complete control of senior public officials' declarations in order to verify the authenticity and accuracy of the declared information. During 2012, the KAA has carried out a complete control of 800 declarations (21,88%) out of 3,656 senior public officials who declared their assets.

Some interlocutors informed the Assessment Team about the absence of accurate motivation of judicial decisions, including decisions related to disciplinary procedures.

177. The period of limitation with regard to disciplinary measures is not defined in the KJC Law. Disciplinary procedure against a judge may be initiated by filing a complaint with the - ODC, which can be done by an individual or organisation, as well as by the ODC acting *ex officio*¹⁴³. Complaints of judicial misconduct may also be lodged with the Kosovo Anti-Corruption Agency, charged with preventing and combating corruption, in part, by referring suspicious cases to the prosecutors for criminal investigation.

178. The disciplinary proceedings are recommended through a written notification by the Office of Disciplinary Counsel (ODC)¹⁴⁴ which acts as a prosecutor on the basis of a conducted investigation and justified by supporting evidence. Cases are heard by the KJC Disciplinary Committee (CDC)¹⁴⁵ – in the first instance and by the KJC in the higher instance (appeal). KJC decisions are not subject to appeal. The proceedings are held in a closed session by the CDC guaranteeing the rights of defence. The written decision to impose or not a disciplinary procedure should be justified. The CDC shall impose a disciplinary measure that is consistent and proportionate with the circumstances, level of responsibility, and consequences of the misconduct. The CDC shall submit a written recommendation for the dismissal of a judge or lay judge from office to the KJC. If the judge or lay judge is released from the charges at the completion of the disciplinary procedure, he or she shall return to his or her previous office upon the decision of the KJC¹⁴⁶. The concerned judge or the ODC may appeal the decision to the full KJC, which may confirm, revise, overrule, or remand the decision. The recommendation of the KJC for dismissal shall, within 15 days submitted to the President for decision-making and to the judge or lay judge concerned.

179. Criminal and other offences¹⁴⁷. According to the LPCI provisions, applicable sanctions related to conflict of interest violations include:

- The possibility to initiate dismissal procedure upon the request by the Anti-corruption Agency to the competent authority against the senior official [when applicable] on the ground of the incompatibility revealed (Article 18.9);
- A fine from 500 to 2 500 EUR is imposed for violations of Article 8 Paragraph 1, 2 and 6; Article 9; Article 11; Article 12 Paragraph 1, 2 and 3 Subparagraph 3.1 and 3.3; Article 13, Article 14 Paragraph 1, 2 and 5; Article 15 Paragraph 1, 2 and 3; Article 16 and Article 17 of the LPCI.
- A fine from 700 to 2 500 EUR is imposed for violations of Article 14 Paragraph 3 and 4 and of Article 15 Paragraph 5 of the LCPI.
- A fine from 1 000 to 2 500 EUR is imposed for violations of Article 8 paragraph 3, 4 and 5 of the LPCI against the manager or manager of the institution.
- Senior public officials, managers or leaders of managing institutions may also incur additional sanction by the court (prohibition of exercising public functions from 3 months to one year).

180. The new Criminal Code that entered into force at the beginning of 2013 incriminates conflict of interest as a criminal offence. Thus, Article 424 CC provides that an official person who participates personally in any official matter in which he or she, a member of the family, or any related legal person, has a financial interest shall be punished by a fine or imprisonment up to three (3) years. When the official matter is a procurement action or public auction, the perpetrator shall be punished by imprisonment of one (1) to five (5) years. The term "participation" is defined exercising official authority through decision, approval, disapproval, recommendation, rendering advice, investigation, or otherwise exercising influence over an official matter. "Official matter" is defined as a judicial or other official proceeding; an application, request for a ruling or other official determination; a contract or claim; a public auction or other procurement action; or, another matter affecting the financial or personal interests of the official or another person. "Related legal person" means any legal person in which the official or a member of the family has a financial

¹⁴³ KJC Law, Article 45.2.

¹⁴⁴ Founded in 2001 (ex-Judicial Inspection Unit), the ODC is a separate and independent body that serves both the KJC and the KPC (see Article 45 of the KJC Law and 35 of the KPC Law that are similar). It carries out its duties in accordance with respective laws and relevant regulations of both councils. It has a separate budget that is administered by the Secretariat of the KJC upon the direction and the certification of the Director of ODC. The ODC has a structure of 20 employees (4 vacant positions to be filled).

¹⁴⁵ The CDC consists of 3 members of the KJC (having at least two judges including its Chairperson).

¹⁴⁶ KJC Law, Article 37.

¹⁴⁷ This relevant analysis of sanctions is also valid for other sections of the report as the Law covers all public officials, including judges, prosecutors, police, MPs, members of government etc.

relationship, including a relationship or a prospective relationship as a responsible person or employee. A "member of family" is defined by Article 120, § 33 CC as a spouse, parent, adoptive parent, child, adoptive child, sibling, blood relative living in the same home or a person with whom the perpetrator lives in an extra-marital communion.

181. Sanctions applied in accordance to the LPCI do not exclude disciplinary liability as well as material and criminal liability of senior officials.

182. According to Law on Declaration of Assets and Gifts, violations of its provisions, if they do not constitute a criminal offence, are considered as a minor offence and are punished with fines as following:

- A fine from 1 000 to 2 500 EUR is imposed for absence of submitting regular annual declaration or such declaration when taking up a public function.
- A fine from 1 500 to 2 500 EUR is imposed for not submitting the declaration of assets upon the request of the KAA.
- A fine from 1 000 to 2 500 EUR is imposed for not submitting the declaration of assets after the removal from the public function or for not correcting material mistakes, incorrect or incomplete data within 15 days from the received notification.
- The new Criminal Code that entered into force at the beginning of 2013 incriminates failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations as a criminal offence. Thus, Article 437 CC provides that failure or delay to file a declaration of property, income, gifts, other material benefits or financial obligations is be punished by a fine or by imprisonment of up to three (3) years. On the other hand, false reporting (including omission of data or of required information) of property, income, gifts, other material benefits or financial obligations is punished by a fine and imprisonment of six (6) months to five (5) years.

183. Pursuant to Article 107 of the Constitution, judges, including lay-judges, are immune from criminal prosecution, civil lawsuit and dismissal for actions taken, decisions made or opinions expressed that are within the scope of their responsibilities as judges. Judges, including lay-judges, shall not enjoy immunity and may be removed from office if they have committed an intentional violation of the law. When a judge is indicted or arrested, notice must be given to the KJC without delay¹⁴⁸. However, the Criminal Code allows for prosecution of judges for "unlawful" decisions, rather than those that are to be considered as a criminal conduct¹⁴⁹. The possibility that prosecutors may open investigations and bring indictments against judges for decisions that are legally mistaken rather than criminal is seen as an attack on both judicial immunity and independence.

184. The following statistical information results from complaints received by the ODC during 2010 and 2011. So far in 2010, the ODC received 285 complaints that resulted in 181 dismissed cases at the preliminary stage and 92 reports submitted to the CDC. They include 273 cases of neglect of judicial functions in the form of delays in adjudicating disputes or other forms, 4 for lack of independence and impartiality, 6 for breaches of the ethics code, and 2 for unspecified grounds. During 2011, the ODC received 260 complaints (additional 83 cases were carried out from the previous period). 222 complaints were dismissed at the preliminary stage. They have resulted in 40 reports referred to the CDC. Out of the complaints received in 2011, 147 cases were based on neglect of judicial functions in the form of delays or other forms, 3 for lack of independence and impartiality, 10 were for breaches of the ethics code, and 100 unspecified complaints. Those complaints for 2011 concern Supreme Court (22 cases, including its Special Chamber), districts courts (35 cases), municipal courts (230 cases) and prosecution services for the remaining.

185. The average of judicial investigation has dropped from 311 working days in 2009 to 91 in 2010 and 46 in 2011. On the other hand disciplinary proceedings in both instances are presented in the table below.

Year/Disciplinary instances	2009	2010	2011
CDC Decisions	-	21 cases	57 cases (41 pending cases)
KJC Decisions (appellate instance)	3 cases	5 cases	6 cases (14 pending cases)

¹⁴⁸ Constitution, Article 107; LC, Article 31, KJC Law, Article 12 – for the immunity of KJC members.

¹⁴⁹ CC, Article 432.

186. The following statistical information results from disciplinary proceedings decided by the CDC during 2011 and 2012¹⁵⁰. During 2011, out of 25 disciplinary cases/decisions, 15 disciplinary measures have been decided and 10 cases have been dismissed: 12 reprimands, 2 reprimands with a directive to take corrective actions and 1 temporary reduction of salary. They generally concern neglect, failure or abuse of judicial functions as well as violation of ethical rules. During 2012, out of 13 disciplinary cases/decisions, 7 disciplinary measures have been decided and 6 cases have been dismissed: 1 reprimand, 3 reprimands with a directive to take corrective actions and 3 temporary reductions of salary. They generally concern 4 cases of neglect, failure or abuse of judicial functions, 2 cases of violation of ethical rules and 1 case of conviction for a criminal offence.

187. The Assessment Team learnt with concern the existence of backlog of disciplinary cases deliberated and decided by the CDC and/or the KJC. Although the duration of judicial inspection has been reduced a lot, hearing and deciding of cases by the CDC or KJC may take sometimes several years (even 5 to 6 years). Having in mind, the important elapsed period from the date of alleged misconduct, disciplinary bodies have developed a contested practice without any legal ground to dismiss the case heard and avoid any enforcement of sanction because of the period elapsed. On the other hand, the KJC Law does not have any limitation period applicable to disciplinary proceedings. Moreover, the Assessment Team could not be clearly informed, due also to lack of cases and practice, about the hypothesis when the misconduct includes attributes of a criminal offence and roles and interactions between at least the ODC and State Prosecutor's services. Further, due to the multitude of bodies (KJC Disciplinary Committee, KJC in full composition, ODC, KAA and Prosecutor), the system appears unnecessarily complicated and leaving potential grey zones resulting in overlapping proceedings and competences. Thus, although not very frequent, few decisions of the KJC having as outcome the modification (neither confirmation nor overruling) of the first instance CDC decision are a matter of serious concern in the Assessment Team's opinion. Elegant but unjustified failure of important cases, in particular for serious misconduct, may compromise the credibility of the enforcement system and involved bodies in lower levels. Furthermore, the Assessment Team shares the view that the ODC should benefit enhanced support, better capacities and resources and training. Furthermore, besides any potential criminal follow-up or standard administrative investigation, the KAA usually refers to respective councils (KJC or KPC) when it considers the case may need further follow-up and disciplinary proceedings. It is therefore recommended **(i) to establish a formal relationship between the ODC and the State Prosecutor in order to enhance disciplinary and criminal investigation of judges and prosecutors and make mutual co-operation transparent; and (ii) to streamline and clarify the institutional framework and proceedings for disciplinary/criminal investigations against judges and prosecutors, including the establishment of a limitation period for disciplinary proceedings, in order to avoid unnecessary delays and overlapping of proceedings.**

188. Overall, the system of sanctions has been strengthened by introduction of criminal offences for some misconduct related to conflict of interest and declaration of assets, i.e. false declaration. At the same time, the Assessment Team noted that it may lead to a situation in which a parallel investigation may be launched: one administrative by KAA, eventually ending with an administrative fine imposed by the judge for minor offences, and another criminal investigation led by the Prosecutors. The question of the pronouncing sanctions by a judge for minor offences and its consequences for non-execution remain open, in terms of criminal investigation. Therefore, although not every case of the conflict of interest has necessarily elements of criminal offence, it is recommended **that interaction between the KAA and the Prosecutor, as well as the judges in proceedings for minor and criminal offences is clarified through standard operating procedures on conflicts of interest, with regard to the entry into force of the new Criminal Code.**

Advice, training and awareness

189. The KJC Law envisages Training Policies, Standards and Instructions, requiring from the KJC in coordination with the Kosovo Judicial Institute to determine the policies, standards and directives for regulating the training of judges, lay judges and other judicial staff. Moreover the KJC may cooperate with other associations or organisations with the aim of professional training of judges and lay judges. The KJC may also require the revision of any training program in order to ensure the implementation of policies and standards for the professional training of judges and lay judges¹⁵¹. Judicial training for judges, prosecutors and candidates for judges and prosecutors is conducted by the Kosovo Judicial Institute (KJI), which is an independent legal entity. Under the

¹⁵⁰ Data collected at the following link (last access on 8 February 2013): <http://www.kgjk-ks.org/?cid=1,199>

¹⁵¹ Law on Kosovo Judicial Council, Articles 50 and 51.

existing legal framework, the Continuous Education Program (CEP) is dedicated to sitting judges and prosecutors, whereas the Advancement Education Program (AEP) is offered to newly appointed or promoted judges and prosecutors. The AEP has not been specifically mandatory for Kosovo's professional judges until the adoption of LC that foresees it as obligatory. Moreover, the Code of Ethics and Professional Conduct for Judge requires that judges maintain and improve the highest standards of professionalism and legal expertise and engage in CEP and training as determined by the KJC and when not incompatible with other judicial duties¹⁵². However, the Initial Education Program (IEP) is a mandatory training that is delivered to certain categories of candidates for judges and prosecutors. The KJI has offered 88 trainings in its IEP in 2007, 95 in 2008, 101 in 2009, and 110 in 2010 and 111 in 2011 (78 IEP and 33 AEP). These trainings drew 2,031 judicial participants in 2007 (1,365 judges and 394 prosecutors), 2,031 in 2008 (1,254 judges and 350 prosecutors), 2,696 in 2009 (1,446 judges and 512 prosecutors), 2,053 in 2010 (1,146 judges and 266 prosecutors) and 1,691 in 2011 (1,322 judges and 115 prosecutors). Kosovo's judges are in the unique position of serving in a justice system governed by a Constitution that is only a few years old. The result has been a rapid enactment of a large number of new laws by the Kosovo Assembly.

190. In the framework of Initial Education Program (IEP), training module on judiciary and prosecutorial ethics has been provided to 4 different promotions of candidates for judges and prosecutors in 20 training sessions and covering 141 candidates. In addition, training module on Financial Crime and Corruption has been delivered to 4 promotions of candidates for judges and prosecutors during 20 training sessions and including 141 candidates. With regard to Continuous Education Program (CEP) for judges and prosecutors the following ethical different topics have been under focus: ethics of judiciary and prosecution, general principles of the code of ethics, disciplinary procedure of KJC, misconduct and specific cases in the practice of the Office of the Disciplinary Counsel. In addition, during the period 2009-2012, 16 trainings in around 30 days have been delivered to 324 participants (153 judges, 102 prosecutors and 69 others). They have been organised according to the following modules: organised crime (financial crime, corruption, money laundering, informal economy); corruption (features, investigation techniques, prevention, consequences, criminal offences); financial crime and informal economy (prosecution and investigation of money laundering cases, forms and elements of ML criminal offences, legal instruments, relevant involved institutions, criminal offences involving elements of financial crime, measures for prevention of financial crime, investigation and confiscation of proceeds of financial crimes, financial crimes evidence, obtaining and analysing financial proofs, written documents and IT), cybercrime (fraud, misuse in sale points, ATM and internet fraud, charge backs).

¹⁵² CEPCJ, III.A.3.

b) Corruption Prevention in respect of Prosecutors

Overview of the prosecution service

191. According to Article 109 of the Constitution, the State Prosecutor is an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal offences and other offences specified by law. The State Prosecutor is an impartial institution and acts in accordance with the Constitution and the law. The prosecution service is considered to be part of the judiciary. The Constitution further envisages that the State Prosecutor shall reflect the multi-ethnic composition of Kosovo and shall respect the principles of gender equality. The initial mandate for prosecutors lasts three years. The reappointment mandate is permanent until the retirement age as determined by law and unless dismissed in accordance with the law. Prosecutors may be removed from office upon conviction of a serious criminal offence or for serious neglect of duties.

192. Law on State Prosecutor was adopted by Kosovo Assembly on 30 September 2010. Except for the Articles 21, 28 and 29 which were effective in 2010, the remaining Articles of this law entered into force on 1 January 2013¹⁵³. Article 5 of this law envisages that the State Prosecutor shall reflect the ethnic diversity in Kosovo, in accordance with Articles 109(4) and 110(3) of the Constitution and internationally recognised principles of human rights and gender equality.

193. According to Article 14 of Law on State Prosecutor (LSP), the State Prosecutor is hierarchically organised into the following organisation levels: (1) Basic Prosecution Offices comprised of a General Department, Department for Minors and the Serious Crimes Prosecution Department; (2) Appellate Prosecution Office comprised of a General Department and a Serious Crimes Prosecution Department; (3) Special Prosecution Office (SPRK) which is a permanent and specialised prosecutorial office operating within the Office of the State Prosecutor of Kosovo and having its seat in Pristina; and (4) the Office of Chief State Prosecutor. Any case falling within the jurisdiction of the Commercial Matters Department or the Administrative Matters Department of the Basic Court shall be assigned to prosecutors within the General Prosecution Department of the Basic Prosecution Office. There are around 150 prosecutors¹⁵⁴ in Kosovo (120 for basic level, 10 for the appellate level, 10 for Special Prosecution Office¹⁵⁵ and 6 in the State Prosecutor Office). Before the implementation of the new prosecution structure at the beginning of 2013, there were 7 prosecution offices at the municipal level and 5 prosecution offices at the district level under the previous structure. Article 17 LSP envisages that the territorial jurisdiction, scope, and powers of the Special Prosecution Office are governed exclusively by Law on Special Prosecution Office¹⁵⁶. The new prosecution structure has no impact on the organisation of the Special Prosecution Office.

194. The Chief State Prosecutor has jurisdiction for the entire territory of Kosovo and has exclusive jurisdiction over third instances cases before the Supreme Court. The Chief State Prosecutor has also exclusive jurisdiction over all cases involving extraordinary legal remedies. It may assume jurisdiction over any case upon the request of or with the consent of the Chief Prosecutor of the Special Prosecution Office. He or she may assume jurisdiction over any case in any prosecution office of Kosovo as provided by law. The Chief State Prosecutor shall be the head of the State Prosecutor and shall have overall responsibility for the management of the State Prosecutor and the supervision of all prosecutors. The Chief State Prosecutor may make appropriate delegations of authority. The Chief State Prosecutor shall issue rules, instructions, guidelines, and decisions for the internal regulation of the State Prosecutor.

195. According to Article 3 of Law on State Prosecutor, the State Prosecutor is an independent institution that exercises its functions in an impartial manner. The State Prosecutor and each prosecutor ensures equal, objective and unbiased treatment for all persons before the law, regardless of gender, race, national or social origin, political associations or connections, religious beliefs, state of health or handicap, or societal position. It shall be unlawful and in contradiction with the Constitution for any natural or legal person to interfere with, obstruct, influence or attempt to interfere with, obstruct or influence the State Prosecutor in the performance of its prosecutorial functions related to any individual investigation, proceeding, or case.

¹⁵³ Law No. 03-L-225 of 30 September 2010 on State Prosecutor.

¹⁵⁴ This figure represents the full staffing component of the prosecution service. However, because of vacancies, it is estimated there are approximately 125 prosecutors in Kosovo (around 15% of positions being still vacant in Kosovo and more than 20% in Pristina).

¹⁵⁵ On 7 November 2012 the KPC decided to transfer 5 additional prosecutors to the SPRK.

¹⁵⁶ Law No. 2008/03-L-052 on Special Prosecution Office (hereafter "SPRK Law").

196. According to Article 110 of the Constitution, the Kosovo Prosecutorial Council (KPC) is an independent institution in the exercise of its functions in accordance with law¹⁵⁷. The KPC ensures equal access to prosecutor's service for all persons in Kosovo. It also ensures that prosecutors carry out their function in an independent, professional, and impartial way and reflects the multi-ethnic nature of Kosovo and the principle of gender equality. The KPC is responsible for recruiting, proposing for appointment or reappointment to the President candidates for prosecutors as well as recommending dismissal of prosecutors; assessing, promoting, transferring, disciplining, and determine policies, standards and instructions for the training of prosecutors. The KPC must give preference for appointment as prosecutors to members of under-represented communities in a manner provided by law. All candidates should fulfil the criteria as provided by law.

197. Other KPC duties and competences include *inter alia*: proposing candidates to the President for appointment as Chief State Prosecutor; in cooperation with the Kosovo Judicial Institute, establishing the standards for recruiting, organising and advertising the preparatory examination for the qualification of prosecutors; announcing the public competition for prosecutors; determining the number of prosecutors in each prosecution office; appointing the Chief Prosecutors for the Basic Prosecution Offices and Appellate Prosecution Office in compliance with Law on State Prosecutor; developing, in coordination with the Office of the Chief State Prosecutor, prosecutorial policies and strategies for effectively combating criminality; proposing to the Government and the Assembly measures related to the prosecutorial system and to combat criminality; reporting to the Kosovo Assembly, the President, and the public on the work of the KPC and the State Prosecution Office; preparing an annual report on the activities of the State Prosecutor and the expenditures of the KPC; providing and publishing information and statistical data on the prosecution system; overseeing the administration of the prosecution offices and its personnel; overseeing the Prosecution Performance Review Unit and issuing rules and regulations in accordance with its competencies; providing the support for the regular periodic assessment of the caseloads of the prosecution offices and implementing a case allocation system to ensure the efficient functioning of the prosecution offices; preparing, submitting and overseeing the budget of the prosecutorial system to ensure efficient and effective functioning of prosecution offices and accounting for the use of fiscal resources; issuing the Code of Professional Ethics for its members, prosecutors, and supporting administrative staff; establishing the procedures for and conducting disciplinary proceedings; recommending to the President the removal of the Chief State Prosecutor; determining policies, standards and instructions related to the training of prosecutors and other personnel and overseeing the implementation of professional training and development of prosecutors; cooperating with individuals and organisations who are responsible for monitoring the prosecution service; establishing necessary committees; approving the rules of procedure for the functioning of the KPC and its committees. The KPC is also responsible for promulgating regulations relating to the management of information in compliance with data protection and access to information legislation.

198. The composition of the KPC, as well as provisions regarding the reappointment, removal, term of office, organisational structure and rules of procedure, are determined by KPC Law. According to Article 5 of KPC Law, the KPC is composed of nine (9) members who are elected for a 5 year term with possibility to be re-elected once: five members must be prosecutors (representing the Chief State Prosecutor, the Special, Appellate and Basic Prosecution offices); 3 members are appointed from a list of 5 candidates that represent the Chamber of Advocates (Bar), law faculties and civil society. Unlike the case of the KJC, Minister of Justice is a member *ex officio* of the KPC whereas the Chief State Prosecutor serves *ex officio* as Chairman of the KPC. In other words, the oversight body for the prosecution service is chaired by the head of the institution which it oversees. However, the initial composition of the KPC after the entry into force of the KPC Law is based on the transitional provision of Article 42. Although the Assessment Team has not enough information at its disposal in order to consider capacity and effectiveness of the KPC functioning and activities, it was however aware of the recent existence of this body¹⁵⁸.

Recruitment, career and conditions of service

199. According to Law on State Prosecutor, candidates for appointment as a prosecutor must meet the following minimum requirements and qualifications, and shall: be a citizen and resident of Kosovo; possess a valid university degree in law recognised by the laws of Kosovo; have passed the bar examination; have passed the preparatory examination for prosecutors and judges; have

¹⁵⁷ Law No. 2010/03-L-224 on Kosovo Prosecutorial Council (hereafter "KPC Law").

¹⁵⁸ Moreover, unlike the KJC, the KPC has no clear secretariat which works directly to it. Instead secretariat services are provided in part by the KPC Performance Evaluation Unit which is thus limited in the quantity of evaluation work it is able to undertake and, in part by the civil servants working within the Office of the Chief Prosecutor.

positive high professional reputation and moral integrity; have no final convictions for criminal offences, with the exception of minor offences as defined by the law; have passed the legal education exam, except the persons, that have at least seven (7) years of legal experience and lawyers that have exercised the lawyer's profession at least five (5) years. Candidates who have exercised the judge's or prosecutor's job at least three (3) years, as well as candidates who have at least seven (7) years of legal experience and have passed the preparation exam during the process of appointment and re-appointment for judges and prosecutors, shall not enter the preparation exam¹⁵⁹.

200. As defined by Article 18.4 of the KPC Law, when making recommendations for appointment or reappointment, the KPC must refer to the following criteria: (a) professional knowledge, work experience and performance, including an understanding of, and respect for, human rights; (b) capacity for legal reasoning as proved through professional activities in the legal field, including as a judge, prosecutor or lawyer, academic works and other professional activities; (c) professional ability based on previous career results, including participation in organised forms of training in which performance has been assessed; (d) capability and capacity for analysing legal problems; (e) ability to perform impartially, conscientiously, diligently, decisively and responsibly the duties of the office; (f) communication abilities; (g) conduct out of office; and (h) personal integrity.

201. In addition to the minimum qualifications, all candidates for appointment as state prosecutors, in certain prosecution offices, such as for the Serious Crime Department, Appellate Prosecution Office, Special Prosecution Office, Office of Chief State Prosecutor and for the Chief State Prosecutor, additional criteria are envisaged, mostly in terms of the length of experience required (varying between 3 to 8 years of legal experience)¹⁶⁰.

202. The Chief State Prosecutor shall be appointed and dismissed by the President of Kosovo upon the proposal of the KPC. The term of the Chief State Prosecutor is seven (7) years, without the possibility of reappointment. The KPC appoints Chief Prosecutors for all other units of the State Prosecutor. Their term lasts for 4 years with the possibility to be renewed once. The KPC is responsible for developing and implementing procedures for recruiting and nominating candidates for appointment as prosecutors. The KPC Law envisages the detailed procedures and steps for the nomination and appointment and reappointment of the prosecutors. Special attention is given to the ethnic representation of under-represented communities¹⁶¹. Those provisions require that the President shall appoint and reappoint prosecutors upon the nominations of the KPC and in compliance with the Constitution and the law. If the President of Kosovo refuses to appoint or reappoint any candidate, written reasons of his or her refusal should be provided within sixty (60) days to the KPC. The KPC may present the refused candidate to the President one additional time together with its written justification, or another candidate. According to the Constitution, the initial term of office of the prosecutor lasts for three years. Based on merits and demonstrated work, the reappointment mandate is permanent until the retirement age as determined by law or unless dismissed in accordance with the law¹⁶². Through the internal rules of KPC, vetting procedures related to candidates for prosecutors are determined, including the verification of their assets. Office for Prosecutorial Evaluation and Verification (OPEV) is responsible for vetting of candidates for prosecutors.

[For further details, see paragraph 120 including footnote 74 above. Concerning the Special Appointment Process, see paragraphs 121 to 123 above].

203. According to the KPC Law, the KPC shall establish criteria for assessing and promoting prosecutors that include but are not limited to the following: professional knowledge, working experience and performance, including an understanding of, and respect for human rights; legal reasoning skills; professional ability, including participation in organised forms of training in which performance has been assessed; skills and capacity for analysing legal problems; ability to perform impartially, conscientiously, diligently, decisively and responsibly the duties of the office; communication skills; out-of-office conduct and personal integrity.

204. The Chief State Prosecutor may make appropriate delegations of authority¹⁶³. Each Chief Prosecutor shall be the administrative head of the office to which he/she is appointed. The Chief

¹⁵⁹ Law on the State Prosecution, Article 19.

¹⁶⁰ *Ibid.*, Article 20.

¹⁶¹ See Articles 17 – 20 of the Law on Prosecutorial Council No.03-L-224.

¹⁶² Constitution, Article 109.

¹⁶³ Law on State Prosecutor, Article 11.

Prosecutor may make appropriate delegations of authority, subject to the consent of the Chief State Prosecutor¹⁶⁴.

205. The transfer of a prosecutor into another prosecution office may be decided by the KPC upon request of the Chief Prosecutor for a time period not longer than six months at a time. In principle, prosecutors are not transferred against their will except as otherwise provided in this law. The Chief State Prosecutor, for extraordinary circumstances, may temporarily transfer a prosecutor to another prosecution office. A transfer under these circumstances shall not exceed thirty (30) days unless approved for a longer period by the KPC. Upon application to the KPC, a prosecutor may be permanently transferred to another prosecution office. The KPC is responsible for adopting rules and regulations establishing the standards and procedures governing the appeals.

206. The KPC shall determine, based on disciplinary proceedings, whether the misconduct of a prosecutor justifies dismissal from office. Every recommendation from the KPC for the dismissal of a prosecutor shall include the written reasons for such recommendation and the basic conclusions of the Disciplinary Committee. The recommendation of the KPC for dismissal shall, within fifteen (15) days, be submitted to the President and the prosecutor concerned. The President, in accordance with the Constitution and the KPC Law, shall decide on the recommendation of the KPC for dismissal. A prosecutor shall formally be notified by the KPC regarding the decision of the President for the approval or disapproval of dismissal from office before such a decision is enforced¹⁶⁵. The KPC is authorised to remove a Chief Prosecutor from that position, pursuant to a performance assessment conducted in accordance with applicable law, or upon a finding of criminal conduct, mismanagement, incompetence, or failure to fulfill the duties of the position.

207. Remuneration. Since January 2011, prosecutors have been granted a salary raise equal to those of the judges¹⁶⁶. Thus the Chief State Prosecutor shall receive a salary equivalent to that of the President of the Supreme Court. Chief Prosecutor of the Special Prosecution receives 95% of the salary of Chief State Prosecutor. Prosecutors who are permanently appointed to the Office of the Chief State Prosecutor or the Special Prosecution receive a salary equivalent to ninety percent (90%) of the salary of the Chief State Prosecutor. The percentages and the scale are used in a similar manner as in the case of judges. The gross annual salary of a prosecutor in a Basic Prosecution Office is approximately 12,360 EUR, while the salary of a prosecutor in the Appellate Prosecution Office is approximately 13,728 EUR. In respect of prosecutors of the State Prosecutor's Office or Special Prosecution Office, the gross annual salary is around 15,252 EUR. The Kosovo Prosecutorial Council is entrusted to issue an additional compensation scheme that mirrors *inter alia* the specific responsibilities of prosecutors serving in the Serious Crimes, Departments; however, in no case shall the sum of the base salary and the additional compensation exceed ninety percent (90%) of the salary of the Basic Prosecution Chief Prosecutor¹⁶⁷.

208. There are a number of KPC Administrative Instructions or Decisions which provide for benefits such as remuneration for attending working groups, telephone usage, hospitality (for some authorities), use of official cars, etc. Further it does not appear that the KPC considered overall budgetary resources when making these decisions. Otherwise, there are no other benefits (housing loans, exemptions, bonuses, transfer reimbursements, etc.) that apply to prosecutors.

209. The Assessment Team is aware that there had been essentially no vetting of candidates prior the Special Appointment Process (see above in the section related to judges)¹⁶⁸. In addition, it was informed by practitioners about the current insufficient number of prosecutors. On the other hand, Kosovo is just recently starting to implement an important structural reform of the judicial and prosecutorial systems. Moreover, the performance appraisal is still not established. There is also a matter of fact that prosecution system and especially its respective KPC is more recent than the KJC and will need to pay serious efforts in order to strengthen procedures and mechanisms. In such important transitional context, the vetting process and procedures are the paramount conditions aiming to ensure integrity, avoid undue influence to the process and guarantee the independence of the prosecution services. Furthermore, the Assessment Team learnt that the OJCV is facing budgetary problems and there is an intention to include it in the future within the KJC

¹⁶⁴ *Ibid*, Article 13.

¹⁶⁵ Law on Prosecutorial Council, Article 28.

¹⁶⁶ Some difficulties were encountered due to transitional provisions application and the introduction of the structural reform of courts and prosecution services setting up differences and even reductions of salaries. KPC and KJC have been unable to find a solution to the matter until specific decisions were taken at the beginning of 2013.

¹⁶⁷ Law on State Prosecutor, Article 21.

¹⁶⁸ It should be noted that since the end of the Independent Judicial and Prosecutorial Commission's (IJPC) mandate, the KPC has in fact conducted two separate rounds of recruitment.

Secretariat but conserving its twofold role towards candidates for judges and prosecutors implying a close relationship with KJC and KPC. On the other hand, the Assessment Team was informed after the on-site visit that former recruitment processes have shown weaknesses in relation to the assessment of candidates' skills and capacities to undertake the tasks of a prosecutor as outlined in Article 18.4 of the KPC Law. Consequently, it is recommended **that the KJC and the KPC adopt clear and comprehensive vetting procedures (i) based on objective and transparent criteria; (ii) known in advance and (iii) that every decision be motivated accordingly.** Concerning the probationary system for prosecutors, the Assessment Team recalls the recommendation on this issue in paragraph 129 above.

Case management and procedure

210. According to Article 13 of Law on State Prosecutor, each Chief Prosecutor shall assign cases to prosecutors within the prosecution office, taking into account the nature of the case, the experience and specialisation of the prosecutors. It was unclear for the Assessment Team to understand whether Chief Prosecutors are given any guidance or whether there are any instructions in this respect.

211. Article 4.2 of Law on State Prosecutor provides that "a duly appointed state prosecutor is authorised to initiate a criminal investigation, file an indictment or summary indictment, conduct a prosecution, or perform other duties and function that are in accordance with the Constitution and applicable laws".

212. The KPC does not have its own website. On the other hand, it was underlined by some interlocutors that reports provided to the public do not provide information on conviction rates. Considering that for case management and strengthening of transparency issues there is room for a lot of improvement in the context of Kosovo, the Assessment Team recalls the recommendation mentioned at the paragraph 144 above and its relevance to the prosecution system as well.

Ethical principles and rules of conduct

213. Rules of conduct. A new Code of Ethics and Professional Conduct for Prosecutors (CEPCP) were adopted by the KPC on 31 July 2012. The CEPCP envisages a number of detailed provisions on professional ethics, including requirements that a prosecutor shall maintain and improve the highest standards of professionalism and legal expertise, and for that purpose, engage in continuing legal education and training whenever available. Particularly, a prosecutor shall respect and apply: the principles and ethical duties of their office as set forth in this Code of conduct; the legal rights of suspects, victims and witnesses; human rights and freedoms as laid down by international instruments; principles and practices regarding organisation of work, management and human resources in a prosecutorial and judicial context¹⁶⁹.

Conflict of interest

214. Prosecutors, as senior public officials, are bound to conflict of interest rules, pursuant to similar rules also applicable to judges and described above (see paragraphs 149 to 155 above). However, it was argued by some interlocutors that the inter-relationship between Law on Conflicts of Interest, rules of conduct and disciplinary action are not entirely clear.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

215. Law on State Prosecutor requires that prosecutors shall not use the status as a prosecutor or the reputation of the State Prosecutor to advance their personal rights or interests and shall not perform any other duty or service that may interfere with their independence and impartiality or may otherwise be incompatible with the performance of the duties of a prosecutor. In addition, prosecutors shall not engage in any political functions or activities, including membership in political parties, or running for or holding political office. Prosecutors are encouraged to vote but otherwise may not participate in elections or political activities. Seeking or maintaining political office is incompatible with the performance of the duties of a prosecutor¹⁷⁰.

¹⁶⁹ Code of Ethics and Professional Conduct for Prosecutors, Article 3, §§ 1-2.

¹⁷⁰ *Ibid*, Article 26.

216. In addition to the above, the CEPCP requires that a prosecutor is forbidden from using his/her position or information that he/she obtains through his/her position for either his/her own personal gain or for the personal gain of anyone else. In addition, a prosecutor shall refrain from financial and business dealings that may reflect adversely on his/her ability to carry out his/her function in an impartial, professional and independent way¹⁷¹.

217. Law on State Prosecutor requires that Prosecutors shall not perform any other duty or service that may interfere with their independence and impartiality or may otherwise be incompatible with the performance of the duties of a prosecutor. Moreover, Prosecutors shall not engage in any political functions or activities, including membership in political parties, or running for or holding political office. Prosecutors are encouraged to vote but otherwise may not participate in elections or political activities. Seeking or maintaining political office is incompatible with the performance of the duties of a prosecutor¹⁷². In addition, the CEPCP as well requires that a prosecutor shall not be engaged in any activity, including political activity, which is incompatible with a prosecutor's function¹⁷³.

218. Regarding additional activities, prosecutors shall not use the status as a prosecutor or the reputation of the State Prosecutor to advance their personal rights or interests. The conduct of Prosecutors shall be consistent with the provision set forth in the Code of Ethics and Professional Conduct of Prosecutors¹⁷⁴. Prosecutors have the right to take part in professional organisations which promote independence and the protection of professional interests of prosecutors. Prosecutors may engage in activities which are in accordance with the Code of Ethics and Professional Conduct of Prosecutors, such as attending professional or scientific meetings, lectures or trainings and taking part in the preparation of different legal projects. Subject to the approval of the Chief State Prosecutor, prosecutors may be remunerated for such activities in accordance with the Code of Ethics and Professional Conduct of Prosecutors provided there is no conflict of interest and there is no violation of law, code of ethics, or other sub-legal acts. Consistent with the provisions of the Code of Ethics and Professional Conduct of Prosecutors, Prosecutors may engage in professional and scientific writings but may not publish the relevant content of prosecutorial files during the exercise of or after completion of prosecutorial duty, unless it is expressly permitted by law or sub-legal act issued by the KPC¹⁷⁵. The CEPCP further requires, in particular, that a prosecutor shall not hold an office in or be a member of any political party or engage in any non-prosecutorial activity during working hours without a prior approval by KPC. Time and engagement conditions are determined by KPC with a respective decision¹⁷⁶.

219. According to the CEPCP, in principle, a prosecutor may carry out activities outside his/her scope as a prosecutor, including those activities which are the embodiments of his/her rights as a citizen or which represent his/her professional interests and independence. However, a prosecutor may not carry out activities incompatible with the reputation of the institution, or that negatively affect professional and public confidence in the prosecutorial system¹⁷⁷.

220. As it was already mentioned regarding judges (see paragraph 157 above), the Assessment Team notes for prosecutors as well the possibility to be engaged in accessory activities outside working hours, under some framework and general principles that result from the legal framework and ethical rules. In addition, in case of prosecutors, the current ethical rules recently adopted do not define anymore any indicative limit concerning the remuneration under such external engagements. Moreover, other concerns already expressed for judges on this issue are similarly valid for prosecutors as well. In light of the above, it is recommended **that the KPC adopts guidelines concerning approval of exceptional outside engagement for prosecutors and establish a limit for the remuneration of such engagements.**

Recusal and routine withdrawal

221. According to Article 44 CPC, a prosecutor is disqualified in the following cases: if he or she has been injured by the criminal offence; if he or she is the spouse, the extramarital partner, a relation by blood in a direct line to any degree or in a collateral line to the fourth degree or a relation by marriage to the second degree to the defendant, the defence counsel, the injured party,

¹⁷¹ Code of Ethics and Professional Conduct for Prosecutors, Article 4, §§ 4, 7.

¹⁷² Law on State Prosecutor, Article 26, paragraphs 2 and 3.

¹⁷³ Code of Ethics and Professional Conduct for Prosecutors, Article 4, § 3, a).

¹⁷⁴ Law on State Prosecutor, Article 26, paragraphs 1 and 4.

¹⁷⁵ Law on State Prosecutor, Article 25.

¹⁷⁶ Code of Ethics and Professional Conduct for Prosecutors, Article 4, § 3, b) and c).

¹⁷⁷ Code of Ethics and Professional Conduct for Prosecutors, Article 4, §§ 1-2.

or his or her legal representative or authorised representative; if he or she is a legal guardian, ward, adopted child, adoptive parent, foster parent or foster child of the defendant, the defence counsel or the injured party; if, in the same criminal case, he or she has taken part in the proceedings as a judge, a defence counsel, a legal representative or authorised representative of the injured party or if he or she has been examined as a witness or as an expert witness; or a conflict of interest exists as defined in Article 6 of Law on Preventing Conflicts of Interest in Exercising Public Functions¹⁷⁸. It is a continuous obligation of the prosecutor to disqualify himself or herself upon his or her discovery of grounds for disqualification. The disqualification is decided by the superior state prosecutor, by the Chief State Prosecutor in case of a chief prosecutor of an office or by the KPC in case of the Chief State Prosecutor.

Financial interests

222. A prosecutor has in particular the responsibility to avoid any potential conflict of interest based on family or social relationships, as well as financial or professional relationships, in compliance with legislation on prevention of conflict of interest. In any event, if a prosecutor becomes aware of any other conflict of interest or there are any other circumstances that might raise doubts as to his or her impartiality in a case, he/she must discontinue all activity on the case and immediately report in writing such circumstances to the supervisor of the prosecutor's office¹⁷⁹.

Gifts

223. (See also paragraphs 161 to 163 above) According to the CEPCP, a prosecutor and members of his/her family shall not, under any circumstance, accept gifts, favours, privileges, or promises for material help from any person having a direct or indirect interest in a case he/she is in charge of¹⁸⁰.

Contracts with public authorities

224. For more details, see paragraph 164 above.

Post-employment restrictions

225. For more details, see paragraph 165 above.

Third party contacts, confidential information

226. According to Law on State Prosecutor, the State Prosecutor shall not provide any information directly or indirectly which would disclose official secrets, would jeopardise a pending investigation or criminal proceeding, be harmful to the integrity, dignity, security, and rights to privacy of any persons, or violate the rights of minors¹⁸¹. A prosecutor shall seek to safeguard the principle of equality of arms, in particular by disclosing to the other parties, except when otherwise provided in the law, any information that he/she possesses which may affect the just outcome of the proceedings. He/she should also keep confidential information obtained from third parties, in particular where the presumption of innocence is at stake, unless disclosure is required in the interest of justice or by law¹⁸².

227. In his/her relationship with a judge, a public prosecutor shall: respect the independence and the impartiality of judges; he/she shall neither cast doubt on judicial decisions nor hinder their execution, except when he/she is exercising his/her rights of appeal or invoking some other procedure in accordance with the law; be objective and fair during court proceedings; refrain from publicly criticising judges in an inappropriate manner. In his/her relationship with the police and other authorities, a prosecutor shall: in cases where applicable law requires a prosecutor to lead preliminary criminal proceedings, or allows him/her to demand law enforcement agencies undertake specific actions, the prosecutor must give clear, lawful instructions, as appropriate, with a view toward an effective criminal prosecution; promote reporting and sanctioning, if appropriate,

¹⁷⁸ The Assessment Team was told that there is no clear provision in the CPC regarding a situation where the prosecutor is related to the judge(s). However, the Code of Conduct provides that a prosecutor has the responsibility to avoid "any potential conflict of interest" and/or to take steps where there are circumstances which might raise doubts as to his/her impartiality in a case (Article 3, points 4 and 5).

¹⁷⁹ Code of Ethics and Professional Conduct for Prosecutors, Article 3, §§ 4-5.

¹⁸⁰ Code of Ethics and Professional Conduct for Prosecutors, Article 3, § 12, h).

¹⁸¹ Article 10 of the Law on State Prosecutor.

¹⁸² Code of Ethics and Professional Conduct for Prosecutors, Article 3, § 12, c) & d).

of criminal activity; in any case promote appropriate and functional co-operation with the police and other law enforcement agencies¹⁸³.

228. Concerning the use of confidential information, State Prosecutor shall not provide any information directly or indirectly which would disclose official secrets, would jeopardise a pending investigation or criminal proceeding, be harmful to the integrity, dignity, security, and rights to privacy of any persons, or violate the rights of minors¹⁸⁴.

Declaration of assets, income, liabilities and interests

229. For more details, see paragraphs 169 to 172 above.

Supervision

Ethical principles

230. The specific forms of misconduct described in the CEPCP are not exhaustive. Any misconduct or action undertaken by a prosecutor, even though not expressly contemplated by the provisions contained in the CEPCP, or by other applicable codes, laws, or bylaws, but having a similar effect, shall be considered a breach of this Code and consequently sanctioned¹⁸⁵. In terms of Article 24 of the KPC Law, the violation of the CEPCP requirements constitutes a misconduct and it is therefore subject to disciplinary proceedings.

Additional employment and other activities

231. As foreseen by Law on State Prosecutor, prosecutors have the right to take part in professional organisations which promote independence and the protection of professional interests of prosecutors. Prosecutors may engage in activities which are in accordance with the Code of Ethics and Professional Conduct of Prosecutors, such as attending professional or scientific meetings, lectures or trainings and taking part in the preparation of different legal projects. Subject to the approval of the Chief State Prosecutor, prosecutors may be remunerated for such activities in accordance with the Code of Ethics and Professional Conduct of Prosecutors provided there is no conflict of interest and there is no violation of law, code of ethics, or other sub-legal acts. Consistent with the provisions of the Code of Ethics and Professional Conduct of Prosecutors, prosecutors may engage in professional and scientific writings but may not publish the relevant content of prosecutorial files during the exercise of or after completion of prosecutorial duty, unless it is expressly permitted by law or sub-legal act issued by the KPC¹⁸⁶.

Asset Declaration

232. For more details, see paragraph 175 above.

Enforcement measures and immunity

233. The KPC Law envisages detailed provisions on disciplinary proceedings in its Chapter V and foresees the following disciplinary measures for prosecutors which are imposed by the Disciplinary Committee: (1) reprimand; (2) reprimand with a directive to take corrective actions; (3) temporary reduction of salary by up to fifty percent (50%) taking into account the nature of misconduct; (4) demotion to a lower position within the prosecutorial system; or (5) proposal for removal of a State Prosecutor from office¹⁸⁷.

234. Disciplinary Committee may suspend a prosecutor without pay during any period of investigation or during the disciplinary proceedings until a final decision is taken. Disciplinary procedure against a prosecutor may be initiated by filing a complaint with the Office of Disciplinary Prosecutor (ODP), which can be done by an individual or organisation, as well as by the ODP or the KPC acting *ex officio*¹⁸⁸. Cases are heard by the KPC's Disciplinary Committee (CDC)¹⁸⁹ – in the first

¹⁸³ Code of Ethics and Professional Conduct for Prosecutors, Article 3, §§ 8-9.

¹⁸⁴ Law No.03/L-225 on State Prosecutor, Article 10.2.

¹⁸⁵ Code of Ethics and Professional Conduct for Prosecutors, Article 2, § 1.

¹⁸⁶ Law No.03/L-225 on State Prosecutor, Article 25.

¹⁸⁷ Law No.03/L-224 on Kosovo Prosecutorial Council, Article 27.

¹⁸⁸ KPC Law, Article 35.2.

¹⁸⁹ According to Article 23 of the KPC Law, the CDC consists of 3 members of the KPC (having at least two prosecutors including its Chairperson).

instance and by the KPC in the higher instance (appeal). The disciplinary proceedings are recommended through a written notification by the Office of Disciplinary Prosecutor (ODP)¹⁹⁰ which acts as a prosecutor on the basis of a conducted investigation and justified by supporting evidence. The proceedings are held in a closed session by the CDC guaranteeing the rights of defence. The written decision to impose or not a disciplinary procedure should be justified. The Disciplinary Committee imposes the relevant disciplinary measure that is consistent with the circumstances, level of responsibility and consequences of the misconduct. The Committee shall submit a written recommendation for the dismissal of a prosecutor from office to the KPC. If the prosecutor is released from the charges at the completion of the disciplinary procedure, he or she shall return to his or her previous office upon the decision of the KPC¹⁹¹. The concerned prosecutor or the ODP may appeal the decision to the full KPC, which may confirm, revise, overrule, or remand the decision. The recommendation of the KPC for dismissal shall, within 15 days submitted to the President of Kosovo for decision-making and to the prosecutor concerned.

235. According to the Constitution, Prosecutors may be removed from office upon conviction of a serious criminal offence or for serious neglect of duties¹⁹². Moreover, as mentioned in the case of judges, prosecutors are subject to conflict of interest sanctions (see paragraphs 179 to 181 above).

236. With regard to applicable sanctions related to violations of assets and gifts declaration, see paragraph 182 above.

237. According to Law on State Prosecutor, prosecutors shall be immune from prosecution, civil lawsuit and dismissal for actions taken, decisions made, or opinions expressed that are within the scope of their responsibilities. Prosecutors shall not enjoy immunity and may be removed from office if they have committed an intentional violation of the law. When a prosecutor is indicted or arrested, he or she shall immediately give notice to the Chief State Prosecutor without delay¹⁹³.

238. The Assessment Team could not obtain any clear and distinct statistical data related to disciplinary procedures against prosecutors¹⁹⁴.

239. The Assessment Team shares the view that current inspection and disciplinary proceedings, that are the responsibility of the ODP, generally include judges and prosecutors, but without clear distinction. This may be also due to lack of sufficient practice and more recent independent organisation of prosecution services. Besides problems referred to judges (see paragraph 187 above), the particularity of disciplinary proceedings against prosecutors contains some practical difficulties when the misconduct may be criminally investigated and prosecuted. In such cases, a better and clear relationship between the ODP and relevant authorities in the prosecution services' hierarchy is more than necessary. In addition, disciplinary investigation and proceedings against prosecutors should be more enhanced by *inter alia* avoiding challenges and difficulties already encountered in the judicial system. The Assessment Team was also informed that it appears to be no/little exchange between Chief Prosecutors and the ODP. It believes that Chief Prosecutors as well should be able and should be encouraged to request investigations by the ODP where they suspect wrongdoing by prosecutors. It is therefore recommended **to establish a formal relationship between the ODP and the KPC (with due consideration to the relationship between Chief Prosecutors and the ODC as well) in order to enhance disciplinary and criminal investigation of prosecutors, based on principle of transparency and openness, while keeping the secrecy of investigation and protection of personal data.**

Advice, training and awareness

240. Prosecutors are entitled and required to receive professional training appropriate to enable the effective performance of their state prosecutorial functions, as determined by the KPC. The Chief State Prosecutor, in conjunction with the KPC, shall review training programs for prosecutors

¹⁹⁰ The ODP is a separate and independent body that serves both the Kosovo Judicial Council and the Kosovo Prosecutorial Council. It has a separate budget that is administered by the Secretariat of the KPC upon the direction and the certification of the Director of ODP.

¹⁹¹ Law No.03/L-224 on Kosovo Prosecutorial Council, Article 27.3.

¹⁹² Constitution, Article 109.6.

¹⁹³ Law No.03-L-225 on State Prosecutor, Article 23.

¹⁹⁴ KPC decisions concerning complaints filed against decisions of Disciplinary Commission are not accessible. However, it seems that statistics provided for judges (see paragraphs 138 to 140 above) include prosecutors as well, but without distinct breakdown. According to the respective annual report, during 2011, the Disciplinary Commission has reviewed 10 cases and issued 10 decisions: 6 suspensions, 1 rejection of the report, 1 reprimand, 1 temporary reduction of salary and 1 suspension without payment.

and make necessary adjustments to ensure their appropriateness, effectiveness and benefit¹⁹⁵. The Assessment Team learned that considerable training is on offer; however, due to lack of effective needs assessment and clear systemic training curriculum, it is not clear that the right persons are attending such training or the training is always effective¹⁹⁶.

241. Trainings for prosecutors are organised by the KJI and are described in paragraphs 189-190 above.

¹⁹⁵ *Ibid*, Article 24.

¹⁹⁶ In January 2013, the KPC set up a working group in order to develop a joint training plan for prosecutors, police, KAA officials and customs.

2.3. Police

Overview of the police services and organisation

242. According to Article 128 of the Constitution, the Police is responsible for the preservation of public order and safety.

243. Law on Police regulates the authorisations and duties of Police, its organisation and other issues related to activities and actions of the Police of Kosovo. The actions of the Kosovo Police shall be guided by the following principles: fair and equal treatment of all persons; respect for human rights and fundamental freedoms; neutrality and impartiality regarding persons' political views and affiliations; integrity, honesty and accountability in public service; transparency-providing information to the public and being open to public; legitimacy, suitability and proportionality; commitment to employment, advancement and assignment of duties in comprehensive, merit-based and non-discriminatory manner, by reflecting the multi ethnic character of Kosovo and by recognising the principles of gender equality and human rights foreseen by the Constitution¹⁹⁷. Kosovo Police is a public service within the scope of the Ministry of Internal Affairs, considered as a legal entity. It operates through unified chain of command throughout the territory of Kosovo¹⁹⁸.

Organisation levels/various categories of police staff

244. Police is organised in central and local levels. The General Police Directorate constitutes the central headquarters responsible for all Kosovo. The local level shall include the Regional Police Directorates (Pristina, Mitrovica, Peja, Gjilan, Prizren and Ferizaj), responsible for regions comprising specified municipalities, Police Stations, which are responsible for local policing within each municipality, and police substations, if any, responsible for local policing within specific areas of a municipality. The territorial jurisdiction of each Regional Directorate is established by the General Director. The territorial jurisdiction of each Police Station is coterminous with the municipality in which it is located. The territorial jurisdiction of any Police substation is established by the General Director. The internal organisational structure of Police of Kosovo is established by the General Director, subject to approval by the Minister. The General Director may also establish, subject to the approval of the Minister, police units to perform specific, temporary duties. With the purpose of border management and control, besides police stations located in each municipality, there are also established border police stations under the authority and jurisdiction of Regional Directorate of Border Police¹⁹⁹.

245. There are also various Departments within the Police such as: Department of Public Order, Department against Crime, Department of Border, Department of Support Services, Department of Administration and Personnel and Crime Laboratory Centre²⁰⁰.

246. There is no a clear rotation system based on specific regulation, internal rules and instructions or operational applicable methodologies.

Autonomy of police services

247. According to the Constitution of Kosovo, the Police of Kosovo shall have a unified chain of command throughout Kosovo with police stations corresponding to municipal boundaries. The Kosovo Police shall facilitate cooperation with municipal authorities and community leaders through the establishment of Local Councils as provided by law. Ethnic composition of the police within a municipality shall reflect the ethnic composition of the population within the respective municipality to the highest extent possible²⁰¹. The Police shall function under the authority of the Minister of the Ministry of Internal Affairs and under the control and supervision of the General Director of the Police. The Minister's authority does not include the operational management of the Police. The General Director cooperates with the Minister and provides him/her with information and reports according to the manner determined by law²⁰².

¹⁹⁷ Law No. 04/L-076 on Police, Article 2.

¹⁹⁸ Law on Police, Article 4.

¹⁹⁹ Law on Police, Article 32.

²⁰⁰ <http://www.kosovopolice.com/?page=2,21>

²⁰¹ Constitution, Article 128.

²⁰² *Ibid.*, Article 5.

Recruitment, career and conditions of service

248. Article 44 of Law on Police provides for three (3) categories of police personnel that are employed in Kosovo Police: (1) police officers who take an oath and have authority to exercise and to perform authorisations and police duties; (2) civil personnel that is employed to perform administrative and support services, but who do not have authority to exercise police authorisations; and (3) police cadet. Employment relation for Police personnel is regulated by a sub legal act. According to Law on Police the ranking system is as following: junior police officer; police officer; senior police officer; sergeant; lieutenant; captain; major; lieutenant colonel; colonel. Police officers appointed in the position of General Director and Deputy General Director/s upon completion of the mandate shall regain the previous rank that they had before their appointment in such positions²⁰³.

249. The General Director of the Police and the Deputy General Directors of the Police shall be appointed for a period of five (5) years, with the possibility of renewal after every five (5) years, from the appointing authority. The General Director of Police is appointed by the Prime Minister. The Commission which is established by the Minister of Internal Affairs (the Minister) proposes to the General Director of Police the candidates for appointment in the position of Deputy General Directors of Police, whereas the General Director of Police recommends to the Minister candidates for Deputy General Directors. The Deputy General Directors are appointed by the Minister²⁰⁴. Regional Police Directors are appointed by the General Director based on the standard of ranks, positions and description of working places in Police²⁰⁵. Police Station Commanders are appointed by the General Director based on the internal procedures of the Police²⁰⁶. In municipalities where Serbian community is the largest ethnic community, Commanders of Police Stations and Commanders of substations are appointed by the Ministry of Internal Affairs with the proposal of Municipal Assembly and the General Director²⁰⁷. The General Director of Police is responsible to lead, control and supervise the Police, to manage and to allocate the budget of the Police in compliance with the strategic objectives and aims set by the Minister.

250. There are no legal rules in Law on Police for promotion, delegation/transfer and dismissal of police staff. These are regulated by sub-legal acts that are not accessible on-line. The Law envisages the dismissal of high ranks as following: General Director or Deputy Directors are released or dismissed from the duty by the appointing authority, for one of the following reasons: conviction of a criminal offence; retirement age reaching; resignation; incapability to exercise the duty for a period of time no longer than six (6) months; termination of his mandate; poor documented performance.

251. When there is a reasonable suspicion to believe that the General Director of Police has committed a criminal act or for any dismissal ground, the Minister may immediately suspend the General Director and present the facts for the suspension to the Prime Minister. The Prime Minister shall decide on extending or terminating the suspension. In case of release, dismissal or suspension of General Director, Prime Minister shall immediately appoint one of the Deputy General Directors as acting General Director²⁰⁸.

252. According to Law on Police, the remuneration for police officers takes into consideration special conditions under which they perform their duties. Basic salary of police officers may vary based on including factors, but is not limited only to the rank and the length of service. In addition to basic salary, police officers may lawfully receive various types of salary supplements, compensations and benefits. Such supplemental payments are based on factors including, but not limited to, only in hazardous duties, work under pressure, overtime work, work with shifts, work during holidays or other days that are days on leave, assignment in special works and for special skills. Supplemental payments may include, but are not limited in compensation work hazardous work, work under pressure, compensation work schedule with shifts, and payments for assignment in special works. The basic salaries and any authorised supplemental payment are determined and paid in accordance with procedures defined in relevant applicable law and sub legal acts. The General Director, with the approval of the Minister may include in the annual budget of the Police the proposal for the amounts that are needed to be used for the payment of any supplemental payments authorised by law. Except invalid pension enjoyed based on the applicable law, police

²⁰³ Law No. 04/L-076 on Police, Article 45.

²⁰⁴ *Ibid.*, Article 37.

²⁰⁵ *Ibid.*, Article 40.

²⁰⁶ *Ibid.*, Article 41.

²⁰⁷ *Ibid.*, Article 42.

²⁰⁸ Law on Police, Article 39.

officers who become invalid while performing their duty or in the line of duty shall be eligible to invalid pension with 20% of gross salary²⁰⁹.

253. Benefits may include, but are not limited to: medical and health expenses, expenses for professional and technical training, living expenses for temporary transfer, paid leave, compensation in cases of death and pension benefits.

254. The Assessment Team has learnt that the appointment of the General Director of Police has raised some concern in the past, when the former Director General was replaced and the new appointed. There is no doubt that this constitutional prerogative gives the Prime Minister the final word, however, the reasons, procedure and criteria for appointment/dismissal of the Director General of Police are to be objective and transparent in the interest of the professionalism and autonomy of the police. This is also important for decreasing perception of politicisation of police that has been present so far. It is therefore recommended **to introduce objective and transparent criteria for the appointment/dismissal of the General Director of the Police in order to ensure operational independence of the Police.**

255. A similar concern is shared by the Assessment Team with regard to the immediate senior management level of the Police. The current framework still provides too many discretion powers, without any counterbalance of transparency, nor any independent board or other external supervision mechanism to assess reasons for appointment or dismissal of Deputy Directors and other top management level of the police. Undue influence has been voiced with regard to some high management appointments with the Kosovo Police. While the Assessment Team heart also positive consideration about police role and efforts to enhance its capacities, lack of adequate criteria and procedures that follow objective, transparent and clear steps when appointing, removing, promoting or transferring persons in/from the positions of Deputy Directors and other higher ranks in the management in headquarters and regional police structures may lead to undue influence within the police with an effect of reduction of its autonomy and increase of politisation perception. It is therefore recommended **to introduce objective and transparent criteria for the appointment/dismissal of the Deputy Directors and other senior level officials of the Police.**

Ethical principles and rules of conduct

256. The rules of conduct and ethical principles of the Police are determined by the Code of Ethics of Kosovo Police, which is expression of willpower and general summary of basic principles for all police officials of Kosovo Police Service where are defined: Police Objectives; Legal basis of Police; Police role in penal justice system and police relations with justice authorities; Police organisational structure; working relations; staff training and investigation.

Conflict of interest

257. The elements of this system described under the section on judges (see paragraphs 149 to 155 above) apply accordingly to police officers. However, due to the closed list of senior public officials, only General Director, Deputy Directors, Regional Directors of Kosovo Police and Chief Inspector of Police Inspectorate are considered senior public officials by Article 4, paragraph 1.16 of LPCI. The Assessment Team recalls the need to adapt the requirements of the recommendation (part (iii)) in paragraph 320 below to other levels of police officers.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

258. The Police officer shall not accept a position or obligation, and shall not participate in any function or activity, that creates a conflict of interest with the official police duties. Positions and activities that constitute conflict of interest include, but are not limited to, the following: appointment or election to public duty or other government position; participation in electoral campaigns for selection in a public duty; employment, or participation in any business activity for compensation, except with permission granted by the General Director; active participation in any political party; following instructions of any political party in performance of police duties; appearing in police uniform at any political gathering, except when there is on official police duty (mere membership in a political party is not a conflict of interest); and Issuance of public

²⁰⁹ *Ibid.*, Article 47.

statements or comments regarding the work of Police, except in cases when it is allowed by the superior with appropriate authorisation²¹⁰.

259. As already mentioned for judges and prosecutors, there are no clear guidelines concerning the possibility of police officers to be engaged in accessory activities besides the requirement to have the approval from the Director General. In addition, no threshold is applicable with regard to the permissible remuneration in such engagements. Considering the size, the level of the mobility within the police, as well as various risks it faces on periodical basis, the Assessment Team is of opinion that such issues have to be better regulated and clarified for effective preventive and supervisory purposes. It is therefore recommended **to adopt guidelines for Police concerning the approval of exceptional outside engagement and to establish a limit for the remuneration on such engagements.**

Gifts

260. For further information, see paragraphs 161 to 163 above.

Post-employment restrictions

261. There are no rules on such restrictions for the majority of police officials. However, concerning the positions of General Director, Deputy Directors, Regional Directors of Kosovo Police and Chief Inspector of Police Inspectorate rules already explained in the paragraph 165 above are also applicable.

262. Current rules aiming to avoid improper migration of public officials to the private sector ("pantouflage") do not cover different categories of police officers (with exception of particular senior positions). The Assessment Team believes that setting up similar rules that are already applicable for judges, prosecutors and some other public officials should be also extended to police officers in order to prevent conflict of interest situations. Therefore, it is recommended **to establish post-employment restrictions for police officers at all levels and that appropriate arrangements be made for efficient supervision of the implementation of such regulations.**

Third party contacts, confidential information

263. A Police Officer has power to temporarily take or use any property, including, but not limited to, means of transportation or communication or protection, in the possession of any citizen, but only when it is necessary to prevent imminent danger to persons or property or to achieve another urgent police objective that requires immediate action. Property taken must be returned to the person from whom it was taken as soon as it is no longer needed to achieve the urgent police objective for which it was taken and, in any event, no later than twenty four (24) hours after it was taken. The Police shall reimburse the owner or possessor for any expenses or damages incurred while using the property²¹¹.

264. A Police Officer may establish confidential, cooperative relationships with persons in order to receive information that are relevant in performing police duties and achieving legitimate police objectives²¹².

265. A Police Officer shall receive and evaluate all information received from anonymous individuals that is relevant to performing police duties and achieving legitimate police objectives. A Police Officer may establish confidential, cooperative relationships with persons in order to receive information that are relevant in performing police duties and achieving legitimate police objectives. A Police Officer shall protect the confidentiality of such cooperative relationships and the information received until the legal obligation to maintain confidentiality is fulfilled²¹³.

Declaration of assets, income, liabilities and interests

266. For further information, see paragraphs 169 to 172.

²¹⁰ Law on Police, Article 49.

²¹¹ Law on Police, Article 28.

²¹² Law on Police Article 29.

²¹³ Law on Police, Article 29.

Reporting corruption

267. The Police budget has a certain amount for special funds to be used for payment of rewards, payment of informants, payment for witness protection, and payment for other special police operations. Funds are administered by the General Director in conformity with sub-legal acts issued by the Minister for governance, management and spending such funds²¹⁴.

Supervision

Kosovo Police Inspectorate

268. Kosovo Police, in addition to its relation with the Ministry of Internal Affairs, is supervised by the inspection of the Kosovo Police Inspectorate which is established in 2006 as an executive agency under the Ministry of Internal Affairs. The Kosovo Police Inspectorate (KPI) functions based on Law No. 03/L-231 of 14 October 2010 on Police Inspectorate of Kosovo. The Agency combines the two primary functions in pursuit of the principles of accountability and transparency – the pillars of democratic police:

- Prevention, detection, documentation and investigation of the criminal offences committed by Police employees, regardless of rank and position, during the exercise of their official duty or off duty, including investigations of high profile disciplinary incidents and disciplinary investigations of police officers having the highest rank within the senior police management level and senior appointed police positions.
- Inspection of Kosovo Police (KP) structures and functions in order to ensure accountability, efficiency and effectiveness when enforcing laws, sub legal laws and standard operation procedures into force.

Additional employment and other activities

269. For further information, see paragraphs 151 to 153 above.

Asset Declaration

270. For further information, see paragraph 175 above.

Professional ethics

271. Kosovo Police and Kosovo Police Inspectorate are the responsible bodies to ensure compliance of police officers with ethical rules.

Enforcement measures

272. All disciplinary sanctions involving Kosovo Police personnel, except the cases foreseen by Law on Police Inspectorate that concern serious misconduct shall be investigated and decided by the Kosovo Police. Disciplinary violations, measures and procedures are regulated by a sub legal act²¹⁵. Disciplinary hearings regarding the appeals for grave disciplinary violations will be performed by the Senior Police Appointments and Discipline Committee. Senior Police Appointments and Discipline Committee will conduct disciplinary hearings according to sub-legal acts approved by the Minister. Kosovo Police employee who is a subject of the appeal for grave disciplinary violation may be represented by an independent defence counsel chosen by him during the entire process of investigations or during any subsequent hearing or appeal²¹⁶. On the basis of Article 45 of Law on Kosovo Police, disciplinary violations are classified in two main categories: major disciplinary violations and minor disciplinary violations. Major disciplinary violations include *inter alia*: serious discrediting behaviour, serious insubordination, undue and serious disclosure of information, corruption, serious breach of authority, improper use of firearms, unlawful use of force, causing major damage to police property, use of alcohol or other intoxicating substances, sexual harassment while on duty, discriminating actions based on age, gender, sexual orientation, ethnicity and or religious background, sexual abuse or sexual exploitation of any person and criminal activity.

273. Criminal and other offences. For further information, see paragraphs 179 to 182.

²¹⁴ Law on Police, Article 51-52.

²¹⁵ Law on Police, Article 43.

²¹⁶ Law No.03/L-036 on Kosovo Police Inspectorate, Article 32-33.

274. Statistical information: During 2010, 1,185 cases have been received by KPI (around 50% internally, 48.7% as citizens' complaints and the rest from other institutions). 34.4% concerned serious misconduct, 45.7% minor violations and 19.9% unfounded complaints. Only few cases were related to corruption.

275. During 2011, around 649 complaints have been submitted to the Kosovo Police Inspectorate (KPI) concerning alleged disciplinary violations of police officers. Only 7 cases have been accepted by the KPI (2 under investigation, 2 undergoing preliminary investigation, 1 suspended case due to parallel criminal proceedings and 2 dismissed cases). In addition, during the second half of 2011, the KPI has registered 143 criminal cases involving police officers (an average of around 20 cases per month). The KPI has filed 46 criminal reports and had 58 cases under investigation process. 165 police officers were subject of criminal investigation during 2011 (abuse of office and passive bribery represent 18 and 15 cases respectively). 15 arrested and 8 suspended police officers were recorded during the second half of 2011.

276. The Assessment Team has been informed that the KPI has been recently subject of further organisation and structure reforms in order to enhance its effectiveness and efficiency. Thus, besides competences over disciplinary proceedings, the KPI is entrusted by its current legal framework to carry out also criminal investigations against police officers. Previously composed by two departments and with a staff of 50 employees, there has been in 2011 an addition of 3 more departments and more 42 employees, although several vacancies have not been fully filled. According to the 2012 annual report, a number of criminal investigations were launched against police officers: out of the total number of complaints, 6% ended in criminal proceedings. The Assessment Team welcomes recent developments and steps that aim to enhance efficiency when enforcing legal and regulatory framework as well as standard operation procedures into force and may improve effective monitoring of police actions, including disciplinary proceedings for ethical misconduct and investigation of corruption acts. However, it recalls that any attempt to evaluate positively the efficiency and accountability within the Kosovo Police presumes the existence of solid track record when enforcing disciplinary and other actions with the Police. It is recommended **to reinforce human capacity of the relevant police disciplinary and internal investigation bodies and to keep a reliable track record of disciplinary and other actions taken with regard to police officers.**

Training and awareness

277. Kosovo Academy for Public Safety (KAPS) is established on September of 2006. Initially it is called Police Service School, subsequently since the year 2006 is called Kosovo centre for Public Safety, Education and development. Whereas from the end of the year 2011, gets the name of Kosovo Academy for Public Safety (KAPS). KAPS as an executive agency of Ministry of Internal Affairs provides basic and specialised training for the Kosovo Police, Kosovo Correctional Service, Kosovo Customs, Emergency Management Agency as well to other public safety agencies. The Agency is divided in departments and units/offices while in addition to the general services for the Agency itself the department for training and program support is providing standards for training and a transparent and consistent approach in meeting the needs of the support program for all participants of training at KAPS. The training department has three main directorates, such as the Directorate for Administration and Training Support; the Directorate for Obligatory Trainings and the Directorate for Specialised Trainings.

278. Police officer shall be educated to fulfil professional duties and for this he/she will undergo professional trainings. Police training will be based on core values of democracy, legal state and protect of human rights and will be realised in accordance with police objectives. General training for police will be open for society, as much as possible. General initial training should preferably be followed by in service and periodic trainings, when training is needed for specialist for specific field and leadership. Respective units for all level trainings, in particular, Training Department shall play main role in accomplishment of the obligation predicted in this Article. General police training for all levels shall be followed by practical training for use of force and its limitations, having into consideration principles of human rights which are sanctioned in European Constitution for Human rights and applicable legislation for this field. Police officer shall be prepared and equipped with general knowledge in that way that he/she can develop these abilities, which are crucial for performing official duty²¹⁷.

²¹⁷ Code of Ethics of Kosovo Police, Article 28-31.

2.4. Public Administration

a) Description of the situation

General scope

Legal framework

279. Public administration in Kosovo covers central and local levels and it comprises 38 municipalities that constitute the basic territorial unit of local self-governance. The general framework that governs the organisation and functioning of public administration of Kosovo is laid down in the Constitution and, in general, in different laws on public administration such as: Law No.03/L-189 of 16/09/2010 on State Administration; Law No. 03/L-149 of 13 May 2010 on Civil Service, Law No. 03/L-147 of 13 May 2010 on Salaries of Civil Servants; Law No. 03/L-192 of 15 July 2010 on Independent Oversight Board of Kosovo Civil Service; Law No.02/L-28 of 22 July 2005 on Administrative Procedure; Law No. 03/L-040 of 20 February 2008 on Local Self Government; Law No. 03/L-215 of 7 October 2010 on Access to Public Documents; Law No. 03/L-172 of 29 April 2010 on Protection of Personal Data; Law No. 03/L-195 of 22 July 2010 on Ombudsperson; Law No. 03/L-202 of 16 September 2010 on Administrative Conflicts. Moreover, different important provisions which also apply to public administration are contained in other laws such as: Law No. 04/L-051 of 31 August 2011 on Prevention of Conflicts of Interest in Discharge of Public Functions; Law No. 04/L-050 of 31 August 2011 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials. Law on State Administration regulates duties and scope of activity of ministries, state administration bodies and other administrative bodies. It is however not applied to the administrations of the Assembly, the President, the Constitutional Court, the judiciary and the prosecution service, the independent institutions²¹⁸, higher public education institutions and public enterprises that are governed by special legislation²¹⁹.

Definition of public authority/administration

280. As it is envisaged by Law on State Administration, the state administration exercises its functions and performs its duties based on the Constitution, law, other provisions and general acts. Duties of state administration include direct implementation of the law, issuance of provisions for their implementation, exercise of administrative supervision and performance of other administrative and professional duties²²⁰. Article 2 of Law on State Administration defines the Government as a whole, the Prime Minister, the Deputy Prime Ministers and the ministers as the highest state administration authorities. It also provides the following definitions related to state administrative bodies:

- *Highest state administration bodies* - the Office of the Prime Minister and the Ministries used by the respective Highest State Administration Authorities for implementation of their governmental and administrative responsibilities;
- *Central state administrative bodies* - subordinate bodies of the state administration performing non-ministerial tasks or other administrative tasks;
- *Local state administration bodies* - municipal bodies of the state administration;
- *Independent state administration bodies* - legal entities established to perform activities of state administration which require in the public interest a high degree of independence²²¹.

Simplification of administrative procedures

281. Some of the main principles in Law on State Administration are the efficiency and effectiveness. Moreover, it provides that state administration while carrying out its work, within the legal competences and authorisations, is transparent, professional, efficient and effective, independent and impartial. The particularity of the context in Kosovo is the presence of two levels in public administration (central and municipal) as well as the fact that a majority of different services are delocalised at the municipal level.

²¹⁸ As defined by chapter XII of the Constitution, they cover the Ombudsman, the Auditor General, the Central Election Commission, the Central Bank of Kosovo, the Independent Media Commission as well as independent agencies (institutions established by the Assembly).

²¹⁹ Law No. 03/L-189 on State Administration, Article 16. As far as their own and extended competencies are concerned, the administration of municipalities is regulated by the Law on Local Self Government.

²²⁰ Law No. 03/L-189 on State Administration, Article 3.

²²¹ *Ibid*, Article 2.

Anti-corruption policy

282. Concerning the anti-corruption policy, see paragraphs 68 to 79 above.

Transparency

283. The right of access to information held by public institutions is foreseen in the Constitution and regulated mainly by Law No. 03/L-215 of 7 October 2010 on Access to Public Documents as well as Law on Administrative Procedure. The Ombudsperson institution (regulated by Law No. 03/L-195 of 22 July 2010) monitors the implementation of this law, promotes and ensures the right of information of individuals and may issue recommendations to the authorities²²². The legal framework requires that the work of public administration shall be transparent. In this regard, Law on Official Gazette requires that Kosovo institutions should publish in the Official Gazette all laws adopted by Assembly, the ratified international agreements, decisions of the Constitutional Court; decrees of President of Kosovo in cases when requested by the President; declarations and resolutions adopted by Assembly, in cases when requested by the President of the Assembly. Moreover, the law envisages that the Prime Minister can request the publication of sub-legal acts of the Government and ministries²²³.

284. In addition to Law on Official Gazette, Law on Access to Public Documents guarantees the right of every natural and legal person to have access, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by the public institutions²²⁴. In addition, Law on Access to Public Documents envisages the publication of all relevant and important information on the webpage of the relevant public institution²²⁵. Moreover, the principle of transparency in the Civil Service Law states that "[...] processes in the Civil Service are open to the public"²²⁶.

285. Finally, the strategy on public administration reform envisages the obligation of drafting normative acts and conducting periodic research on opinions regarding ethics and transparency in public administration²²⁷. This can be seen even by Law on State Administration which requires that the work of administration bodies is public²²⁸.

286. At first sight, it appears to be a statutory guarantee of transparency in the government and public administration activity. However, this does not seem to be quite so clear in practice in the view of the Assessment Team. According to some interlocutors met during the on-site visit, access to information is not always clearly provided for. Furthermore, implementation of recent legislation that replaced previous regulations dating from 2003 on this issue faced general delay and difficulties, especially with regard to issuing sub-legal implementing regulations and setting up institutional infrastructure (units or officials for public communication). Lack of statistics and reluctance in reporting progress to the Government coordination body by other institutions are also matters of concern. The still poor reporting system in place, uncertainties regarding lists of classified documents²²⁹ and/or administrative guidelines have been noted by the Report of 2011 that has been issued by the Government on this issue. It results from the first year of implementation of the legal framework that citizens and companies represent only around 10% of requestors whereas medias in general represent alone more than 73% followed by civil society with 13%. On local level, media, civil society and individuals represent altogether only 5% of the total of requests. 514 requests for access to public documents have been registered in total during 2011 in government level and 715 within independent agencies in central level whereas data from local authorities which are not fully accurate and reliable show a total of 1 367 requests. On local level, there is a lack of contact points or responsible officials for implementing the right for access to public documents. A similar situation exists for several independent agencies.

287. The number of complaints lodged at the Ombudsperson Institution against refusal of access to public documents is relatively small. However, there are several cases where interventions made

²²² Law No 03/L-215 on Access to Public Documents, Article 17.

²²³ Law No 03/L-190 on Official Gazette, Article 4.

²²⁴ Law No 03/L-215 on Access to Public Documents, Article 1.

²²⁵ *Ibid*, Article 16.

²²⁶ Law No. 03/L-149 on Civil Service, Article 5.

²²⁷ Public Administration Reform Strategy, 2010-2013, Objective 3 - Ethics and Transparency.

²²⁸ Law No.03/L-189 on State Administration, Article 6.

²²⁹ Some public contracts that involve important budgetary funds have not been made public, even partially, following respective request(s).

by this institution remain unsolved due to lack of reaction from public institutions and even the lack of its effective enforcement power. Lack of public awareness and knowledge about the framework of right of access to public documents and the very low practical use of this right remains a challenge. So far, no awareness among the general public about the right to access public information has been provided due to budgetary restraints. The lack of transparency of public institutions continues to be a problematic issue in their relations with medias. This difficult relationship is translated into delays or excessive time taken by certain institutions to supply requested information (e.g. concerning public procurement, permits, expenses, regulations etc.) or even in lack of answers and ignored requests. Moreover, many institutions delay the release and/or publication in their respective web pages of documents that are mandated by law to be public, including audit reports, expenditures, annual reports, budgets, sublegal acts etc. There are no data of enforced sanctions (fines) in application of Article 27 of Law on Access to Public Documents.

288. The Assessment Team is concerned about insufficient transparency in general that may be an important impediment to impartiality and neutrality in the decision-making process of public administration. Moreover, access to public information is still at the early steps of implementation whereas the lack of awareness and effective use of such right by citizens has as immediate impact a wide lack of trust in public institutions as well as a very high perception of corruption. The Assessment Team believes that opacity may be a contributory factor to arbitrary and unfair decisions and the development or perpetration of unethical conduct. In order to avoid any problem of predictability and abuse of discretionary power in decision-making, transparency in general and access to information in particular call for further implementation and sustainable efforts. Therefore, it is recommended **i) to enhance transparency in the public administration (including "e-government") through implementation of a more proactive policy, proper strengthening of regulatory and institutional frameworks as well as periodical monitoring and reporting; and ii) that further steps should be undertaken to adequately implement access to public documents at both central and local levels.**

Control of public administration

289. Administrative decisions – whether on central or local level – are subject to administrative (Articles 126-136 of Law on Administrative Procedure) and judicial review (Law on Administrative Conflicts). Public administrations are subject to other internal and external controls such as the control of the Ombudsperson Institution (see hereafter), the Office of Auditor General, the Kosovo Anti-corruption Agency (see above), the internal audit units and other specific inspectorates. Law on Internal Audit (No. 03/L-128) sets up a Central Harmonisation Unit on Internal Audit (CHUIA) within the Ministry of Finance, Internal Audit Committees in main central institutions and municipalities, internal audit units within budgetary bodies, regulates auditors' licensing (certification) and qualifications for internal auditors as well as addresses relevant rules, policies, manuals, guidelines, Internal Audit Charter, Code of Ethics and professional standards that must be issued by the Minister of Finance. In particular fields, special bodies have been established by specific legislation such as Kosovo Independent Oversight Board (KIOB) for civil service, Central Procurement Agency, Procurement Review Body and Public Procurement Regulatory Commission. (see below, under public procurement section) There are around 220 internal auditors in Kosovo.

290. In addition to the internal control at the institution level, there is a special control of human resources management conducted by the Kosovo Independent Oversight Board. According to the Constitution, an independent oversight board for civil service should ensure the respect of the rules and principles governing the civil service²³⁰. The board is an autonomous body reporting to Assembly which determines appeals and ensures compliance with all rules and principles governing the civil service.

291. The Office of the Auditor General²³¹ is an independent institution responsible for conducting external financial audits (performance and regularity) of central and local government entities. It publishes an annual report that the General Auditor delivers to the Assembly.

292. Since few years, Kosovo has undertaken legislative and institutional efforts to have general and specialised frameworks related to control, inspection and audit of public activities (administrative, judicial, financial, police, customs, taxes, different inspectorates and other oversight and supervisory bodies). Some of these bodies are better developed or have more experience than others.

²³⁰ Constitution, Article 101.

²³¹ Law on the Establishment of the Office of the Auditor General of Kosovo and the Audit Office of Kosovo (Law No. 03/L-075 of 5 June 2008). Amendments are being prepared to address inconsistencies and shortfalls of this Law.

293. The organisation and strengthening of internal audit is still an issue in Kosovo institutions. In some institutions, especially public companies and small municipalities, internal audit units are lacking at around 10% and approximately 22% of audit committees are not yet operational (16% are lacking). In some other institutions, there are not enough auditors. In the web pages of public institutions, the section related to internal audit does not contain any report or other published documents. The Assessment Team did not receive information on the current state of affairs in the internal audit system. Nevertheless, according to reports of the Office of the Auditor General, the Central Harmonisation Unit/MoF has been primarily focused on developing the legal and sublegal framework for Financial Management Control (FM/C) and to a less extent it was involved in supporting its practical implementation throughout budgetary organisations. Assessment of FM/C systems and practices in respective organisations is going on through checklists²³². There is a well-established external audit and satisfactory activities carried out by the Office of the Auditor General (OAG) that benefits international leadership. Further close cooperation would be valuable between OAG and internal audit structures in order to develop risk management mechanisms and to enhance accountability for value for money, results and impact. In addition, the Assessment Team underlines the necessity that forthcoming amendments ensure sustained capacities and the independence of the Office of Auditor General.

294. The Ombudsperson Institution has received the following number of complaints during 3 last years: 1,318 complaints in 2009; 1,233 in 2010 and 1,453 in 2011. It carries investigation for around 35-40% of them and has succeeded to resolve 25-45% of them. Its personnel has increased from 42 employees in 2009 to 48 employees in 2011. So far, it has not received cases directly related to corruption and its role remains limited in this area. Recommendations of the Ombudsman are not always taken into consideration and considered by public institutions. In general, implementation steps are at their initial steps and further serious efforts are necessary to assess the fully institutional infrastructure established and functioning and especially to improve good governance and accountability of public activities. There is also room for a lot of improvement aiming to ensure a closer cooperation between control, inspection, audit, oversight and supervisory bodies and authorities and increase of information toward citizens.

Status, recruitment, career of public officials

Basic Criteria for Admission to the Civil Service

295. According to the Constitution, the composition of the civil service must reflect the diversity of the people in Kosovo. The general conditions for appointment to public offices and the procedures regulating these appointments are laid down in the Law on Civil Service. The laws on Civil Service and on Salaries in the Civil Service have set the basic conditions for a stable, unified and professional civil service by replacing the previous dysfunctional system based on three-year contracts with a career-based system. Kosovo has around 71,000 civil servants, of whom 29,000 are in central-level institutions and 42,000 at municipal level. Law on Civil Service covers the administration of Assembly, the administration of the Office of the President, the Office of the Prime Minister and ministries, executive agencies, independent and regulatory agencies and municipal administrations²³³.

296. According to Law on Civil Service of Kosovo citizens who have reached the majority age, who have full capacity to act, who are in position of their civil and political rights, who have the educational background and professional competence required to carry out executive, managerial or implementation administrative functions and who meet the physical conditions required for the concerned position have the right for employment in the Civil Service of Kosovo. The same Article envisages that the admission to the Civil Service of Kosovo may be conducted until one (1) year before the mandatory retirement age. As for the foreigners, the law refers to the European principles of free movement of workers and non-discrimination, stating that foreigners possessing

²³² In the customs sector, internal audit is carried out based on preliminary planning and analysis of areas presenting internal audit needs. During the audit process, internationally accepted audit standards and methodologies are used.

²³³ However, the Law on Civil Service is not applicable to the following categories of officials: the teaching staff of the education system; the medical staff; creators and art performers; police officers; customs officers; correctional officers; members of the Kosovo Security Force; political staff and appointees in the cabinets of the President, the Assembly, the Prime Minister and Ministers; officials elected to elected positions and appointed by elected officials; personnel employed in the cabinets of public officials; support and maintenance personnel. Such categories are regulated by Law on Labor, special laws, collective agreements or sector regulations (Article 4.1).

the required qualifications for the concerned position may be admitted to the Civil Service of Kosovo (except for core functions related to the sovereignty of the state)²³⁴.

297. Moreover, the law envisages that the admission to the Civil Service shall be done in compliance with the principle of merit, open publication of vacancies, transparency, objectivity and impartiality of the testing committee, non-discrimination of candidates and the right to appeal at the end of the procedure²³⁵.

Promotions

298. Law on Civil Service also governs the promotion in the public administration. The Law envisages that career advancement in the Civil Service is ensured by means of rising from lower to higher functional category, or from lower to higher grade within the same functional category. Access, through promotion, to higher levels of the functional hierarchy in the Civil Service of Kosovo is based on merit and is open to all qualified Civil Servants without, in compliance with the anti-discrimination principles established in Law on Civil Service and Law on Anti-Discrimination. Direct appointment to a vacant position in derogation of the principle of merit and procedures established by applicable legislation is not permitted²³⁶.

Advancement to Higher Functional Position or Grade

299. The same Law states that advancement from lower to higher functional position or from lower to higher grade within functional position is allowed based on:

1. availability of vacant positions;
2. fulfilment of all requirements set for the position;
3. the minimum time spent; and
4. successful testing and evidence of merits, skills and professional competence.

300. Promotions are allowed only for career Civil Servants that are classified not lower than two (2) grades below the announced vacancy, unless otherwise specified by law. The requirement to undergo written testing is waived for the promotion to a higher grade within the same functional category²³⁷.

301. The unemployment rate is assessed to be still very high at around 47%²³⁸. Public administration in Kosovo is planned to be around 79 825 public servants (35 891 at central level and 43 663 at local level)²³⁹. The number of public servants in local level has been defined according to criteria adopted by a Government decision No.10/46 of December 3, 2008. However, in subsequent years, it is argued that local administration is composed of more than 3 000 civil servants beyond the requirements of the aforementioned decision.

302. A Public Administration Reform (PAR) 2010-2013 strategy has been adopted on September 2010. However, the relevant PAR Action Plan was adopted only in May 2012. Although there are legal and institutional efforts to introduce procedures aiming to ensure a merit-based recruitment to the civil service (compulsory advertisement of vacancies, the existence of examination procedures, recruitment committee, the right of appeal), in practice, the recruitment system in Kosovo has offered a low capacity in the past. The high degree of informality, the use and abuse of discretion, the alleged existence of nepotism, favouritism and political patronage in recruiting

²³⁴ Law No. 03/L-149 on Civil Service, Article 13.

²³⁵ *Ibid*, Article 18.

²³⁶ *Ibid*, Article 26.

²³⁷ *Ibid*, Article 27.

²³⁸ 335,905 job seekers are reported in January 2012.

²³⁹ These figures result from the Law on Budget of Kosovo for 2013. However, according to Ministry of Public Administration, there are around 73,000 employees (approximately 20,000 civil servants at central level). Moreover, data reported by the Office of the Auditor General mention a total of 75,374 employees in December 2011 as recorded by annual financial statements of Kosovo Budget. However, according to Ministry of Publication Administration data the public sector of Kosovo at that time consisted of 77,790 employees. The difference of around 2,400 is mainly related to the fact that some employees hold more than one job position.

A centralised software/payroll system for salaries of public employees exists and is managed by the MPA. However, there also salaries paid outside this system. Until 2011, this system has included in total 1,444 positions and 461 grades. The average gross salary in the public administration was 429 EUR in 2011 but there is a significant difference between the average monthly salaries in different categories of public institutions as well as between the same categories of professionals.

public servants is seen, perceived and assessed as a challenging problem²⁴⁰. Changes and replacements in public administration following changes of political leadership and, in particular, after government changes have not been unusual as well. On the other hand, the high level of politisation and the low level of professionalism do not offer yet important opportunities and effective mechanisms for efficiency and accountability of public administration.

303. The implementation of the Law on Civil Service (LCS) has been delayed due to adoption of relevant sublegal acts that has taken few years²⁴¹. The new Law on Civil Service has formally changed the situation by making indefinite terms the basis of civil service contracts. However, the Assessment Team was informed that, besides recruitment in accordance with Law on Civil Service, different civil servants being recruited in the past under temporary contracts have not fully been subject of regular appointment procedures²⁴². This form of employment that is not adequately regulated and covered by the LCS is typically without much regard for the merit principle and subject to easy dismissal. The Assessment Team could not be informed about the number of servants under contract situation. The culture of discretion, informality and transparency deficit is illustrated by the presence of parallel routes of entry into the civil service. In particular, the use of so-called temporary appointments without being subject to any recruitment procedure has significantly compromised the credibility of the merit-based system. In addition, it is a common belief that vacancies are advertised months after positions have been filled due to reportedly high levels of political interference in the public sector despite the system of open competition and merit recruitment, principles of openness, fairness, professional competence and political neutrality. Most commonly, temporary staffs subsequently apply for 'proper' civil service jobs in order to change their status²⁴³. In this way, concerned competitions²⁴⁴ turn out to be fake competitions, as the winner is known in advance before the start of procedure. Inconsistencies in practices across ministries and agencies are also widely reported. The large level of discretion of recruiting institutions and the decentralisation of the recruitment system may not be fruitful in terms of common and standardised practical implementation of legal and sublegal framework. In this regard, the Ministry of Administration does not play a significant role in ensuring common standards across institutions.

304. Moreover, the current system's capacity to screen applicants' integrity and past records is very low. In particular, there are no vetting procedures for the recruitment of public servants enabling authorities to check integrity of candidates and to screen entries of eventual criminal records²⁴⁵. In the view of the above, it is recommended **(i) to implement uniform rules for the transparent and impartial recruitment and promotion of public servants through, *inter alia*, proper announcement of vacant posts, fair competition between candidates and**

²⁴⁰ According to a recent local survey, about 73 percent of the respondents believe that friends (5.4%) and family connections (35%), bribe (24%) and party allegiance (8.8%) are important for finding employment in the public sector. This opinion has been also shared by some counterparts already meet. In one case involving a mayor of a municipality, it was reported firing of a number of staff and then their positions have been filled without advertising the vacancies.

²⁴¹ Regulation on recruitment procedures (02/2010); Regulation on job descriptions (03/2010); Regulation on the right and proportional representation of minorities in the civil service (04/2010); Regulation on working time (05/2010); Regulation on the transfer of civil servants (06/2010); Regulation on the appointment of civil servants (07/2010); Regulation on suspension and termination of the civil service working relationship (01/2011); Regulation on probationary periods for civil servants (02/2011); Regulation on civil servants' personal files (03/2011); Regulation on disciplinary procedures in the civil service (04/2011); Regulation on resolving appeals in the civil service (05/2011); Regulation on leave in the civil service (06/2011); Regulation on official evidence of requests for access to public documents (04/2012); Regulation on job classification has been recently approved by the Government as well (05/2012); Regulation on senior management positions in the civil service (06/2012); Regulation on redundant civil servants (08/2012); Regulation for early retirement of civil servants (13/2012); Regulation on civil servants' performance appraisal results (19/2012); Regulation on voluntary work of civil servants after retirement (20/2012); Regulation on civil servants' career promotion (21/2012); Regulation on restriction conditions of the right of strike in specific services of civil service (30/2012); Regulation on care procedures for civil servants due to physical or mental disability or health problems (31/2012).

²⁴² Article 12 of LCS foresees for non-career civil servants' positions a system of temporary contracts (up to 2 years) and specific contracts (up to 6 months, the so-called Special Agreements Services).

²⁴³ This possibility is even determined by Article 22.2 LCS.

²⁴⁴ According to the Independent Oversight Board data, public servants' complaints related to competitions development represent 21,4% for 2011, 28,3% for 2010 and 30,9% for 2009. They represent an average of 29% of all complaints in central and local level and around 20% in independent institutions. On the other hand, the proportion of full or partial funded complaints is: 45% in 2009, 34% in 2010 and 68,4% in 2011.

²⁴⁵ The Assessment Team was informed that candidates applying for a job in Kosovo Customs are required to present a written statement from the competent court confirming that they are not subject to criminal investigations. In addition, Kosovo Customs Code provides that an officer may stop working if convicted of a criminal offence by a final court decision/ judgment.

avoidance of conflicts of interest; (ii) to increase the supervision and monitoring of the selection and promotion procedures of public officials; and (iii) to introduce appropriate screening procedures for checking data and the integrity of candidates to positions in the public administration.

Codes of conduct/ethics

305. Law on Civil Service envisages a wide range of provisions related to conduct and ethical principles. Those provisions are provided in a separate chapter called Principles and Terms of Civil Servants' Professional Conduct, covering the following areas: Performance of Duties and Obligation to Implement Legislation; Duty to Abstain from Abuse of Authority; Duty to Refuse Undue Rewards; Duty to Abstain from Unduly Rewarding for other Civil Servants; Duty to Inform and Justify Administrative Action; Duty to Secrecy and Respect of Privacy; Duty to keep High Standards of Professional Performance; Duty to be Present; Use of Public Property; Duty to Comply with Orders and Pursue Mandatory Administrative Actions; Refusal to Perform Illegal Acts or Criminal Offences²⁴⁶.

306. Currently, there is no code of conduct/ethics in place for the civil service. The Code of Conduct for civil servants No.1/2006 which was adopted on the basis of the previous legal framework seems to be obsolete in the view of the current applicable legal framework and subsequent changes. In addition, it is not clear if it is used in the civil service. Codes of ethics exist for public officials of specific bodies, such as the Police²⁴⁷, Judiciary, the Office of the Auditor General, the Independent Oversight Board for civil service of Kosovo²⁴⁸, the Ombudsperson Institution²⁴⁹, public servants of the Constitutional Court²⁵⁰, Procurement Code of Ethics etc.

307. With regard to professional ethics, several codes of conducts are in force (such as for police, tax administration, customs, some independent institutions) but their contents seems to be little known²⁵¹ to and owned by officials. The Assessment Team learned during the on-site visit that a new draft code of ethics for civil servants is under process of discussion and coordination at the Government level. Its future scope is expected to cover the civil service. However, there are categories of employees working in the public sector that may not be covered by the new expected code of ethics (health, education, public enterprises, etc.).

308. Increased familiarity of ethical professional standards is necessary in public administration at all levels through use of training, guides/guidelines and offering of advice; performance assessment of public officials as well as on occasions for assessing further development and improvement of existing rules. Therefore, it is recommended **(i) to adopt the Code of Ethics for civil servants as soon as possible; (ii) to consider extension of its application to uncovered categories of officials in the public administration; and (iii) to increase familiarity of the public administration at all levels with ethical professional standards (through, *inter alia*, regular training, guides and advice).**

Conflict of interest, incompatibilities and accessory activities

309. The Constitution contains provisions on incompatibilities in exercising their duties for some categories of high officials, such as Parliamentarians, the President, the Ombudsperson, Members of the Government, Judges. They focus on the incompatibility of their function with other public, political or private activities²⁵². As it is already mentioned, Kosovo has a special Law on Preventing Conflicts of Interest in the Exercise of Public Function.

(For further information, see paragraphs 149 to 153, 164 to 165, 169 to 172 and 175 above).

²⁴⁶ Law No. 03/L-149 on Civil Service, Article 51-62.

²⁴⁷ See http://www.kosovopolice.com/repository/docs/kodi_ietikes.pdf

²⁴⁸ No. 907/2011. See http://kpmshc.rks-gov.net/repository/docs/Kodi_i_etikes%28AL%29-1_17124.pdf

²⁴⁹ See

http://web.archive.org/web/20131104175648/http://www.ombudspersonkosovo.org/repository/docs/50862_The%20code%20of%20ethics%20OIK%20-%202011.pdf

²⁵⁰ See http://www.gjkk-ks.org/repository/docs/gjkk_kodi_i_etikes.pdf

²⁵¹ Kosovo Customs informed the Assessment Team that hired officers are trained in relation to the provisions of the Code of Conduct and are required to sign a confirmation that they are aware of and have read the provisions of the Code of Conduct.

²⁵² Constitution, Articles 72 (deputies), 88 (President), 96.7 (members of the Government), 106 (judges), 108.6(5) (KJC) and 134.3 (Ombudsperson).

Gifts and their registration

310. See paragraphs 161 to 163.

311. As explained in the section 3 of this report, Kosovo criminalises accepting of gifts, fees or advantages of any kind as a result of the performance of an official duty (unless the acceptance of the gift, fee or advantage is permitted by law – cf. Article 422.2.3 CC; for further explanation, see paragraphs 503 and following below) In addition, as already described above in respect of judges (see paragraph 161 above), Article 11 of Law on Declaration of Assets and Gifts (Law No. 04/L-050) sets forth rules regarding prohibited and accepted gifts. During the on-site visit, there was some uncertainty of the interlocutors met about the precise extent of the legal acceptance of gifts in spite of the rules given in the law. On the other hand, the Assessment Team notes that Article 12 of LPCI refers to some prescribed behaviour of public officials when they are attempted or influenced. It is therefore necessary that some guidelines are given to complete the law with examples of the legal conduct in this very important area. It is therefore recommended **to develop guidelines about the behaviour and conduct of public officials when they receive gifts in order to complete the rules laid down in Article 11 of Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials.**

312. The legislation related to prevention of conflict of interest has been initially introduced in 2007²⁵³. Further amendments that intervened in 2009 have modified or introduced *inter alia* definitions of related persons, trusted persons, further categories of public officials (senior officials of Security Force, Intelligence Agency, Police, Tax Administration, Customs, Public Procurement bodies, Privatisation Agency, members of different boards, officials having decision-making role), limitations of functions in commercial entities. However, besides the initiation of the dismissal of the official being in conflict of interest situation by the KAA, there were no other enforceable sanctions.

313. Novelties and improvements of the current LPCI of 2011 concern *inter alia*: the clarification of the list of senior officials up to the middle management level, case by case declaration of conflict of interest, the blind trust regime, competences of the KAA as the central responsible body for the implementation of this law (including its involvement in monitoring tendering commissions activities, the possibility to request cancellation of contracts between entities where the official has a private interest and the public authority, ordering the official to choose which post to retain between incompatible public and private posts), sanctions for enforcement of legal provisions (mainly fines), publication of the KAA decisions.

314. The Assessment Team understood from replies of authorities and different discussions during the on-site visit that the role and responsibilities of immediate supervisors and managing institutions in terms of controls and enforcement of conflicts of interest and incompatibilities of functions of senior officials are generally not exerted in a very active way. To a large extent, for everything related to conflict of interest issues, the only mention has been made to the central role and responsibility of the KAA in this area. Thus, the risk of conflict of interest detection is low and hence the impact of the deterrence is not sufficient²⁵⁴. However, the introduction of the incrimination of conflict of interest as a criminal offence in the new Criminal Code is an opportune momentum to strengthen detection, control, cooperation and enforcement efforts of public authorities under the central coordination of the KAA. Moreover, the KAA is entrusted among other duties to offer managers and personnel units more guidance in deciding over cases as the agency already gives opinions upon request on how to deal with situations. It hasn't, however, yet issued any reference materials - e.g. booklets, manuals or compilations of typical cases. As for public ethics in general, tests and inclusion in personnel assessment criteria could be considered.

315. Asset declaration system is relatively recent in Kosovo (since February 2010). The requirement to disclose assets and income is limited to the senior officials included in the category of high-ranking public officials. In addition, the Tax Administration and the Customs also maintain a further assets declaration system which applies to a larger range of officials and (at least in Customs), to all property worth over €2,000 (any change of property occurring in the last 15 days). The system is internally regulated in the Customs although the Tax Administration system

²⁵³ Law No. 02-L-133 on Preventing Conflicts of Interest in Exercising Public Function (02 November 2007). Further amendments have been brought by Law No. 03-L-155 of 19 November 2009.

²⁵⁴ Data from 2011 show that out of 54 conflict of interest cases (CoI) dealt by the KAA, in 23 cases the CoI has been avoided by the official, 13 cases resulted without CoI, 3 cases resulted into dismissals from office, 1 case was proceeded as an offence, in 7 cases the KAA has issued an opinion and 7 cases were forwarded for the next year proceedings. In 2012, more than 110 cases of conflict of interest have been dealt by the KAA.

operates on a voluntary basis. Declaration forms are similar. For the first time, the KAA has published in 2011 on its website the declared assets of high public officials. The lack of effective punishment and the sanctioning gap (the existence of only no-deterrent administrative fines) has been recently addressed and incriminated in the new Criminal Code concerning false declarations or failure to submit declaration of assets.

316. The implementation of the law has revealed some legal weaknesses and capacity problems for its proper implementation. Several fines have been imposed on those officials who did not comply with the law, but control continues to be procedural rather than substantive²⁵⁵. Although there is a high compliance in completion of forms, the quality of the information submitted is often low and insufficient. The current law recognises that an official's obligation to provide additional information only relates to his/her dependants. One aspect that may influence accuracy is the possibility of hiding assets under the names of relatives or persons other than direct dependants. KAA's capacity is increasing, but the expertise of its staff needs to be improved. A property declaration and registration system database has started to be functional in the KAA since 2010 for internal use and KAA publication purposes, but without integration with other existing databases. Control of senior official's data in different registers kept by *inter alia* Business Registration Agency, Tax Administration of Kosovo, Kosovo Cadastral Agency, Kosovo banks and other institutions relies on classical ways of exchange of information and often on information provided by concerned institutions upon the KAA's request.

317. Procedures are still very formalistic and no investigations are carried out on the sources of the revenues and the origin of assets. Although the title of the law includes also the term "origin" of assets, however the use of the term in different provisions of the law (including those related to the obligation to declare assets) is not coherent. Nevertheless, the origin of assets and income is included in declaration forms. Proactive monitoring rather than just an official's declaration verification is a pre-condition for an efficient implementation of the established system of assets declaration. There is not yet an interaction of both systems monitored by the KAA (assets declaration and conflict of interest prevention) in the sense that an efficient assets declaration system helps the prevention of conflict of interests of senior officials in their decision-making process.

318. The KAA is entrusted to keep a register of gifts based on records and reports received by public institutions. According to these reports for the year 2010, 42 protocol gifts and 49 random gifts have been reported. This practice is very formally implemented and no practical utility has been noticed so far.

319. The Assessment Team notes also that not only Law on Assets Declaration but also LPCI cover defined categories of public officials (senior officials up to the medium management level). While such an approach is understandable for asset declaration purposes and management, nevertheless the limitation of conflict of interest rules and possible improper migration to the private sector to only certain categories of public officials and the lack of coverage of other categories of officials, at any level, including collaborators of public services, is obviously not in compliance with general standard and practice²⁵⁶.

320. In light of the foregoing considerations, it is recommended **(i) to strengthen the control of the declarations of assets and interests in order to ensure proper implementation and monitoring; (ii) to intensify efforts to build capacity in individual institutions to prevent and detect conflicts of interest through close supervision and coordination mechanisms, as well as by means of specific reference materials, guidelines and training; and (iii) an adequate and enforceable conflict of interest standard, including improper migration to the private sector ("pantouflage") be extended to every person who carries out a function in the public administration (including managers and consultants) at every level of government.**

²⁵⁵ During 2011, there were 2 313 senior public officials who were required to declare assets (328 upon taking office, 1 830 for periodical declaration, 77 upon KAA request and 78 upon leaving/being dismissed from office). Only 86 officials (3.7%) have not filled their declarations (39 have been fined by courts, no feedback for others; average of fines is more than 400 EUR – from 150 to 1 000 EUR). In 557 cases, correction of material mistakes and filling of accurate data has been requested. Complete control has been initiated for 540 senior public officials (14 of them upon request of third parties and 526 on *ex officio* basis). Out of 39 cases of unjustified changes in assets, in 28 cases additional information was requested, 9 cases have been forwarded for further investigation concerning conflict of interest whereas only in 2 cases offence procedures has been initiated.

²⁵⁶ The Assessment Team learnt that through an internal order tax administration officials are prohibited to exercise any accessory employment activity, excepting teaching.

Training

321. According to Law on Civil Service, the Kosovo Institute of Public Administration (KIPA) is responsible for the implementation of training and education policies and strategies and capacity building in the Civil Service²⁵⁷. Moreover, the Law provides for that all civil servants are eligible for and also required to upgrade and enhance their professional capacity through training in the Civil Service. Civil Servants may also be authorised to attend, outside the Civil Service, specialised educational programmes, for their professional development, as long as relevant for the Civil Service of Kosovo. Civil Servants' participation in capacity building events planned and delivered within the Civil Service shall be treated as equivalent to performing professional duties and supervisors are responsible to facilitate and support participation of their subordinates. Participation in capacity building events is mandatory for all Civil Servants²⁵⁸.

Rotation of staff employed within public administrations

322. There are no rules on rotation of staff in the public administration. A rotation system has been introduced for some positions vulnerable to corruption in public administration (such as the Revenue Operation Directorate and the Law Enforcement Directorate in Kosovo Customs). A similar system does not exist for the civil service or other sectors exposed to corruption (tax administration, police, etc.). The Assessment Team observes that this approach should serve as a model for other similarly vulnerable sectors of public administration and targeted officials most exposed to the risk of corruption. It is therefore recommended **to consider making wider use of rotation in those sectors of the public administration that are particularly exposed to a risk of corruption.**

Transfer of Civil Servants

323. The Civil Service Law envisages that the transfer of Civil Servants can be performed through relocation to another job location and as a temporary transfer to other job location. Relocation of Civil Servants, as a non-disciplinary measure, entails temporary or permanent re-deployment to other job location, to exercise the same or different functions, at the same functional category and grade. According to the Law, the relocation can consist of: (i) Lateral transfers with assignment to other office in the same or different organisation at the same functional level and grade, within the central or municipal administrations; (ii) Rotation to other offices with same functional category and grade but other duties; and (iii) Secondment to other organisation outside the Kosovo Civil Service.

324. A Civil Servant, with his/her consent and in agreement with the employer, may be subject to secondment to international organisations, public enterprises or any other public organisation requiring specific skills and certain professional experience. Employment terms should not be less favourable than those in his/her previous job position²⁵⁹.

Obligation to report corruption

325. According to Law on Suppression of Corruption "Official persons shall report cases of corruption, which come to their knowledge, to the KAA. The KAA shall forward all such cases to the Office of the Public Prosecutor of Kosovo (OPPK) for consideration"²⁶⁰. Moreover, Law on Kosovo Anti-Corruption Agency requires that "if a person during the official duty is aware of official corrupted action, he/she should notify the KAA and also undertake necessary measures to preserve data in connection with corrupted conduct"²⁶¹.

326. Law on Protection of Informants is another important law which guarantees the rights of the whistleblower who reports/discloses in good faith unlawful actions of officials or responsible persons within public institutions at central or local level or within institutions, public or private enterprises²⁶². Whistleblowers can submit information about the unlawful actions to the official person dealing with reported wrongdoings or to any other supervisor.

²⁵⁷ Law No. 03/L-149 on Civil Service, Article 10.

²⁵⁸ *Ibid*, Article 35.

²⁵⁹ *Ibid*, Article 28.

²⁶⁰ Law No. 2004/34 on Suppression of Corruption, Article 16.

²⁶¹ Law No. 03/L-159 on Kosovo Anti-Corruption Agency, Article 19.

²⁶² Law No. 04/L-043 on Protection of Informants, Articles 3 and 6.

Disciplinary proceedings

327. Disciplinary proceedings are regulated by Law on Civil Service. Civil servants may be disciplinary held liable for the violation of duties which occurred as a result of their own fault, as laid down in this law. All civil servants who are negligent in observing and implementing the law and sub normative acts governing the civil service are subject to disciplinary sanctions²⁶³.

328. Disciplinary measures shall be administered with gradual intensity proportionate to the importance of consequences and damages provoked by the Civil Servant's misconduct. Violations of work tasks fall into: minor and severe-serious violations, which are regulated with sub-legal act. The following disciplinary measures are applied for minor violations: verbal warning; written remark that is placed in personal file of Civil Servant.

329. The following disciplinary measures are applied for serious violations: (1) suspension of duties up to 3 months and withholding of 1/3 of salary for a period from up to two (2) months issued by the disciplinary commission upon request from the immediate supervisor; (2) removal from office and transfer to another location with similar duties and interdiction to promotion up to five (5) years issued by the disciplinary commission; (3) termination of the working relationship in Civil Service by the disciplinary commission²⁶⁴.

330. Moreover, Law on Civil Service envisages that every institution of the public administration which employs Civil Servants must establish a disciplinary commission in order to undertake disciplinary action in case of serious violations of this law and related sub-legal acts. The chairman and the members of the disciplinary commission are appointed by the General Secretary or equivalent position of the concerned institution whereas its members must not be part of appeal commissions of the respective institution. The chairman and members of the disciplinary commission are appointed from the ranks of Civil Servants with superior education. They are appointed for a period of two (2) years with possibility of extension and must reflect the diversity of the Kosovo society, including in particular gender diversity²⁶⁵. On the other hand, disciplinary action against civil servants in senior management positions is administered by a special disciplinary commission of 5 members that is appointed by the Government on a case-by-case basis.

331. The personal liability for committing criminal acts and offences while executing administrative acts shall not exclude the disciplinary liability of a Civil Servant, provided that the act also constitutes a breach of duty as indicated in this law. Disciplinary and criminal proceedings are not carried out in parallel. In principle, according to Article 68 of the LCS, no disciplinary measure can be undertaken for an act punishable by criminal law before a decision has been made in first degree. In case of criminal proceedings initiated against a Civil Servant, all disciplinary proceedings related to the case cannot initiate until the final ruling of the competent court. If the Civil Servant is found guilty by final decision and is convicted of criminal offence with elements that comprise violations of civil service principles and rules, the employer body should initiate the procedure for dismissal of the Civil Servant. In case of acquittal from criminal liability, the civil servant has to reintegrate his/her previous position and his/her file must not contain any mention of the criminal proceedings and/or any related preventive suspension²⁶⁶. During the period of criminal proceedings, the civil servant is under preventive suspension with payment of only 50% of his/her salary that will be fully recovered in case of reintegration of the position due to absence of criminal charges.

332. Statistics on disciplinary proceedings are the responsibility of respective public institutions²⁶⁷. The Department on Civil Service Administration in the Ministry of Public Administration does not collect periodical statistics from other public institutions. In the absence of statistics regarding the use of disciplinary proceedings and measures, it was not possible to assess the efficiency of the existing system. It is therefore recommended **to establish and maintain a central periodical reporting of statistics on the use of disciplinary proceedings and sanctions in the public administration.**

²⁶³ *Ibid*, Article 64.

²⁶⁴ *Ibid*, Article 66.

²⁶⁵ *Ibid*, Article 70.

²⁶⁶ Law No. 03/L-149 on Civil Service, Article 63.

²⁶⁷ Kosovo Customs informed the Assessment Team that a monthly reporting system of statistics is in place concerning disciplinary cases and regular reports of relevant data.

2.5. Members of Parliament (MP)

Overview of the parliamentary system

333. Although it is not specifically mentioned in the Constitution, Kosovo has a parliamentary system of governance with a multi-party system²⁶⁸. There is a unicameral Parliament (the Assembly) that exercises the legislative power²⁶⁹. The Constitution provides for a dominant role of the Assembly in the legislative process. The rights to take legislative initiatives is conferred to a group of at least 6 members of the Assembly, the Government, the President from his/her scope of the authority or at least ten thousand citizens having the right to vote²⁷⁰.

334. Members of the Assembly are elected through direct elections²⁷¹. The Assembly is composed of one hundred twenty (120) MPs elected by secret ballot through an open-list proportional representation system. The seats in the Assembly are distributed amongst all parties, coalitions, citizens' initiatives and independent candidates by allocating 100 seats in proportion to the number of valid votes received by them; and 20 seats reserved for representation of communities of minorities²⁷². Mandates are divided between political entities (parties, coalitions, citizen's initiatives or independent candidates) which receive at least five percent of the general vote. Members of the Assembly are in principle elected for a mandate of four years.

335. Articles 70 and following of the Constitution contain some basic rules applicable to parliamentarians; *inter alia*, rules on mandate, incompatibility of posts and on inviolability and ineligibility. MPs are representatives of the citizens and are not bound by any obligatory mandate. In principle, the position of a MP is incompatible with executive position in the public administration or publicly owned enterprise (including the position of a member of the Government). In terms of the Article 73 of the Constitution, the following positions are ineligible to be elected as MPs without prior resignation from their position: judges and prosecutors, members of the Kosovo Security Force, Police, Intelligence Agency, customs, independent agencies, diplomatic representatives, chairperson and members of the Central Election Commission, mayors and other officials holding executive responsibilities at municipal level, persons deprived of legal capacity by a final court decision. The exercise of MPs office is regulated in further detail by the Law on Rights and Responsibilities of the Member of the Assembly (LRRMA)²⁷³. A parliamentarian's mandate expires in the event of his/her death, absence/refusal to take the oath, resignation, appointment as a member of the Government, termination of the Assembly's mandate, absence for more than 6 consecutive months, conviction to one or more years for committing a crime²⁷⁴.

336. The internal organisation and conduct of work of the Assembly are specified in the Rules of Procedure²⁷⁵.

Transparency of the legislative process

Information on the legislative process

337. Kosovo Assembly is considered to be one of the most transparent institutions in Kosovo. The Constitution itself requires that the meetings of the Kosovo Assembly should be public²⁷⁶. According to the Rules of Procedure of the Assembly (RPA) "Sessions of the Assembly shall be public, unless otherwise decided by the Assembly. The sessions may be broadcasted in accordance with the Decision of the Presidency. An electronic record shall be made of all plenary sessions. Each discussion shall be recorded in the language in which it was made. Minutes shall contain the agenda, a resume of discussions and decisions taken by the Assembly. The records/transcripts of meetings are a) filed in the Assembly archives, b) published in the web site of Assembly, c)

²⁶⁸ The current Constitution dates from 2008. According to Article 4.4 of the Constitution, the Government is subject to parliamentarian control.

²⁶⁹ Constitution, Chapter IV Assembly, Article 4.

²⁷⁰ Constitution, Article 79, Law No. 04/L-025 of 6 October 2011 on Legislative Initiatives.

²⁷¹ *Ibid*, Article 63, § 1.

²⁷² *Ibid*, Article 64, § 1; Article 111 of the Law No. 03/L-073 on General Elections.

²⁷³ Law No. 03/L-111 of 4 June 2010.

²⁷⁴ Constitution, Article 70.

²⁷⁵ Adopted on 29 April 2010.

²⁷⁶ *Ibid.*, Article 68.

disseminated to the members of Assembly and d) made available to the public pursuant to the law²⁷⁷.

338. The RPA envisage that the law should undergo through two readings in the Assembly, first reading and second reading. In exceptional cases, a third reading may take place. In between those readings there are Committee review processes. The laws are assigned to a so-called 'functional committee' which is responsible to prepare amendments and recommendations for the second reading. All those steps, in general, are open to the public and interested parties can attend those committee meetings²⁷⁸. In completing the review process, the Committees organise public consultations in the form of "public hearings". Thus according to the RPA "for the purpose of obtaining information on a subject under debate, a committee may hold public hearings of experts, public organisations, representatives of interests groups and other persons"²⁷⁹.

339. Moreover, in April 2011, the Presidency of the Assembly adopted a new Regulation on the Access of the Media and the Public to the Assembly, whereby it foresees that the work of the Assembly and its bodies are open to the written and electronic media as well as to the public. This regulation sets a number of procedures to enable the public to visit and attend the work of the Assembly and its bodies²⁸⁰. All voting results are published on the webpage of the Assembly as well and are accessible to the general public.

Prior consultations

340. In addition to the above, the Government rules on drafting legislation require the inclusion of the civil society and the general public in the process of drafting legislation. Therefore, according to those rules in place the law-making process in Kosovo is quite open and transparent. Government rules in several provisions require the consultation with the groups of interest and the civil society²⁸¹. It is however important to note that consultation practice of non-government interested stakeholders is not a wide practice and remains fragmented.

Parliament committees

341. According to the Constitution, Assembly of Kosovo appoints permanent committees, operational committees and *ad hoc* committees reflecting the political composition of the Assembly. On the request of one third (1/3) of all of the MPs, the Assembly appoints committees for specific matters, including investigative matters. Moreover the Constitution requires that at least one vice chair of each parliamentary committee shall be from the MPs of a Community different from the Community of the chair. Competences and procedures of the committees are defined in the RPA²⁸².

342. Committees are specified in Article 69 of the RPA. Nevertheless, in this new mandate there were some minor changes decided by the Assembly and as such, currently the Kosovo Assembly has the following Committees: Standing Committees: Budget and Finance Committee; Committee on Rights, Interests of Communities and Returns; Committee on Legislation; Committee for European Integration. Functional Committees: Committee on Foreign Affairs; Committee for Education, Culture, Youth, Sports, Public Administration, Local Government and Media; Committee for Economic Development, Infrastructure, Trade and Industry; Committee on Health, Labour and Social Welfare; Committee for Agriculture, Forestry, Environment and Spatial Planning; Committee on Internal Affairs, Security and Supervision of the Kosovo Security Force; Oversight Committee for Kosovo Intelligence Agency; Oversight Committee on Public Finance; Commission on Human Rights, Gender Equality, Missing Persons and Petitions. Subcommittees: Sub-committee for Mandate, Immunity and Regulation²⁸³.

²⁷⁷ RPA, Article 43.

²⁷⁸ *Ibid.*, Article 65 – Moreover according to paragraph 4 of this article "Committees may invite representatives of institutions and of civil society to attend its meetings in order to present evidence or produce important documents".

²⁷⁹ *Ibid.*, Article 66.

²⁸⁰ Assembly Regulation Nr. 04-V-024, on the "Rules on Access of Media and the Public in the Work of the Assembly", 19 April 2011.

²⁸¹ Regulation No. 09/2011 on Rules and Procedure of the Government (especially Articles 28; 29; 30; 32 and 39).

²⁸² Constitution, Article 77.

²⁸³ Source: <http://assembly-kosova.org/?cid=2,110>

Parliament sittings

343. According to the Constitution, the Assembly of Kosovo conducts its annual work in two sessions: the spring session begins on the third Monday of January and the autumn session begins on the second Monday of September²⁸⁴. Moreover according to the RPA, the plenary sessions of the Assembly shall usually take place twice per month. The plenary week begins usually on Thursday²⁸⁵. The Presidency may call extraordinary sessions of the Assembly to discuss on urgent matters. Such session may be also called by: the President, the Prime Minister, one or more parliamentary groups representing not less than one third, namely one third of the Members of Assembly²⁸⁶.

Remuneration and economic benefits

344. According to the RPA, once the term of office of a Member of the Assembly has been certified, the Member shall have the right to remuneration in monthly salaries, which are determined by the Presidency of the Assembly upon the recommendation of the Budget and Finance Committee. After his or her term of office has terminated normally, the Member of the Assembly shall be entitled to a monthly salary defined in Rule 2.1 for twelve (12) months, if he or she does not, during this time, return to the workplace that he/she had before being elected as a Member of the Assembly or if he/she does not take up other employment. A Member of the Assembly, whose term of office has terminated on the grounds set out in Article 25 of the RPA, as well as on the grounds of his or her resignation, shall not be entitled to a monthly salary. If the term of office of a Member of the Assembly terminates because of his/her death, the family of the Member of the Assembly shall, on the occasion of his/her burial, be entitled to an amount of money equalling to two months' salary, as well as to an amount of monthly salary set out in Rule 2.1 for one calendar year, starting from the day when the term of office was terminated²⁸⁷.

345. The average annual salary of a MP for 2012 is around 18,000.00€. Nevertheless, the average annual income as an MP is calculated at the general budget of the Assembly at a figure of around 28,000.00€, which includes all other benefits for the participation in the committee hearings and in the plenary sessions as well (over 400€ per each month).

Additional benefits

346. Members of the Kosovo Assembly are entitled to additional remuneration as well. As it is set forth in Rule 3 of the Annex four, *Additional remuneration*:

- Apart from monthly salaries set out in Rule 2.1, each Member of the Assembly shall be entitled to additional remuneration for participating in sessions of the Assembly, for his or her work in the Committees of the Assembly and for taking part in other bodies outside the usual activities of the Assembly.
- By a special decision of the Presidency of the Assembly, a Member of the Assembly shall be given additional remuneration for participation in each session of the Assembly.
- If a Member of the Assembly misses a session of the Assembly, he/she shall not receive the additional remuneration set out in Rule 3.2 for that session.
- Members of committees shall be paid for their work in each committee of the Assembly. A Member of the Assembly shall be given additional remuneration for his/her work in committees.
- Income is provided to a MP proportionally to his or her attendance in the committee sessions, on monthly basis.
- The Chairpersons of main and functional Committees shall receive additional remuneration, which is determined by a special decision of the Presidency of the Assembly.
- Parliamentary Group Leaders shall receive additional remuneration, which is determined by a special decision of the Presidency of the Assembly.
- The decision on the amount of monthly salaries and additional remunerations shall be made by the Presidency of the Assembly following recommendations of the Budget Committee²⁸⁸.

²⁸⁴ Constitution, Article 69 and the RPA, Article 37.

²⁸⁵ RPA, Article 39.

²⁸⁶ RPA, Plenary Sessions, Article 38.

²⁸⁷ RPA, Annex 4, Rule 2.

²⁸⁸ RPA, Annex 4, Rule 3.

347. There is no specific regulation referring to the detailed income of MPs. Some information can be retrieved from the Anti-Corruption Agency at the annual declaration of the income and wealth of the public officials.

348. According to the RPA, individual Members of the Assembly, the committees and the Parliamentary groups are provided with offices in the Assembly and with the assisting staff. The MPs are provided with offices in the Assembly (MPs do not have individual support staff). The funds for above mentioned needs will be covered by the Budget of the Assembly²⁸⁹.

349. In the view of the Assessment Team, transparency in parliamentary procedure appears essentially to be guaranteed. In specific situations, parliamentary committee meetings may not be public, but this is no different from the situation in the majority of other countries. If they were made public, this might make it more difficult to reach a political consensus. Legislative bills are published on the internet at a sufficiently advanced stage. Nevertheless, the Assessment Team observes that it might be possible to improve transparent information of the Assembly's activities, notably by improving searching capacities and publicising better the possibility of accessing the web pages in which draft laws and other Assembly documents of public information interest can be found. Moreover, the Assessment Team shares the view that consultation processes of interested non-government parties may be further enhanced and consolidated in the future.

Ethical principles and rules of conduct

350. According to the Code of Conduct for members of the Assembly which is annexed to the RPA (Annex 3), MPs have a duty to respect the law and to act on all occasions in accordance with the public trust placed in them, observing in particular the following principles:

- Selflessness. Members shall take decisions solely in terms of the public interest. They shall not take decisions in order to gain financial or other material benefits for themselves, their families, or their friends.
- Moral integrity. Members shall not place themselves under any financial or other obligation to individuals or organisations that might influence them in performance of their official duties.
- Objectivity. In carrying out public business, including matters to do with public appointments, awarding contracts, or recommending individuals for rewards and benefits, Members shall make choices solely on merit and the public interest.
- Accountability. Members are accountable for their decisions and must submit themselves to such scrutiny as is appropriate to their office.
- Honesty. Members have a duty to declare any private interests that might be relevant to their public duties and to take steps to resolve any conflicts that might arise in a way that protects the public interest.
- Leadership. Members shall provide support to these principles by leadership and example²⁹⁰.

351. Taking note of existing ethical rules applicable to MPs, the Assessment Team takes the view however that further improvements are necessary to be brought in order to improve it. In order to ensure the Code of Conduct will better serve for the working culture of the Assembly, the Code itself needs to be updated, the role of the oversight authority in addressing ethical issues needs to be addressed/enhanced, training and advice or counselling services promoted and carried out. It is also important that it includes establishing effective channels for discussing and resolving issues that raise ethical concerns, both on an individual basis (e.g. advice on a confidential basis) and on an institutional level (e.g. training, institutional discussions of integrity and ethical issues related to parliamentary conduct, etc.). Furthermore, proper guidance should be provided, including *inter alia* conflicts of interest, gifts and other advantages, misuse of information and of public resources, contacts with third parties, including lobbyists as well as a credible mechanism of supervision and adequate sanctions. The Assessment Team believes that providing further guidance on ethical standards and corruption prevention-related provisions would increase MPs awareness about integrity issues, provide guidance for their behaviour and demonstrate to the public that they are willing to take action to promote a culture of ethics. In light of foregoing, it is recommended **that the Code of Conduct for members of parliament be revised and complemented with practical measures for its implementation, such as dedicated training, counselling and advice regarding ethical and corruption-related issues.**

²⁸⁹ Law No. 03/L-111 on Rights and Responsibilities of the MP, Article 33.

²⁹⁰ RPA, Annex 3: Code of Conduct for Members of the Assembly.

Conflict of interest

352. Members of the Assembly are covered by Law on Preventing Conflicts of Interest for public officials²⁹¹. For further information, see paragraphs 149 and following above.

Prohibition or restriction of certain activities

Restrictions on voting

353. Member of the Assembly shall not vote on a matter where a particular decision might result in a financial benefit for him/her that would not also be received by a wider category of persons, who are not themselves Members of the Assembly or relatives of Members of the Assembly²⁹².

Prohibition of paid advocacy in the Assembly

354. A MP shall not advocate or initiate any course or matter in any proceedings of the Assembly or its Committees in return for payment or benefit in kind whether direct or indirect. This shall also apply if the payment or benefit is received by a member of his/her immediate family²⁹³.

Incompatibilities and accessory activities

355. According to the Constitution of Kosovo, "a member of the Assembly of Kosovo shall neither keep any executive post in the public administration or in any publicly owned enterprise nor exercise any other executive function as provided by law"²⁹⁴. Moreover, according to Law on Rights and Responsibilities of MPs, the MP cannot be at the same time Prime Minister, Deputy Prime Minister, Minister or Deputy Minister. In case of appointing a MP to those functions, the MP's mandate terminates on the day of his/her appointment as a member of the Government²⁹⁵. In addition, according to the same law, the MP cannot be a Board member of one private company; cannot act as an advisor or a legal representative of any company or business during his mandate; cannot be the chief editor or the deputy chief editor of written and electronic media, with exception of his/her political party ones; cannot practice the activity of lawyer during his mandate; cannot carry out the economic activities which create conflict of interests²⁹⁶.

356. Furthermore, Law on Prevention of Conflicts of Interest for public officials, which covers the MPs as well, provides rules, restrictions and prohibitions applicable to them as well (for more information, see paragraphs 151 to 153 above).

Financial interests

357. According to the RPA, where a Member, or a member of his or her immediate family, has a personal financial interest in any matter being considered by the Assembly, or by any Committee of which he or she is a member, he/she shall declare that interest orally before taking part in the proceedings related to the matter. This requirement also extends to situations where the Member expects to have a personal financial interest in a matter, although he/she may not have such an interest at the time of the proceedings²⁹⁷.

Gifts

358. According to Law on Rights and Responsibilities of MPs, the MP can accept gifts during his mandate in compliance with the relevant applicable law. The previous restrictions are not related to the amount of funds or things received by the MP for a free of charge use and provided by the Assembly, his party, his group of MPs and by a foundation that supports the legislative authority or that is in close connection with this. Such funds and things for free use have to be registered by the MP as a part of their statement on the property, income and economic interests. By the end of his mandate, the MP cannot keep the things received for free use in his property or in his further use or by any person close to him²⁹⁸.

²⁹¹ Law No. 04/L-051 on Preventing Conflict of Interest in Exercising Public Functions, Article 4.

²⁹² RPA, Annex 3: Code of Conduct for Members of the Assembly, § 4.

²⁹³ *Ibid.*, § 5.

²⁹⁴ Constitution, Incompatibility, Article 72, § 1.

²⁹⁵ Law No. 03/L-111 on Rights and Responsibilities of MPs, Article 6.

²⁹⁶ *Ibid.*, Article 7.

²⁹⁷ RPA, Annex 3: Code of Conduct for Members of the Assembly, par. 2-3.

²⁹⁸ Law No. 03/L-111 on Rights and Responsibilities of MPs, Article 46.

359. Moreover, MPs are covered by Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials (for further information, see paragraphs 161 to 163 above).

Benefits received. Register of interests

360. According to the RPA, MPs shall also inform the President of the Assembly in writing of all financial interests they or their immediate family may possess and financial benefits they may receive in the following categories:

- Employment, trade, profession or vocation (apart from Membership of the Assembly) for which remuneration is obtained, or in which the Member has any financial interest;
- Directorships of public or private companies for which remuneration is obtained (even if it is paid through a related company);
- Contracts for consultancy, representation or similar services, not arising out of an occupation already declared;
- Contracts for journalism, other writing, lecturing etc.;
- Gifts, including hospitality or travel, above a value to be specified by the President of the Assembly relating to or arising out of their membership to Assembly;
- Financial sponsorship as a candidate for election to the Assembly, other than by a political party, coalition or citizens' initiative which the Member represents, that exceeds 25% of the Member's election expenses; and
- Financial support as a Member of the Assembly, other than by a political party, coalition or citizens' initiative which the Member represents"²⁹⁹.

Contracts with public authorities

361. For further information, see paragraph 164 above.

Post-employment restrictions

362. For further information, see paragraph 165 above.

Lobbying

363. There are no specific provisions referring to the lobbying activities of the MPs. Nevertheless, according to the RPA the Member of Assembly is the representative of citizens. The member of the Assembly shall have an equal right and responsibility to participate fully in the proceedings of the Assembly and act in accordance with their convictions and conscience. The MP, in addition to the rights to initiate draft laws, resolutions, questions to the members of the Government, vote on decisions proposed by the Assembly, shall also have the right to take part on an equal basis with other Members of the Assembly in all debates of the Assembly³⁰⁰. Furthermore, in the daily business of the Assembly, the rules allow the MP to be independent and to exercise his authority in the decision-making process of the Assembly. Moreover, public hearings and other meetings of the working groups of such committees are used a lot for lobbying on different issues pertaining to the legislation being discussed. MPs do use sometimes civil society organisations to lobby on certain issues as well.

Misuse of confidential information

364. The MP is obliged to keep the confidentiality of information and of the official documents in accordance with the Law³⁰¹.

Misuse of public resources

365. There are no exact provisions for MPs referring to the misuse of public resources. Nevertheless according to the RPA, all Members of the Assembly have the right to use all the services of the Assembly, including the Assembly building, professional services of the Assembly, computer services, the Internet and other electronic services, library, interpretation, transport and

²⁹⁹ RPA, Annex 3: Code of Conduct for Members of the Assembly.

³⁰⁰ RPA, Article 21.

³⁰¹ Law No. 03/L-111 on Rights and Responsibilities of the MP, Article 43.

other services. Those services may be used only through the Assembly Secretariat, by notifying it for each individual service needed³⁰².

Declaration of assets, income, liabilities and interests

366. For further information, see paragraphs 169 to 172 above.

367. The Assessment Team notes that legal and regulatory framework in relation to conflict of interest, declaration of assets and gifts appears to be sufficient with regard to MPs. Although the site of the KAA lists *inter alia* the interests / declaration of assets of the MPs, these lists seem incomplete. Several reasons may explain that situation: some interlocutors mentioned to the Assessment Team that, because of the economic situation in Kosovo, some MPs can hesitate to make public their assets with the risk to be unpopular. But other reasons, less admissible, may be listed. Another problem is that the MPs (and probably other senior public officials) set themselves the estimated value of their assets. No external control is possible. The lack of information available to the public referring to the detailed incomes is also a problem. In the view of the above, it is recommended **to give to the KAA – or to another official body, in collaboration with the tax administration - the competence to make an adequate assessment of declared assets.**

Supervision

Presidium, Rules of Procedure and Committee

368. The Constitution foresees that the RPA are adopted by two thirds (2/3) vote of all its MPs and determine the internal organisation and method of work for the Assembly³⁰³. The RPA were lately adopted in April 2010³⁰⁴. Nevertheless, currently the Assembly is in the final stage of amending those rules and they are expected to be approved soon³⁰⁵. One of the reasons for this is that the RPA are not in full harmony with the Constitution. This is the case with the Presidium as well (which according to the Constitution and the parliamentary practice is called Presidency of the Assembly). As such, the Constitution envisages that the Assembly of Kosovo elects the President of the Assembly and five (5) Deputy Presidents from among its MPs. The President and the Deputy Presidents form the Presidency of the Assembly. The Presidency is responsible for the administrative operation of the Assembly as provided in the RPA³⁰⁶. The President of the Assembly (Speaker) is responsible for representing the Assembly, setting the agenda, convening and chairing the sessions, signing acts adopted by the Assembly as well as for other functions as laid down in the Constitution and the RPA³⁰⁷.

369. This is a permanent subcommittee called "*Sub-committee for Mandate, Immunity and Regulation*" which is attached to the Committee on Legislation. According to the current rules in place, this Committee reviews all issues that are related to the implementation of the RPA and for mandates and immunities.

Ethical principles

370. The oversight of ethical principles that are attached to the RPA (in Annex 3) is ensured by the President of the Assembly who may also consult the Presidency in specific circumstances and for particular actions.

Enforcement measures and immunity

371. The immunity of Members of the Parliament has been one of the most debated issues in the Kosovo politics and legal community. The immunity of MPs is regulated by the Constitution of Kosovo, Law on the Rights and Responsibilities of the MP and the RPA³⁰⁸.

³⁰² RPA, Code of Conduct for Members of the Assembly, Annex 4, Rule 7.

³⁰³ Constitution, Article 76.

³⁰⁴ Regulation 03 - V - 304 of April 29, 2010.

³⁰⁵ The Assessment Team was informed about the expectation to have the RPA adopted by the last quarter of 2013.

³⁰⁶ Constitution, Article 67.

³⁰⁷ *Ibid.*, Article 67(6).

³⁰⁸ Constitution, Article 75; Law No. 03/L-111 on Rights and Responsibilities of the Deputy, Articles 9 and 10; RPA, Article 22

372. According to the Constitution and two other acts, members of the Assembly shall be immune from prosecution, civil lawsuit and dismissal for actions or decisions that are within the scope of their responsibilities as members of the Assembly. This includes verbal or written statements and other acts performed in the capacity of the Member of Assembly. However, the immunity does not prevent the criminal prosecution of members of the Assembly for actions taken outside of the scope of their responsibilities as members of the Assembly. A member of the Assembly cannot be arrested, detained or prosecuted while performing her/his duties as a member of the Assembly without the consent of the majority of all members of the Assembly. The immunity of a Member of Assembly starts on the day of certification of the election results and ceases at the end of the mandate.

373. The request to waive the immunity of a MP is presented by the State Prosecutor of Kosovo. In cases when the private indictment is raised against the MP according to the Criminal Procedure Code of Kosovo, the request for lifting the immunity can be submitted only by the court that is investigating the case. The request for lifting the immunity is addressed to the President of the Assembly who immediately sends it to the Committee for Mandates and Immunities that reviews and prepares the recommendations for the next plenary session of the Assembly. The Committee for Mandates and Immunities prepares the recommendation for the Assembly within thirty (30) days from the day of receiving the request by the President of the Assembly. The Assembly will without debate bring a decision regarding the lifting of immunity of the MP however the MP can put forward his views regarding the case. For the lifting of the immunity of the MP the majority of votes by all members of the Assembly are necessary. The MP who has lost the immunity has the right to complain to the competent court, within a term of thirty (30) days. The MP's complaint shall not suspend the decision of the Assembly. As an exception from the previous procedure, the measure of arrest, detention or imprisonment can be undertaken against a MP even without waiving the immunity in advance by the Assembly in case when he or she is caught while committing (*in flagranti*) a serious criminal offence that is punishable by five (5) or more years of imprisonment.

374. Moreover, there is a Constitutional Court decision on the interpretation of the *immunity* of the MPs, which had interpreted the immunity of the MPs in a strict sense of the Constitution³⁰⁹. (See below at the Criminal and other offences, the interpretation given by the Constitutional Court).

Criminal and other offences

375. In addition to what is presented above, the rules of procedure envisage that: "a Member of the Assembly shall lose the mandate *inter alia* in the following cases: b) he/she resigns; d) he/she is convicted for a criminal offence with imprisonment of one (1) year or more; e) in a period of six (6) months he/she does not attend any of the sessions of the Assembly. If the Member of Assembly does not show good cause to the satisfaction of the President of the Assembly, the President shall seek the recommendation of the Committee on Mandate, Immunity and Regulation. After the recommendation of the Committee the President shall propose to the Assembly that the Member concerned ceases to be a Member of Assembly. The Assembly shall decide on the matter in the next session"³¹⁰.

376. Regarding the criminal offences of the MPs and the extent of the immunity of MPs, the Constitutional Court has decided in the abovementioned case that in accordance with Article 75(1), Article 89 and Article 98 of the Constitution, the members of the Assembly, the President and the members of the Government enjoy functional immunity for actions taken or decisions made within the scope of their respective responsibility. Accordingly, members of the Assembly, the President and the members of the Government are non-liaible in judicial proceedings of any nature over the opinions expressed, votes cast or decisions taken within the scope of their responsibility. This type of immunity is of unlimited duration.

377. Concerning the immunity of the members of the Assembly acting outside the scope of their responsibilities, the Constitutional Court has ruled that MPs are not immune from criminal prosecution for actions taken or decisions made outside the scope of their responsibilities. This is applicable both with regard to prosecution for criminal acts allegedly committed prior to the beginning of their mandate and during the course of their mandate as MPs. In addition, MPs are not immune from civil lawsuit for actions taken and decisions made outside the scope of their responsibilities. A member of the Assembly cannot be dismissed other than for reasons set out in Article 70 of the Constitution. According to the Constitutional Court reasoning, a MP may not be arrested or detained while performing his/ her duties, without a decision of the Assembly;

³⁰⁹ See the Judgment of the Constitutional Court in the Case Number: KO-98/11, with the Ref. No.: AGJ138/11.

³¹⁰ RPA, Article 25.

otherwise, in cases when the MP is not performing his/her duties, he/she may be arrested or detained without a decision of the Assembly. The notion of "performance of duties" is defined by the Constitutional Court as the work of the Assembly during its plenary and committee meetings. Any prosecutorial body/institution that is performing the prosecution of persons charged with committing criminal acts as described by Article 109 of the Constitution and that acts within the jurisdiction prescribed by the applicable law of Kosovo have the right to request the Assembly to waive the immunity of a MP. This body/institution is authorised to arrest or detain without a decision of the Assembly while the MP is not performing his/her duties that is, when there is no plenary meeting of the Assembly or of its committees³¹¹.

378. No statistical information was provided to the Assessment Team on declaration of assets, conflict of interest, ethical, disciplinary, criminal investigations and immunities' issues.

379. The Assessment Team refers to GRECO practice and requirements which implies that rules introduced regarding conflicts of interest and the declaration of assets and income should be accompanied by enforcement mechanisms and effective, deterrent and proportionate sanctions. Kosovo legislation does not fulfil these requirements. The lack of a specialised body (like the Anti-Corruption Agency) in charge with the control of the declarations of assets / interests is a major gap. Therefore, it is recommended **that measures be taken to ensure supervision and enforcement of the existing rules on conflicts of interest and disclosure of outside ties by members of parliament.**

Training and awareness

380. There are no training programs for the MPs, nevertheless after the inaugural session of the new mandate, the Assembly organises an Orientation Training Program for the newly elected MPs.

³¹¹ See the Judgment of the Constitutional Court in the Case Number: KO-98/11, with the Ref. No.: AGJ138/11, page 24 and 25.

2.6. Financing of political parties and election campaigns

a) Transparency of party funding – general part

General

381. The political parties in Kosovo are considered to be extremely centralised. According to Global Corruption Barometer Report 2010/11 of Transparency International, political parties in Kosovo are the institutions perceived as the most affected by corruption (4.2 out of 5.0 - knowing that the scale 5 shows extreme corruption)³¹².

Legal framework

382. In Kosovo, political parties are governed by Law on Financing of Political Entities of 2010 (hereafter "LFPE") which governs the regular finances of the political parties whereas the Law on General Elections of 2008³¹³ (hereafter "LGE") includes *inter alia* provisions on financing of electoral campaigns for the Assembly. Political parties are not mentioned in the Constitution. Law on Local Elections regulates elections for municipal assemblies and mayors of municipalities in Kosovo. There is currently under process at the Assembly a draft Law on Election of the President as part of Election Reform in Kosovo, that will cover the finances of the campaign for presidential elections and other finances related to it³¹⁴. Although the legal framework that regulated the political parties is relatively recent, its eventual improvements including the increase of transparency of political financing are to be assessed.

383. The current legal framework gives a great autonomy and power to the Central Election Commission (CEC) in drafting secondary legislation (Article 128 LGE). CEC Regulations cover different specific issues of functioning and financing of political parties and election process such as the registration and activity of political parties, the certification of political entities and their candidates, code of conduct rules during elections, campaign spending limit and financial disclosure, sanctions and fines for financing of political entities³¹⁵.

Definition of political parties

384. The LGE defines a Political Party as an organisation of individuals who voluntarily associate on the basis of common ideas, interests or views, for the purpose of obtaining influence and having their representatives elected to public office or as otherwise defined by applicable legislation. A Political Entity is defined as "a Political Party, Coalition, Citizens' Initiative or independent candidate".

Founding and registration of political parties

385. There are no explicit provisions on founding of political parties. The LGE and CEC regulations only refer to registration of political parties and certification of political entities. In Kosovo, political parties are registered in the Central Election Commission. Based on the LGE and Law on Local Elections, CEC has established the Office of Political Entities Registration and Certification ("the Office")³¹⁶. This Office operates within CEC and is responsible for registration and maintaining of the register of political parties, certification of all political entities which are included in ballots as well as the campaign spending limit and financial disclosure³¹⁷. Besides the LGE, registration and certification of political parties is regulated by CEC regulations. The application for registration of a political party is submitted to the Office in the form established by CEC rule and it requires *inter alia* the following: contact details of representatives of the party (the president, the authorised financial agent and the authorised person to communicate with the CEC on behalf of the party); contact information and address of the seat; the signed statement to respect the Code of Conduct for political parties; the party statute and programme; the party's symbols (name,

³¹² Global Corruption Barometer 2010 Report, <http://gcb.transparency.org/gcb201011/results/> accessed on August 27, 2012.

³¹³ The Regulation No. 2004/11 of UNMIK on the registration and operation of political parties in Kosovo has been the previous legal basis in this area.

³¹⁴ Legislation and Practices in the Financing of Political Parties, November 2011, CRINIS Research Project Kosovo Democratic Institute (KDI) /Transparency International Kosovo (TIK), page 9.

³¹⁵ Election Rules of CEC, <http://www.kqz-ks.org/en/election-regulations> (accessed on Aug 27, 2012).

³¹⁶ Law No. 03/L-073 on General Elections, Article 11.1.

³¹⁷ CEC Rule No. 01/2008, Section 2.1.

acronym or seal and symbol); the most recent financial statement and the most recent convention of the party; names addresses and signatures of at least 500 party members who are registered voters in Kosovo. A non-refundable application fee of 500 EUR is due for the registration of a political party³¹⁸.

386. After submission, the Office reviews applications and, within thirty days, notifies the CEC on the status of the application. If the documentation is deemed complete, the CEC announces the notice in newspapers and on its official website within seven days. Each interested person may object to an application on the grounds submitted in writing to the Office. If there are objections, they are considered and a decision is made to approve or deny the application for registration. In case of refusal, the parties are notified in writing for the reasons of denial. Within following twenty-four hours parties may appeal to the Election Complaints and Appeals Panel (ECAP) a denying decision of the CEC, and the appeal must be decided by ECAP within seventy-two hours. If there are neither objections nor grounds for refusal, the Office, within three days, recommends to the CEC to register the political party.

387. Upon registration, the political party acquires the legal personality. However, political parties, who were registered once, need to apply every year not later than 31 March in order to continue the registration³¹⁹. Failure to reregister means that the political party is removed from the register of political parties. In September 2012, there were 53 registered political parties in Kosovo (30 of them represent different minorities). The Register of Political Parties is accessible in the CEC's website.

Participation in elections

388. Kosovo has a parliamentary organisation with a multi-party system as defined by its Constitution which dates from 2008 after the declaration of independence. As indicated above, elections are regulated by two recent different laws (for general and local elections). The absence of an Electoral Code is often mentioned as an issue to be considered for a comprehensive, clear and harmonised legal framework in this area. The President is elected by a two thirds majority of the Assembly through a secret ballot for a term of five years according to Articles 86 and 87 of the Constitution. The unicameral Assembly is composed of one hundred twenty (120) members who are elected for a term of four years under proportional representation through the secret ballot on the basis of open lists³²⁰. Out of these 120 members, up until the elections of 2010, 20 seats are to be reserved for minority community parties (10 are exclusive for the Serb minority and 10 for other minorities)³²¹.

389. The seats in the Assembly are distributed amongst all electoral entities (political parties, coalitions, citizens' initiatives and independent candidates) in proportion to the number of valid votes received by them in the election to the Assembly³²². Law on General Elections defines Kosovo as a single multi-member electoral district, with proportional participation. The threshold applicable for election participation of certified political entities in elections is 5 % of total votes excluding the minority community parties. Kosovo holds general elections every 4 years, in which citizens' vote for up to 5 candidates from the list of a political entity in a single electoral district.

390. Article 44 of the Constitution provides for the freedom of association that includes the right of everyone to establish an organisation without obtaining any permission, to be or not to be a member of any organisation and to participate in the activities of an organisation. In addition to this, Article 45, Freedom of Election and Participation, states that "every citizen 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".

391. Elections are conducted by Polling Station Committees (PSC, responsible for the administration of parliamentary and local elections in the polling stations i.e. the premises designated for holding the voting) and Municipal Election Commissions (MEC, responsible for the conduct of parliamentary and local elections in the municipal territory) under the supervision of the Central Election Commission. The powers of the state oversight body, the Central Election

³¹⁸ LGE, Article 12 and CEC Rule No. 01/2008, Section 3. However the list of required documents to be submitted by the political party for the registration is different among these provisions. The CEC Rule as a sublegal act contains additional requirements which are not defined by the LGE.

³¹⁹ CEC Rule no 01/2008, Section 2.5.

³²⁰ Constitution, Articles 64 and 66.

³²¹ Constitution, Articles 64.2 and 148.

³²² Constitution, Article 64.

Commission (CEC) are defined in the Constitution and the LGE³²³. The LGE defines the Central Election Commission as an independent permanent body of experts responsible for the preparation, administration, supervision and verification of all aspects of elections and for the announcement of their results. The CEC has at its disposal a Secretariat composed of civil servants in order to carry out its tasks. The seats in the Commission are proportionally divided according to the parliamentary groups and the President appoints the chairperson from among the judges of Supreme Court and courts exercising appellate jurisdiction³²⁴. The CEC ensures preparation and conduct of elections in accordance with the principles and requirements set out by law³²⁵. There are prerequisites of professional qualification of the candidates heading the CEC.

392. A Political Entity (comprising political parties, coalitions of parties, citizens' initiative and independent candidates) that intends to contest a Kosovo Assembly Election, Municipal Election or Mayor's Elections must apply for certification with the Central Election Commission (CEC)³²⁶. As a rule, a registered Political Party has to be certified to participate in an election. Political entities should submit their application to the CEC up to 60 days before elections. The application for certification of Political Entities shall be accompanied with the Candidates' List and all relevant supporting documentation as defined by law and CEC rules³²⁷.

393. As defined by the law, the Office shall inform the CEC regarding the registration status of each applicant Political Entity prior to the conclusion of the certification procedure³²⁸. A certification fee is applied which is up to two hundred (200) Euros for each Municipal Election or two thousands (2 000) Euros for the Kosovo Assembly Elections. The deposited funds will be returned to the political entities that win one or more seats in the Assembly 30 days after CEC certifies the elections. But the funds of the political entities that have not won any seat in the Assembly will be transferred to the Kosovo Budget. The certification process may be suspended by the CEC if any fine imposed or administrative fee are not fully paid by the political entity.

394. A registered Political Party shall ensure the democratic participation of the members of the Party in the selection of the electoral candidates of the Party³²⁹. In order to participate in election, Political parties are obliged to submit the candidates' list to the CEC. The list shall comprise at least 30% of candidates from the other gender³³⁰. In each Political Entity's candidate list, at least thirty (30%) percent shall be male and at least thirty (30%) percent shall be female, with one candidate from each gender included at least once in each group of three candidates, counting from the first candidate in the list³³¹. Each political entity when applying for certification must submit also signature booklets that contain 100 signatures of support of registered voters for each municipal election but no more than 1,000 signatures when ten or more municipal elections are contested and 1,000 valid signatures if it intends to contest the Kosovo Assembly Elections. The required number of signatures is not submitted if a political entity has obtained at least one seat in the last general or local elections.

395. The election campaign starts 30 days before the election date and ends 24 hours before the election date³³². During the period between 24 hours before the opening of the polling stations until their official close, broadcasting activities and publication of any material pertaining to campaign activity are prohibited. During the period between 24 hours before the official close of the polling stations until the official closing of the polling process, broadcasting and publication of any opinion poll and survey results related to the election campaign are also prohibited³³³.

396. The use of public office, resources, or staff of any institution at a central or local level for the purpose of supporting a political entity in an election is strictly prohibited. Political entities shall not take advantage of civil servants using the post, resources, or staff to campaign during elections³³⁴. Political entities including their supporters or candidates are prohibited to conduct electoral activities (displaying or placing notices, placards and posters, names or slogans) in or on

³²³ Constitution, Article 139: Central Election Commission (CEC).

³²⁴ Constitution, Article 139.3.

³²⁵ LGE, Article 59.2.

³²⁶ CEC Rule No. 08/2009 on Certification of Political entities and their Candidates, Section 2.1.

³²⁷ *Ibid.*, Section 3; LGE, Article 15.

³²⁸ LGE, Article 17.

³²⁹ CEC Rule no 01/2008 on Registration and Operation of Political Parties, Section 14.1.

³³⁰ LGE, Article 110, paragraph 2.

³³¹ LGE, Article 27.1.

³³² LGE, Article 3 (definition of campaign period).

³³³ LGE, Article 52.

³³⁴ LGE, Article 2.

public buildings or structures, on or above public roads, on public road traffic signs, in or on premises or structures occupied or used by international organisations, or in private premises without permission³³⁵. Furthermore, the use of public offices or resources or those of enterprises owned or controlled by central or local authorities as well as the involvement of public employees by using their public positions for electoral purposes are prohibited³³⁶.

Party representation in Parliament

397. In the last parliamentary elections held on 12 December 2010, seats in the Assembly were distributed among the following political parties: Democratic Party of Kosovo (PDK - 34 seats), Democratic League of Kosovo (LDK - 27 seats), Citizen's Initiative "Vetëvendosje" movement (VV - 14 seats), Alliance for Future of Kosovo (AAK - 12 seats), New Kosovo Coalition³³⁷ (KKR - 8 seats). Smaller and minorities' parties have obtained the following seats: Independent Liberal Party (Serbian) (SLS - 8 seats), United Serbian List (JSL - 4 seats), Turkish Democratic Party of Kosovo (KDTP - 3 seats), Vakati Coalition (Bosnian) (VAKAT - 2 seats), Ashkali Party for Integration (PAI - 1 seat), New Democratic Party (Bosnian) (NDS - 1 seat), Bosniak Party of Democratic Action of Kosovo (BSDAK - 1 seat), New Democratic Initiative of Kosovo (Egyptian) (IRDK - 1 seat), Democratic Ashkali Party of Kosovo (PDAK - 1 seat), Serbian Democratic Party of Kosovo and Metohija (SDSKIM - 1 seat), Civic Initiative of Gora (GIG - 1 seat), United Roma Party of Kosovo (PREBK - 1 seat). Altogether, 29 parties or coalitions participated in these elections.

398. As a general constitution, the Assessment Team has been positively impressed by the fact that the legal framework is rather good and highly developed in Kosovo. Nevertheless, the control mechanisms, financial and staffing resources to effectively supervise the funding of political parties, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions, are not sufficient.

399. The privatisation process is also increasing the possibilities of corruption at the highest level of the State. For example, the sale of PTK (Post and Telecommunications of Kosovo), which is expected to fetch hundreds of millions of Euros, raise questions over buyers, and more specifically about foreign companies. Moreover, a previous privatisation of distribution services of KEK (Power Corporation of Kosovo) has raised different concerns regarding especially the low value of the assets contracted.

400. Kosovo's legislation on political financing is rather complete and covers a range of core issues and fulfils most of the requirements contained in Recommendation (2003)4. However, it is possible to identify three main areas in which Kosovo could improve its legislation: aspects of a formal and methodological nature (legislative technique); aspects of a material nature (choice of measures, transparency); and application of legislation (supervision, control and sanctions).

401. Even if in the GRECO experience concerning political funding field, there has been a particular focus to issues that are mainly related to the topics of transparency, control and sanctions, the Assessment Team's opinion is that some other issues ought to be mentioned in this report. They concern problems of a formal and methodological nature as well as a dispersion of regulations and problems of legislative coherence

402. The dispersion of regulations on party funding over a number of laws is particularly pronounced in Kosovo: Law on Financing of Political Entities (LFPE), Law on General Elections (LGE), Law on Local Elections and draft Law on Election of the President, Law on Kosovo Budget for public funding. This dispersion of legislation is a hindrance to a coherent concept for legislation in this field. There are therefore different legislative solutions depending on the level of elections, which is not particularly satisfactory. On a terminological level, there are also different notions referring to the same phenomenon. The absence of an electoral code is often mentioned as an issue to be considered for a comprehensive, clear and harmonised legal framework.

403. Specifically, a comparison of regulations governing elections at local and national level and for the presidency should be undertaken in order to identify the differences and examine their validity and justification. It would be worthwhile conducting a global appraisal of legislation with a view to making the legislation more coherent at a material and terminological level. Consequently, it is recommended **to harmonise the legal provisions on political entities and campaigns**

³³⁵ LGE, Article 33, b.

³³⁶ LGE, Article 35.

³³⁷ Consisting of New Kosovo Alliance (AKR), Justice Party (PD), Social Democratic Party (PSD), Retired and Disabled Party (PPI), Retired Party of Kosovo (PPK), Albanian National Democratic Party (PNDSH), Green Party of Kosovo (PGJK).

financing in line with the legislation applicable to other candidates for election (local and national level, presidential election).

404. On the other hand, the Assessment Team notes with regard to accessibility of regulations that it is difficult to assess the extent to which this legislation is readily accessible, and above all to what extent the people most concerned (candidates, political parties, NGOs active in the field, etc.) are able to have easy access (via internet) to these regulations, and to commentaries or guides to their application. It would doubtless be desirable if there were a unique website setting out all the regulations in a clear and concise manner. The website of the UK's Electoral Commission which provides access to regulations by type of user (candidate, party, voter; see homepage) could serve as a model. It is essential that the persons concerned are familiar with the regulations. It is therefore recommended **to develop a comprehensive and unique website setting out the legal and regulatory framework, and providing relevant information on political entities periodical reports and other relevant information.**

Overview of the political funding system

Sources of funding

405. The funding of political parties in Kosovo is regulated by the Law on Financing the Political Parties of 2010 (LFPE) which regulates the conditions for the financing, administration, oversight, transparency and reporting of the expenditures of the assets and income of political parties in Kosovo³³⁸. The law defines the financial and material sources of political parties³³⁹, such as: membership fees, contributions (donations), financing from the Budget of Kosovo, incomings from the activities³⁴⁰ of the Political Parties.

406. The current Law on Financing of Political Entities defines allocation of public funding to the political parties: The public financing of political parties is provided through the Fund for support to political subjects within the Budget of Kosovo. Political subjects include political parties, coalition of parties, citizens' initiatives and independent candidates. Nevertheless, until the new law entered into force in late 2010, funding to support political parties was managed by the Secretariat of the Assembly³⁴¹. The public financial support is used for financing regular activities of political parties, branches and respective units of political subjects, their pre-election and election activities and activities of parliamentary groups and it cannot exceed 0.34% of the Budget of Kosovo³⁴². The budget is allocated proportionally among the political subjects represented in the Assembly according to the number of seats. If one MP decides to leave the political subject, where he/she won the mandate, he/she shall not receive the financial support allocated from the fund for the rest of the mandate in the new political subject.

407. Upon the proposal of the Government, the Assembly allocates funds, but not exceeding 0.05% of Kosovo Budget, to finance the local and central elections' campaigns related to regular or extraordinary elections³⁴³. 90% of funds are given to political subjects based on the number of seats obtained in the Assembly and in municipal assemblies during the last elections (local or central elections), and 10% of funds are allocated proportionally for other political subjects which are registered and certified by the Central Election Commission, for respective elections. However, political subjects that benefit from public funds but do not participate in respective elections are obliged to return back the obtained public funds³⁴⁴. By contrast, electoral subjects may obtain funds for their electoral campaign from private domestic – physical or legal – persons. Independent certified candidates for election, certified citizen's initiatives and members of Parliament under their respective party/coalition or parliamentary group are also eligible to receive public support through the fund for the support of political subjects.

³³⁸ Assessment of Institutional Integrity, Kosovo 2011, Kosovo Democratic Institute (KDI) /Transparency International Kosovo (TIK), page 187.

³³⁹ Law No. 03/L-174 on Financing of Political Entities, Article 4.

³⁴⁰ *Ibid*, Article 6.

³⁴¹ Legislation and Practices in the Financing of Political Parties, November 2011, CRINIS Research Project Kosovo Democratic Institute (KDI) /Transparency International Kosovo (TIK), page 12.

³⁴² Law No. 04/L-058 on Amending the Law on Financing of Political Entities, Article 2. In the original Law, this rate has been defined at 0.17% of the budget (1,9 million EUR for 2010). For 2012, the support is 4,2 million EUR.

³⁴³ LFPE, Article 10.

³⁴⁴ LFPE, Article 10 (as amended by Law No. 04/L-058).

408. The financing of entities related, directly or indirectly, to political parties or otherwise under their control and of organisations affiliated with political parties is not clearly regulated. The public financial support may be used to finance respective youth and women units of political parties.

Direct public funding

409. At the time of their creation, political parties do not benefit any financial or material assistance from Kosovo budget. The political parties receive public funds defined by the Law on Kosovo Budget. The fund for the support of political subjects operates under the decision of the Central Election Commission which is responsible for the distribution and management of such fund in application of the LFPE³⁴⁵. However, government and non-government foreign institutions and foreign natural and legal persons are banned from financial and material assistance to political parties³⁴⁶.

410. Public institutions authorities or with participation of state capital as well as institutions that gain capital from gambling and other betting activities cannot provide financial or material assistance to political parties. Public enterprises are also banned but only to support financially political subjects. A Political Party that fails to elect its President and highest executive body and does not inform the Office within five days thereafter, becomes ineligible for any public funding of any kind until it comes into compliance with the rules³⁴⁷. Also, the political parties should attach to the request a financial declaration for the previous year in order to benefit from this fund³⁴⁸. In case when a political subject does not pay its obligations such as fines, judicial sentences, bills etc., then the respective amounts are retained and deducted from the budget.

Indirect public funding

411. Political subjects have the right to use free of charge mass media in the event of electoral campaigns under certain conditions. The LGE contains detailed provisions on the use of the media during the electoral campaign by the certified political subjects. Broadcasters which choose to air paid political advertising are required to offer a minimum number of minutes of free airtime to each certified political entity during the campaign period as specified by Article 49 of the LGE (it varies from 10 minutes for radio stations to 20 minutes for private television broadcasters and 40 minutes for the public service television broadcaster).

412. All media is bound to ensure a fair and equitable access and coverage to all certified political entities. The implementation of these provisions is controlled by the Independent Media Commission which is an independent institution.

Private funding

413. Political parties may receive membership fees³⁴⁹. The fees are not subject to taxes. The annual amount of the membership fee cannot exceed 12 EUR per year.

414. Contributions to political subjects are limited up to 2,000 Euros per a calendar year for natural persons and up to 10,000 Euros for legal entities³⁵⁰. All contributions need to have proven the origin of funds. The receiving political subjects are obliged to report the dubious donation to the authorities for further verification of the origin and if this cannot be proved therefore the funds are to be given to the Kosovo budget³⁵¹.

415. There is a prohibition in granting donations from which the donor may clearly benefit any economic advantage. Donations of natural and legal persons to political entities should be done in a transparent manner in bank account and should be included in financial reports of beneficiary

³⁴⁵ LFPE, Articles 4, paragraph 1.3, 7.

³⁴⁶ LFPE, Article 11.

³⁴⁷ CEC Rule 01/2008, Section 18.3.

³⁴⁸ LFPE, Article 9, paragraph 3.

³⁴⁹ LFPE, Article 4. However, in some cases, representatives of political parties or movements holding official positions commit to transfer a part of their benefits to the party. For instance, MPs of Vetëvendosje movement hold 500 EUR from their salary in the Assembly and contribute the rest to their political movement.

³⁵⁰ LFPE, Article 5. The threshold for individual donations has been previously defined up to 20,000 EUR by the CEC Rule No.1/2008.

³⁵¹ Assessment of Institutional Integrity, Kosovo 2011, Kosovo Democratic Institute (KDI) /Transparency International Kosovo (TIK), page 254.

political entities. The financial report of political entities should contain the name and registration number of legal persons or name, surname and address of natural persons³⁵².

416. A political party is not allowed to accept a contribution from an individual who does not disclose his or her full name, address and personal number or is unknown (anonymous donors). The political party cannot either accept an indirect contribution made through an individual from the money, property or services of a third party³⁵³. Prohibited contributions have to be returned to the contributor within 14 days, otherwise, they should be remitted to the Kosovo Consolidated Budget. The Exercise of political pressure on natural or legal persons as well as promising of privileges or undue benefits in exchange of contributions is prohibited.

417. Political subjects cannot engage in any commercial or profitable activity, except the sale of goods like: publications, editions, advertisings, posters with party emblem or acronym of political subject and other allowed legal sources. The total income of such activities cannot exceed 2,000 EUR per year. Such income is exempted from taxes, however any other income of political subject is subject to applicable taxes. Political subjects may also collect funds intended to be used in upcoming election campaigns during a period for no more than 6 months before the start of the election campaign. Such funds have to be received in a bank account that the political subject must have or open in any registered commercial bank in Kosovo³⁵⁴.

418. Private funding to political entities during electoral campaigns is regulated by similar rules.

419. In many former communist countries, the most important resource for political parties is state (or public) funding. In Poland, for example, about 80% to 90% of the budget of the main political parties comes from public funding. In Kosovo, it is not clear for the Assessment Team if this proportion is comparable. Anyway, because of the economic situation of Kosovo, state funding is an important issue to allow the development of a democratic debate.

420. Article 2 of Recommendation (2003)4 defines a donation to a political party as "any deliberate act to bestow advantage, economic or otherwise, on a political party". This definition is not present in the listing of Article 2 LFPE. In Kosovo, "donation to a political party" seems to include only the contributions that are directly received by the party in form of property (assets) or financial resources; and does not include the donations in form of service, as well as to donations in form of property or financial resources that are not directly received by political parties. LFPE ought to be completed. Therefore, it is recommended **to ensure that the definition of a 'contribution' to a political party as foreseen in Rule 01/2008 on Registration and Operation of Political Parties is consistently used in the legislative and regulatory framework concerning funding of political entities and electoral campaigns in order to include indirect resources (such as services or in-kind donations).**

421. With regard to rules limiting the value of donations, in the view of the Assessment Team, Kosovo legislation seems to be quite accurate and no further remarks are considered necessary.

422. Organisations affiliated to political parties, such as research institutes or political party foundations, are usually, at least formally, autonomous institutions and are in principle independent of the political party. In practice, however, it can safely be assumed that financial transactions between political parties and their affiliated organisations occur frequently. Entities connected with political parties should be required to keep proper accounts in order to facilitate public monitoring of their financial activities (Article 6 Rec(2003)4). Kosovo legislation does not mention these entities. It seems that this phenomenon is not widespread in Kosovo. Nevertheless, the complete lack of rules on the subject is a shortcoming that could be rectified in the future. Consequently, it is recommended **to introduce a definition and regulation of the entities related to a political party** (possibly).

Expenditure

423. Despite other sources for funding the election campaign, Political Parties has the right to collect election expenses, no more than six (6) months, before the election campaign starts. The money should be transferred to the bank account of the Entity. The Political Parties are obliged to keep records for the origin of the collected funds.

³⁵² LFPE, Article 11 (as amended by Law No. 04/L-058 on Amending the Law on Financing the Political Parties).

³⁵³ CEC Rule 1/2008, 17.2 & 17.3; LFPE, Article 11.1 (12 § 1.3).

³⁵⁴ LFPE, Article 13.

424. On the other side, the CEC, through the Electoral Rule no 12/2009 (Section 2) on Campaign Spending Limit and Financial Disclosures, has limited spending during election campaigns in Kosovo to "500 Euro per 1,000 registered voters", or 0.50 Euro per each registered voter. The total amount is calculated on the basis of the last voters' list reviewed by the CEC. The threshold is applicable for both election campaigns (Kosovo Assembly and municipal assembly or mayors' elections). These campaign spending limits are cumulative for all elections contested by a political entity. The Rule clearly defines that a product or service is seen as bought for electoral purposes, if intended for this purpose, not taking into account the time it was bought. However, there is no ban on expenditure for regular annual activities of the parties.

Statistics

425. The authorities indicated that in 2012, public funds paid from the Kosovo consolidated budget for the performance of the annual activity of political parties, based on the provisions of the Law on Financing of Political Entities amounted to altogether 4,200,000.00 EUR³⁵⁵. 1,190,000.00 EUR were allotted to the PDK; 945,000.00 EUR to the LDK, 490,000.00 EUR to the Vetëvendosja Movement and 420,000.00 EUR to the AKK. In 2011, the total amount of public funds was 2,437,800.00 EUR: 690,710.00 EUR were allotted to the PDK; 548,505.00 EUR to the LDK, 284,410.00 EUR to the Vetëvendosja Movement and 243,780.00 EUR to the AKK.

426. Concerning parliamentary election year 2010, the Assessment Team did not get figures on public funds distributed to political parties. As for income from private sources, the PDK reported 408,534 EUR (101,306 EUR of which deriving from membership fees), the LDK reported 296,751 EUR (no membership fees were reported), the AAK reported 190,000 EUR (no membership fees were reported) and the Vetëvendosje Movement 113,832 EUR (10,215 EUR of which deriving from membership fees). According to the table submitted to the Assessment Team, expenditure of the principal parties amounted as following: the PDK reportedly spent 396,367 EUR, the LDK 296,751 EUR, the AAK 154,874 EUR and the Vetëvendosje Movement 85,670 EUR.

427. Regarding local election year 2009, the Assessment Team could not get figures on public funds distributed to political parties. As for income from private sources, the PDK reportedly received 401,188 EUR (no membership fees indicated), the LDK 6,774 EUR (no membership fees indicated) and the AAK 15,000 EUR (no membership fees indicated). According to the table of the Central Electoral Commission, expenditure of the main parties amounted as following: the PDK reportedly spent 422,144 EUR, the LDK 31,011 EUR and the AAK 15,000 EUR.

b) Transparency of party funding – specific part

Transparency

Books and accounts

428. As a rule, all incoming and outgoing payment from financial activities of political entities has to be registered in financial registers. Political entities are bound to keep accurate records for the origin, structure and flow of collected funds. The LFPE defines the financial responsibilities of political entities. The political entities must appoint a representative who holds financial responsibility for: incoming registration; expenses of funds; submitting the final report of assets expenses; submitting financial statements report of campaign; and other liabilities related with incomes, expenses, presentation of the aim and sharing amounts of subject's fund³⁵⁶. The parties accounting shall be signed by their financial officer, who is responsible for the accuracy of all information submitted to the Office of political subjects' registration and certification within the CEC (the Office). The attendance of financial officers for the training session in accounting and auditing arranged by the Office is regulated by the Law on General Elections.

429. The reports on income shall include the following details for each donation exceeding the amount from one hundred (100) Euros during the period included in the report³⁵⁷: the date of each donation, the amount of each donation, the name of each donor and an official registration of each donor. Nevertheless, the threshold of 100 Euro above which private donations are identified in the parties' regular financial accounts could be taken away as it can potentially reduce the level of

³⁵⁵ There is an increase of up to 72% in the total allocated amount of public funds for 2012 compared to the previous year.

³⁵⁶ LFPE, Article 14.

³⁵⁷ *Ibid*, Article 15.3.4.

transparency of the donations³⁵⁸. Financial statements of a registered Political Party shall be audited annually³⁵⁹.

Reporting obligations

430. Legal provisions on reporting expenditure are strong. When it comes to the details of the reports on expenses, they shall include the date of each expense, the amount of each expense, the name of each vendor, and an official registration number of each vendor³⁶⁰. Currently with the regulation in force No. 01/2008, the parties are obliged to submit Annual Financial Report (AFR) until March 1st of the upcoming year. According to CEC Rule No. 16/2011, a Final Report has to be submitted by political subjects for a three-month period in relation to the use of funds received from the Fund for support of political subjects. Civic initiatives do not undergo similar reporting rules as political parties. It has been reported as well as confirmed by auditing reports that several political parties do not fully comply with their reporting obligations to the office for political party registration.

Tax declarations

431. Every expense is exposed to the taxes. Incomes from the membership fees and the incomes from sale of goods, such as: publications, editions, advertisings, posters with party emblem or acronym of political subject, are not subject to taxes³⁶¹. Political Parties are obliged to register all incoming and outgoing payment from financial activities of political subjects.

432. All funds collected for financing the election campaign should be reported in a Campaign Financial Disclosure Report (CFDR) which should be submitted no later than 45 days after the day of the election³⁶². Each CFDR of every political entity, including their branches and constituent parts should include disclosure of: the income, including the source and date of all cash contributions; all expenditures including campaign expenditures; a balance sheet showing the assets, liabilities and equity. The Office of Political Parties Registration and Certification in CEC shall audit all Campaign Financial Disclosure Report and Candidate Financial Disclosure Form. The use of an external auditor as a campaign auditor is subject to decision of the CEC³⁶³.

433. As regards the preservation of records, the legislation requires that each registered political party, shall keep and maintain accurate and detailed financial records for a period of seven (7) years³⁶⁴. They include inter alia accounting books; all income by source, amount, payment mode; all payments made; receipts for all expenditures exceeding 100 EUR; bank records for all accounts; contracts; all contributions (value, date, contacts details of the donor and the recipient). The implementation of this requirement is confirmed by the parties' accountants.

Publication requirements

434. The disclosure of the annual financial reports is directly regulated by legal provisions. The CEC shall publish all annual financial reports together with auditing declarations of political parties on its official website³⁶⁵. There is also the Law on Access to Public Documents which applies to this information. Nevertheless, there are no provisions that regulate disclosure of financial reports by the parties themselves, as well as the period of time when these reports shall be published / disclosed: whether they shall be disclosed immediately once submitted to CEC, or after the entire process is finished, namely after the auditing process is undertaken. Hence, the violation of the abovementioned provisions cannot be sanctioned, as they are not clearly written out. Another obstacle to transparency in political funding in Kosovo is the threshold amount set by the laws in place that require the disclosure of annual private donations to parties. The threshold amount includes the overall value of contributions from the source that has exceeded the amount of one hundred (100) Euros during the period included in the report. In accordance with international best practices, Kosovo laws require the information to be disclosed in detail, which includes one-by-one identification of each private donor, private income, the amount of each donation public funding

³⁵⁸ Legislation and Practices in Financing of Political Parties, November 2011, CRINIS Research Project Kosovo Democratic Institute (KDI) /Transparency International Kosovo (TIK), page 23.

³⁵⁹ LGE Article 13.

³⁶⁰ LFPE, Article 15.3.

³⁶¹ *Ibid.*, Article 16.

³⁶² LGE, Article 40.

³⁶³ CEC Rule No. 12/2009 on Campaign Spending Limit and Financial Disclosure, Section 4.

³⁶⁴ CEC Rule No. 01/2008 on Registration and the Activities of the Political Parties, Section 21.

³⁶⁵ LFPE, Article 15.3.

income, expenditure from private and public funding and each expense including the identification of the supplier³⁶⁶.

Access to accounting records and tax declarations

435. The Assessment Team could not get relevant information on the right to access political parties tax declarations; access to financial information of political parties by tax authorities and prosecution services.

436. The Assessment Team observes that the publication of accounts is a key element in the process of overseeing party funding and electoral campaigns. States should require political parties to make their full accounts publicly available at regular intervals, at least annually. At the very least, parties should present a summary of their accounts including records of donations and expenditures. Kosovo legislation fulfils the minimum standards in this regard. But the implementation of the legislation is quite insufficient in Kosovo. The requirement to identify the donor is not fulfilled. And the violation of the provisions in this matter is not sanctioned. In the view of the foregoing, it is recommended **to set more precise conditions for requirements of the financial reports and the deadline(s) of their publication.**

Supervision

Auditing

437. Financial statements of a registered Political Party are audited annually³⁶⁷.

Electoral campaign financing Auditing reports

438. Audit of annual financial disclosure reports that are made by political entities is performed on the basis of the Law No. 03/L-173 on General Elections and Law No. 03/L-072 on Local Elections, Law No. 03/L-174 on Financing Political Parties, Law No. 03/L-048 on Public Financial Management and Accountability, Law on Prevention of Money Laundering and Financing of Terrorism, the CEC Rule No. 01/2008 on Registration and Operation of Political Parties and Electoral Rule No. 14/2009 on Sanctions and Fines. The use of an external auditor as a campaign auditor is subject to decision of the CEC³⁶⁸. The external auditor is selected through an open procedure in accordance with the legislation on public procurement. Besides other general and special conditions, auditors or companies who participate as candidates for the audit of annual financial disclosure reports that are submitted by political entities should have a valid license to perform auditing services in accordance to international auditing standards and present at least 3 references for services of similar nature. The auditor informs all political entities about the adopted methodology prior to the audit. The verification of submitted information and data is carried out by the auditor through the obligation to refer to official information of public or private institutions that include inter alia tax administration, cadastral offices, registers of legal persons and vehicles, NGOs or local and international organisations in Kosovo, financial institutions and media. All communication of the auditor is flowed through the Office of Political Entities Registration and Certification.

Monitoring

Central Election Commission

439. As already mentioned above (paragraph 385), an Office for Political Party Registration and Certification (the Office) operates under the CEC³⁶⁹. The Office is responsible for registration and maintaining the registry of political parties, certification of all political entities to be included on a ballot, and the campaign spending limit and financial disclosure. The Office is headed by an Executive Director who reports directly to the CEC Secretariat. The task of the Office is to monitor the functioning of the parties inside, by observing and reporting on developments at all levels in the party. This means the monitoring of election and reporting and even sanctioning of the parties if they do not adhere to regulation and their statute.

³⁶⁶ Legislation and Practices in the Financing of Political Parties, November 2011, CRINIS Research Project Kosovo Democratic Institute (KDI) /Transparency International Kosovo (TIK), page 25.

³⁶⁷ LGE, Article 3.

³⁶⁸ CEC Rule No. 12/2009 on Campaign Spending Limit and Financial Disclosure, Section 4.

³⁶⁹ In accordance with the Law on General Elections (Articles 12.3, 64.2 (a) and (b)) and the Law on Local Elections (Articles 13 and 20).

440. CEC shall prepare an annual report for the Assembly for the distribution and expenditure of funds from the Fund, by no later than 30 June of the following year³⁷⁰.

441. The Assessment Team notes that in Kosovo, several authorities oversee the activities of political parties: the Central Election Commission (CEC); the Office of Political Party Registration and Certification (established by the CEC) and the Kosovo Tax Administration (as concerns the observation of the requirements established by the tax legislation). For obvious reasons, the Kosovo Tax Administration cannot be considered as "independent" as required by the Recommendation (2003)⁴.

442. An independent control authority has a key function in the implementation of the legislation. It must have sufficient resources and adequate means of inquiry. The CEC should have the necessary staff. The staff of the Central Electoral Commission seems to be insufficient; the staff of the Office of Political Party Registration and Certification is quite insufficient: only three persons are working there, and the salary of the members of the Office are rather bad in comparison with other comparable positions. Lack of capacities of the Office to perform its work creates space for non-compliance and violations of legislation and regulations, which directly affects dynamics of processes regarding political parties. In order to accomplish its duties, the Office needs a much larger number of professional staff than it has now, better treatment, further support and appropriate conditions to operate effectively, objectively and react to undue influence and pressures. Therefore, it is recommended **to give to the Central Electoral Commission/the Office or the Anti-corruption Agency the mandate and the appropriate authority as well as the financial resources and specialised staff to effectively and proactively supervise the funding of political parties and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions.**

443. The role of the CEC should not only be one of supervision, but the CEC ought to serve as a kind of centre of expertise to provide information to citizens, political parties, the media and NGOs, particularly in the very complex and specialised field of party funding. Consequently, it is recommended **(i) to unify parties' reporting forms, in particular regarding content, periodicity of their submission and publication; and (ii) to determine the procedure for monitoring of established standards.**

444. Auditing is "outsourced" to expert auditors. The supervision and control of the auditors and the specific competences of the auditors in the field of party funding are not assured. The control of the auditors is too formal. A specialisation would be necessary. An effort could also be made at the level of the prosecuting authorities to raise awareness of legislation on political parties and their obligations to report (any breaches) through in-service training programmes. The provisions of the legislation on political parties should be strengthened to include the duties of the auditors and the CEC and in relation to civil and criminal offences. The independence of the expert auditors does not seem to be a problem. It is therefore recommended **to establish clear rules ensuring the specialisation, independence and know-how/expertise of auditors called upon to audit the accounts of political parties and candidates.**

Sanctions

Electoral Code Administrative sanctions

445. The LFPE (Article 18, overdue obligations) defines that in case when a political party does not pay its obligations such as fines, judicial sentences, bills, etc. then the respective amount will be deducted from the budget, that it is distributed to support the political parties. This provision of the law has been implemented for the first time in July 2011, after media and civil society demands to the CEC.

446. Legally, parties are sanctioned through suspension of direct public subsidies for non-compliance with rules of accounting. A political subject, that does not submit the annual financial report to the CEC within the period of time defined by this law, shall lose the right to receive benefits from the fund for the coming year³⁷¹. Furthermore, overdue obligations: if a political subject does not pay its obligations such as fines, judicial sentence, bills, etc., then the respective amount will be deducted from the budget, that it is distributed to support the political subject³⁷².

³⁷⁰ Law No. 04/L-058 on amending the Law on Financing of Political Entities, Article 6.5.

³⁷¹ LFPE, Article 21.2.

³⁷² *Ibid.* Article 18.

447. In case of non-compliance with legal obligations for reporting, CEC on the recommendation of the Office fines the political parties for late submission of required documentation and categorises them based on criterion of representation and time. The lowest foreseen fine is 200 Euros for irregular entries in the accounting book, while the highest is 2,000 Euro for concealment or falsification of the amount that is between 3/4 to 4/4 of the respective category. Fines collected are deposited in the state budget³⁷³.

448. The Law no 03/L-174 on Financing of Political Entities has been amended by the end of 2011. The penal provisions have been amended in order to minimise the uncomplimentary of the rules. According to Article 7 of the amending law, a political party shall be fined from five thousand (5 000) Euro up to fifty thousand (50 000) Euro, while the candidate for Mayor, candidate for MP, municipal advisor and independent candidate shall be fined from one thousand (1 000) Euro up to five thousand (5 000) Euro for violating the provisions of this Law if: (i) they receive financial funds in contradiction with provisions of this Law and other applicable legislation; (ii) they maintain records in its files in contradiction with provisions of this Law and other applicable legislation; (iii) they do not comply with provisions of this Law and other applicable legislation related to general and local elections³⁷⁴.

449. Regarding the submitting of the financial reports, financial representatives of the Political parties are fined from one thousand (1 000) Euro up to five thousand (5,000) Euro, while the Political Party lose the right to receive benefits from the public fund in the coming year. All revenues received by these fines are deposited to the State Budget.

450. There are no specific criminal sanctions for infringements of political financing regulations. The law states that the authorised financial officer of the party and the president of the party shall be legally responsible for the accuracy of all information submitted to the CEC Office as required by this law³⁷⁵. Entities including civil society, can initiate criminal sanctioning procedures in cases of non-compliance with the accounting rules. Furthermore, besides CEC, in case of non-compliance with the accounting rules, Elections Complaints and Appeals Panel (ECAP) can impose sanctions to political parties³⁷⁶.

451. Criminal Code is the essential criminal law that has paid special attention to criminal offences against voting rights, including election or bribery fraud cases through its Chapter VIII (Articles 2010 to 220 CC). These Articles provide for criminal actions against anyone who in any way violates the right to be candidate, threatens a candidate, prevents voters from exercising their right to vote, violates the right decision of voters, commits abuse of official duty during elections, gives or receives a bribe in relation to voting, abuses the right to vote, obstructs the voting process, violates confidentiality in voting, falsifies voting results and destroys voting documents. The penalties provided in these provisions, involve fines, conditional sentences and up to five (5) years effective imprisonment. Based on the crimes related to elections committed so far in Kosovo, it seems that these provisions are sufficient to prosecute these criminal actions³⁷⁷.

Immunities and time limits

452. Candidates for Parliament do not enjoy immunity. For further information concerning immunities, see section 3.4 of this report. The general statute of limitation applies to criminal offences committed in relation to Chapter XVIII of the Criminal Code (criminal offences against voting rights). All criminal offences in this chapter are punished by a maximum of 5 year, so limitations of 3 or 5 years are applicable depending of the type of the offence (e.g. 3 years for the abuse of official duty during elections or bribery in relation to voting; 3 or 5 years for falsification of voting results depending on the status of the perpetrator).

Statistics

453. The Assessment Team did not receive information and data related to violations and enforced sanctions.

³⁷³ CEC regulation No.14/2009 on sanctions and fines, Article 3.

³⁷⁴ Law No. 04/L-058 on amending and supplementing the Law No. 03/L-174, Article 7.

³⁷⁵ LGE, Article 14.2.

³⁷⁶ LGE, Article 46.

³⁷⁷ KLI report, Criminal Code, Chapter XVI: Criminal Offences against Liberties and Rights of Persons, the Assembly of Kosovo, April 2003.

454. The Assessment Team firmly shares the view that Kosovo should deal with the question of the adequacy and proportionality of the sanctions for violations of the provisions of Article 21 of the Law on Financing of Political Entities. The amounts of the fines in Article 11 of the Rule No 16/2011 on funding of political subjects are not dissuasive enough, and not proportionate to the gravity of the offences. That is why it is recommended **to introduce more dissuasive, effective and proportionate sanctions in respect of violations of political financing rules, and to provide the Central Electoral Commission with the necessary powers to investigate such cases and to apply the appropriate sanctions.**

455. The Assessment Team observes that the level of enforcement of the legislation may be a problem, and not only in terms of the legislation itself. It seems that the nature of the control of the CEC is very formal: it consists of a mere check on whether the report is complete and submitted on time. It is recommended **to provide the Office with appropriate authority to carry out, as needed, a material verification (in addition to the existing formal review) of the information provided by election candidates and other political entities.**

456. Effective enforcement of the legislation requires a more material analysis. In the course of its work, the CEC and other bodies come across prima facie evidence of breaches of regulations. The CEC should be under a statutory duty to investigate breaches which seem to be systemic or serious. The CEC ought to be in a position to mount effective investigations; but that in itself is not enough. The CEC must obtain the organisational capacity to discharge this responsibility. The CEC must develop the core expertise needed to launch and run investigations, to determine whether breaches have been committed and to learn lessons for the future. At the very least it should have access to trained investigators and specialised lawyers. For example, if companies were mostly to make donations to political parties in-kind, for example by employing people who then go to work for the party, or by directly paying the party's bills, it would not necessarily come to light in an audit (and certainly not in a review of the financial report of a political party). Moreover, specific training of the various entities involved in investigations (prosecution authorities) should be organised. It is therefore recommended **to introduce compulsory periodic publication of political parties' reports on a public website.**

2.7. Public Procurement

General overview of the public procurement system

457. Public procurement is perceived to be one of the most corrupted sectors in the public service. Efficiency and transparency in public procurement continue to be special challenges of public institutions. All domestic and international reports, Auditor's General reports, civil society and media reports have noticed and demonstrated continuous breaches of bidding procedures³⁷⁸. This sector is subject of even more concerns given the fact that considerable public funds (approximately 14% of GDP) are dedicated to be spent through the application of the public procurement framework. Thus, during 2010 602.5 million € or 53.34% of the Kosovo Consolidated Budget have been foreseen to be spent through the public procurement system in Kosovo (without including expenditures of public enterprises). A total of 12 130 contracts were signed in 2011, representing approximately EUR 552 million (without including EUR 236 million that were allocated for the construction of the Morinë-Merdarë Highway).

458. The Public Procurement Law (PPL) has been frequently amended during last years in Kosovo. The public procurement sector was regulated by an UNMIK Regulation of 2003 which was replaced by the Law of 2007 that in turn was replaced by the Law of 2010. The public procurement system has been argued to be a mixture of various legal models. The amendments made therein intended the harmonisation with European standards and EU directives. Adopted in August 2011³⁷⁹, the current Law addresses most of the deficiencies of the previous legislation and significantly increases the compatibility with EU standards. Secondary legislation of public procurement has been finalised and respective responsibilities of central responsible institutions have been adjusted and clarified. Notwithstanding the frequent amendments made to the legislation, however, in many evidences and reports of different institutions there are still observations about the unsatisfactory implementation of PPL.

Transparency requirements

459. As it results from the PPL purpose (Article 1), ensuring transparent and fair use of public funds and establishing conditions and criteria, procedures, rights and obligations to be observed and respected constitute some of its main objectives. Transparency is among fundamental principles of the PPL together with equality of treatment, non-discrimination, competition among economic operators and some other economic considerations.

460. Article 10 PPL provides for the promotion of transparency in all procurement processes, including inter alia: the maintenance of comprehensive records for each designed or conducted procurement activity (including, at a minimum, all relevant documents administered for a procurement activity, all documents related to an award, and a copy of the public contract and all related documents); providing upon request prompt and reasonable access to the records described above in a routine, uneventful, and non-obstructive manner; providing upon request a copy of any accessed material. A contracting authority is required to provide access to and copies of any procurement activity records, including confidential business information to a review expert, the other PP authorities, a review panel, a court upon their request or order.

461. The Public Procurement Regulatory Commission (PPRC) should electronically publish the present Law and the public procurement rules on its website. In every case when PP competent authorities plan to issue any secondary implementing legislation, they are obligated to make their draft available to the public and interested parties, for a period of no less than 15 days for comments. Some transparency improvements brought by the recent PPL concern, *inter alia*, regulation of "the Publication of Notices" by requiring from every contracting authority to send all announcements, including the preliminary announcement, the contract announcement, the announcement on granting a contract and the announcement on cancellation, to PPRC for publication on its web-site. Also, with the old Law, the access in documentation by the Economic Operators was possible only 10 days after the publication of announcement on granting a contract, while complaints could not be submitted later than 8 days after publishing the announcement on granting a contract. Thus, the deadline on submitting the complaints ended before they could have access in the documentation. With the new Law, the access is ensured immediately after publication of the announcement for granting a contract.

³⁷⁸ Corruption in procurement procedures was the central theme of the third meeting of the Anti-Corruption Council held on 24 May 2012 that is chaired by the President of Kosovo.

³⁷⁹ Law No. 04/L-042 of 31/08/2011 on Public Procurement. The other recent Law No. 04/L-045 of 21 October 2011 on Public Private Partnership (PPP) regulates concessions.

462. Access to information. Every notice shall be drawn up in accordance with the applicable standard form adopted by the PPRC³⁸⁰ and all those forms can be downloaded on PPRC web-site. Moreover, Article 11 relating to Confidential Business Information, provides that: "Without prejudice to its obligations to provide access to interested parties and members of the public to procurement activity records, a contracting authority shall respect and safeguard items classified as confidential business information".

463. Public procurement sector is largely perceived and considered by different stakeholders as a very challenging sector exposed to corruption and other related abuses³⁸¹. Some interlocutors meet by the Assessment Team advanced some structural problems of the economy and the still general underdeveloped situation of foreign investments and private market and initiatives that makes the Government in general the unique big stakeholder and client of the local market. Public spending has still a big impact on the development of the domestic economy and procurements are consequently of key importance. In addition to that, within a widespread corruption context, the public procurement sector is a high risk area due to a set of favouring factors such as the important public funds that are allocated and spent each year in PP, the fact that many officials and politicians have business connections, many contractors are affiliated to political parties, several economic operators ensure their main existence in works and services with public authorities, frequent changes of PPL that happened over the last years thus making the implementation difficult and leaving opportunities for corruption.

464. There is a perception that large amounts of public funds are handled by actors with low levels of competence in a non-transparent environment which lacks proper institutional oversight. The number of persons who are responsible for spending budgetary resources is around 300 managers. The new PPL has addressed the issue of signatures of administrative and political representatives on high-value contracts. Contracting authorities are now entirely responsible for tendering procedures that they conduct. Monitoring, including on contract management, is increasing. The only function of the CPA is currently central purchasing, as it is no longer responsible for providing *ex ante* approval of tender procedures in specific cases. Some progress has been noticed during 2011, especially with regard to the more frequent use of framework contracts by contracting authorities, the use of open procedure in 82,80% of the total value of contracts, the decrease of negotiated procedure without prior publication of a notice as well as the reduction of cancellation of contract notices.

465. Although there are defined applicable criteria and procedures in the PPL and relevant regulations, many risks, identified shortcomings and irregularities are noted in the main phases of the PP chain. First, at the pre-selection phase, often designed tender dossiers are incompatible with legal and regulatory requirements; criteria established are not measurable or technical specifications are not clearly set out thus favouring certain specific economic operators; determination of selection criteria are questionable. Furthermore, at the selection and contract awarding phase, there are cases of continuation of selection procedures despite the insufficient number of candidates as prescribed by legal requirements; interferences and unusual favouritism to award the contract to favoured economic operators (being ineligible); awarded contracts under conflict of interest situations (relatives who are owners of economic operators, representatives of economic operators being one of public officials of the contracting authority); lack of contract's signing with the winner, etc. Finally, at the implementation and supervision phase, insufficient implementation of works or services (non-delivery/poor quality of outcome), insufficient monitoring of contract implementation, payment made before receiving goods or services, lack of penalties when implementation deadlines are exceeded are some of common identified shortcomings.

466. Moreover, in a more general perspective, challenges in PP system lie also *inter alia* on: influence and pressures made to procurement officials during conduct of procurement activities, especially on the occasion of the contract's award; improper implementation of PP legislation and regulations; quite frequent replacement of procurement officials in contracting authorities; small number of licensed procurement officials in comparison to the budget allocated and spent for procurement; lack of electronic infrastructure in PP procedures; insufficient training of procurement officials. In its reports, the Auditor General has expressed concerns on the excessive level of wining

³⁸⁰ *Ibid* Article 43.

³⁸¹ According to a recent local survey, among 26 different public services, public procurement and tenders record the most negative perception (-32%). See Kosovo Mosaic 2012, UNDP, December 2012, p.3

http://www.kosovo.undp.org/repository/docs/Kosovo_Mosaic_2012_Eng_735317.pdf

Also, it is reported and argued from some local surveys that in several cases economic operators that benefit public contracts through different irregularities are usually contributors and donors for the financing of political parties and electoral campaigns.

contracts after their implementation, higher prices paid for supplies compared to the market, insufficiency of needs assessment and the seldom use of centralised procurements for purchasing common goods that may provide good value for money.

467. As was the case for previous laws, the new PPL is lengthy and complex, which may be an issue where the majority of procurement is assured by medium-value and low-value contracts. Its provisions are bureaucratic and formalistic. Sometimes, a certain trend of over-regulation is also noticed. Having regard to the previous encountered risks and irregularities, despite the progress made in terms of transparency, the need for more transparency and proactive approach of relevant PP authorities in this regard is required for an improved prevention and increase of trust to the PP system. There is a black list of excluded economic operators, but it is empty in one PP authority and it has only two records in the other PP authority website. The Assessment Team was told that sometimes important PP contracts remain undisclosed. In addition, there are claims that publication of information is delayed in certain cases. Furthermore, there are steps undertaken and assistance projects underway aiming to increase transparency infrastructure and introduce e-procurement tools. Therefore, it is recommended **to create conditions for enhanced transparency and equality in competition, in order to minimise the risk of corruption opportunities in public procurement and privatisation fields.**

Applicable criteria for decision-making

468. It is important for a contracting authority to ensure that it will enter into a contract with an economic operator that has the ability to perform and complete the contract. Thus a contracting authority may want to check, for example, economic operators' suitability in terms of compliance with basic legal requirements as well as the financial resources, experience, skills and technical resources and exclude from the procurement process those economic operators that do not satisfy such checks. This is known as the selection or qualification process³⁸².

469. An economic operator (EO) shall be deemed to be qualified to participate in a procurement activity if:

- 1) Such EO proves to be eligible and
- 2) Such EO, in the event the contracting authority has established minimum qualification requirements, meets such requirements³⁸³.

470. The Selection criteria shall be clearly specified in the contract notice and in the tender dossier, as well as, any and all documents or other information that an interested EO is required to submit with its tender or with its request to be pre-qualified in a restricted or negotiated procedure after the publication of the contract notice in order to be considered qualified. Eligibility Requirements include: 1. Honesty - Avoidance of "conflict of interest"; 2. Truthfulness - Ensuring honest behaviour of the EOs or their executives the last 10 years; 3. Economic sincerity - Ensuring reliability of the EOs. Minimum Qualification Requirements are related to: 1. Professional suitability; 2. Economic and financial standing; 3. Technical and/or professional capability.

471. According to Kosovo legal framework, the procedures developed for the use of public funds are: open procedures; restricted procedures; negotiated procedure after (or without) publication of a contract notice; price quotation procedure; procedures for minimal value contracts; and public framework contracts³⁸⁴.

Implementation and review system

472. Related secondary legislation to PPL has been completed and enforced in March 2012.

- At the end of 2011, 70 secondary acts were approved by the PPRC that concern all tender dossier, contract notices, Procurement Code of Ethics, documents for Diplomatic Missions of Kosovo (they have entered into force on January 1st, 2012).
- During January 2012, 4 secondary acts were promulgated: Procurement Regulation and Operational Guidelines, as well as Work Regulation of PPRC with Operational Guidelines, (entry into force on February 1st, 2012).
- During February 2012, 7 secondary acts were promulgated in relation to the sale of assets, and have entered into force on March 1st, 2012.

³⁸² <http://www.oecd.org/site/sigma/publicationsdocuments/47450104.pdf>

³⁸³ Operational Guidelines for Public Procurement – section 23 (PPRB)

³⁸⁴ Chapter II of PPL; see also Public Procurement Rules, Part A, A01, www.krpp.rks-gov.net

- The entire secondary legislation for public procurement consists of 81 acts that were promulgated by PPRC, in three language versions, and are published in: <http://krpp.rks-gov.net>.

473. Institutional framework. Based on PPL, two central independent procurement institutions operate in Kosovo: Public Procurement Regulatory Commission (PPRC) and Procurement Review Body (PRB). The Public Procurement Regulatory Commission (PPRC) is an independent regulatory institution³⁸⁵. The PRB is an independent administrative review body of PP procedures. There is also a Central Procurement Agency (CPA) that is established as a contracting authority under the Ministry of Finance.

474. The Public Procurement Regulatory Commission (PPRC) is in charge of establishing detailed implementing rules of the PPL and is competent for the overall development, functioning and supervision of Kosovo's public procurement system, policy, legislation and regulation, international co-ordination, monitoring and control, advisory and operations' support, publication and information, professionalisation and capacity-strengthening functions, development and procurement co-ordination. In addition, the PPRC is competent *inter alia* for: conducting investigations of procurement activities and contract management for monitoring purposes; issuing opinions to contracting authorities and examining their reports; preparing and publishing the complete secondary legislation on procurement; preparing and disseminating procurement manuals, guidelines, standard forms and models; reinforcing awareness; providing technical assistance; issuing interpretive rulings; establishing and maintaining an electronic Public Procurement Register; establishing manual and electronic monitoring systems; collecting, analysing and publishing information on all types of notices on public procurement; supporting training programs in public procurement; supporting the development of electronic tools; monitoring the implementation of contracts by the contracting authorities; cooperating with foreign institutions in the field of public procurement; preparing and submitting to the Government and Assembly of Kosovo the Annual Report on public procurement activities; making recommendation for changes to the PP primary and secondary legislation³⁸⁶.

475. The PPRC, which reports to Assembly, is composed by a Board of 3 members (including the President) within a total staff of 27 persons³⁸⁷. PPRC board members are proposed by the Government and nominated by the Assembly, for a 5-year term that may be renewed once. Removal or suspension of PPRC Board Members may be initiated by the Government or the Assembly and decided by the competent court. Acts of the PPRC may be contested to the competent court.

476. The Procurement Review Body (PRB) is an independent administrative review body and exercises the authority, powers, functions and responsibilities specified in the provisions of the Law on Public Procurement³⁸⁸. Since its establishment in 2008, the PRB consists of a board of 5 members who are proposed by the Government and nominated by the Assembly, for a 5-year term with the possibility to be renewed once. The removal and suspension of a member of the PRB is subject to the same rules and procedures applicable for PPRC's members. PRB members must have same qualifications as judges. The PRB is assisted by a Secretariat led by the Head of the Secretariat³⁸⁹.

477. The competences of PRB include *inter alia* reviewing all complaints received regarding the possible violations of the PPL; disqualifying an economic operator from participation in public procurement up to a period of one year; conducting investigation on its own initiative or upon request of any party involved in the procurement process relating to any irregularity during the performing of procurement activities; ordering the suspension or termination of a procurement activity, imposing fines against contracting authorities, ordering the invalidity of a contract. Complaints are reviewed by the Review Panel, formed by the PRB, consisting of one, three or the all five members depending on the value of the contract, on the basis of a report prepared by an expert and communicated to the parties concerned. The review procedure is transparent, with public hearings, and every decision is published on www.oshp.rks-gov.net in Albanian, Serbian and English. The deadline for decision-making is 15 days after the date of transmission by the contracting authority of documentation on the tendering procedure, and may be extended in

³⁸⁵ Article 86, Law on Public Procurement.

³⁸⁶ PPL, Articles 87 and 88.

³⁸⁷ The PPRC budget was EUR 326 523 in 2012 and it is planned to be EUR 327 365 in 2013 whereas the personnel is similarly composed of 30 persons.

³⁸⁸ Article 98, PPL.

³⁸⁹ The PRB budget has been EUR 288 508 in 2012 and it will be EUR 304 375 in 2013. The staff has moved from 21 to 23 persons in 2013.

complex cases to a maximum of 20 additional days. The complaints fee is EUR 500, which may be considered as prohibitive in low-value cases. The PRB decisions are reviewed by the competent court on judicial review of administrative matters. The PRB prepares and submits to the Assembly of Kosovo the Annual Report on performance of procurement complaints.

478. The Central Procurement Agency (CPA) is established under the Ministry of Finance, as a contracting authority for central and coordinated purchasing and exercises and performs functions and responsibilities specified in the Law on Public Procurement³⁹⁰. Executive Director of CPA is appointed in the same manner as the Secretary General in the Ministries, with a 3-year term. The CPA may manage and perform centralised contracts for the entire Kosovo, if authorised by the Government of Kosovo as well as perform procurements on behalf of the contracting authorities when dealing with complex procurements (requested by the CA). However, the CPA has not conducted any centralised procurement in the past four years as the Government has not so far given its approval.

479. The Institute of Public Administration (IPA) is in charge *inter alia* for training the public procurement officers. Trainings last 15 days and are organised in two levels (basic and advanced). During 2010 and 2011, 521 PP officials have attended basic trainings whereas 489 officials have been certified for a 3-year period.

Control mechanisms

480. According to Law on Public Procurement, the PPRC shall be responsible for the overall development, operation and supervision of the public procurement system in Kosovo and shall carry out the functions assigned to it by the present Law. Moreover Article 88 PPL envisages monitoring and supervision functions of the PPRC over the implementation of PP legal and regulatory provisions³⁹¹. In the meantime, the Office of General Auditor (sends audited reports to the Assembly) and KRPP and PRB report to Kosovo Assembly as well at least once a year.

Appeal system, recourse and remedies

481. Complaints of interested parties (economic operators) are submitted to Procurement Review Body at any stage of the procurement process except in cases when the contract has been awarded or the design contest has been decided that require a time limit of ten days. In principle, the fact of making a complaint that is received by the PRB is an automatic ground for suspension of any further activity by the contracting authority. Complainants are required to advance a complaint fee of 500 EUR to the PRB which is reimbursed back when the PRB considers the complaint as well-funded. The review of complaints is done by the Review Panel which is composed of one to three members of the Procurement Review Body depending on the size or the value of the contract or the difficulty/importance of the case. In cases when the matter under review is of particular importance; the review panel is composed of five PRB members. The review panel is appointed by the Head of Procurement Review Body (PRB). Based on Articles 105.1, 105.2, 106 and 117 of PPL and considering the recommendations provided by the review experts who are assigned, the Review Panels issue the following decisions: approval, re-evaluation, annulment and rejection. Appeals against review decisions issued by Review Panels may be filed to the Supreme Court.

482. Sanctions. For frivolous complaints, the PRB may impose a fine of up to 5 000 EUR against complainants. Damages suffered by complainants as a result of violations committed by the concerned contracting authority are calculated and imposed by the PRB in cases when the complaint is determined as valid. As defined by Article 130, paragraph 1 (items 1.1 to 1.4) of PPL the illegal influence is considered a violation of this Law and it is punished in accordance with the relevant applicable law. The item 1.1 contains a definition that is similar to active and passive trading in influence. In the item 1.2 are covered forms of intimidation, coercing, harming or provoking harm aiming to influence decisions or actions. The item 1.3 concerns forms of collusion between economic operators whereas the item 1.4 refers to participation and association acts related to the previous items. The PRB may impose a fine of not less than five thousand (5,000) EUR on any contracting authority that fails to implement a decision or to comply with an order of

³⁹⁰ Article 94 PPL. For 2012 and 2013, the CPA has a budget of EUR 161 617 and a personnel of 15 persons.

³⁹¹ During 2011, 40 planned monitoring activities have been carried out by the PPRC covering 218 procurement activities as well as 6 monitoring activities upon request of contracting authorities. The most significant irregularities noted concern *inter alia* lack of notification to eliminated candidates and tenderers (40,4%), statement of needs and determination of availability of funds (20.2%), procurement planning (18.9%), performance security deposit prior signing of the contract (14.2%), publication of notice for contract awarding (11%), funds availability (10.1%), use of objective, measurable and pre-determined criteria (10.1%), tender dossiers irregularities (8.7%), examination, evaluation and comparison of tenders (8.7%).

the PRB within five (5) days³⁹². Regarding the technical specifications, the legislation prohibits a Contracting Authority from drafting technical specifications that favour or discriminate one or more Economic Operators, respectively: "A contracting authority is specifically prohibited from establishing a technical specification that favours or disfavors one or more Economic Operators." However, even though it is prohibited, the Law does not envisage clear sanctions relative to a breach of such legal provision by public procurement officials or against the contracting authorities.

483. As it can be seen in tables below, statistics demonstrate that the allocated budget dedicated to public procurement activities varies between 500 to around 800 Million EUR during last years. On 31 December 2011, there were 161 contracting authorities in Kosovo, with 489 certified procurement officers. In all contracting authorities procurement departments are established.

Number and value of public procurement contracts for last 3 years is presented below:

Number of Contracts			
	2009	2010	2011
Government	10,955.00	9,947.00	9,305.00
Public Companies	3,786.00	3,484.00	3,001.00
Others	79.00	68.00	4.00
	14,820.00	13,499.00	12,310.00

Value of Contracts			
	2009	2010	2011
Government	529,849,302.73	286,739,192.67	284,714,229.60
Public Companies	245,382,175.36	194,579,794.27	267,260,689.03
Others	2,922,036.94	749,861.62	175,849.56
	778,153,515.03	482,068,848.56	552,150,768.19 ³⁹³

Use of public procurement procedures:

Procedures	2009	2010	2011
Open procedure	84.86%	85.47%	82.80%
Restricted procedure	0.00%	0.00%	1.35%
Negotiated procedure with prior publication of a notice	0.39%	2.03%	4.82%
Negotiated procedure without prior publication of a notice	10.83%	7.02%	6.21%
Other procedures (competitive dialogue, etc.)	3.93%	5.48%	4.82%

Source: PPRC annual reports

484. From its establishment until the end of 2011, the PRB has received 2,082 complaints (an average of more than 400 per year). The number of received and reviewed complaints in the Review Panel of PRB for 2011 is 386. From the reviewed complaints the following decisions were taken: 190 approved decisions (43 %), 106 re-evaluation decisions (20 %), 71 re-evaluation decisions (14 %), 8 rejected decisions (20 %) and 11 revoked complaints (3 %). In general, complaints represent more than 3% of signed contracts in total. Out of a total of 386 complaints, 367 have been treated, 25 have been appealed to courts who issued 7 decisions with interim measures.

485. Although central purchasing, a leverage for better efficiency and integrity, is foreseen in the law, and an agency within the Ministry of Finance is now entirely devoted to this function, no steps have been taken by the Government to make it operational. The lack of staff and resources as well as the weak capacity of PPRC for monitoring PP activities are a matter of concern. The PPRC could not monitor until recently the implementation phase of procurement contracts that started to be introduced during 2012. The *post ante* monitoring/supervision that is carried out by the PPRC,

³⁹² Article 131 PPL.

³⁹³ Public funds used for the construction of Morinë-Merdarë Highway (a long term contract of 659,813,399.88 EUR) are not included. They represent 106,883,295.92 EUR for 2010 and 236,165,999.52 EUR for 2011. The laws on annual budget for 2012 and 2013 have respectively planned 239,200,000 EUR and 243,557,511 EUR for the construction of highways.

either upon request of contracting authorities or in accordance of PPRC plan, remains formal. This supervision seems to operate by distance through administrative correspondence. Red flags and risk indicators based on gathered experience could be very useful to be developed and used in the future by concerned stakeholders. Besides identification of potential irregularities mainly after the decision-making and relevant recommendations/opinions issued for future improvement, there are no clear power and responsibility of PPRC to interact with other relevant administrative bodies and law enforcement bodies for identified violations and responsible officials. There is a certain overlapping between PPRC role (according to Article 88 PPL) and KAA responsibility (according to Articles 8.4 and 19.1.6 LPCI and Article 5.1.2 of KAA Law). The Assessment Team believes that in both cases opinions of these bodies are not mandatory.

486. Moreover, the biggest concern in the PP area seems to be the poor implementation of legislation that is due, among other factors, to a large extent to corruption considerations. Annual reports of the Office of Auditor General include many important central and local institutions with irregularities and non-compliance with PPL requirements. On the other hand, resources and monitoring capacities are weak, formal and insufficient. The Assessment Team was also informed that besides needs for more human and financial resources, there is an important discrepancy of financial treatment which is higher in different contracting authorities compared to PP regulatory and review bodies' employees. The Assessment Team welcomes the recent legal reforms aiming to reform and improve the PP system. However, in the Assessment Team's opinion such an existing system is still too complex and heavy for Kosovo that makes its current functioning difficult and is characterised by some critical implementation gaps. Interaction between contracting authorities, PP regulatory and review bodies and other concerned stakeholders needs to be further improved.

487. The Assessment Team is very concerned about the procedure prescribed in Article 130 PPL regarding PP violations and unlawful influence. Firstly, paragraph 1 of this provision provides for prohibited acts (types of offences) that are of a criminal nature. Secondly, there is an obligation to report such offences that is limited only to civil servants, employees or officials of contracting authorities. Finally, the criminal report has to be submitted to the Ministry of Internal Affairs who should investigate the case and, if necessary and in case of justified ground, should forward it to law enforcement bodies. The aforementioned provision contradicts with Article 386 of Criminal Code and sets an additional complex and uncommon layer which may potentially be misused and creates unnecessary procedural filters.

488. From the effectiveness point of view, while several actors and especially media have reported many times abuses and alleged corruption in the public procurement system to such an extent as it has created, in the view of some interlocutors, a context of tender mania, nevertheless the investigations have been insufficient and were limited to low levels of public officials. However, some important cases of abuses, corruption and fraud in public procurement procedures that are currently under investigation have appeared during two last years and they include, among others, some high profile officials too³⁹⁴. On the other side, there are no reliable data about disciplinary or other measures resulting from irregularities and violations of PP provisions as a result of monitoring and supervision activities.

489. In light of the shortcomings identified above, it is recommended **(i) with a view to minimise corruption risks and opportunities, to ensure further streamlining of public procurement rules and procedures, including a quick introduction of central purchasing; (ii) to enhance monitoring, supervision and review capacities and mechanisms; (iii) to revise the Public Procurement Law concerning the scope and procedures related to reporting of public procurement violations and offenders; and (iv) to enhance the exchange and treatment of information and horizontal interagency cooperation, notably between public procurement, audit, anti-corruption, tax and other law enforcement bodies.**

³⁹⁴ Medias and civil society have been periodically very critical and have raised their voice on different cases of corruption allegations in public procurement processes. Ongoing investigations are under process involving, among other public officials, high public officials, including few ministers. At the beginning of 2011, the biggest investigated case ever dealt by law enforcement bodies in the area of public procurement in Kosovo has started. It involves around 20 different levels of officials of one ministry with a potential budgetary loss rounding at 5 million EUR.

Integrity measures for responsible personnel

Appointment procedures and processes

490. According to Article 23 PPL, the Chief Administrative Officer of the contracting authority shall designate one person to serve as the contracting authority's Responsible Procurement Officer³⁹⁵. If other employees of the contracting authority are civil servants, the Procurement Officer shall also be a civil servant. A person may serve as a responsible procurement Officer if the person holds a university degree, and a valid basic or advanced procurement professional certificate. There are also ineligibility criteria as set by Article 65 PPL. A Procurement Officer or a staff member of a Procurement Department is required to submit to PPRC a written declaration under oath declaring that he/she (i) is not ineligible to serve as Procurement Officer under this Article, (ii) shall honestly and faithfully conduct the procurement activities of the contracting authority in strict conformity with this Law, and (iii) shall professionally and immediately discharge all other duties specified in this Law.

Declaration of assets and other private interests

491. Requirements of the Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials³⁹⁶ are also applicable to heads of procurement in all public institutions. For further details on this issue, see paragraphs 169 to 172 above.

Post-employment requirements

492. See paragraph 165 above.

Rules of conduct/ethics

493. There is a special Code of Ethics for the public procurement officers and other related staff working in and for the procurement, which envisages detailed provisions and requirements on rules of conduct and ethics³⁹⁷.

Risk management mechanisms

494. There are no clear and functioning risk management instruments and tools.

Training

495. All previous laws on public procurement which have entered into force in Kosovo until 2010 have required as a mandatory requirement the training of procurement officers within 10 days. Since 2011, Law on Public Procurement requires that the training of the procurement officers is prolonged into 15 days, by classifying the trainings in two levels: basic and advanced level. Kosovo Institute of Public Administration (KIPA) in cooperation with the PPRC, is the responsible institution for training, certification and organisation of exams for the public procurement officials. The training last 15 days, while KIPA issues a "Professional Basic Procurement Certificate" – to persons who have attended all basic courses, while the "Advanced Professional Procurement Certificate" is issued to persons who have successfully passed the advanced courses. These certificates are valid for three (3) years.

Disciplinary measures and other sanctions,

496. The Civil Service Law is applicable for the public procurement officers as well. Therefore all disciplinary measures applicable for civil servants are applicable here as well.

³⁹⁵ Chief Administrative Officer.

³⁹⁶ Law No. 04/L-050, on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, Article 3. According to this Law, "Directors of all departments, Heads of Public Finances and Procurement throughout all public institutions", are considered Senior Public Officials – thus falling under this category as envisaged by this Law.

³⁹⁷ The Procurement Code of Ethics is available at:

http://krpp.rks-gov.net/Default.aspx?PID=StdForms&LID=1&PPRCMenu_OpenNode=62

Statistics

497. During 2011, 489 procurement officers have completed basic training and obtained basic procurement license, valid for three years, whereas these officers now are attending the advanced training on public procurement. The number of certified public procurement officers has been 302 in 2005, 360 in 2006, 414 in 2007, 431 in 2008, 424 in 2009 and 489 in 2010-2011. Even during 2012, PPRC, in cooperation with the KIPA, have held a basic training on public procurement, which have been attended by around 50 procurement officers. Participants of these trainings are procurement officers of all contracting authorities of Kosovo, including government institutions of Kosovo, public companies and several NGOs.

498. The Assessment Team has been informed during the on-site visit that there is a high turnover of staff in the public procurement system due to incoherent policies and discrepancies in their treatment and/or varying practices regulating the salaries for similar positions. Insufficient resources, especially in case of public procurement monitoring and review bodies, make difficult to recruit and keep qualitative personnel. This is reflected in lack of capacity building improvement and insufficient PP staff specialisation, including the absence of focus on prevention and detection of corruption, conflict of interest and other related violations. Another matter of concern relates to external interferences in decision-making process. There have been public procurement training activities and certification of public procurement servants; however their focus on anti-corruption measures is not sufficient. It is therefore recommended **(i) to introduce coherent staff policies and treatment in the public procurement system in order to avoid changes of staff; (ii) to clarify and strengthen procedures that ensure objective criteria for the conclusion of contracts; (iii) to introduce conflict of interest prevention rules in the public procurement, including compulsory declaration of conflict of interest situations by members of procurement panels; and (iv) to promote further training and specialisation focused on prevention and detection of corruption practices.**

3. CRIMINAL LAW, LAW ENFORCEMENT AND CRIMINAL PROCEDURE

3.1. Offences and sanctions

Description of the situation

499. Kosovo has neither signed nor ratified the Criminal Law Convention on Corruption (ETS No. 173) as well as the Additional Protocol to the Criminal Law Convention (ETS No. 191).

500. The Criminal Code of Kosovo (CC) that has been adopted on 6 July 2003 by the UNMIK Regulation 2003/25 was effective until 31 December 2012. A new Criminal Code (CC) was adopted by the Law No. 04/L-082 of 20 April 2012 which foresees its entry into force on 1 January 2013. The provisions on public sector bribery and related offences are contained in Chapter XXIX of the CC which relates to criminal offences against official duty. Chapter XXXIV of the NCC on official corruption and criminal offences against official duty contains bribery and related offences. The NCC integrates new offences which are criminalised such as misusing official information, conflict of interest, active bribery to foreign public officials and failure to report or false reporting of assets and gifts.

501. The following table shows correspondence of relevant provisions in both Criminal Codes:

Offence	CC provision	NCC provision
Abusing official position or authority	Article 339	Article 422
Misappropriation in office	Article 340	Article 425
Fraud in office	Article 341	Article 426
Unauthorised use of property	Article 342	Article 427
Accepting bribes	Article 343	Article 428
Giving bribes	Article 344	Article 429
Trading in influence	Article 345	Article 431
Issuing unlawful judicial decisions	Article 346	Article 432
Disclosing official secrets	Article 347	Article 433
Falsifying official documents	Article 348	Article 434
Misusing official information	-	Article 423
Conflict of interest	-	Article 424
Giving bribe to foreign public official	-	Article 430
Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations	-	Article 437
Unjustified acceptance of gifts	Article 250	Article 315
Unjustified giving of gifts	Article 251	Article 316

a) Bribery of domestic public officials (Articles 1-3 and 19 of ETS No. 173)

502. Active bribery is criminalised in Article 429 which establishes two forms of the offence: (1) Bribery to induce an official to act or refrain from acting in accordance with his or her official duties (i.e. lawful official acts or omissions); (2) bribery to induce an official to act or refrain from acting in violation of his or her official duties (i.e. unlawful official acts or omissions).

Article 429 - Giving bribes

- 1. 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 (3) years.*
- 2. 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 violation of his or her official duties, shall be punished by a fine and imprisonment of three (3) months to three (3) years.*
- 3. When the offence under paragraph 1 of this Article results in a benefit exceeding fifteen thousand (15,000) EUR, the perpetrator shall be punished by fine and imprisonment of one (1) to eight (8) years.*
- 4. When the perpetrator of the offence provided for in paragraph 1 or 2 of this Article gave the bribe at the request of an official person or responsible person and reported the offence before it*

was discovered or before knowing that the offence was discovered, the court may waive the punishment.

503. Criminalisation of passive bribery is provided for under Articles 428 and 422 of the Criminal Code. The relevant provisions differentiate three types of conduct: if the bribe has been requested or accepted before the performance of the official act: (1) for an official to act or refrain from acting in accordance with his or her official duties (i.e. lawful official acts or omissions); (2) for an official to act or refrain from acting in violation of his or her official duties (i.e. unlawful official acts or omissions); (3) if the bribe has been requested or accepted after the performance, or non-performance, of the official act 422(3.2).

Article 428 - Accepting bribes

- 1. 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, shall be punished by fine and imprisonment of six (6) months to five (5) years.*
- 2. An official person who 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, so that the official person acts or refrains from acting, in violation of his or her official duties, shall be punished by fine and imprisonment of three (3) to twelve (12) years.*
- 3. When the offence under paragraph 1 of this Article results in a benefit exceeding fifteen thousand (15,000) EUR, the perpetrator shall be punished by fine and imprisonment of one (1) to eight (8) years.*

Article 422 - Abusing official position or authority.

- 1. An official person, who, by taking advantage of his office or official authority, exceeds the limits of his or her authorisations or does not execute his or her official duties with the intent to acquire any benefit for himself or another person or to cause damage to another person or to seriously violates the rights of another person, shall be punished by imprisonment of six (6) months to five (5) years.*
- 2. For purposes of this Article, the abuse of official position includes, but is not limited to:*
.....
2.3. accepting any gift, fee or advantage of any kind as a result of the performance of an official duty unless the acceptance of the gift, fee or advantage is permitted by law;
.....

Elements of the offence

"Domestic public official"

504. The Criminal Code of Kosovo defines the domestic public official as the "official person". Thus, according to Article 120.2 CC the official person includes: a) a person elected or appointed to a State body; b) an authorised person in a state body, business organisation or other legal person, who by law or by other provision issued in accordance with the law, exercises public authority; or, c) a person who exercises specific official duties, based on authorisation provided for by law.

505. The abovementioned definition covers persons carrying out official duties or exercising official functions in the state bodies (including mayors and ministers, judges and prosecutors), irrespective of their type of contract and the temporary/permanent character of the functions performed. The wide scope of the definition also allows to cover individuals vested by law with public authority to perform certain duties of state administration or providing public services or specific official duties (e.g. doctors, teachers and professors, driving school instructors, social workers, etc.), employees of public enterprises, etc.

"Promising, offering or giving" (active bribery)

506. The elements of "promising", "offering" and "giving" are expressly contained in the criminal provisions concerning active bribery.

"Request or receipt, acceptance of an offer or promise" (passive bribery)

507. The elements of "request or receipt" and "acceptance of an offer or promise" are also expressly contained in the criminal provisions concerning passive bribery.

508. As already mentioned above, Kosovo CC also criminalises situations where the bribe has been requested or accepted after the performance - or non-performance - of the official act. Thus, Article 422.2.3 CC (bribery *a posteriori*) refers to "accepting any gift, fee or advantage of any kind as a result of the performance of an official duty (unless the acceptance of the gift, fee or advantage is permitted by law)". As such, this provision can make the prosecution of bribery easier, for instance, in cases of repeated bribery offences or when agreement has been reached that the bribe would be paid after the (non-)accomplishment of an official act and the prosecution has difficulty in proving the existence of such an agreement (formal or informal) between the bribe-giver and the bribe-taker. Further particulars about the extent of legal acceptance of gifts are given in Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, Article 11, Reception of gifts (see also paragraph 311 above).

"Any undue advantage"

509. The relevant provisions of the Criminal Code concerning bribery refer explicitly to the term "undue gift or advantage". Rules on gifts are laid out in the Law on Asset Declaration and the Law on Prevention of Conflicts of Interest. As a rule, a public official cannot accept any monetary gift. The use of the term "any" implies that both material and immaterial advantages are covered in the concept of gift or advantage.

"Directly or indirectly"

510. Relevant bribery provisions refer to offences that may be committed "directly or indirectly".

"For himself or herself or for anyone else"

511. The terms "for himself or herself or for another person" are contained only in the passive bribery offence. Third part beneficiaries are not explicitly covered in the active bribery offence.

"To act or refrain from acting in the exercise of his or her functions"

512. Legislation expressly covers both positive – lawful and unlawful – acts and omissions, on condition that they are in the scope of the official duties.

513. For a bribery offence to occur, it is not required that the act or omission of the official be unlawful as such. However, the commission/omission of an unlawful official act entails more severe sanctions.

"Committed intentionally"

514. The Criminal Code of Kosovo provides in Article 17 that persons are criminally liable if they commit a criminal offence intentionally or negligently. However criminal liability for negligent commission of a criminal offence applies only if it is explicitly provided for by law. Therefore, as the provisions on bribery do not mention that they can be caused by negligence, it can be inferred *a sensu contrario* that they can only be committed intentionally.

Sanctions

515. Active bribery with respect to lawful official acts or omissions is punishable by fine and imprisonment of up to three (3) years (Article 429 (1), Criminal Code). In cases where the bribe is given to perform unlawful official acts or omissions, the punishment prescribed is imprisonment of three (3) months to three (3) years and a fine (Article 429 (2), Criminal Code). If the offence results in a benefit exceeding 15,000 EUR, the punishment is imprisonment of one (1) to eight (8) years and a fine (Article 429 (3), Criminal Code). Fines for physical persons cannot be less than 100 EUR or more than 500,000 EUR (Article 46, Criminal Code).

516. Passive bribery with respect to lawful official acts or omissions is punished by fine and imprisonment of six (6) months to five (5) years (Article 428 (1), Criminal Code). In cases where the bribe is requested or received to perform unlawful official acts or omissions, the punishment

prescribed is imprisonment of three (3) to twelve (12) years and a fine (Article 428 (2), Criminal Code). If the offence results in a benefit exceeding 15,000 EUR, the punishment is imprisonment of one (1) to eight (8) years and a fine (Article 428 (3), Criminal Code). In cases where the bribe has been requested or accepted after the performance of the official act the sanction is up to five (5) years' imprisonment for abuse of official position or authority (Article 422, Criminal Code).

517. The applicable sanctions for other comparable offences are: up to three (3) years' imprisonment for conflict of interest (Article 424, Criminal Code); up to five (5) years' imprisonment for fraud in office (Article 426, Criminal Code). The applicable sanction for the aforementioned offences could range from one (1) to twelve (12) years' imprisonment when aggravating circumstances concur.

518. In addition to the abovementioned principal punishments, the accessory punishments, which are set forth in the general part of the Criminal Code, are applicable *inter alia* to both active and passive bribery offences. In this context, Article 62 CC provides for types of accessory punishments, such as, *inter alia*, prohibition on exercising public administration or public services functions or confiscation. This prohibition is for one (1) to five (5) years (Article 65 CC) and it applies to physical persons who are punished by imprisonment.

519. In addition to the general bribery provisions, there are some related specific provisions regarding active and passive bribery in relation to voting (Article 215 CC), entering into harmful contracts (Article 291 CC) and escape of persons deprived of liberty (Article 405 CC). Article 215.1 CC criminalises promising, offering and giving any undue benefit or gift to any person, with the intent to influence that person to vote, not to vote, vote in favour or against a specific person or proposal, or to cast a void vote, in any election or referendum (sanction: imprisonment of 1 to 5 years). Article 215.2 CC criminalises requesting or receiving any undue benefit or gift for himself, herself or for another any person, or accepts an offer or promise of such benefit or gift, to vote or not to vote, to vote in favour or against a specific person or proposal, or to cast a void vote, in any election or referendum (sanction: imprisonment of 1 to 5 years). Persons serving as intermediaries when violating paragraphs 1 or 2 of this Article are punished by imprisonment of 1 to 5 years. When the previous offences are committed by a member of the Election Commission or any person during the exercise of his or her official duties in regard to voting, the sanction is the imprisonment from 3 to 5 years.

520. Moreover, entering into harmful contracts in terms of Article 291 CC that are contrary to given authorisations and causing damage to the business organisation is punished by imprisonment of 1 to 10 years if *inter alia* the perpetrator accepts a bribe.

521. Also, escape of persons deprived of liberty from the penitentiary institution by the use of bribery is punished according to Article 405.2 CC with imprisonment of up to 5 years whereas facilitating by using bribery the escape of a person who is detained is punished by Article 406.2 CC with imprisonment of 3 months to 5 years.

Criminal organisation, organised corruption offences

522. The Criminal Code of Kosovo does not contain any specific provision on the organised corruption offences. Nevertheless, there are Articles referring to the organised crime and organised criminal groups. The term "organised criminal group" is defined by the Article 120 CC as "a structured association, established over a period of time, of three or more persons for the commission of a certain criminal offence that acts in concert with the aim of committing one or more serious criminal offences in order to obtain, directly or indirectly, a financial or other material benefit".

523. Moreover, Article 283 CC (Participation in or organisation of an organised criminal group) provides *inter alia* that whoever, with the intent and with knowledge of either the aim and general activity of the organised criminal group or its intention to commit one or more criminal offences which are punishable by imprisonment of at least four (4) years, actively takes part in the group's criminal activities knowing that such participation will contribute to the achievement of the group's criminal activities, shall be punished by a fine of up to two hundred fifty thousand (250,000) EUR and imprisonment of at least seven (7) years.

524. The Kosovo legislation to a large extent meets the requirements of international standards in the anti-corruption area. Having said that there are still questions as identified and listed below.

525. The offence of bribery of domestic public officials is criminalised in two central provisions, i.e. Article 429 CC (active bribery) and Article 428 CC (passive bribery). These provisions comprise

all types of active bribery (promising, offering or giving) and passive bribery (requesting, receiving or accepting of an offer or promise) as provided for in the Council of Europe Convention. Article 430 CC covers active bribery of foreign public officials. In these Articles the bribe is described as "any undue gift or advantage" while the convention uses the wording "any undue advantage". The interlocutors met during the on-site visit confirmed that it was not only money covered by these Articles but any undue advantage material or immaterial, irrespective of their value, in so far as the purpose of such advantages would be to influence a public official's action in service. On the other hand the provisions concerning active bribery (Articles 429 and 430 CC) do not directly cover situations where third party beneficiaries are involved – for example where the bribe is given not to the official person himself, but to his wife or another person contrary to the Convention "for himself or herself or for anyone else" and contrary to the Article 428 CC concerning passive bribery, "for himself, herself or for another person". It is therefore recommended **that legislative measures are taken to make third beneficiaries directly covered in Articles 429 and 430 CC about active bribery.**

526. With respect to the type of acts to be performed or omitted by the public official in the context of a bribery offence, these have to fall "*within his or her official duties*" (Articles 428, 429 and 430 CC). Articles 428 and 429: "*acting in accordance with his or her official duties*" and Article 430: "*acting in the exercise of his or her official duties*". When defining a public official in Article 120.2.2 it is said that a domestic official person *is a person who exercises public authority* and that a foreign official person is *any person holding a legislative, executive, administrative or judicial office of a foreign State*. In the convention the type of acts to be performed should be *in the exercise of his or her functions*. The question is if acts and omissions which are completely outside the official's duties or his/her statutory remit, but which s/he has the opportunity to commit because of the function s/he occupies, would be covered directly by the bribery provisions (e.g. granting access to confidential information to which the public official has access in the exercise of his/her function in situations where the gathering or disclosure of such information is not strictly within the scope of the duties of the official concerned). Interlocutors met during the on-site visit explained that while the meanings of the different words are the same as in the Convention, the translation of these Articles to English was the reason of differences between the texts in different Articles. The Ministry of Justice has subsequently given further explanations on the question: "Controlling the interpretation of Articles of the Criminal Code of Kosovo (hereafter "CC"): In Articles 428 and 429, the phrase "acting in accordance with his or her official duties" corresponds to the Albanian phrase "*të veprjë ose të mos veprjë në pajtim me detyrën e tij zyrtare*". The same Albanian phrase is used in Article 430 whereas in the English version of Article 430 the phrase used is the following: "in exercise of his or her official duties". There is a difference that can be noted; however we do not have the mandate to interpret its content. It might have been a mistake done whilst the text was translated. In such a case, the important thing to note is that the Albanian language is the language from which the last interpretation shall derive. The explanation that we can provide with regard to Article 120 CC is similar to the explanation provided above. In this particular case, the phrase "exercises public authority" corresponds to the Albanian phrase "*ushtron detyra të posaçme*". We consider that this type of translation is not made properly. The other phrase "exercising a public function" corresponds to "*ushtron funksion publik*". The translation in this case is proper. As far as the relation between the phrases "exercises public authority" – "exercising a public function" is concerned, we do not have the mandate to interpret the meaning of them. All we can provide as explanation is that, if in doubt, the Albanian version prevails. It is therefore recommended **that the authorities ensure that there are no loopholes in the system and if necessary to take the legislative measures that the offence of active and passive bribery in the public sector covers all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's duties.**

527. Concerning the scope of perpetrators, the broad description of the term "official" contained in Articles 120 CC captures the different categories of persons covered by the Convention.

b) Bribery of members of domestic public assemblies (Article 4 of ETS No. 173)

528. There are no specific provisions on bribery regarding members of domestic public assemblies separately. Nevertheless they can be covered under the concept on 'public officials' as explained above about Article 120 CC. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of members of domestic public assemblies.

c) Bribery of foreign public officials (Article 5 of ETS No. 173)

529. The Criminal Code has a special Article regarding active bribery of foreign public officials.

Article 430 - Giving bribes to foreign public official

1. Whoever promises, offers or gives, directly or indirectly, any undue gift or advantage to a foreign public official, so that the foreign public official or another person, acts or refrains from, shall be punished by a fine and imprisonment of up to five (5) years.

2. Whoever promises, offers or gives, directly or indirectly, any undue gift or advantage to a foreign public official, so that the foreign public official or another person, acts or refrains from acting in violation of his or her official duties, shall be punished by a fine and imprisonment of one (1) to five (5) years.

3. When the offence under paragraph 1 of this Article results in a benefit exceeding fifteen thousand (15,000) EUR, the perpetrator shall be punished by fine and imprisonment of one (1) to eight (8) years.

4. The gift or benefit offered or received in violation of this Article shall be confiscated.

530. Article 120.3 CC defines the concept of "Foreign official person or foreign public official" as:

- (1) any person holding a legislative, executive, administrative or judicial office of a foreign State, whether appointed or elected;
- (2) any arbitrator exercising functions under the national law on arbitration of a foreign State;
- (3) any person exercising a public function for a foreign State, including for a public agency or public enterprise;
- (4) any official, employee or representative of a public international organisation and their bodies;
- (5) any member of international parliamentary assembly; and
- (6) any judge, prosecutor or official of international court or tribunal which exercises its jurisdiction over Kosovo.

531. The distinction between two types of the offence (lawful and unlawful official acts or omissions) is also made with regard to foreign public officials in Article 430 CC. The following elements of the offence ("promising", "offering" and "giving", "undue gift or advantage", "directly or indirectly", "To act or refrain from acting in the exercise of his or her functions", "Committed intentionally") are covered in a similar way as in the offences of bribery of domestic public officials. However, the element "For himself or herself or for anyone else" is not explicitly covered although there is a mention of the wording "foreign public official or another person".

532. Active bribery with respect to lawful official acts or omissions of foreign public official is punishable by fine and imprisonment of up to five (5) years (Article 430 (1), Criminal Code). In cases where the bribe is given to perform unlawful official acts or omissions, the punishment prescribed is imprisonment of one (1) to five (5) years and a fine (Article 430 (2), Criminal Code). If the offence results in a benefit exceeding 15,000 EUR, the punishment is imprisonment of one (1) to eight (8) years and a fine (Article 430 (3), Criminal Code).

d) Bribery of members of foreign public assemblies (Article 6 of ETS No. 173)

533. Members of foreign public assemblies are considered to be foreign officials and thus covered by the active bribery provision of Articles 430. Passive bribery involving foreign public officials, including members of foreign public assemblies, is covered by Article 428 of the Criminal Code. The elements/concepts of the offence and the applicable sanctions detailed under passive bribery of domestic public officials and active bribery of foreign public officials apply to bribery of members of foreign public assemblies.

e) Bribery in the private sector (Articles 7 and 8 of ETS No. 173)

534. Articles 316 (Unjustified giving of gifts) and 315 CC (Unjustified acceptance of gifts) cover to a certain extent the concepts of active and passive bribery in the private sector.

Article 316 - Unjustified giving of gifts

1. Whoever gives, attempts to give or promises a disproportionate reward, gift or any other benefit to a person engaging in an economic activity in order to neglect the interests of his or her business organisation or legal person or to cause damage to such business organisation or legal person

when concluding a contract or performing a service shall be punished by a fine and imprisonment of up to three (3) years.

2. Whoever gives, attempts to give or promises a disproportionate reward, gift or any other benefit to a person engaging in an economic activity in order to acquire any unjustified advantage for concluding a contract or performing a service shall be punished by a fine and imprisonment of up to three (3) years.

3. If the perpetrator of the offence provided for in paragraph 1 or 2 of this Article gives a reward or a gift according to a request and reports the offence before it was discovered or before he or she found out that it was discovered, the court may waive the punishment.

4. The reward or gift given shall be confiscated, except in the case provided for in paragraph 3 of this Article in which case it may be returned to the person who gave it.

Article 315 - Unjustified acceptance of gifts

1. Whoever, in the course of engaging in an economic activity, requests or accepts a disproportionate reward, gift or any other benefit in order to neglect the interests of his or her business organisation or legal person or to cause damage to such business organisation or legal person when concluding a contract or agreeing to perform a service shall be punished by a fine and by imprisonment of up to three (3) years.

2. Whoever, in committing the offence provided for in paragraph 1 of this Article, requests or accepts a disproportionate reward, gift or other benefit for himself or another person in exchange for concluding a contract or agreeing to perform a service shall be punished by a fine and imprisonment of up to three (3) years.

3. Whoever, in committing the offence provided for in paragraph 1 of this Article, requests or accepts a reward, gift or any other benefit after the contract is concluded or the service is performed, shall be punished by a fine and imprisonment of up to one (1) year.

4. The accepted gift or reward shall be confiscated.

Elements of the offence

535. Only "giving" and "promising" for the active side and "requesting" and "accepting" are included in both provisions. The elements "offering" and "acceptance of an offer or promise" are missing in their definitions. The concept of "any undue advantage" is transposed by reference to the words "a disproportionate reward, gift or any other benefit" (Article 316.1 CC) or "a reward, gift or any other benefit" (Article 315.3 CC). The element "for himself or herself or for anyone else" is missing in Articles 315 and 316 CC, but it appears in paragraph 2 of Article 315 CC ("for himself or another person"). The notion of "directly or indirectly" is missing in both provisions. With regard to the words "to act or refrain from acting in the exercise of his or her functions", it is expressed by the words "in order to neglect the interests of his or her business organisation or legal person or to cause damage to such business organisation or legal person when concluding a contract or performing a service [or agreeing to perform a service - 315.1 CC]" that appear only in Articles 315.1 and 316.1 CC. Concerning the intentional element of both offences it is inferred by the words "in order to... cause damage..." or "in order to acquire any unjustified advantage".

"Persons who direct or work for, in any capacity, private sector entities"

536. The wording used in both provisions is "a person engaged in an economic activity". It is not clear if this includes any person working for a private sector entity, in any capacity.

"In the course of business activity"; "...in breach of duties"

537. The wording "in the course of business activity" is expressed in both provisions by the expression "when concluding a contract or [agreeing to] perform a service". Such wording appears to be more limited.

Sanctions and court decisions

538. *Active and passive bribery in the private sector* is punishable by imprisonment of up to three (3) years and a fine. Cases of mitigating circumstances (request or acceptance after the conclusion of a contract or the performance of a service) carry prison punishment of up to one (1) year and a fine (Article 315.3 CC). In both provisions, the gift or reward is mandatorily confiscated. "Accessory punishments" (Articles 62 and following CC) such as, *inter alia*, order to pay compensation for loss or damage (Article 64 CC), prohibition on exercising a profession, activity or duty (Article 66 CC) or confiscation (Article 69 CC). This prohibition is for one (1) to five (5) years (Article 66 CC) and it applies to physical persons who are punished by imprisonment.

539. As regards the subject of bribery in the private sector, Articles 315 and 316 are dealt with in connection to the previous examination of the various Articles about bribery in the CC. It is already pointed out that those Articles are not in accordance with the requirements of Articles 7 and 8 of the Convention (ETS No. 173). It is therefore recommended **that necessary legislative steps are taken to ensure that private corruption is criminalised in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS No. 173).**

f) Bribery of officials of international organisations (Article 9 of ETS No. 173)

540. The explanation provided above for members of foreign public assemblies applies in this context as well.

g) Bribery of members of international parliamentary assemblies (Article 10 of ETS No. 173)

541. The explanation provided above for members of foreign public assemblies applies in this context as well.

h) Bribery of judges and officials of international courts (Article 11 of ETS No. 173)

542. The explanation provided above for members of foreign public assemblies applies in this context as well.

i) Trading in influence (Article 12 of ETS No. 173)

543. Trading in influence is criminalised in Article 431 CC both in its active (paragraph 2) and passive form (paragraph 1).

Article 431 – Trading in influence

1. 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 (8) years.

2. Whoever promises, offers or gives, directly or indirectly, any undue gift or advantage to another person, for himself or herself or another person, in order that this person exert an improper influence over the decision making of an official person or foreign public official, whether or not the influence is exerted or not and whether or not the supposed influence leads to the intended result, shall be punished by a fine or by imprisonment of up to five (5) years.

3. The gift or benefit received or offered in violation of this Article shall be confiscated.

Elements of the offence

"Asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]"

544. This concept is implemented in Article 431.1 CC by the use of words "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".

Other constitutive elements

545. The constitutive elements of bribery offences largely apply with regard to active and passive trading in influence.

Sanctions and court decisions

546. *Active trading in influence* is punishable by up to five (5) years of imprisonment and a fine. The sanctions applicable to *passive trading in influence* are imprisonment of up to eight (8) years and a fine. "Accessory punishments" (Article 62 and following CC), as detailed under bribery of

domestic public officials, also apply to trading in influence. The gift or benefit received or offered has to be confiscated.

547. Trading in influence is criminalised both in its active and passive form. The material components of the offence, i.e. acts performed, material and immaterial undue advantages, third party beneficiaries and commission through intermediaries, are in line with Article 12 of the Convention. There are no court decisions (convictions) for both forms of trading of influence in municipal and district courts during the period from 2008 to 2011.

j) Bribery of domestic arbitrators (Article 1, paragraphs 1 and 2 and Articles 2 and 3 of ETS No. 191) and bribery of foreign arbitrators (Article 4 of ETS No. 191)

548. Domestic arbitrators³⁹⁸ appear to be covered by bribery/trading in influence provisions having in mind the very general definition of the term "official person" as it is set forth in Article 120.2 CC. With regard to foreign arbitrators, they appear to be covered by Articles 430 and 431 CC due to the definition of "Foreign official person or foreign public official" as it is explained in Article 120.3 CC and referred to in the afore-mentioned provisions. Thus, Article 120.3 (3.2) CC covers "any arbitrator exercising functions under the national law on arbitration of a foreign State".

k) Bribery of domestic jurors (Article 1, paragraph 3 and Article 5 of ETS No. 191) and bribery of foreign jurors (Article 6 of ETS No. 191)

549. The figure of a juror is unknown to the domestic legal system. In Kosovo there are lay judges who are appointed by the President of Kosovo upon proposal of the KJC (Article 18 of the KJC Law). They are covered by the notion of "public official". The elements of the offence and the applicable sanctions detailed under bribery/trading in influence of domestic public officials apply accordingly to bribery/trading in influence of lay judges.

550. Regarding foreign jurors, Article 120.3 (3.1) CC includes in the definition of "Foreign official person or foreign public official" "any person holding [...] a judicial office of a foreign State, whether appointed or elected". Therefore, they appear to be covered by Articles 430 and 431 CC". The elements of the offence and the applicable sanctions detailed under bribery/trading in influence of foreign public officials apply accordingly to bribery/trading in influence of foreign jurors.

551. The sanctions available for bribery vary depending on the action or inaction by the official concerned resulting from a bribe and his/her duties, and more particularly, the lawful or unlawful nature of this action/inaction (i.e. whether duties are breached or not). Likewise, the available sanctions for passive bribery/trading in influence are more severe than those provided for active bribery/trading in influence. Overall the sanctions seem effective, proportionate and dissuasive.

Participatory acts

552. Pursuant to Article 28 CC, attempt is punishable for criminal offences that are punished by three or more years of imprisonment. An attempt to commit any other criminal offence is punishable only if expressly provided for by law. On the other hand, when two or more persons jointly commit a criminal offence by participating in its commission or by substantially contributing to its commission in any other way, each of them shall be liable and punished as prescribed for the criminal offence (collaboration)³⁹⁹. Collaboration acts involve co-perpetration (Article 31 CC), incitement (Article 32 CC), assistance (Article 33 CC), agreement to commit a criminal offence (Article 35 CC). These acts are criminalised and punished more leniently in accordance with respective provisions and limits set forth in Article 36 CC.

553. The *attempt* includes the intentional action toward the commission of an offence but the action is not completed or the elements of the intended offence are not fulfilled. An attempt is punishable in cases when the offence is punished for three or more years and in other cases if expressly provided for by law. *Co-perpetration* involves joint participation of two or more persons in the commission of the criminal offence or substantial contribution to its commission. *Assistance* in committing a criminal offence includes, but is not limited to: giving advice or instruction on how to commit a criminal offence; making available the means to commit a criminal offence; creating

³⁹⁸ Regulations on activities of domestic arbitrators are laid down in Chapter XXXI of the Law on Contentious Procedure (Law No. 03/L-006 of 30 June 2008) and in the Law on Arbitration (Law No. 02/L-075 of 26 January 2007).

³⁹⁹ Criminal Code of Kosovo, Article 31.

conditions or removing the impediments to the commission of a criminal offence; or, promising in advance to conceal evidence of the commission of a criminal offence, the perpetrator or identity of the perpetrator, the means used for the commission of a criminal offence, or the profits or gains which result from the commission of a criminal offence. *Agreement to commit a criminal offence* implies the agreement to commit a criminal offence as well as undertaking of any substantial act towards the commission of the criminal offence (substantial act being not necessarily a criminal act but a substantial preparatory step towards the commission of the offence). A co-perpetrator is criminally liable within the limits of his or her intent or negligence. A person who incites or assists in the commission of a criminal offence shall be held criminally liable within the limits of his or her intent (Article 36 CC).

Jurisdiction

554. It is important to be mentioned the Criminal Code provisions on "Transitional provisions for the jurisdiction of EULEX judges and prosecutors in criminal proceedings" (Article 442 CC) stating that:

- 1. With the entry into force of this Criminal Code the EULEX judges and prosecutors assigned to criminal proceedings will have jurisdiction and competence over any case that can be investigated or prosecuted by the Special Prosecution Office of Kosovo (see also Article 441 CC).
- 2. Before the commencement of the relevant stage of the proceeding, upon petition of the EULEX Prosecutor assigned to the case or working in the mixed team identified in Articles 9 and 10 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law No. 03/L-053 of 13 March 2008), or upon petition of any of the parties to the proceeding, or upon a written request of the President of the competent court or of the General Session or of the Supreme Court of Kosovo where the provisions related to the disqualification of a judge or lay judge foreseen by the Criminal Procedure Code of Kosovo are not applicable, the President of the Assembly of EULEX Judges will have the authority, for any reason when this is considered necessary to ensure the proper administration of justice, to assign EULEX judges to the respective stage of a criminal proceeding, according to the modalities on case selection and case allocation developed by the Assembly of the EULEX Judges and in compliance with the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, in addition to the crimes foreseen in Article 3.3 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo for the following crimes when the investigation or prosecution is not conducted by the Special Prosecution Office of Kosovo: 2.30 abusing Official Position or Authority, Accepting Bribes and Giving Bribes as set forth in Articles 422, 428 and 429 of this Code; 2.31 misappropriation in Office and Fraud in Office as set forth in Articles 425-426 of this Code; 2.33 conflict of Interests as set forth in Article 424 of this Code.

Principle of territoriality

555. According to the Criminal Code, criminal laws of Kosovo apply to any person who commits a criminal offence wholly or partly on the territory of Kosovo. The criminal laws of Kosovo apply to any person who commits a criminal offence on any means of air or water transport which is registered in Kosovo, regardless of the location of the air or water transport at the time the criminal offence was committed⁴⁰⁰.

556. Article 115 CC provides that criminal laws of Kosovo apply to any person who is a national of Kosovo or becomes a resident of Kosovo after the commission of the offence and who commits criminal offences outside the territory of Kosovo to the extent that dual criminality exists (extraterritorial jurisdiction). However this kind of jurisdiction applies to a number of specific criminal (predicate) offences that are committed outside the territory of Kosovo and which are included in the mentioned Articles of this provision (related to money laundering, terrorism, organised crime etc.).

Principle of nationality

557. With regard to foreigners (principle of nationality) who commit a criminal offence outside the territory of Kosovo, the jurisdiction is established and criminal laws of Kosovo apply even when such a criminal offence is not referred to in Article 115 CC under the following conditions: (i) the criminal offence has been committed against a national of Kosovo; (ii) the principle of dual

⁴⁰⁰ Criminal Code, Article 114.

criminality applies; and (iii) the perpetrator is found on or has been transferred to the territory of Kosovo (Article 116 CC).

558. It results from the foregoing that: the extraterritorial jurisdiction related to Kosovo nationals is limited to certain defined criminal offences; with regard to foreign perpetrators there are two other restrictions besides the dual criminality principle that is required in principle for both cases.

Requirement of dual criminality

559. As it is mentioned above in the previous paragraphs, the dual criminality principle is required and the act must constitute a criminal offence under the law in force in the country of perpetration (see Articles 115.3 and 116, 1.2 CC).

560. Rules on jurisdiction are laid down in Article 114 CC (territoriality jurisdiction: offences committed, in whole or in part, in Kosovo or on any means of air or water transport which is registered in Kosovo), Article 115 CC (nationality jurisdiction for offences committed abroad by nationals or residents of Kosovo) and Article 116 CC (nationality jurisdiction for offences committed abroad by foreigners against a national of Kosovo). For bribery offences committed abroad Articles 115 and 116 require dual criminality, as bribery offences are neither mentioned in Article 115.1.1 which makes the criminal laws of Kosovo applicable on specific offences nor in Article 115.1.2 where offences must be prosecuted even though committed abroad on the basis of an international agreement binding Kosovo.

561. In the Council of Europe Convention Article 17 – Jurisdiction - a series of criteria is established concerning the jurisdiction over the criminal offences. According to this Article the requirement of dual criminality should not be an obstacle to prosecute bribery offences. On this background it is recommended **to consider abolishing the requirement of dual criminality in Articles 115 and 116 CC in respect of bribery offences when committed abroad.**

Statute of limitations

562. The general rules of the Criminal Code on the Statute of Limitation are set forth in Chapter X, namely in Articles 106 to 111. As such, statutory limitation on the criminal prosecution⁴⁰¹, including the statutory limitation on the execution of punishments⁴⁰², may not be initiated after the following periods have elapsed:

- thirty (30) years from the commission of a criminal offence punishable by lifelong imprisonment;
- twenty (20) years from the commission of a criminal offence punishable by imprisonment of more than ten (10) years;
- ten (10) years from the commission of a criminal offence punishable by imprisonment of more than five (5) years;
- five (5) years from the commission of a criminal offence punishable by imprisonment of more than three (3) years.
- three (3) years from the commission of a criminal offence punishable by imprisonment of more than one (1) year; and
- two (2) years from the commission of a criminal offence punishable by imprisonment up to one (1) year or punishment of a fine.

563. In principle, the period of statutory limitation on criminal prosecution starts on the day when the criminal offence has been committed. If a result constituting an element of the offence occurs later, the period of limitation shall commence to run from that time. The following table illustrates the applicable limitation periods for bribery and trading in influence offences:

Article CC	Offence	Sanction (imprisonment)	Relative statute of limitations
Bribery in the public sector			
Active bribery			
429 (1)	Lawful official acts/omissions	Up to 3 years	3 years

⁴⁰¹ *Ibid.* Article 106.

⁴⁰² *Ibid.* Article 108.

Article CC	Offence	Sanction (imprisonment)	Relative statute of limitations
	Aggravated circumstance	1-8 years	10 years
429 (2)	Unlawful official acts/omissions	3 months - 3 years	3 years
Passive bribery			
428 (1)	Lawful official acts/omissions Aggravated circumstances	6 months – 5 years 1 – 8 years	5 years 10 years
428 (2)	Unlawful official acts/omissions	3 – 12 years	20 years
Bribery in the private sector			
Active bribery			
316		Up to 3 years	3 years
Passive bribery			
315		Up to 3 years	3 years
315 (3)	After the conclusion of a contract or a service	Up to 1 year	2 years
Trading in influence			
Active trading in influence			
431 (2)		Up to 5 years	5 years
Passive trading in influence			
431 (1)		Up to 8 years	10 years

564. When the law provides for more than one punishment for a criminal offence, the period of limitation shall be determined according to the most serious punishment.

565. Kosovo applies two time limits to the offence of bribery – a statute of limitation (SoL) and an investigation time-limit. The SoL for the bribery offence is from three to 12 years and begins to run when the crime has been committed. According to the general rules of the Criminal Code on the Statute of Limitation in Articles 106 to 111, criminal prosecution may not be initiated after between 3 years to 12 years depending on the Article in question. The period of statutory limitation on criminal prosecution commences as mentioned on the day when the criminal offence was committed. If a result constituting an element of the offence occurs later, the period of limitation shall commence to run from that time

566. The period of statutory limitation (SoL) shall not run for any time during which prosecution cannot be initiated or continued by law, including, but not limited to the following circumstances (Article 107, CC):

- 3.1. when the perpetrator is outside of Kosovo and this causes a delay of proceedings;
- 3.2. when the perpetrator is wanted by arrest warrant;
- 3.3. when the Chief State Prosecutor, in accordance with the Code of Criminal Procedure, seeks to obtain evidence from outside of Kosovo; or
- 3.4. during the guilty plea procedure.
4. The period of statutory limitation shall not be tolled if the offence is not prosecuted because of the absence of a request or authorisation to prosecute or a request to prosecute by a foreign state.
5. The period of statutory limitation is interrupted by every act undertaken for the purpose of criminal prosecution of the criminal offence committed.
6. The period of statutory limitation is also interrupted if the perpetrator commits another criminal offence of equal or greater gravity than the previous criminal offence prior to the expiry of the period of statutory limitation.
7. A new period of statutory limitation will commence after each interruption
8. Criminal prosecution shall be prohibited in every case when twice the period of statutory limitation has elapsed.

567. According to Article 159 CPC the investigation shall be completed within two (2) years after an investigation has been initiated. If an indictment is not filed, or a suspension is not entered under Article 157 CPC, after two (2) years of the initiation of the investigation, the investigation shall automatically be terminated. The pre-trial judge may authorise a six (6) month extension of

an investigation where a criminal investigation is complex, including but not limited to if there are four or more defendants, multiple injured parties have been identified, a request for international assistance has been made, or other extraordinary circumstances exist.

568. The state prosecutor may render a ruling to suspend the investigation if the defendant, after committing a criminal offence, has become afflicted with a temporary mental disorder or disability or some other serious disease, if he or she has fled or if there are other circumstances which temporarily prevent successful prosecution of the defendant. The time when the investigation was suspended shall not be taken into account in calculating the period of time for completing the investigation or for the expiration of the statute of limitations of a criminal offence (Article 157 CPC).

569. By the end of the investigation time-limit the case has to be terminated. There is only a limited possibility to suspend the case, as just mentioned above. The maximum two-year deadline for the investigations of large bribery cases appears rather short, given the complexity of the cases and the difficulty in identifying perpetrators. While recognising that a short time limit might be desirable in the context of petty corruption, the two-year time-limit seem clearly insufficient in large and complex cases especially with links to abroad. This could be avoided exceeding the time-limit for investigation in large cases of corruption. It is therefore recommended **to take the necessary legislative steps to ensure, that time-limits for investigation do not hinder the effective combating of corruption.**

Defences

570. Criminal liability may be waived by the court in cases of effective regret of the briber (Article 429 (4) CC - active bribery in public sector and 316 (3) - active bribery in private sector). The effective regret may be generally invoked in case of giving or request of undue advantage from/to the briber and when his/her report is done before the criminal offence was discovered or before knowing that it was discovered.

571. As mentioned above criminal liability may be waived by the court in cases of effective regret of the briber (Article 429 (4) CC - active bribery in public sector and 316 (3) - active bribery in private sector). In Article 316 it is explicitly mentioned that the reward or gift given shall be confiscated, except in the case provided for in paragraph 3 where the criminal liability is waived. There is no similar provision in Article 429. It is up to the court to decide if the regret is of a kind which should waive the criminal liability – the bribe-giver has thought better of it and reported the crime to the police. Not because he did not get from the public official what he wanted (an element of extortion) and not because he was afraid that the crime would be detected.

572. As mentioned above the reward or gift is given back in cases of active private bribery, when the court finds that the requirements for effective regret have been met. There is no provision about this situation in the Article concerning active bribery. One of the reasons to let the court decide the waiving of criminal liability and not having the liability automatically waived is that it is of great importance to avoid the element of extortion. In the case of extortion, the bribe-giver could benefit from the defence of effective regret, even if s/he has not brought the offence to the attention of a law enforcement authority. It is therefore recommended **to take the necessary legislative steps to ensure that the possibility provided by the special defence of effective regret to return the bribe to the bribe-giver who has reported the offence before it is uncovered be abolished.**

Statistics

573. Concerning bribery of public officials, Ministry of Internal Affairs (MIA) & Kosovo Police (KP) have provided the following figures:

Criminal Offence	2010	2011	January-September 2012
<i>1. Abuse of official position or authority</i>			
a) Cases under investigations	228	32	23
b) Criminal charges	98	104	59
c) Against how many suspects	307	212	147
d) Arrested	47	41	19
<i>2. Corruption criminal offences</i>			

Criminal Offence	2010	2011	January-September 2012
a) Cases under investigations	272	40	26
b) Criminal charges	140	151	68
c) Against how many suspects	362	293	206
d) Arrested	58	86	33
<i>General</i>			
a) Cases under investigations	722	143	116
b) Criminal charges	522	501	343
c) Against how many suspects	926	815	597
d) Arrested	178	188	118

Explanation: The statistics for the period of 2010 represent not only the number of cases but case and PPN, while statistics for the years 2011 and 2012 represent only the number of cases.

At the time for the on-site visit neither the Ministry of Internal Affairs nor Kosovo Police had information of how many of the cases which had led to an indictment or conviction in court.

574. The following statistics result from decisions of municipal and district courts of Kosovo for the period between 2008 to 2011⁴⁰³:

Criminal Offences	Old CC	New CC	2008	2009	2010	2011
Abuse of Office	Article 339	Article 422	26	45	39	46
Accepting bribes	Article 343	Article 428	8	9	18	13
Giving bribes	Article 344	Article 429	19	12	5	23

575. Regarding private sector bribery (active form - unjustified giving of gifts), there are 6 convicted persons in municipal and district courts of Kosovo during the period from 2008 to 2011.

Corporate liability

(See also Section 2.2 of the PECK AML/CFT Assessment Report on Kosovo)

General characteristics

576. The special Law on Business Organisations (Law No. 02/L-123 of 27 September 2007, hereafter "LBO") defines different types of legal entities engaged in business activities. This law is applicable since October 2008 but it has been amended and supplemented in June 2011 (Law No. 04/L-006). The basic Law uses the term "Company" but this was amended and is now referred to as "Corporation"⁴⁰⁴.

Registration

577. Kosovo Business Registration Agency (KBRA) registers all new businesses, modifications of business data, business shut down, issuance of registration certificate with fiscal number, certificate of value added tax, import-export certificate, provides information and free forms. Types of companies that are registered at KBRA are: personal business enterprises (PBE), general partnerships (GP), limited partnerships (LP), limited liability corporations (L.L.C.) and joint stock corporations (JSC). Apart from the above entities, foreign entities may also register a branch office in Kosovo (it must be registered with the Registry as a foreign business organisation according to the law). A branch office is not a separate legal entity. Consequently, its rights and obligations pertain to the "parent" company and not to the branch office.

578. The Business Registry is a central register that maintains the records of all registered companies. Each registered company can be found online by entering the company name or business ID number. The Business Registry is responsible for: registration of new companies; registration of trade names; registration of branch offices of foreign companies; receipt of annual

⁴⁰³ <https://ask.rks-gov.net/ENG/justice/publications>

⁴⁰⁴ As defined by the definitions given in Law No. 02/L-123 on Business Organisations and amended by Law No. 04/L-006 on Amending and Supplementing the Law No. 02/L-123 on Business Organisations.

financial statements and business reports of limited liability companies and joint stock companies. Currently, the Business Registry contains 104,880 registered PBEs, 3,414 GPs, 86 LPs, 8,577 LLCs, 388 JSCs and 582 foreign business organisations.

Professional interdictions

579. Article 66 CC provides for the temporary deprivation (from 1 to 5 years) of the right to perform a profession, an independent activity, a management or administrative duty or duties related to the disposition, management or use of property in legal entities as a result of the conviction for any kind of criminal offence.

580. According to Article 66 CC a convicted person temporary may lose the right to perform a profession, an independent activity, a management or administrative duty or duties related to the disposition, management or use of property in legal entities as a result of the conviction for any kind of criminal offence. As far as it was understood from officials of the Registry during the onsite visit there is no examination in the Kosovo Business Registration Agency if anyone going to be registered has a temporary deprivation. In order to make the combating of corruption effective it is recommended **to strengthen the controlling functions of the Registry of Enterprises in order to ensure that both natural and legal persons establishing companies be checked and monitored with respect to possible criminal records and professional disqualifications or any other pertinent information on legal persons in the registration process.**

Accounting obligations

581. According to Law on Accounting, Financial Reporting and Audit, business organisations should prepare financial statements in accordance with International Financial Reporting Standards (IFRS) and shall apply the accounting standards, regulations and administrative instructions issued by Kosovo Financial Reporting Council (KFRC)⁴⁰⁵. Under Article 12 of Law on Accounting, Financial Reporting and Audit, accounting documents (financial statements and supporting books) are required to be kept for a period of ten years.

Liability of legal persons

582. Article 40 of the Criminal Code of Kosovo provides that a legal person is liable for the criminal offence of the responsible person, who has committed a criminal offence, acting on behalf of the legal person within his or her authorisations, with the purpose to gain a benefit or has caused damages for that legal person. The liability of legal person exists even when the actions of the legal person were in contradictions with the business policies or the orders of the legal person. Under the same provision (Article 40.2), the legal person is liable for criminal offences in cases of the responsible person, who has committed the criminal offence, who was not sentenced for that criminal offence. The liability of the legal person is based on the culpability of the responsible person.

583. Law on Liability of Legal Persons for Criminal Offences (Law No. 04/L-030 of 31 August 2011)⁴⁰⁶ also regulates the liability of legal persons for criminal offences; criminal sanctions that may be imposed to legal persons and special provisions that regulate the applicable procedure against the legal person. Legal persons are currently subject to criminal liability for criminal offences provided for in special part of the Criminal Code and for other criminal offences, including bribery offences, provided the conditions for criminal liability of legal persons are met, as foreseen by this Law. CC or Law on Liability of Legal Persons for Criminal Offences do not however contain any clear provision in relation to other civil or administrative forms of liability of legal persons.

584. According to Article 18 of the Council of Europe Convention legal persons shall be held liable if three conditions are met. The first condition is that a bribery offence must have been committed. The second condition is that the offence must have been committed for the benefit or on behalf of the legal person. The third condition, which serves to limit the scope of this form of liability, requires the involvement of "any person who has a leading position". The leading position can be assumed to exist in the three situations described –a power of representation or an authority to take decisions or to exercise control- which demonstrates that such a physical person is legally or in practice able to engage the liability of the legal person. Paragraph 2 expressly mentions Parties' obligation to extend corporate liability to cases where the lack of supervision

⁴⁰⁵ Law No. 04/L-014 on Accounting, Financial Reporting and Audit, Article 5.

⁴⁰⁶ This Law will enter into force on 1 January 2013.

within the legal person makes it possible to commit the corruption offences. It aims at holding legal persons liable for the omission by persons in a leading position to exercise supervision over the acts committed by subordinate persons acting on behalf of the legal person. In Kosovo CC the liability of the legal person is based on the culpability of the responsible person. In cases where the natural person responsible for the criminal act is not identified, it will be impossible to assign liability to the legal entity. This situation is assessed as non-conflicting with the provisions of Article 18 of the Criminal Law Convention on Corruption. Nevertheless, there is non-compliance of such a legal restriction with the relevant standard of the Recommendation No. R (88) 18 of the Committee of Ministers concerning Liability of Enterprises having Legal Personality for Offences Committed in the Exercise of their Activities. It is therefore recommended **to take the necessary legislative steps to ensure that legal entities can be held liable not only in situations where a responsible natural person can be punished including situations where the liability is based on lack of supervision but also in situations where it is not possible to find a natural person liable for the offence.**

585. The Assessment Team was informed by Kosovo authorities that there have been no cases where criminal liability to legal entities has been applied. The fact that this tool is not being used in practice is clearly a shortcoming. Therefore, it is recommended **that the Kosovo authorities undertake necessary steps to ensure and enhance the practical application of this measure (liability of legal persons) as a means to sanction criminal activity.**

Tax deductibility and fiscal authorities

586. By virtue of Article 9 of Law on Corporate Income Tax (Law No. 03/L-162 of 29 December 2009), deductible expenses are considered to be only those expenses which incur exclusively for economic activities, on the condition that such expenses are documented and proven by the taxpayer in accordance with sublegal acts issued by the Minister, and are object to limitations specified by the provisions of this Law. Therefore, in principle, no expenses incurred or which may incur for facilitation, expenses to enjoy a privileged treatment or bribe expenses for business privileges are deductible expenses and are not part of tax base.

587. The Kosovo Tax Administration has established the Tax Investigation Unit, which amongst others, deals with investigating corruption cases within its competences and scope set under the Law on Kosovo Tax Administration.

Account offences

588. Criminal Code provisions criminalise *inter alia* tax evasion (Article 313), false tax related documents (Article 314) or avoiding payment of mandatory customs fee (Article 318). Also, Article 23 of Law on Accounting, Financial Reporting and Audit foresees administrative fines that may be imposed when there is, *inter alia*, a failure to submit financial statements (5,000 to 25,000 EUR), a failure to submit audited financial statements (5,000 to 10,000 EUR). A fine in amount of up to five times higher may be imposed for repeated infringements.

Role of accountants, auditors and legal professions

589. According to Articles 385 and 386 of the Criminal Code, accountants and auditors are likely other citizens obliged to report preparation of criminal offences, criminal offences or their perpetrators.

590. The financial statements of the Business Organisations have to be audited in accordance with international standards on auditing and in accordance with the law, submitted and published in KCRF and a copy submitted to MTI, no later than 30 April of the following year. Consolidated financial statements have to be audited in accordance with international standards on auditing and, in accordance with the law, shall be submitted to KCFR and a copy in MTI, and no later than 30 of June of the following year⁴⁰⁷.

591. According to Articles 385 it is a criminal offence not to report the preparation of the commission of an offence in violation of Chapter XXXIV-Criminal Offences Against Official Duty (Articles 422 to 437) and according to Article 386 it is a criminal offence to fail to report such an offence as mentioned above having knowledge of the identity of the perpetrator.

⁴⁰⁷ Law No. 04/L-014- on Accounting, Financial Reporting and Audit, Article 11.

592. According to the International Financial Reporting Standards (IFRS) there is no obligation to report findings concerning offences as mentioned in 385 and 386 CC. It was the opinion by interlocutors met, that the auditors did not have such an obligation to report criminal activity to the police. There could be other ways to tackle such knowledge for example to renounce being auditing the company. This is inconsistent with the CC and not in line with the standards for example in OECD. According to Recommendation of the Council (OECD) for Further Combating Bribery of Foreign Public Officials in International Business Transactions Adopted by the Council on 26 November 2009:

iii) Member countries should require the external auditor who discovers indications of a suspected act of bribery of a foreign public official to report this discovery to management and, as appropriate, to corporate monitoring bodies;

iv) Member countries should encourage companies that receive reports of suspected acts of bribery of foreign public officials from an external auditor to actively and effectively respond to such reports;

v) Member countries should consider requiring the external auditor to report suspected acts of bribery of foreign public officials to competent authorities independent of the company, such as law enforcement or regulatory authorities, and for those countries that permit such reporting, ensure that auditors making such reports reasonably and in good faith are protected from legal action.

593. It is therefore recommended that **Kosovo considers requiring external auditors to report suspected acts of bribery to management or if the management do not react or if the management itself is involved, to report to the competent authorities independent of the company, such as law enforcement or regulatory authorities, and, where appropriate, ensure that auditors making such reports reasonably and in good faith are protected from legal action.**

3.2. Investigation and criminal procedure

594. Investigation and criminal procedures are regulated by the Criminal Procedure Code of Kosovo, 04/L-123, which entered into force on 1 January 2013. The previous Criminal Procedure Code was first promulgated as UNMIK regulation and was later amended by Law No. 03/L-003 on Amendments and Supplements to the Kosovo Provisional Criminal Procedure Code No. 2003/26.

Bodies and institutions in charge of the fight against corruption

595. After receiving information of a suspected criminal offence, the police shall investigate whether a reasonable suspicion exists that a criminal offence prosecuted ex officio has been committed. The police shall investigate criminal offences and shall take all steps necessary to locate the perpetrator, to prevent the perpetrator or his or her accomplice from hiding or fleeing, to detect and preserve traces and other evidence of the criminal offence and objects which might serve as evidence, and to collect all information that may be of use in criminal proceedings. As soon as the police obtain a reasonable suspicion that a criminal offence prosecuted ex officio has been committed, the police have a duty to provide a police report within twenty four (24) hours to the competent state prosecutor, who shall decide whether to initiate a criminal proceeding (CPC 70).

596. The state prosecutor may initiate an investigation (CPC 102) on the basis of a police report or other sources, if there is a reasonable suspicion that a criminal offence has been committed, is being committed or is likely to be committed in the near future which is prosecuted ex officio. The investigation shall be initiated by a decision of the state prosecutor (CPC 104). The decision shall specify the person or persons against whom an investigation will be conducted, the date and time of the initiation of the investigation, a description of the act which specifies the elements of the criminal offence, the legal name of the criminal offence, the circumstances and facts warranting the reasonable suspicion of a criminal offence, whether any technical or covert measures of investigation or surveillance had been authorised and the evidence and information already collected. A stamped copy of the ruling on the investigation shall be sent without delay to the pre-trial judge.

597. The public prosecutor may render a ruling to suspend the investigation if the defendant, after committing a criminal offence, has become afflicted with a temporary mental disorder or disability or some other serious disease, if he or she has fled or if there are other circumstances which temporarily prevent successful prosecution of the defendant (CPC 157).

598. The defendant and the state prosecutor shall have the status of equal parties in criminal proceedings, unless otherwise provided for by the Criminal Procedure Code. The defendant has the right and shall be allowed to make a statement on all the facts and evidence which incriminate him or her and to state all facts and evidence favourable to him or her. He or she has the right to request the state prosecutor to summon witnesses on his or her behalf. He or she has the right to examine or to have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her shall be examined, at the latest, prior to the conclusion of the investigation unless the proceedings result in termination. In simple matters, it shall be sufficient to give the defendant an opportunity to respond in writing (CPC 9.1 + 2).

599. The state prosecutor may also gather such information on his or her own, or from other public entities, including by speaking to witnesses and injured parties, and their legal counsel. The state prosecutor may participate with the police in any examination of the defendant while he or she must respect the rights of suspects under the provisions of this Code (CPC 83.2).

600. Every person against whom the state prosecutor has a reasonable suspicion that he or she has committed a criminal offence shall be named as a defendant in the decision to initiate an investigation. Every defendant named in the decision shall be entitled to the rights of a defendant under the present Code (CPC 103.3).

601. During the formal investigation, the defendant or defence counsel may request the state prosecutor to take or preserve pre-trial testimony that may or could be reasonably expected to be exculpatory (CPC 122.5).

602. During the investigative stage, the state prosecutor shall summon witnesses, victims, experts and the defendant or defendants to provide pre-trial testimony relevant to the criminal proceedings (CPC 132.1). The state prosecutor shall give five (5) days written notice to the defendant, defence counsel, injured party and victim advocate of the date, time and location of the pre-trial testimony. A copy of the notice shall be placed into the file (CPC 132.6).

603. Prior to the filing of any indictment, the defendant shall be examined in a session of pre-trial testimony. If the defendant is being investigated for a criminal offence or offences punished with a maximum period of imprisonment of no more than three (3) years, it shall be sufficient to give the defendant an opportunity to respond in writing CPC 151).

604. Based on the Kosovo legislation, the State Prosecutor is the highest body for investigating criminal offences. The State Prosecutor leads the investigation of cases during all investigation stages. The Kosovo Police is also an investigation body that investigates criminal cases in conformity to the CPC. Based on the Customs Code, Kosovo Customs has the power of a law enforcement body in the area of customs criminal offences and other cases specified under the law, it acts as judicial police. Also the Kosovo Tax Administration has powers to investigate into tax criminal offences, in which case it is considered as judicial police. Based on Law No. 03/L-159 on Anti-Corruption Agency, the Kosovo Anti-Corruption Agency (KAA) initiates and undertakes the detection and preliminary investigation procedure of corruption, and forwards suspected cases of corruption to the competent public prosecutor's office. Based on the legislation in force, the Kosovo Intelligence Agency (KIA) is one of the institutions responsible within the institutional framework for discovery and prevention of corruption activities.

605. As already mentioned (see paragraph 70 above), three prosecutors of the Office of Basic Prosecution of Pristina are assigned to deal exclusively with corruption-related cases. Steps have been taken to strengthen the Kosovo Anti-Corruption Task Force and to ensure that seconded police officers and appointed experts will be able to contribute effectively. As part of the government's anti-corruption efforts, the Anti-Corruption Task Force is the latest anti-corruption unit to be established by the government to combat corruption, following on from the creation of the Kosovo Anti-corruption Agency (KAA), the Office of Good Governance, and the Ombudsperson Institution.

606. In addition, according to Law on Accounting, Financial Reporting and Audit, KFRC (Kosovo Financial Reporting Council) appoints committees as needed to ensure implementation of the International Standards and relevant EU "Acquis Communautaire" including EU Directive No. 78/660/EEC, Directive No. 83/349/EEC and Directive No. 84/253/EEC. As such, one of the KFRC commissions is responsible for investigations and discipline⁴⁰⁸.

⁴⁰⁸ Law No. 04/L-014 on Accounting, Financial Reporting and Audit, Article 15.

607. Kosovo Police (KP) within its structure has established Specialised Departments dealing with the fight against economic and financial crime and corruption at central and regional level, namely the Directorate for Investigation of Economic Crimes and Corruption has the mission to combat economic financial crimes and corruption at the central and regional levels. Kosovo Police has also established a Special Anti-Corruption Department. The Kosovo Police has the Department on Economic Crimes and Corruption, Intelligence Unit, Investigations Unit and other units specialised in the area of covert investigations measures. The Special Prosecution of Kosovo (SPRK) has an Anti-Corruption Department composed of 5 special prosecutors and 5 anti-corruption experts, and the Task Force composed of 30 police officers that exclusively deal with investigating of corruption offences (see above in paragraphs 68 and following concerning the implementation of the anticorruption strategy). Kosovo Customs has a Professional Standards Unit which deals with disciplinary cases. Any serious complaints against KC Officers would in the first instance be looked at by the KC Internal Inspection Unit and may later be passed on to the KC Investigation Unit for any further criminal investigations. The KAA do refer cases to the KC Investigation Unit (as they have more investigative powers) and any potential criminal acts would be reported to the relevant Prosecutor. The Kosovo Tax Administration also has an Investigation Unit to which the KAA may refer cases of alleged corruption for appropriate action/reporting.

608. A Special Prosecution Office (SPRK) within the office of State Prosecutor has been established by Law on SPRK No. 03/L-052 that governs its territorial jurisdiction, scope, powers, composition and appointment of its Chief Prosecutor. The SPRK has exclusive competence to investigate and prosecute inter alia money laundering, terrorism offences, organised crime (Article 5) as well as a subsidiary competence for offences defined in Article 9 of the Law (trafficking offences, counterfeiting money, corruption and fraud offences and other serious offences).

609. In order to effectively combat money laundering and terrorist financing in Kosovo, Law on Prevention of Money Laundering and Terrorist Financing establishes the Financial Intelligence Unit (FIU) within the Ministry of Finance (MoF) as a central independent national institution responsible for requesting, receiving, analysing and disseminating to the competent authorities, disclosures of information which concern potential money laundering and terrorist financing⁴⁰⁹.

(See also detailed analysis of the role, functions and effectiveness of the FIU in Section 2.6 of the PECK AML/CFT Assessment Report)

Special investigative techniques

610. Article 88 CPC provides for the possibility to use covert and technical measures of surveillance during the investigation to provide evidence and identify and trace properties subject to confiscation. The SITs include covert photographic or video surveillance; covert monitoring of conversations; interception of telecommunications; interception of communications by a computer network; search of postal items; controlled delivery of postal items; use of tracking or positioning devices; a simulated purchase of an item; a simulation of a corruption offence; an undercover investigation; metering of telephone-calls; and disclosure of financial data.

Protection of witnesses and whistleblowers

611. Kosovo has a special Law on Witness Protection⁴¹⁰ and another one on Protection of Informants⁴¹¹ both of those laws regulating the status and protection of the witnesses and informants.

612. There is no doubt that Kosovo has a severe problem concerning corruption which has been indicated by the Corruption Perception Index 2011 of Transparency International, where Kosovo had the lowest rating in the Balkans. It was the same impression during the onsite-visit and at the same time it was clear that lots of efforts were carried out to combat corruption. On the other hand it was obvious that there was a great possibility for improvement of the cooperation between the counterparts involved – for example didn't the police get information about the result from the cases they had investigated. Actually it was not possible to get a statistic showing the cases investigated compared with the result of the prosecution. Making the assessment it was very difficult to evaluate the effectiveness of the system as there were no figures showing for example how many cases investigated which led to a conviction, how many persons who were convicted, the number of convicted legal persons, the number of cases with confiscation and the number of

⁴⁰⁹ Law No. 03/L-196 on Prevention of Money Laundering and Terrorist Financing, Article 4.

⁴¹⁰ Law No. 04/L-015 on Witness Protection.

⁴¹¹ Law No. 04/L-043 on Protection of Informants.

acquittals. It is therefore recommended **to take steps to collect appropriate and detailed information and statistics including all angles of a corruption case from the beginning to the end (including the outcome of the case) in order to assess the efficiency of the investigation/prosecution.**

613. Taken into account all the different institutions dealing with the investigation, the Assessment Team felt a complexity of rules in place. It was not obvious if a case should be dealt with within the ordinary police/prosecution or if it should be dealt with at the Kosovo Special Prosecution Office, and if so if it should be the special Anti-corruption Task Force. According to Article 442 CC the EULEX judges and prosecutors assigned to criminal proceedings will have jurisdiction and competence over any case that can be investigated or prosecuted by the Special Prosecution Office of Kosovo. As regards the corruption offences it follows from CC 441 that the Special Prosecution Office has subsidiary competence to investigate and prosecute these crimes.

614. Article 20 of the Council of Europe Convention requires States Parties to adopt the necessary measures to ensure that persons or entities be appropriately specialised in the fight against corruption. The requirement of specialisation is not meant to apply to all levels of law enforcement. It is not required in particular that in each prosecutor's office or in each police station there is a special unit or expert for corruption offences. At the same time, this provision implies that wherever it is necessary for combating effectively corruption there are sufficiently trained law-enforcement units or personnel. According to Article 21 of this Convention co-operation with the authorities in charge of investigating and prosecuting criminal offences is an important aspect of a coherent and efficient action against those committing the corruption offences defined therein. This provision introduces a general obligation to ensure co-operation of all public authorities with those investigating and prosecuting criminal offences.

615. First of all it is very important to have clear competences on which entity has the right to handle a case so it is not a coincidence who is dealing with the case. Is it the local police/prosecutor, Kosovo Police/prosecutor or the Kosovo Special Prosecution Office not to forget the investigations units in the Kosovo Customs and Kosovo Tax Administration? There is a specialised body in the Special Prosecution office, the Special Anti-corruption Task Force, which could probably deal with corruption cases in a greater extent than to day instead of having them dealt with in so many different entities. Probably this entity could have a more permanent nature with prosecutors, policemen and experts working together in the same premises. No doubt that this could more effectively combat corruption when staff, knowing each another, work together on a daily basis being specialised - everyone in their specific area. This department could then have the competence to deal with corruption cases of a severe nature for example besides great amounts the complexity of the case, whether there is a link to organised crime, whether politicians are involved, whether special business methods have been used, whether the case requires extensive investigation abroad or whether the case in any other way is serious. It is therefore recommended **to strengthen the Special Anti-corruption Department both in relation to the competence of this department but also in relation to increasing the resources and the cooperation between prosecutors, investigators and experts.**

616. As mentioned above, it is a requirement of Article 21 of the Council of Europe Convention that there should be co-operation of all public authorities with those investigating and prosecuting criminal offences. It could be tax authorities, administrative authorities, public auditors, labour inspectors, thus whoever in the exercise of his functions comes across information regarding potential corruption offences. Such information, necessary for the law enforcement authorities, is likely to be available, primarily, from those authorities that have a supervisory and controlling competence over the functioning of different aspects of public administration. From the onsite-visit the impression was that there was a general framework for cooperation in Kosovo between the counterparts in the fight against corruption. This cooperation could be improved by properly implement priorities set up in the Strategic Plan for inter-institutional cooperation in the fight against organised crime and corruption 2013-2015 that has been adopted by the Kosovo Prosecutorial Council. A prioritisation of the fields which could be necessary to examine in relation to corruption would be more effective than just awaiting cases to come or having own strategies in the different institutions - in other words to take up a more joined proactive role in the fight against corruption.

617. During the onsite-visit it was stated that if the prosecutor decides to terminate the investigation the injured party don't have the possibility to make a complaint to a higher ranked Prosecutor/the Chief State Prosecutor. Terminating a case is a great decision with wide consequences. The system is also more vulnerable in relation to corruption when it is only up to one person to decide on terminating a case. Therefore there should be a possibility to challenge such a decision which is why it is recommended **that necessary legislative steps are taken to**

ensure that the injured party has the right to file a complaint about the termination of an investigation.

3.3. Confiscation and other deprivation of instrumentalities and proceeds of crime

Confiscation

618. Article 69 (Confiscation of objects) of the Criminal Code envisages that "Objects used or destined for use in the commission of a criminal offence or objects derived from the commission of a criminal offence shall be confiscated. Such objects may be confiscated even if they are not the property of the perpetrator if confiscation is necessary for the interests of general security or for moral reasons if such confiscation does not adversely affect the rights of third parties to obtain compensation from the perpetrator for any damage.

619. Confiscation of material benefits is regulated under Chapter VII of the Criminal Code (Articles 96 to 99) and in Criminal Procedure Code (Article 385). Accordingly, no person may retain a material benefit acquired by the criminal offence. Such benefits will be confiscated by the court establishing the criminal offence (Article 96 CC). Material benefits shall be confiscated from the perpetrator or when confiscation is not possible, the perpetrator shall be obliged to pay an amount of money corresponding to the material benefit acquired.

620. The term "material benefit" is defined by Article 120.34 CC as any property derived directly or indirectly from a criminal offence. Property derived indirectly from a criminal offence includes property into which any property directly derived from the criminal offence was later converted, transformed, or intermingled, as well as income, capital or other economic gains derived or realised for such property at any time since the commission of the criminal offence. Any material gain that derives from whatever criminal offence will be confiscated by the court regardless the fact it is in the ownership or possession of the perpetrator. When confiscation is not possible, the perpetrator shall be obliged to pay an amount of money corresponding to the material benefit acquired (Article 97.1 CC).

Third parties

621. Material Benefits may be confiscated from the person to whom it has been transferred without compensation or with compensation that does not correspond to the real value, if such person knew or should have known that the material benefit was acquired by the commission of a criminal offence CC 97.2).

622. In cases of confiscation the burden of proof normally lies with the prosecutor. However when the material benefit has been transferred to a member of the family the benefits shall be confiscated from the member of the family unless such member of the family proves that he or she gave compensation for the entire value (CC97.2).

623. In the criminal procedure law there are more specific conditions for confiscation at third parties. According to Article 278 proceeds of a criminal offence - transferred to another person, business organisation or legal person - shall be subject to confiscation if: 1. the proceeds of the criminal offence were transferred from the possession of the defendant, 2. the transfer was for substantially less than the fair market value of the criminal proceeds, and 3. there is evidence that the defendant still retains control or use of the criminal proceeds.

624. According to Article 280 CPC confiscation and forfeiture of the material benefit acquired by the commission of a criminal offence may normally only be imposed in a judgment in which the accused is declared guilty or a judicial admonition is imposed. However, in Article 281 CPC property resulting from corrupt acts shall also be confiscated in cases in which criminal proceedings are not concluded with a judgment in which the accused is pronounced guilty.

625. Article 98 ("Protection of injured parties") requires that "If property damages have been awarded to an injured party in criminal proceedings, the court shall order confiscation of the material benefit if it exceeds the amount of the property damages awarded to the injured party. An injured party who, in the course of criminal proceedings has been instructed to initiate civil litigation with respect to his or her property claim, can request compensation from the confiscated material benefit. The injured party seeking compensation from the confiscated material benefit must commence civil litigation within six (6) months from the day of the final decision instructing him or her to initiate civil litigation and within three (3) months from the day of the final court decision establishing his or her property claim.

626. An injured party who fails to report a property claim during the course of criminal proceedings may demand compensation from the confiscated material benefit if he or she has initiated civil litigation within three (3) months from the day when he or she found out about the judgment confiscating the material benefit and no longer than two (2) years from the day the judgment on the confiscation of the material benefit became final and if he or she demanded compensation from the confiscated material benefit within three (3) months from the day when the decision establishing his or her property claim became final⁴¹².

627. Moreover, Kosovo has a special Law on Managing Sequestered or Confiscated Assets by which it has established an Executive Agency attached to the Ministry of Justice responsible for the managing of seized and confiscated assets⁴¹³.

Statistics

628. No available statistics were provided.

Money laundering

629. Pursuant to Article 308 of the Criminal Code "whoever commits the offence of money laundering shall be punished as set forth in the Law on Prevention of Money Laundering and Terrorist Financing".

630. As such, Kosovo has a special Law on Prevention of Money Laundering and Terrorist Financing⁴¹⁴. According to this Law, money laundering is defined as: "any conduct for the purpose of disguising the origin of money or other property obtained by an offence and shall include: 1) conversion or any transfer of money or other property derived from criminal activity; and 2) concealment or disguise of the true nature, origin, location, movement, disposition, ownership or rights with respect to money or other property derived from criminal activity⁴¹⁵."

(See also section 2.4 of the PECK AML/CFT Assessment Report on Kosovo for a comprehensive description and analysis).

International co-operation

631. A petition of a domestic court for legal assistance in criminal matters shall be transmitted to foreign agencies through open and available channels. A foreign petition for legal assistance from domestic courts shall be transmitted in the same manner. In emergency cases and on the basis of reciprocity, petitions for legal assistance may be sent through the competent public entity in the field of internal affairs, or in instances of criminal offences of laundering proceeds of crime or criminal offences connected to the criminal offence of laundering proceeds of crime, also through the competent public entity responsible for the prevention of laundering of proceeds of crime. On the basis of reciprocity or if so determined by an international agreement, international legal assistance in criminal matters may be exchanged directly between an organ of Kosovo and a foreign organ which participates in preliminary proceedings and in criminal proceedings, wherein modern technical assets, in particular computer networks and aids for the transmission of pictures, speech and electronic impulses may be used.

Interim measures

632. Article 112 of the Criminal Procedure Code provides for temporary confiscation of objects and proceeds of crime. A state prosecutor may request an order from the pre-trial judge for objects, property, evidence or money to be temporarily sequestered. Such a request must describe the objects, property, evidence or money with specificity and shall describe how the objects may be evidence of a criminal act, how the object, property or money may facilitate the criminal offence, or how the objects, property or money constitute a material benefit obtained from the commission of a criminal offence. Objects, property, evidence or money may be temporarily

⁴¹² Regarding the confiscation of assets acquired through a criminal offence, the authorities informed the Assessment Team after the on-site visit that the Law No. 04-L-140 on extended powers for confiscation of assets acquired by criminal offence has been adopted on 11 February 2013 and entered into force. Its provisions are applied in cases when the Criminal Code and Criminal Procedure Code are not sufficient.

⁴¹³ Law No. 03/L-141 on Managing Sequestered or Confiscated Assets.

⁴¹⁴ Law No. 03/L-196 on Prevention of Money Laundering and Terrorist Financing.

⁴¹⁵ *Ibid.*, Article 2 (paragraph 1.23).

sequestered only upon a court order. Objects and property that are temporarily sequestered are under the supervision and control of the state prosecutor.

633. Upon application by the state prosecutor at any time during the investigative stages, the pre-trial judge may order a search of a house and other premises and property of a defendant if there is a grounded suspicion that such person has committed a criminal offence and there is a grounded cause that the search will result in the arrest of such person or in the discovery and sequestration of evidence important for the criminal proceedings (Article 105.3 CPC).

Administration of seized proceeds

634. The accessory punishment of confiscation of objects (in accordance with the Criminal Code of Kosovo) shall be executed by the court which has imposed the punishment at first instance. The court shall determine whether to sell the confiscated object or deliver it to a public entity, a museum of criminology or other appropriate institution or to destroy it. Proceeds from the sale of confiscated objects shall be deposited in the Kosovo Budget⁴¹⁶. Under Law No. 03/L-141 on Managing Sequestered or Confiscated Assets, the Agency for the Management of Sequestered or Confiscated Assets has been established which pursuant to the Article 4 has following duties and responsibilities: preserves and manages the sequestered or confiscated assets in cooperation with the court, prosecution, or other competent bodies, in accordance with the law in force; in exemption of the confiscation of assets on realising the collection of tax dues; assists in the execution of the decisions for sequestration or confiscation of assets as required by competent authorities; enables the sale of sequestered or confiscated assets with the authorisation of the competent authority; if need be hires experts to estimate the value of the assets and the manner of preserving sequestered or confiscated assets; manages data regarding sequestered or confiscated assets in a centralised computer system; twice (2) per year reports to the Minister regarding the work of the Agency, or more frequently upon Minister's request.

Investigation concerning the proceeds

635. Upon identification of the perpetrators of the crime of corruption, collection of proofs and other material evidence, the identification, tracking and freezing of the crime proceeds commences (obtained unlawfully). But there is no specific entity systematically initiating identifying, tracing and freezing proceeds of crime when certain serious crimes, notably corruption, are detected.

636. Among the existing authorities there is currently no agency specifically mandated to undertake the task of asset recovery. Additionally, law enforcement authorities, do not proactively seek to identify or pursue criminal proceeds in the course of their investigations. Moreover, the Assessment Team is of the view that prosecutorial authorities have no priority with pursuing criminal proceeds. The Assessment Team was even informed of cases where such property had not been seized/confiscated even within procedural reach of prosecution authorities. Therefore, in order to improve confiscation of proceeds, it is recommended **(i) to establish an entity within the existing structure with particular reference to identification, tracking and freezing proceeds of crime; and (ii) to enhance the effectiveness of the system through introducing mandatory benchmarks for law enforcement in pursuing illicit funds in the case of any investigation of a proceeds-generating offence.**

637. Confiscation of instrumentalities and proceeds of crime are regulated by Articles 69 and 96 to 99 CC. Article 96 provides for the confiscation of a material benefit acquired by the criminal offence and Article 97 states that the perpetrator shall be obliged to pay an amount corresponding to the material benefit acquired when confiscation of the material benefit is not possible. Article 96.2 provides the possibility of confiscation of material benefit transferred to a third person, when such person knew or should have known that the material benefit was acquired by the commission of a criminal offence. When the material benefit has been transferred to a member of the family the benefits shall be confiscated from the member of the family unless such member of the family proves that he or she gave compensation for the entire value (reverse of burden). Confiscation of the proceeds is mandatory. The possibilities of confiscation are in the above respect well regulated by the criminal code. On the other hand, Kosovo legislation does not explicitly provide for a confiscation of objects intended to be used and the conditions for confiscation in the CPC 278 restrict the opportunities to confiscate in accordance with the Article 96 CC in a way that is contrary to the international standards. Criminal Procedure Code should thus be changed to be in line with the Criminal Code where the confiscation should be done in all cases where "such person knew or should have known that the material benefit was acquired by the commission of a criminal offence". In cases of corruption, it is – as mentioned above - possible to confiscate without

⁴¹⁶ Law No. 03/L-191 on Execution of Penal Sanctions, Article 176.

obtaining a conviction of the perpetrator according to Article 281 CPC. But it is only possible to confiscate proceeds of crime, if the material benefit or an amount of money corresponding to the material benefit is found. It may hinder the effective prosecution of corruption offences, if a perpetrator for example can hide proceeds from a crime abroad. It is therefore recommended **to ensure that objects intended to be used in a criminal offence can be confiscated and to enlarge the scope of the provisions on confiscation of instrumentalities and proceeds of crime in order to provide for better possibilities of using confiscation effectively in cases of corruption.**

3.4. Immunities from investigation, prosecution or adjudication of corruption offences

638. According to the Constitution (and some other laws) immunity is provided for the following categories of officials in Kosovo: Members of Parliament (Article 75), the President of Kosovo (Article 89), members of the Government (Article 98), judges, including lay-judges (Article 107), judges of Constitutional Court (Article 117), the Ombudsperson (Article 134.4) and his deputies (Article 11 of Law on Ombudsperson), members of the KJC (Article 12 of the KJC Law), prosecutors (Article 23 of Law on State Prosecutor), members of the KPC (Article 10 of the KPC Law).

639. Members of the institutions of Kosovo only enjoy immunity with respect to the exercise of the duties and responsibilities of the institution they belong to. Consequently, members of the institutions which enjoy immunity are not pardoned by the possibility of prosecution in any case that there is reasonable suspicion for their involvement in a certain criminal offence, no matter if it is a criminal offence with corrupt motives or not. According to Article 107 of the Constitution (Immunities), CC Court judges are immune from criminal prosecution, civil charges and dismissal from work for decisions they render, opinions they express and actions they undertake within the framework of their responsibilities as CC judges.

640. Otherwise, CC on 20 September 2011 rendered a decision in Case No. KO98/11 submitted to the Government of Kosovo. In this judgment, CC decided with regard to the immunity of members of the Kosovo Assembly, President of Kosovo and members of the Kosovo Government. In this case, the Government submitted the Referral containing three separate issues related to the immunities of different state bodies, namely - the deputies of the Assembly, the President of Kosovo and the members of the Government. The Government considers that there is necessity to interpret and clarify the questions of immunities because this issue has a direct impact on the democratic functioning of the institutions of Kosovo, pursuant to the Constitution. The Constitutional Court as the final authority for the interpretation of the Constitution unanimously decided that:

641. The Referral is admissible: In accordance with Article 75(1), Article 89 and Article 98 of the Constitution, the deputies of the Assembly, the President of Kosovo and the members of the Government enjoy functional immunity for actions taken or decisions made within the scope of their respective responsibility. Accordingly, deputies of the Assembly, the President of Kosovo and the members of the Government are non-liable in judicial proceedings of any nature over the opinions expressed, votes cast or decisions taken within the scope of their responsibility. This type of immunity is of unlimited duration.

642. Acting outside the scope of the responsibilities of the Deputies of the Assembly: 1. Deputies are not immune from criminal prosecution for actions taken or decisions made outside the scope of their responsibilities. This is applicable both with regard to prosecution for criminal acts allegedly committed prior to the beginning of their mandate and during the course of their mandate as deputies. 2. Deputies are not immune from civil lawsuit for actions taken and decisions made outside the scope of their responsibilities. 3. Deputies of the Assembly cannot be dismissed other than for reasons set out in Article 70 of the Constitution.

643. Arrest or other detention of a deputy: 1. A deputy may be arrested or detained while performing his/ her duties⁴¹⁷, that is, at plenary meetings of the Assembly and/or of its committees, following a decision of the Assembly. 2. A deputy may be arrested or detained while not performing his/her duties, that is, when there are no plenary meetings of the Assembly or meetings of its committees without a decision of the Assembly. 3. A deputy may be arrested or detained when caught committing (in flagrante) a serious offence that is punishable with five (5) or more years of imprisonment without a decision of the Assembly. 4. A deputy may be arrested or detained when his/her mandate ends arising from a conviction and sentence to one or more years of imprisonment by a final court decision of committing a crime.

644. Waiving the immunity of a deputy: Any prosecutorial body/institution that is performing the prosecution of persons charged with committing criminal acts as described by Article 109 of the Constitution and that acts within the jurisdiction prescribed by the applicable law for Kosovo have the right to request the Assembly to waive the immunity of a deputy. This body/institution is authorised to arrest or detain without a decision of the Assembly while the deputy is not

⁴¹⁷ "While performing his/her duties" means the work of the Assembly during its plenary and committee meetings.

performing his/her duties that is, when there is no plenary meeting of the Assembly or of its committees.

645. The President acting outside the scope of his/her respective responsibility: 1. The President is not immune from prosecution for actions taken and decisions made outside the scope of his/her responsibility. A prosecution may be initiated and performed against a President for a serious crime. 2. The President is not immune from civil lawsuit for actions taken and decisions made outside the scope of his/her responsibilities. 3. The President may be dismissed by the Assembly in accordance with Article 91 of the Constitution. 4. The President cannot be subject to arrest or detention, during his/her term of office, because of the nature of the functions of the President which require his/her permanent availability to perform them.

646. The members of the Government do not have any special protection for their actions taken and decisions made outside the scope of their responsibility.

647. The rules concerning immunity are not found to be an obstacle to combat corruption in Kosovo. Having said that, there may be a problem with the statute of limitation or the limited period for investigation. The statute of limitation however do not seem to be a problem as it is stated in CC 107 that the period of statutory limitation shall not run for any time during which prosecution cannot be initiated or continued by law, including, but not limited to some circumstances directly mentioned in the law. Immunity is a privilege pursuant to the law which cover the situation mentioned which means that the statutory limitation shall not run as long as the immunity continues. Contrary the limited period for investigation. Article 157 CPC gives the legal basis for suspension of investigation. It is unclear whether the wording: "other circumstances which temporarily prevent successful prosecution of the defendant" can provide a basis for suspension of the limited time for investigation. It is therefore recommended **that steps be taken to ensure that the period where investigation cannot be carried out is not taken into account in the limited period for investigation.**

4. INTERNATIONAL COOPERATION

Treaty based multilateral obligations

648. The Ministry of Justice of Kosovo so far has signed Agreements that cover the field of international legal cooperation in the field of Criminal Law with the following countries:

- Turkey: Mutual Legal Assistance on Criminal Matters, Extradition and Transfer of Convicted Persons.
- “the former Yugoslav Republic of Macedonia”: Mutual Legal Assistance on Criminal Matters, Extradition and Transfer of Convicted Persons
- Kingdom of Belgium: Transfer of Convicted Persons
- Croatia: Mutual Legal Assistance on Criminal Matters
- Swiss Confederation: Transfer of Convicted Persons.
- Negotiations have been concluded and agreed with the texts of the agreements with Germany, Italy and Albania. Negotiations are soon expected to start with Montenegro and Slovenia.

649. Kosovo is not a signatory to any international agreement that will make Kosovo party to the exchange of information. The cooperation is conducted through MOU's that have been signed between Ministries of Internal Affairs of individual states (Austria, Hungary, Bulgaria, Sweden, Germany, Albania, Croatia and France).

650. Directorate for International Cooperation in the Field of Law Enforcement (ILECU Kosovo) is a Directorate that started operating on 22 June 2011. ILECU exists in Albania, “the former Yugoslav Republic of Macedonia”, Serbia, BiH, Croatia and Slovenia. Cooperation with these countries (except BiH and Serbia) is carried directly while cooperation with other states (including BiH and Serbia) is done through UNMIK INTERPOL. As of 22 June 2011 there have been over 4,200 cases amongst there were many cases of financial crime investigation. ILECU addresses requests received to the competent institutions (Directorate of Economic Crimes or to FIU). Cooperation with institutions outside the Police (Prosecution, Ministry of Justice, Customs or FIU) is regulated by the MOU that was signed in April 2011.

Mutual legal assistance

651. On the field of international legal cooperation on criminal matters, Ministry of Justice drafted the Law on International Legal Cooperation on Criminal Matters, which entered into force in October 2011 (Law No. 04/L-31 on International Legal Cooperation in Criminal Matters). This Law covers in entirety the International Legal Cooperation. Its Article 1, paragraph 2 foresees that in the absence of an international agreement between Kosovo and the foreign country, international legal assistance can be provided on reciprocity basis. On the basis of this Article, all requests for international legal cooperation can be executed, and there is no legal barrier to exercise respective functions in fighting transnational crime.

652. The Law on International Legal Cooperation 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. In absence of an international agreement between Kosovo and a foreign country, international legal assistance is to be administered on the basis of the principles of reciprocity. International legal assistance procedures are provided for with provisions of Criminal Procedure Code, unless otherwise provided for by this Law⁴¹⁸.

653. Mutual Legal Assistance is further regulated by the Kosovo Criminal Procedure Code (Article 219).

Statistics

654. Ministry of Justice, Department of International Legal Cooperation (DILC), has during the period from 1 January 2008 – 29 June 2012 received and processed a total of 30,043 requests as given below:

I. Total of 7,825 new requests;

⁴¹⁸ Law No. 04/L-031 on International Legal Cooperation in Criminal Matters, Article 1.

- II. Total of 9,363 new requests within the open cases;
- III. Total of 12,855 cases of responses to DILC requests which considers a closed case until the time when next case is received. And cases were related to: a new request on the following cases:
 - Document Services;
 - Legal assistance of different nature;
 - Rogatory letters;
 - Extradition;
 - Verification of documents;
 - Transfer of the court proceedings;
 - Enforcement of judgments;
 - International abduction of children;
 - International arrest warrants;
 - Transfer of convicted persons;
 - War crimes, etc. ... (MJ DILC) ILECU.

ILECU commenced with its work on 22 June 2011 and have since that had over 4,200 cases of information exchange with countries in the region.

Extradition

655. A person may be extradited for the purposes of criminal prosecution or for the execution of the sentence. Kosovo residents shall not be extradited, unless otherwise provided for by international agreements between Kosovo and requesting countries or by international law⁴¹⁹.

656. If a foreign country requests extradition from another foreign country and the person to be extradited is to be escorted through the territory of Kosovo, the competent authority may upon petition of the country concerned grant the escort, provided that the person is a foreign national, that the extradition does not take place for a political act, that such act shall not be considered to include such criminal offences as foreseen by Kosovo Criminal Code, and that the extradition is not for any reason contrary to international law or international human rights standards⁴²⁰.

657. As Kosovo has not ratified the International Conventions regulating international legal cooperation and in absence of bilateral agreements, legal assistance is provided based on the principle of reciprocity. Law on International Legal Cooperation on Criminal Matters (Article 1.2) provides that in absence of an international agreement between Kosovo and a foreign country, international legal assistance is to be administered on the basis of the principle of reciprocity. However, based on the respective national law, many countries do not execute certain types of requests submitted pursuant to the principle of reciprocity. Inevitably, this impedes to a certain extent the provision of legal assistance. In addition, the non-recognition of Kosovo by several countries, especially by five (5) EU countries, could be considered as a hindrance to the efficient international legal cooperation. The EU Rule of Law Mission to Kosovo (EULEX) is in charge of facilitating the transmission of requests for MLA from and to non-recognising countries; however this channel of communication extends the length of proceedings.

658. Law on International Legal Cooperation clearly describes the manner and the form of extradition of foreign nationals in other states, and since 2010 up to date Kosovo has carried out 29 extraditions with 31 extradited, 9 transferees with 9 transferees and 2 repatriations. Citizens of Kosovo cannot be extradited from Kosovo against their will, except when the law and international agreements provide otherwise. However, in such cases foreign countries can make the transfer of criminal proceedings to the judicial bodies of Kosovo for the proceedings of the case in Kosovo.

659. Figures showing the total numbers of request of mutual legal assistance have been given but it is not possible to see the type of cases, type of requests and how long time it took to render the legal assistance. It is therefore recommended **(i) to take steps to collect appropriate and detailed information and statistics including all angles of a request for mutual legal assistance from the beginning to the end in order to assess the efficiency of the rendering of mutual legal assistance; and (ii) to introduce service standards on turnaround times of foreign requests in order to guarantee the effectiveness of the system** (see AML assessment report).

⁴¹⁹ Law No. 04/L-031 on International Legal Cooperation in Criminal Matters, Article 4.

⁴²⁰ Criminal Procedure Code, Article 219.

660. The Criminal Law Convention on Corruption and United Nations Convention against Corruption (UNCAC) can be used via its provisions as the legal basis for mutual legal assistance. Kosovo has not yet joined these conventions, so it not possible to have a legal basis for international cooperation without having a treaty with other countries or having an agreement of reciprocity. However taken into account the importance to combat corruption this should not be a hindrance. It is therefore recommended **that steps are taken to ensure that mutual legal assistance in accordance with the rules in the Criminal Law Convention on Corruption (ETS No. 173) be rendered in cases of corruption in spite of Kosovo having no such a legal obligation.**

5. RECOMMENDATIONS AND FOLLOW-UP

661. In view of findings of the present report, the following recommendations are addressed to Kosovo:

1. General overview of the current situation of corruption

- i. (i) to undertake a periodical assessment of corruption risks, prior to any further revision of the strategic documents (Anti-corruption Strategy and Action Plan); (ii) to adopt a more integrated approach of ethical aspects through adequate integrity plans, with a view to extend preventive measures to the entire public sector, including local government; and (iii) to publish respective findings and thus, to further define/adapt strategic priorities (paragraph 62);**
- ii. to ensure proper and effective implementation and monitoring of the new strategic framework against corruption for 2013-2017, as well as to implement the key outstanding measures from the previous Action Plan 2010-2011 (paragraph 72);**
- iii. (i) to streamline the legal framework related to the prevention of conflicts of interest, by harmonising relevant legislation with the newly adopted Criminal Code; (ii) to review and clarify the institutional framework for the prevention of conflicts of interest, by adopting a set of guidelines which would enable efficient action during both the minor offence and criminal offence proceedings; (iii) to initiate debate on the re-definition of the KAA competencies, in light of the need for more efficient and effective prevention of corruption; and (iv) to progressively include tax authorities in the verification of declared assets, in order to improve the control of origin of assets and thus reduce the space for illegal enrichment (paragraph 79);**

2. Fundamental safeguards and corruption prevention

2.1 Judges

- iv. to review the composition of the KJC in order to fully reflect the standard of independence of the judiciary as well as checks and balances between institutions (paragraph 114);**
- v. to adopt clear and transparent criteria based on which the President can refuse a nomination of a judge or prosecutor as well as the grounds for appealing this decision (paragraph 119);**
- vi. to consider reviewing the probationary system of appointment of judges and prosecutors which envisages an initial 3-year term prior to final confirmation for tenure (paragraph 129);**
- vii. to ensure the appropriate functioning of random assignment of cases as provided in the Regulation on internal organisation of courts (paragraph 141);**
- viii. (i) to establish a transparent and unified system of maintaining and accessing information on case files which would include all stages of investigation, prosecution and adjudication; (ii) to enhance case management, reporting and accessibility of statistics in the judicial system, especially with regard to corruption and related offences, by notably ensuring better matching with prosecutorial services; and (iii) to improve the transparency of the criminal justice system vis-à-vis the wider public and media, in particular in the context of the prevention and fight against corruption (paragraph 144);**
- ix. to update rules of ethics and professional conduct for judges by including proper guidance specifically with regard to conflicts of interest and related areas (notably the acceptance of gifts and other advantages, incompatibilities and additional activities) (paragraph 148);**

- x. **that the KJC adopts transparent guidelines regarding the approval of exceptional outside engagement for judges, including clear justifications to be used when deciding to grant such exceptions (paragraph 157);**
- xi. **(i) to establish a formal relationship between the ODC and the State Prosecutor in order to enhance disciplinary and criminal investigation of judges and prosecutors and make mutual co-operation transparent; and (ii) to streamline and clarify the institutional framework and proceedings for disciplinary/criminal investigations against judges and prosecutors, including the establishment of a limitation period for disciplinary proceedings, in order to avoid unnecessary delays and overlapping of proceedings (paragraph 187);**
- xii. **that interaction between the KAA and the Prosecutor, as well as the judges in proceedings for minor and criminal offences is clarified through standard operating procedures on conflicts of interest, with regard to the entry into force of the new Criminal Code (paragraph 188);**

2.2 Prosecutors

- xiii. **that the KJC and the KPC adopt clear and comprehensive vetting procedures (i) based on objective and transparent criteria; (ii) known in advance and (iii) that every decision be motivated accordingly (paragraph 209);**
- xiv. **that the KPC adopts guidelines concerning approval of exceptional outside engagement for prosecutors and establish a limit for the remuneration of such engagements (paragraph 220);**
- xv. **to establish a formal relationship between the ODP and the KPC (with due consideration to the relationship between Chief Prosecutors and the ODC as well) in order to enhance disciplinary and criminal investigation of prosecutors, based on principle of transparency and openness, while keeping the secrecy of investigation and protection of personal data (paragraph 239);**

2.3 Police

- xvi. **to introduce objective and transparent criteria for the appointment/dismissal of the General Director of the Police in order to ensure operational independence of the Police (paragraph 254);**
- xvii. **to introduce objective and transparent criteria for the appointment/dismissal of the Deputy Directors and other senior level officials of the Police (paragraph 255);**
- xviii. **to adopt guidelines for Police concerning the approval of exceptional outside engagement and to establish a limit for the remuneration on such engagements (paragraph 259);**
- xix. **to establish post-employment restrictions for police officers at all levels and that appropriate arrangements be made for efficient supervision of the implementation of such regulations (paragraph 262);**
- xx. **to reinforce human capacity of the relevant police disciplinary and internal investigation bodies and to keep a reliable track record of disciplinary and other actions taken with regard to police officers (paragraph 276);**

2.4 Public Administration

- xxi. **i) to enhance transparency in the public administration (including “e-government”) through implementation of a more proactive policy, proper strengthening of regulatory and institutional frameworks as well as periodical monitoring and reporting; and ii) that further steps should be undertaken to adequately implement access to public documents at both central and local levels (paragraph 288);**
- xxii. **(i) to implement uniform rules for the transparent and impartial recruitment and promotion of public servants through, *inter alia*, proper announcement of vacant posts, fair competition between candidates and avoidance of conflicts of**

interest; (ii) to increase the supervision and monitoring of the selection and promotion procedures of public officials; and (iii) to introduce appropriate screening procedures for checking data and the integrity of candidates to positions in the public administration (paragraph 304);

- xxiii. (i) to adopt the Code of Ethics for civil servants as soon as possible; (ii) to consider extension of its application to uncovered categories of officials in the public administration; and (iii) to increase familiarity of the public administration at all levels with ethical professional standards (through, *inter alia*, regular training, guides and advice) (paragraph 308);
- xxiv. to develop guidelines about the behaviour and conduct of public officials when they receive gifts in order to complete the rules laid down in Article 11 of Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials (paragraph 311);
- xxv. (i) to strengthen the control of the declarations of assets and interests in order to ensure proper implementation and monitoring; (ii) to intensify efforts to build capacity in individual institutions to prevent and detect conflicts of interest through close supervision and coordination mechanisms, as well as by means of specific reference materials, guidelines and training; and (iii) an adequate and enforceable conflict of interest standard, including improper migration to the private sector ("pantouflage") be extended to every person who carries out a function in the public administration (including managers and consultants) at every level of government (paragraph 320);
- xxvi. to consider making wider use of rotation in those sectors of the public administration that are particularly exposed to a risk of corruption (paragraph 322);
- xxvii. to establish and maintain a central periodical reporting of statistics on the use of disciplinary proceedings and sanctions in the public administration (paragraph 332);

2.5 Members of Parliament

- xxviii. that the Code of Conduct for members of parliament be revised and complemented with practical measures for its implementation, such as dedicated training, counselling and advice regarding ethical and corruption-related issues (paragraph 351);
- xxix. to give to the KAA – or to another official body, in collaboration with the tax administration - the competence to make an adequate assessment of declared assets (paragraph 367);
- xxx. that measures be taken to ensure supervision and enforcement of the existing rules on conflicts of interest and disclosure of outside ties by members of parliament (paragraph 379);

2.6 Financing of political parties and election campaigns

- xxxi. to harmonise the legal provisions on political entities and campaigns financing in line with the legislation applicable to other candidates for election (local and national level, presidential election) (paragraph 403);
- xxxii. to develop a comprehensive and unique website setting out the legal and regulatory framework, and providing relevant information on political entities periodical reports and other relevant information (paragraph 404);
- xxxiii. to ensure that the definition of a 'contribution' to a political party as foreseen in Rule 01/2008 on Registration and Operation of Political Parties is consistently used in the legislative and regulatory framework concerning funding of political entities and electoral campaigns in order to include indirect resources (such as services or in-kind donations) (paragraph 420);

- xxxiv. **to introduce a definition and regulation of the entities related to a political party (possibly) (paragraph 422);**
- xxxv. **to set more precise conditions for requirements of the financial reports and the deadline(s) of their publication (paragraph 436);**
- xxxvi. **to give to the Central Electoral Commission/the Office or the Anti-corruption Agency the mandate and the appropriate authority as well as the financial resources and specialised staff to effectively and proactively supervise the funding of political parties and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions (paragraph 442);**
- xxxvii. **(i) to unify parties' reporting forms, in particular regarding content, periodicity of their submission and publication; and (ii) to determine the procedure for monitoring of established standards (paragraph 443);**
- xxxviii. **to establish clear rules ensuring the specialisation, independence and know-how/expertise of auditors called upon to audit the accounts of political parties and candidates (paragraph 444);**
- xxxix. **to introduce more dissuasive, effective and proportionate sanctions in respect of violations of political financing rules, and to provide the Central Electoral Commission with the necessary powers to investigate such cases and to apply the appropriate sanctions (paragraph 454);**
- xl. **to provide the Office with appropriate authority to carry out, as needed, a material verification (in addition to the existing formal review) of the information provided by election candidates and other political entities (paragraph 455);**
- xli. **to introduce compulsory periodic publication of political parties' reports on a public website (paragraph 456);**

2.7 Public procurement

- xlii. **to create conditions for enhanced transparency and equality in competition, in order to minimise the risk of corruption opportunities in public procurement and privatisation fields (paragraph 467);**
- xliii. **(i) with a view to minimise corruption risks and opportunities, to ensure further streamlining of public procurement rules and procedures, including a quick introduction of central purchasing; (ii) to enhance monitoring, supervision and review capacities and mechanisms; (iii) to revise the Public Procurement Law concerning the scope and procedures related to reporting of public procurement violations and offenders; and (iv) to enhance the exchange and treatment of information and horizontal interagency cooperation, notably between public procurement, audit, anti-corruption, tax and other law enforcement bodies (paragraph 489);**
- xliv. **(i) to introduce coherent staff policies and treatment in the public procurement system in order to avoid changes of staff; (ii) to clarify and strengthen procedures in order to have objective criteria for the conclusion of contracts; (iii) to introduce conflict of interest prevention rules in the public procurement, including compulsory declaration of conflict of interest situations by members of procurement panels; and (iv) to promote further training and specialisation focused on prevention and detection of corruption practices (paragraph 498);**

3. Criminal law, law enforcement and criminal procedure

3.1 Offences and sanctions

- xlv. **that legislative measures are taken to make third beneficiaries directly covered in Articles 429 and 430 CC about active bribery (paragraph 525);**

- xlvi. **that the authorities ensure that there are no loopholes in the system and if necessary to take the legislative measures that the offence of active and passive bribery in the public sector covers all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's duties** (paragraph 526);
- xlvii. **that necessary legislative steps are taken to ensure that private corruption is criminalised in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS No. 173)** (paragraph 539);
- xlviii. **to consider abolishing the requirement of dual criminality in Articles 115 and 116 CC in respect of bribery offences when committed abroad** (paragraph 561);
- xlix. **to take the necessary legislative steps to ensure that time-limits for investigation do not hinder the effective combating of corruption** (paragraph 569);
- I. **to take the necessary legislative steps to ensure that the possibility provided by the special defence of effective regret to return the bribe to the bribe-giver who has reported the offence before it is uncovered be abolished** (paragraph 572);

Corporate liability

- ii. **to strengthen the controlling functions of the Registry of Enterprises in order to ensure that both natural and legal persons establishing companies be checked and monitored with respect to possible criminal records and professional disqualifications or any other pertinent information on legal persons in the registration process** (paragraph 580);
- iii. **to take the necessary legislative steps to ensure that legal entities can be held liable not only in situations where a responsible natural person can be punished including situations where the liability is based on lack of supervision but also in situations where it is not possible to find a natural person liable for the offence** (paragraph 584);
- liii. **that the Kosovo authorities undertake necessary steps to ensure and enhance the practical application of this measure (liability of legal persons) as a means to sanction criminal activity** (paragraph 585);
- liv. **that Kosovo considers requiring external auditors to report suspected acts of bribery to management or, if the management do not react or if the management itself is involved, to report to the competent authorities independent of the company, such as law enforcement or regulatory authorities, and, where appropriate, ensure that auditors making such reports reasonably and in good faith are protected from legal action** (paragraph 593);

3.2 Investigation and criminal procedure

- iv. **to take steps to collect appropriate and detailed information and statistics including all angles of a corruption case from the beginning to the end (including the outcome of the case) in order to assess the efficiency of the investigation/prosecution** (paragraph 612);
- lvi. **to strengthen the Special Anti-corruption Department both in relation to the competence of this department but also in relation to increasing the resources and the cooperation between prosecutors, investigators and experts** (paragraph 615);
- lvii. **that necessary legislative steps are taken to ensure that the injured party has the right to file a complaint about the termination of an investigation** (paragraph 617);

3.3 Confiscation and other deprivation of instrumentalities and proceeds of crime

- lviii. **(i) to establish an entity within the existing structure with particular reference to identification, tracking and freezing proceeds of crime; and (ii) to enhance the effectiveness of the system through introducing mandatory benchmarks for law**

enforcement in pursuing illicit funds in the case of any investigation of a proceeds-generating offence (paragraph 636);

- lix. **to ensure that objects intended to be used in a criminal offence can be confiscated and to enlarge the scope of the provisions on confiscation of instrumentalities and proceeds of crime in order to provide for better possibilities of using confiscation effectively in cases of corruption** (paragraph 637);

3.4 Immunities from investigation, prosecution or adjudication of corruption offences

- lx. **that steps be taken to ensure that the period where investigation cannot be carried out is not taken into account in the limited period for investigation** (paragraph 647);

4. International co-operation

- lxi. **(i) to take steps to collect appropriate and detailed information and statistics including all angles of a request for mutual legal assistance from the beginning to the end in order to assess the efficiency of the rendering of mutual legal assistance; and (ii) to introduce service standards on turnaround times of foreign requests in order to guarantee the effectiveness of the system** (see AML assessment report) (paragraph 659);
- lxii. **that steps are taken to ensure that mutual legal assistance in accordance with the rules in the Criminal Law Convention on Corruption (ETS No. 173) be rendered in cases of corruption in spite of Kosovo having no such a legal obligation** (paragraph 660);

Follow-up

662. Pursuant to PECK Terms of Reference, the implementation measures of the abovementioned recommendations by the authorities of Kosovo will be assessed under the second cycle of PECK based on implementation report(s) from authorities and in conformity with GRECO specific compliance procedure.

663. Following relevant authorisation from authorities of Kosovo, this report, including translated version(s) in domestic language(s) will be made public. Authorities of Kosovo are invited to make the translated version(s) of the report publicly available as well.