

Building integrity in the Kosovo Security Force

An analysis of institutional risk factors

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Preface

At the request of the Norwegian Ministry of Defence, the Agency for Public Management and eGovernment (Difi) has prepared this assessment of institutional risk factors relating to corruption in the security sector of Kosovo.

The current report was written as part of a study covering 9 countries in South-Eastern Europe, 8 of them as a Norwegian contribution to the NATO BI Programme and 1 on a bilateral basis. Difi has prepared a separate methodological document for the study. The latter document provides an in-depth description of the content of international anti-corruption norms and includes a list of close to 300 questions that were used to identify the extent to which the 9 countries in the study had, in fact, institutionalised the norms. The document also provides a rationale for why each of the norms is considered to be important for reducing the risk of corruption.

A national expert in each of the countries involved has collected data in accordance with Difi's methodological document. Three principal types of data sources were used:

- Official documents/statutory texts.
- Interviews with relevant decision-makers and other local experts, as well as representatives of international organisations.
- Analyses and studies already available.

The national experts presented the results of the data collection in a separate report for each country, each one comprising 75-200 pages. The documentation they contained provided a direct response to Difi's approximately 300 questions. A representative for Transparency International UK/Defence and Security Programme (TI/DSP) provided comments to the reports. They were further discussed at three meetings where all of the local experts participated together with representatives from TI, NATO, the Norwegian Ministry of Defence and Difi. At one of the meetings an expert on the topic of corruption/good governance in the EU's expansion processes contributed.

Based on the reports from the national experts, Difi has prepared, with considerable assistance from the EU expert on corruption/good governance, an abbreviated and more concise Difi Report for each country, including recommendations for the Ministry concerned. These reports were then submitted to the Ministry in question for any comments or proposed corrections. The received answers have largely been included in the final reports. However, all evaluations, conclusions and recommendations contained in the reports are the sole responsibility of Difi.

Oslo, October 2015

A handwritten signature in blue ink, appearing to read 'Ingelin Killengreen', with a long horizontal flourish extending to the right.

Ingelin Killengreen
Director General

Abbreviations and acronyms

ACA	The Anticorruption Agency
CHU	Central Harmonisation Unit
CIASKSF	Committee of Internal Affairs, Security and Kosovo Security Forces
CPA	The Central Procurement Agency
CSO	Civil society organisations
HRM	Human Resources Management
IAU	Internal Audit Unit
ICO	International Civilian Office
IG	Inspector General
INTOSAI	The International Organisation of Supreme Audit Institutions
KBSFR	The Kosovo Board for Standards of Financial Reporting
KCSS	The Kosovar Centre for Security Studies
KFMIS	The Kosovo Financial Management Information System
KIA	The Kosovo Intelligence Agency
KIPA	The Kosovo Institute of Public Administration
KPC	Kosovo Protection Corps
LCISC	The Law on Classified Information and Security Clearance
MKSF	The Ministry of the Kosovo Security Forces
MP	Members of Parliament
MPA	The Ministry of Public Administration
OAG	The Office of the Auditor General
OBCS	The Independent Oversight Board for the Civil Service
OCKIA	The Oversight Committee of KIA
PPRC	The Public Procurement Regulatory Committee
PRB	The procurement Review Body
UNMIK	The United Nations Mission to Kosovo
YIHR	Young Initiative for Human Rights

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1 Executive Summary

Having ambitions to join the European Union, the Kosovar Government has been strengthening its capacities for implementing and coordinating reforms in preparation for EU convergence. Despite these efforts, the capacities and roles of the established structures are still not sufficiently developed. This report identifies a number of areas in need of reform in order to strengthen the protection of integrity in public life and to reduce vulnerability to corruption.

In the case of the parliamentary oversight of security matters the major weakness is the subordination of the Assembly to the interests of the majority ruling party, especially on financial matters. The clearance by The Kosovo Intelligence Agency (KIA) of parliamentarians mandated to oversee it is a serious distortion of the parliamentary oversight over the Armed Forces. The European Commission has also recurrently, through its annual progress reports, raised criticism on the way in which the Assembly is subservient of the political interests of the majority.

In regards to state audit institutions, the Office of the Auditor General (OAG) and the function it performs are deemed to be well established in the country, but given the experience of other foreign-born institutions, such as the ombudsman, worries arise on its sustainability beyond 2014 when foreigners will withdraw from the institution.

The Ombudsman is a foreign-born institution, which has not taken root yet in the Kosovo institutional landscape. The country suffers from a traditional ignorance of basic human rights, which are often violated, and failures in implementing the rule of law. The financial and human resource capacities of the ombudsman remain low. A quite evident weak domestic political will to strengthening the institution is observable. The institution is mainly supported by foreigners, especially by the European Commission, which is recurrently insistent on enhancing the Ombudsman.

In addition to defective legislation, political pressure on the Anticorruption Agency (ACA) and a questionable political will to investigate braches of the conflict of interest regime, leads to a poor compliance with the conflict of interest regime. The Law on Asset Declarations had a weak sanctioning framework until January 2013, when certain breaches were given the category of a crime by the new Penal Code. The impact of the Code remains to be seen. The EU Court of Auditors proposes a good summary of the conflict of interest policy: “The Law on conflicts of interest lacks relevant reporting obligations and it only foresees that the Kosovo Anti-Corruption Agency should urge the official to avoid the conflict. Conflicts of interest persist” (Report EU Court of Auditors, page 44).

Transparency policies are slowly taking root in Kosovo, particularly demanded by the media, some NGOs and the international community. The general population is rather unaware of their rights to access official documents and do

not seem particularly concerned. The enforcement of that right, which is attributed to the Ombudsman (an institution without enforcement powers), is weak, almost impossible.

In the matter of the legal framework for public procurement and military asset disposal it is in place, but it is still prone to corruption and mismanagement, especially the acquisition of goods and services. Recourse to negotiated, single source procurements is too frequent and unjustified. The staff at the MKSF lack training in military procurement and have been criticised by the media for mismanagement of public funds.

In summary, the Law on Internal Audis constitutes a solid basis for the building of the system, but the level of understanding of technical concepts appears to be low in most institutions, including the MKSF.

In summary, the civil service is still challenged by some elements of patronage, politicisation and clannish ways of management. Hence it may be difficult to realize the Euro Atlantic ambitions.

2 Introduction

This report is an analysis of institutional risks for corruption and anti-integrity behavior in the Ministry of the Kosovo Security Forces (MKSF).

The point of departure for the analysis is the observation that a holistic approach to security sector reform is increasingly called for.¹ Pro-integrity reforms internal to the defence sector should be set in a wider reform perspective including appropriate instruments within civilian policy sectors. The current report treats the MKSF as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across national systems of public governance and impacting the MKSF as any other ministry.

To a large extent the report concentrates on checks and balances in the public sector; *i.e.*, mechanisms set in place to reduce mistakes or improper behaviour. Checks and balances imply sharing of responsibilities and information so that no one person or institution has absolute control over decisions. Whereas power concentration may be a major, perhaps *the* major corruption risk factor, a system of countervailing powers and transparency promotes democratic checks on corruption/anti-integrity behaviour.

We look at the integrity-promoting (or integrity-inhibiting) properties of the following main checks and balances:

- a. parliamentary oversight;
- b. anti-corruption policies;
- c. specialised anti-corruption bodies;
- d. arrangements for handling conflicts of interests;
- e. arrangements for transparency/freedom of access to information;
- f. arrangements for external and internal audit, inspection arrangements;
- g. Ombudsman institutions;

In addition to examining the checks and balances, the gap analysis focuses on two high risk areas susceptible to corruption/unethical behaviour:

- h. public procurement (or alternatively: disposal of defence assets);
- i. human resources management (HRM).

Both areas are of particular importance in the security sector. Security sector institutions are responsible for large and complex *procurements* that may facilitate corruption. In most countries, the ministry of defence is one of the largest ministries in terms of number of staff and is responsible for a large number of employees outside the Ministry. *Human resources* are central to the quality of performance of security sector organs.

The report identifies a number of areas in need of reform in order to strengthen the protection of integrity in public life and to reduce vulnerability to

¹ See for instance OECD (2007), *The OECD DAC Handbook on Security System Reform (SSR) Supporting Security and Justice*.

corruption. The report is action oriented: based on its analysis it proposes a number of recommendations for reform action to be undertaken by the government.

3 Parliamentary oversight over the executive and independent bodies reporting to Parliament

3.1 Direct parliamentary oversight over the executive

In this section we analyse the functioning of the Parliament in relation to its constitutional role of control of the political action and performance of the executive. The Anticorruption Agency (ACA), a body reporting to the Assembly will be devoted a specific chapter in this report (see Chapter III). The 2008 Constitution defines Kosovo as a parliamentary democracy and regulates the mandate and responsibilities of the Kosovo's Assembly (the Parliament) concerning the oversight of the executive, with a specific mention to the foreign and security policies. The fundamental law (article 125) guarantees the "civilian and democratic control over security institutions".

Primary legislation also deals with the matter. The law on the Ministry of the Kosovo Security Force (MKSF) further regulates the powers of the Assembly in scrutinising the MKSF, namely: a) Examining laws, strategies and policy documents submitted by the MKSF; b) Revision of the budget of the Security Forces; and c) Revision of all contracts exceeding one million euro. The 2010 Law on Parliamentary Investigation also regulates the powers of the Assembly and parliamentary committees in scrutinising the executive, including the MKSF and the Security Forces as such. The 2010 Rules of the Assembly, which unfold article 76 of the Constitution, regulate the specific procedures of parliamentary committees and the rights and mandate of the MPs.

The Parliamentary Committee on Budget and Finance is responsible for examining the budget proposal of the MKSF, as forwarded by the Ministry of Finance, before its approval by the Parliament in plenum. The Committee has also to approve acquisitions of equipment (including donated equipment) higher than one million euro.

Although the legal framework is comprehensive, the practice of the parliamentary scrutiny of the financial practices of the executive, including procurement, is weak. In fact the Parliament did not carry out any financial review so far, which was noted by the European Commission's Communication (October 2012) to the European Parliament in the process of discussing a feasibility study for a Stabilisation and Association Agreement between the EU and Kosovo.

The communication between the MKSF and the Parliament is reported to be smooth. The Ministry reports regularly to the Committee of Internal Affairs, Security and Kosovo Security Forces (CIASKSF), while usually the executive's responses to questions of individual MPs are timely. The CIASKSF is chaired since 2011 by a member of the opposition party. Three senior MKSF officials conduct the relations with the Parliament: the minister, the commander of the KSF and the general secretary of the MKSF on various aspects of the security and defence affairs. Notwithstanding, the practice of the parliamentary

oversight is rather haphazard, as it is formalistic and exceedingly led by party discipline. In the sessions of the CIASKSF the number of oral and written questions raised by MPs is increasing, but not in the plenum of the Parliament, which rarely address KSF-related questions. No interpellations have been registered on KSF since the establishment of the independence of the country. Another parliamentary instrument is the field visits to KSF, which happen from time to time, but they are rather formalistic and not led by a purposeful parliamentary control, but reportedly inspired by personal inclinations of individual parliamentarians willing to visit their old “comrades in arms” from the time of the Kosovo Liberation Army and the Kosovo Protection Corps.

The Assembly has had no intervention at all related to the control of acquisitions of military material above one million euro. These procurements, including donations, have been silenced in the reports from the MKSF to the Assembly. No MP has posed any question on the matter. One explanation may be the low capacity of the Parliament to review those contracts. The overview on disposal of military assets is also a responsibility of the Assembly. It has not exercised this responsibility because there has been no asset disposal since the Kosovo’s independence.

Public hearings are one of the parliamentary scrutiny mechanisms used. A hearing was notorious on a memorandum of understanding between the KSF and the police, which was rejected due to fear that the Armed Forces could be used to suppress civic protests along with the police when there appears to be a risk of rioting.²

Along with the CIASKSF, other parliamentary committees exercise control over the executive: the Committee on Public Finances and the Committee on Human Rights, Gender and Missing Persons. This latter is mandated to oversee potential violations of human rights by public authorities. The MKSF drafted a new organisational structure where the gender dimension is particularly highlighted. The structure was submitted to the CIASKSF by June 2013.

There is no significant practice of discussing security issues in Parliament, which does not review the implementation of security strategies of the security sector. There is no evidence that the existing National Security Strategy has been discussed in Parliament. That strategy was driven by the International Civilian Office (ICO) and other international stakeholders. It is perceived as being out of touch with the Kosovo realities. Seemingly that strategy was approved by the presidency of the parliament, but never discussed in any committee or parliamentary plenum.

Parliamentary staff is under the Law on Civil Service. The staffs of the CIASKSF are 4-strong, assisted by a local expert seconded by the OSCE. They are recruited formally on merit, but practically on political grounds. They are conversant with parliamentary procedures, but not with security-related and

² Public hearings are also organised by the MKSF. This is defined by the government regulation. The MKSF organised public hearings with representatives of civil society on drafting the law on deployment of KSF abroad and law on KSF pensions.

budgetary and financial matters. The Committee's administrative coordinator is also the coordinator of the Committee on the Kosovo Intelligence Agency. Parliamentary premises are insufficient.

There is a special parliamentary committee to oversee the Kosovo Intelligence Agency (KIA), whose responsibilities are regulated by the 2008 Law on the KIA. This committee is the Oversight Committee of KIA (OCKIA), which has no mandate to oversee the intelligence department of the KSF. In case the intelligence department will become a military intelligence agency, (which is the case with other countries in the Western Balkans) then the OCKIA would need to exercise direct oversight over this agency. The mandate of the Committee is deemed to be sufficient for the oversight of the KIA, except that MPs who are members of the OCKIA are not automatically exempted from the security clearance procedure, a procedure which is conducted and decided by the KIA. As a consequence the KIA can de facto veto any MPs from looking into their affairs. This could be considered as being in violation of the concept of civilian oversight of the security forces.

In addition OCKIA sessions are usually closed, which makes it difficult to evaluate the effectiveness of the parliamentary control over the KIA. No concrete practical consequences have been observed as a result of the OCKIA monitoring of the KIA.

SIGMA³ summarises the bleak situation affecting the parliamentary oversight of the executive as follows: *“The system of political checks and balances in Kosovo is distorted due to the excessive predominance of the executive. The Assembly has not succeeded in properly supervising the implementation of laws by the government and the overall performance of the administration. On the one hand, MPs are fully absorbed with the legislative agenda and on the other hand, parliament receives very little information on the current implementation stage of civil service and other legislation. The administrative capacity of the Assembly is also not sufficient to provide the professional support required by parliamentarians.*

The Assembly also does not pay enough attention to independent institutions reporting to it, such as the Ombudsperson, the Independent Oversight Board of the Civil Service (IOBCS) and the Anti-Corruption Agency (ACA). There is little debate and almost no follow-up on the issues and problems reported by these institutions. Parliament issues some recommendations, but it does not follow the implementation progress of those recommendations”.

All said, the major weakness of the parliamentary oversight of security matters the subordination of the Assembly to the interests of the majority ruling party, especially on financial matters. The clearance by the KIA of parliamentarians mandated to oversee it is a serious distortion of the parliamentary oversight over the Armed Forces. The European Commission has also recurrently, through its annual progress reports, raised criticism on

³ SIGMA/OECD 2012 Kosovo Assessment.

the way in which the Assembly is subservient of the political interests of the majority.

3.2 State Audit Institution

The Auditor General is the highest external financial control institution in the country. Article 136 of the Constitution establishes its mandate, election and dismissal. The Auditor General reports to the Assembly. The Office of the Auditor General is headed by an international expert auditor.

The 2008 Law on the Establishment of the Office of the Auditor General (OAG) clearly states its independence and “total discretion in the exercise of its functions” (article 2), within the limits of recognised international auditing standards and professional generic methodology used in the auditing of financial statements (article 3). The OAG can carry out audits on efficiency in the use of public funds, but there is a noticeable lack of coordination between the OAG and other law enforcement agencies.

The OAG is funded by the State budget, which contains a separate budgetary line allotted to the OAG for salaries and operational costs. It occupies rented offices, which are inadequate and expensive. The lack of suitable premises is attributed by observers to neglect by the Ministry of Public Administration. Overall, there is no perception of undue political pressure upon auditors.

The staff is civil servants. They amounted to 124 officials in 2011, 98 of them were auditors, 25 per cent of them are certified auditors. All are receiving training to achieve that level. The OAG plans to employ 124 auditors by the end of 2013. Training is funded domestically only by 5 per cent of the cost. The remaining is funded from international donors. The OAG staff enjoys higher salaries than the rest of the civil service, a fact that distorts the overall salary scheme even if in the short term it can help attracting qualified civil servants to the OAG.

There have been problems with the high turnover rates of qualified auditors, enticed by better remuneration in the private sector. The above mentioned salary increase did not reduce the problem in any significant measure.

The OAG is entitled to carry out both performance and regularity compliance auditing of any budget funded public institution, including the MKSF. If required by donors, the OAG can also audit the use of donations. With its current resources the OAG has difficulties in reaching all institutions liable to be audited. The law allows the OAG, while retaining supervision, to outsource audit activities from private licensed companies. It's by now a current practice to outsource the audit of municipalities as well as the audit of performance in state institutions.

The OAG carries out annual auditing of regularity and performance of the MKSF. In addition to the findings on procurement (see below) there are a number of issues raised on the MKSF by the Auditor General in the period 2009–2012, especially concerning the verification of payments and irregular

recruitment of civil servants,⁴ but the OAG reports show steady progress in the overall financial management of the MKSF. The OAG auditors have free access to all the records and non-classified contacts of the MKSF. There are no reports on obstructionist activities to the work of the auditors by audited institutions.

The OAG reports are submitted to the Parliament and also publicly available on its website, in Albanian, Serbian and English. A Parliamentary Committee on Public Finances, chaired by a member of the opposition parties, reviews the OAG reports. These reports are reputed to be of outstanding quality. Its recommendations are extensively pondered by the MKSF staff, which the OAG regards as being highly compliant with the OAG recommendations⁵.

The Auditor General Office is led by a Swedish national, who was appointed in accordance with the procedures foreseen in the Comprehensive Proposal for the Status of Kosovo⁶. This means that the international community is heavily involved in the establishment and consolidation of the OAG. The mandate of the international community concerning the OAG will expire by mid-2014, when the current incumbent will be replaced by a Kosovar citizen. The institution and its functions are considered to be consolidated.

In conclusion, the OAG and the function it performs are deemed to be well established in the country, but given the experience of other foreign-born institutions, such as the ombudsman, worries arise on its sustainability beyond 2014 when foreigners will withdraw from the institution.

3.3 Ombudsman Institution

The Ombudsman was established in 2000 by the United Nations Mission to Kosovo (UNMIK), endowed with a mandate to investigate complaints against the UNMIK administration and other public institutions in the field of human rights. The UNMIK Regulation 2000/38 was the legal basis for the Ombudsman institution, which was superseded by UNMIK regulation 2006/6. The UNMIK and any other international organisation administration were no longer within the remit of the Ombudsman, but only the local Kosovar institutions remained within its purview and a Kosovo citizen was appointed as the new Ombudsman. This was perceived by the Kosovars as double standards because the international community, while governing Kosovo, decided to establish an Ombudsman for watching the institutions in the hands of the Kosovars only, so leaving unwatched the institutions in the hands of foreigners.

This explains why there is little warmth when it comes to this institution. The requests of the Ombudsman are repeatedly ignored by the government. The institution lacks financial capacity and independence. Few of its recommendations are heeded by the authorities. The Government has showed reluctance to award more budget to the institution. The European Commission

⁴ The assessment of legal or illegal recruitment and appointments is however a responsibility of IOBCS.

⁵ See OAG annual reports of 2009, 2010 and 2011 in its website.

⁶ Also known as the Ahtisaari Plan.

Feasibility Study (2012) mentioned above contained a specific request to the government to support the Ombudsman.

The 2008 Constitution (articles 132, 133 and 134) gave constitutional standing to the institution. The current Law on the Ombudsman was adopted in 2010. It repealed the old UNMIK legislation. The current constitutional mandate is to monitor, defend and protect the rights of citizens from unlawful or improper acts or failures of public authorities. The constitution also establishes some personal educational features for an individual to be appointed as the ombudsman by the Assembly. The appointment is through public calling. A parliamentary committee scrutinises the applicants, makes a shortlist of three candidates and submits it for vote to the Assembly plenum, which decides by absolute majority (61 positive votes are needed out of 120 MPs). This voting mechanism allows for side-lining the opposition. The position is incompatible with any other public or private activity and with involvement in political parties. At least one deputy ombudsman shall belong the Serb minority. A Deputy Ombudsman is appointed by simple majority of MPs present.

The Ombudsman may be dismissed upon request by 1/3 of MPs for a vote where at least 2/3 have to vote for the dismissal. This mechanism requires the vote of the minority parties. There is a list of three legal causes for dismissal, which some are quite vague: physical or mental incapacity; if convicted criminally to 6 months of more of imprisonment; personal behaviour inconsistent with the office of the Ombudsman.

The Ombudsman's staffs are under the Law on the Civil Service and Law on State Administration, which allow for autonomy in deciding the staff structure of independent institutions. There are no publicly available reports revealing bad practice in this regard. Some 55% of a 536 000 euro budget (2011) is allocated for salaries for some 48 staffers. The budget is so small that the Ombudsman can hardly deliver its mandate. The qualification of the staff is deemed to be generally poor. Training on human resource and financial management is provided regularly by the Kosovo Institute of Public Administration (KIPA) and training on human rights, which is the core business of the institution, unevenly by international donors. Due to low salaries the staff turnover is high, especially among the more experienced officials, who tend to go to the private sector.

The premises are insufficient and not adequate to hold the staff and the activities. This was noted by the European Commission in the Feasibility Study cited above. Given the budgetary constraints and the staff shortages affecting the Ombudsman, mainly due to constant governmental encroachment in the management of the institution, it is not deemed to be truly independent, but only on paper. The European Commission in its Feasibility Study pointed out at these difficulties and urged the government to refrain that enmeshment and guarantee a budgetary framework more stable and more predictable for the Ombudsman institution.

The influence of the Ombudsman reports is negligible, as the government and public officials systematically ignore the reports and recommendations issued

by the institution. The Assembly reviews the annual reports but these discussions are inconsequential and the issues reported are scarcely addressed, if at all. The law, however, allows for the Ombudsman to access any public building without prior notice and lodge complaints at the constitutional court for human rights violations, especially of those regulated by the European Convention on Human Rights.

The annual reports of the Ombudsman are of poor quality. They do not provide details on cases and are not standardised and do not show a homogeneous style. The 2011 report shows worrisome figures. Only 10 % of cases were actioned upon in full, which is a very poor record of case resolution which does not help the institution to gain the citizens' trust.

The Ombudsman did not acquire the mandate as a National Preventive Mechanism against Torture under the UN Optional Protocol to the Convention against Torture. Nonetheless the Law against Discrimination (article 10) confers responsibility and powers to the Ombudsman to sanction unlawful discriminatory acts by public authorities. The Ombudsman may have access to classified information provided the necessary security clearance is given.

The Ombudsman has jurisdiction over the KSF. In the period 2009–2012 three cases have reached the institution dealing with the KSF. The low number of complaints affecting the KSF is perhaps the consequence of a general lack of awareness among the population of the role of this institution and also the spread popular belief that the KSF and the Kosovo Intelligence Agency (KIA) are “untouchable”. The media and civil society organisations (CSO) regularly address the performance of the Ombudsman, but rarely with regards to its dealings with the KSF. There is an ongoing discussion within the parliamentary Committee for Internal Affairs and the KSF on creating a Parliamentary Commissioner for the Armed Forces to act as an Ombudsman of sorts for members of the police and the KSF.

Overall the Ombudsman is a foreign-born institution which has not taken root yet in the Kosovo institutional landscape. The country suffers from a traditional ignorance of basic human rights, which are often violated, and failures in implementing the rule of law. The financial and human resource capacities of the ombudsman remain low. A quite evident weak domestic political will to strengthening the institution is observable. The institution is mainly supported by foreigners, especially by the European Commission, which is recurrently insistent on enhancing the Ombudsman.

3.4 Prevention of Conflict of Interest

There are three pieces of primary law regulating the matter: Law on Declaration, Origin and Control of Property of Senior Public Officials; Law on Declaration, Origin and Control of Gifts of all Public Officials; and the 2011 Law on the Prevention of Conflict of Interest in the Discharge of Public Functions. These laws, except the one of 2011, were adopted by the international administration of UNMIK and currently the European Commission assess every year the degree of implementation of these laws. The

Law on Civil Service defines who is a senior public servant and political appointee, as they are obliged to declare income and assets.

The yearly declaration of income and assets is mandatory and includes those of immediate relatives. Public officials at the Ministry of Defence and members of the KSF are affected by this obligation as well. The declaration form is very complex and comprehensive. It has to be submitted to the Anticorruption Agency (ACA) in March every year. The ACA publishes the declarations in its website and shall verify the facts and can request the support or information from other public institutions. The ACA verification of assets is poor, as only 20% of declarations are scrutinised. Almost none of ministers and judges were verified in 2011. The number of declarations is on the increase, according to the reports released by the ACA. Citizens can supply additional information to the ACA to complete the declaration of individual public officials.

The ACA shall forward false declarations to the prosecutor to initiate criminal proceedings. The new Penal Code (article 437), which entered into force in January 2013, foresees penal reproaches, including up to 5-year imprisonment, to those violating the obligations of honest declaration of assets. In addition, the legal framework cited above foresees administrative fines up to 2500€ for administrative violations of these obligations. In 2011, some 38 officials were fined. The ACA has initialled criminal procedures against 6 members of the KSF at the end of 2012 for legal breaches in their 2011 declarations. Civil society organisations, especially the FOL Movement, and the media watch the declarations and publicly denounce irregularities. They have been very critical of the ACA, in particular of its director.

The Laws on Declaration, Origin and Control of Property forbid officials from accepting gifts if it could influence on their official duties. Monetary gifts are strictly forbidden. Other gifts are limited to one per annum. The Ministry of Public Administration established gift registers to be kept in all public administration settings, including the MKSF. As at January 2013 no gifts were reported in the MKSF. The overall awareness and practice concerning the declaration of gifts is low throughout institutions. In 2012, only 86 gifts were declared by all institutions combined. The media and CSO are relatively insouciant towards gifts, as they consider the matter as the less serious source of corruption in the country.

The 2011 Law on Prevention of Conflict of Interest makes the duties of public office incompatible with any other employment, with some exceptions, which shall be authorised by the employing institution. This regulation is vague. It allows for blatant circumventions of the conflict of interest regime. The Law applies in full to the KSF.

Nevertheless some prohibitions are sufficiently precise: senior public officials cannot be managers or members of managing bodies of for profit or non-for-profit organisations, as well as they are forbidden from taking interest or undertaking activities in sectors under their official purview. Officials cannot receive any kind of compensation from NGOs, except per diems. The way in which the law is worded shows many loopholes, however, making its

implementation difficult and controversial. The existing oversight bodies such as the Anti-Corruption Agency and the Office of the Auditor General monitor the extent to which senior officials at the MKSF and KSF comply with the incompatibilities regime. However, the limited capacities of the oversight bodies does not guarantee proper and consistent monitoring of this matter.

The Law on Prevention of Conflicts of Interest also imposes the obligation on public officials to withdraw from decision making processes where they have an interest, direct or indirect, which may influence the decision. The official shall share the information with his superior, who will determine whether or not the official has to withdraw from a given process. Otherwise the decision at stake shall be considered null. In case of discrepancy between the official and his superior, the ACA shall decide on the withdrawal (article 15). The ACA Decision 01-3285/12 reflects a case involving a MKSF senior civil servant who shut down his company out of conflict of interest with his official duties.

In post-public employment related matters, the Law on Conflict of Interest (article 17) establishes a one-year cooling period, subsequent to leaving office concerning employment in businesses or NGOs that were under the purview of the concerned official during the immediate two years prior to leaving office. This provision also applies to the MKSF.

The supervision of compliance with the conflict of interest regime falls within the remit of the ACA. It has a division on the prevention of conflict of interest, which at the end of 2012 was staffed by a Head and three senior officials. The ACA's capacity is inadequate to ensure compliance with the conflict of interest regime.

The 2012 Penal Code (article 424, in force since January 2013, describes the crime of illicit participation in decision-making on a matter where the public official has a direct or indirect financial interest. It foresees sanctions of up to 3-year imprisonment. If the matter is public procurement the conviction can reach up to 5-year in prison. The concrete application of the Code remains to be seen, as its promulgation is very recent.

The international community has been the main driving force behind the establishment of the conflict of interest regime. The plurality of foreigners intervening on the field, which represent different administrative cultures, traditions and interests, and are not coordinated, has led to a complex and somehow incoherent legal framework. This is hampering the implementation of foreign inspired legislation. That implementation gap in turn affects the social role of the law and the respect that citizens may have to the law. The Special Report 18/2012 of the European Court of Auditors on the European Union Assistance to Kosovo related to the rule of law highlights this lack of coordination between the main donors, namely the EU and the United States.⁷

⁷ Publications Office of the European Union, Luxembourg, 2012. The report states (paragraph 86, page 30): "The EU Institutions have made significant efforts to coordinate with the USA which is the largest bilateral donor in Kosovo. Nonetheless it remains difficult to achieve full co-ordination given the wide range of US actors involved in Kosovo in the rule of law field. Co-ordination is particularly challenging in the drafting of legislation, where the USA is very active despite Kosovo's interest in adopting the EU

In addition to defective legislation, political pressure on the ACA and a questionable political will to investigate breaches of the conflict of interest regime, leads to a poor compliance with the conflict of interest regime. The Law on Asset Declarations had a weak sanctioning framework until January 2013, when certain breaches were given the category of a crime by the new Penal Code. The impact of the Code remains to be seen. The EU Court of Auditors proposes a good summary of the conflict of interest policy: “The Law on conflicts of interest lacks relevant reporting obligations and it only foresees that the Kosovo Anti-Corruption Agency should urge the official to avoid the conflict. Conflicts of interest persist” (Report EU Court of Auditors, page 44).

3.5 Transparency, Free Access to Information and Confidentiality

Article 41 of the Constitution refers to the right of access to officials documents. A 2003 UNMIK Law on Access to Official Documents regulates the procedural details. This Law was superseded by a 2010 Law with the same title. The 2005 Law on Administrative Procedures also regulates the matter.

Applicants to obtain documents do not need to manifest any particular reason and the requested authority shall deliver in 7 days. A negative reply can be challenged before the Ombudsman. This latter is the authority protecting the citizens’ rights to access to official documents, but it does not have adjudicating powers. Therefore, the Ombudsman is not able to enforce the above mentioned citizens’ right⁸. As a consequence, aggrieved citizens seeking redress of denial of access to official documents cannot do otherwise but lodge a complaint in court. Given the judicial inefficiency and confusion of jurisdictions⁹ and that the judiciary remains one of the weakest pillars of the state, very few citizens venture on that judicial path. In October 2012 only two cases were registered in court on access to official documents related matters.

Obtaining documents is free of charge, but fees are foreseen to cover costs if the Ministry of Finance issues a regulation on the matter, which did not happen so far (reports exist denouncing arbitrary fees imposed by officials). Exceptions to free access to documents (article 12) are constituted by the personal data protection and the classified documents. Refusal to provide access shall be motivated by the relevant authority. The law is considered to be up to international standards by the civil society and the media, even if fears of misinterpretation of the exceptions surface from time to time.

acquis communautaire and the fact that Kosovo’s legal framework is based on European Continental law. For example, the new law on courts required around 50 drafts starting from 2004 and was only adopted by the Assembly in August 2010, the government blaming the significant delay on disagreement between EUO and USAID”.

⁸ For more details on the Ombudsman, see the relevant section above in this report.

⁹ It’s seemingly unclear which court is competent to deal with this matter of access to information. As a result, lower courts have forwarded it the Supreme Court (?), as did the Municipal Court of Pristina in a case followed by the FOL Movement, a NGO.

If the international community was instrumental in the adoption of the 2003 Law, its influence in 2010 had been reduced to the EU and the US. Both of them monitor the implementation of this legislation through their respective annual reports¹⁰.

The Law on Classified Information and Security Clearance (LCISC) was adopted in 2010. It displays the usual classification (top secret, secret, confidential and restricted). Any documents falling within that classification are secluded from public access. In practice, there is to date a very limited number of documents classified as well as of requests denied for classification reasons, none of them affecting the MKSF. On the contrary, the MKSF received 4 formal requests in 2012, mainly from journalists and NGOs, to access to official documents. The MKSF provided timely information, as requested. The information displayed at the MKSF website is incomplete, as it only shows a few documents which are not classified. Laws and procurement decisions are published, though.

The authority in charge of administering the policy on the protection of the right to free access to information is the Ministry of Public Administration, but the Public Relations Office of the Government is in charge of preparing and releasing the annual report on the matter to the Assembly and to the public. This Office shall also make recommendations to the concerned institutions and propose action plans.

Official Evidence on Request for Access to Official Documents is covered by Regulation 04/2012 of the Government establishing procedures, forms and responsibilities for dealing with the requests for access to public information. The regulation entrusts the public relations staff to decide on releasing information or not, which is problematic given the legal nature of the issues at stake. The European Commission had criticised the lack of reliable statistics in the application of the Law on Access to Official Documents, which prompted the Government to issue the above mentioned Regulation.

The criticism in the media and NGOs has been widespread pointing out at the difficulties in accessing official documents. At the MKSF officials in charge often do not know how to deal with the situation and tend to favour confidentiality over openness out of sheer insecurity. This is a common feature across the whole public administration. The Ombudsman has criticised this attitude and suggested training and awareness raising for citizens and public officials alike. CSO, for example the YIHR (Young Initiative for Human Rights), have been active in awareness raising campaigns, but it is still very limited the interest of the citizenry in accessing official documents.

As for defence budget transparency, the state budget is public and published in the Official Gazette, including the parts of the budget affecting the MKSF. In its 2013 budget no “grey zone”¹¹ is observable. The budget of the police includes two specific budget lines to classified procurements, under the rubrics

¹⁰ EU Progress Annual Report and US Department of State Annual Report

¹¹ Budget earmarked for secret spending. The confidential equipment is itemised under the budget line on “capital investment” (amounting to 36% of the budget in 2013, not all devoted to secret spending).

of “operations” and “special operations”¹². The entire budget of the Kosovo Intelligence Agency is classified.

In summary, transparency policies are slowly taking root in Kosovo, particularly demanded by the media, some NGOs and the international community. The general population is rather unaware of their rights to access official documents and do not seem particularly concerned. The enforcement of that right, which is attributed to the Ombudsman (an institution without enforcement powers), is weak, almost impossible.

¹² The ratio of secret spending under the two rubrics of the police budget is 10.5% in 2013.

4 Policies under the responsibility of the executive

4.1 Public procurement and military asset disposal

4.1.1 Acquisition through public procurement

The Law on Public Procurement was adopted in 2003, amended in 2007 and 2010. A new Law was adopted in 2011 upon requirement of the European Union. It applies to the whole public administration, including the security sector. It applies together with the Law on Administrative Procedures of 2005. Article 3 of the 2011 Law establishes the exceptions to the general procurement rules, which, among others include procurement which could “compromise the legitimate secrecy of security interests”. There are no specific administrative instructions dealing with procurement in security.

One major problem is the practice of using the “single source” procedure, a negotiated procedure with a single seller, bypassing the regular public, competitive tendering. The government officials state that the single source procedures were conducted in line with the legal framework, yet, the amounts procured through single source rose from € 50 million in 2008 to € 164 million in 2009 and remained roughly that high in 2010 and 2011. The KSF procurement in 2009 represented some 1.2% of the total KSF budget. In 2012 three contracts of the KSF were substantiated through the single source procedure, not all of them with clear and sufficient justification. Overall, it seems that the single source negotiated procedure is on the decrease in the public administration, mainly due to pressure from CSOs and the European Union.

There are three main administrative bodies dealing with public procurement: the Procurement Review Body (PRB), the Public Procurement Regulatory Committee (PPRC) and the Central Procurement Agency (CPA).

The Procurement Review Body (PRB) was established in August 2008 as a quasi-judicial body on the complaints lodged by economic operators should they allege any wrongs committed by the contracting authorities. It is an independent collegial authority with a Board of 5 members, assisted by a secretariat of 7 staffers. So far there are no reports pointing out at political interference with the PRB. Existing criticism refers mainly to staff’s poor skills and limited capacities of the PRB. The PRB complains about the inadequate premises they are lodged in and the insufficient number of staff.

The Public Procurement Regulatory Committee (article 87 of the Law on Public Procurement) is responsible for the overall development, operation and supervision of public procurement in the country. It conducts investigations, issues opinions addressed to contracting authorities, examines reports, and produces guidelines and manuals on public procurement. The PPRC is composed of 3 members appointed by the Assembly upon proposal of the Government.

The Central Procurement Agency is part of the Ministry of Finance since 2011 as a consequence of the new Law. Its main function is to carry out central

purchasing of goods and services for the public administration. The Director and the staff are civil servants.

Within the MKSF, there is a Department for Procurement and Contracts reporting to the Permanent Secretary of the Ministry. It has 6 officials (5 civil servants and 1 military personnel) with several different education and professional backgrounds, which are qualified in public procurement. However, despite participation in few events, the MKSF procurement officers seem to be needing some capacity building action (e.g. training) in military procurement, given the fact that the number of specific military-related purchases is increasing. With the exception of attendance in one seminar, they have not undergone any training on anti-corruption or ethics. Until mid-2013, the MKSF had no specific procurement manual but it has expressed the intention to draft one. They apply the general guidelines.

The National Security Strategy does not contain any links between the strategy and procurement needs in the KSF. The reason is because the strategy is a vague document disconnected from the local context. The Procurement Plan of the MKSF is developed in accordance with the Law on Public Procurement and is submitted to the CPA and published in its website, except those contact which are expected to be classified. The final decision on a procurement procedure at the MKSF is taken by the Head of the Procurement and Contracts Department on contracts below 125 000K in goods and services or 500 000K in public works. On the amounts exceeding these figures the decision taker is the Minister of the MKSF. The MKSF needs prior authorisation of the Prime Minister for concluding classified contracts requiring negotiated procedures. Defence procurement is usually not debated in the Assembly.

The announcements of tenders are published on the webpage of the MKSF as well as on those of the procurement bodies. Although the Law states the principle of giving sufficient time to bidders for them to prepare their offer, sometimes it does not happen and complaints are lodged. The MKSF has had no complaints of such nature.

The Law does not require the establishment of a Bid Opening Commission for opening the offers, but it shall be done prior to the occurring of the award in order to ensure that the procedure was in line with the Law and regulations. No pre-established rules exist for the appointment of this Commission's members, which may lead to questionable appointments. The Law is more comprehensive regarding the establishment of the Evaluation Commission, which has to examine, evaluate and compare the offers, but equally the absence of precise rules for appointing its members is noticeable and may be a source of problems (e.g. conflict of interest).¹³

The Code of Ethics, however, provides for mandatory avoidance of conflicts of interest. The decisions, including opinions and justifications within the Evaluation Committees, are published on the websites of the Contracting Authority and the Central Procurement Agency.

¹³ The MKSF officials insist that there were no cases when the selection of the tender committee implied conflict of interest.

The records of procurements are kept in the Department of Contracts and Procurement of the MKSF, but there appear to be discrepancies between the records kept at the MKSF and those kept at the PRB, PPRC or CPA. Discrepancies are attributed to the fact that a joint database is missing along with a triangulation of data. The PRB and PPRC provide electronic data on their websites, but too often the files are incomplete and difficult to track.

The Law on Public Procurement regulates the sanctions to economic operators that have been caught in corrupt practices. The PRB shall investigate and, if found in violation of the law, put the responsible company in a black list. In 2012 two economic operators were blacklisted in this way.

The Law on Public Procurement regulates the complaint procedures before the PRB. Complainants have to deposit a warranty of 500€, which is reimbursed if he PRB adjudicates in favour of the complainant. This body commissions an expert to verify the appeal and investigate the allegations of the party. The findings of the expert, which are heard in front of the PRB Board, are a substantial ground for the ensuring decision by the PRB, which may oblige the contracting authority to redress the decision and recommence the tender procedure. In the mentioned hearing both the representatives of the contracting authority and of the complainant are heard along with the PRB's expert. In 2011 eight appeals were lodged against the MKSF before the PRB, four of which were rejected. In 2012, seven appeals were lodged against the MKSF, three of which were sent to re-tendering and one is in re-evaluation. MKSF officials state that they always respect the recommendation of PRB. Decisions by the PRB can be appealed before the Basic Court. The Court has a huge backlog of pending cases.

The most common breaches of the Law on Public Procurement are two: 1) Taylor-made tender specifications favouring the bidders preferred by the contracting authority and 2) Disregard of the legal economic criterion whereby the cheapest offer should be preferred, all other conditions being similar.

The OAG has raised some criticism against the MKSF in its 2010 report, whereas in its 2011 report it stated that the recommendations on procurement from the OAG had been fully met by the MKSF, especially that the high value contract criteria should match those in the Law. The 2011 report also found some other irregularities in the MKSF, such as that delays in delivery of purchased goods did not bear penalties to the contractor, that there was no recorded evidence of the quality of the delivered goods and that expenditures were not recorded in accordance with the prescribed methodology.

The media is active in uncovering mismanagement in relation to public procurement. Several media reports concerned the MKSF and the KSF, most of them sourced from PPRC reports. In contrast, few CSOs have addressed procurement in the security sector, with the notable exception of the Kosovar Centre for Security Studies (KCSS), which released a comprehensive report on good governance in the security sector, with a chapter on procurement and financial management. The action of the media and CSOs is causing impact, as awareness in the MKSF on the need for good governance is increasing.

4.1.2 Military asset disposal

The Administrative Instruction 21/2009 on the Management of Government Assets is the basic existing regulation on the management and disposal of public bodies' assets. It is complemented by the Rule for Government Sale and Disposal of Assets and the Law on Privatisation. Article 13 of the Administrative Instruction establishes that the proposal for the disposal of assets has to be reviewed by a Committee and approved by the Minister of Finance. Within the MKSF, the General Secretary is empowered to dispose of assets once the Committee has released a favourable opinion. The proceedings from the asset disposal are transferred to the Treasury (Ministry of Finance).

No disposal of military assets has been carried out since the independence of the country. In January 2013 the MKSF was preparing a list of disposable military items, which had reached amortisation thresholds according to the law. The Ministry of Trade and Industry has the legal competence for selling all government assets, including those of the MKSF. According to the Administrative Instruction 21/2009, every government institution, hence the MKSF, has to appoint one or several assets and logistic officers to manage its assets internally.

In October 2010 the MKSF established a Committee for the Evaluation of Capital Assets, which made an inventory of all military assets of the country. No information has been made publicly available on this. Only the 2010 OAG report refers to an ad hoc Committee which evaluated the MKSF assets in € 114 million. The report of the registered assets is submitted at the Ministry of Finances.

The Kosovo Financial Management Information System (KFMIS) keeps the electronic data on the government assets, including the disposed ones. The general database called "E-Pasuria" registers existing assets and identifies those to be disposed, but this database is not properly working, which makes it difficult for institutions to keep updated and have accurate information.

The OAG 2009 report criticised the management of assets at the MKSF, especially the management of the assets belonging to the former Kosovo Protection Corps (KPC). The OAG signalled the incapacity of the MKSF to provide precise lists of disposed assets. Disposals were justified by documents amounting only to €49 000 whereas the total disposed had amounted to €153 000. The MKSF seemingly has no direct responsibility on this discrepancy, as the disposal of assets of the former KPC were carried out by the Ministry of Public Administration. The OAG also pointed out at problems with the barcoding of assets. The OAG 2011 reports highlights that the MKSF had met its recommendations. Later on the OAG has identified problems in the use of official vehicles at the MKSF.

In summary, the legal framework for public procurement and military asset disposal is in place, but it is still prone to corruption and mismanagement, especially the acquisition of goods and services. Recourse to negotiated, single source procurements is too frequent and unjustified. The staff at the

MKSF lack training in military procurement and have been criticised by the media for mismanagement of public funds.

4.2 Internal financial control, inspector general and control of intelligence services

4.2.1 Internal financial control

The legal basis for financial control derives from article 120 of the Constitution, which spells out the principles that should govern the financial management, namely accountability, effectiveness, efficiency and transparency. The Law on Financial Management and Accountability of 2003, as amended several times, the latest one on 2 July 2012, regulates the public financial management. The internal audit is regulated by the 2006, amended in 2009, Law on Internal Audit, aimed at introducing more operational efficiency in budgetary operations. It is governed by six principles: legality, integrity, objectivity, confidentiality, competency and independence. These two laws were requested by the European Commission, which also supported their drafting.

There is an ex ante control of commitments and payments in the MKSF as provided by the Law on Public Financial Management and Responsibilities, Financial Regulation 01/2010 on Financial Management and Control and Financial Regulation 01/2013 on Expenditure of Public Funds. Internal auditing is conducted only once the procedures are finalised and payments are done.

Every public institution is obliged to establish an internal audit unit (IAU). The one at the MKSF has three auditors and reports to the General Secretary. The IAU also reports to the Ministry of Finances. The OAG considers this Unit to be fully consolidated and functional. The staff of the IAU are experienced professionals, but lack training on auditing the military, in particular the military logistics.

The Administrative Instruction 8/2009 on the Mission, Organisation and Structures of the MKSF regulates the role and responsibility of the IAU as a control mechanism responsible for auditing the MKSF and KSF in order to ensure an appropriate use of public funds. They use auditing standards aligned with the International Organisation of Supreme Audit Institutions (INTOSAI) and the Kosovo Board for Standards of Financial Reporting (KBSFR).

There is at the MKSF a Committee of Internal Audit, made of the Deputy Minister, the Inspector General, the Head of the IAU and a representative of the KSF Commander. The role of this Committee is the support and guidance of the IAU by supervising the audit plans and results, protecting the independence of the internal auditors, assessing the adequacy of resources allotted to the internal audit function, promoting the compliance with the audit recommendations and advising on risks connected to internal control and audit.

The Ministry of Finance hosts, directly subordinated to the minister, the Central Harmonisation Unit (CHU), responsible for the harmonisation and coordination

of the internal audit function across all public administration settings, including the MKSF. The CHU published a manual on general public financial management and control, which is in use in all public institutions. It also promotes awareness raising campaigns among public officials and politicians on the importance of internal audit. The CHU has also published a handbook for internal auditors in two volumes, one on audit compliance and the other one on internal audit standard procedures. The Ministry of Finance has also published a code of ethics on internal control as well as a range of documents promoting professional standards for internal auditors.

The overall performance of internal audit faced considerable criticism from the media and CSO. The establishment of a sound, functioning internal audit and control mechanism has been a challenge in Kosovo because public officials lacked the required education and training and the concept of internal audit was little understood in the country, according to the Kosovo Democratic Institute, a NGO. The reports of internal auditors are still defective and imprecise in describing their findings and formulating their conclusions and recommendations. No public criticism was raised concerning the internal audit and control at MKSF.

4.2.2 The inspector general

The Inspector General (IG) of the MKSF, established simultaneously with the KSF, was appointed by the President of the country in 2009. The incumbent holds the rank of Brigadier-General. The mandate of the IG is to enhance discipline and guarantee the readiness and operational capability of the KSF. At the same time he has a role as advisor to the Minister and to the Commander of the KSF. The IG performs four functions: advising, training, inspections and investigations. The IG has frequent access to the Minister and the Commander while acting independently. Since the establishment of the IG in 2009 no investigation has been conducted.

The IG is appointed by the President upon recommendation of the Minister of the MKSF, subsequent to consultations with the Commander of the KSF. The civilian staff and the uniformed personnel of the IG are appointed according to the civil service legislation and the Regulation on the Appointments to the KSF respectively. The IG has 6 staffers (3 uniformed and 3 civilian), a number considered to be insufficient. The IG is a recent institution still struggling for its consolidation.

The IG is responsible for ensuring the enforcement of and compliance with all laws affecting the KSF. The usual rate of inspection carried out is one per month on average. The IG also conducts verification checking on compliance of its recommendations. No whistle blower mechanism exists while there is no knowledge on the Law on Whistle-Blowers in the MKSF.

There has been no public attention and scrutiny of the IG. This seclusion from the public eyes helped by the fact that the legal framework of the IG favours confidentiality (article 4 of the Regulation on the Inspectorate of the KSF) and its reports and statements are not freely accessible by the public.

4.2.3 Control of Intelligence Services (Kosovo Intelligence Service)

While Parliament control the KIA (Kosovo Intelligence Service) through the Oversight Committee of KIA (OCKIA), the Government controls it by means of the Inspector General (IG) of the KIA, appointed by the Prime Minister and the President. The role of the IG is to monitor compliance with the legislation by the KIA. The KIA reports to the Prime Minister.

In summary, the Law on Internal Audis constitutes a solid basis for the building of the system, but the level of understanding of technical concepts appears to be low in most institutions, including the MKSF.

4.3 Civil Service and Human Resource Management

The Law on Civil Service was adopted in May 2010, but it still requires some pieces of secondary legislation. The Laws on Salaries and on State Administration complete the legal framework for the civil service. The military personnel are regulated by the Law on the 2008 Kosovo Security Forces in application of the Comprehensive Proposal for the Resolution of the Kosovo Status (Ahtisaari Plan). The Law on Civil Service was markedly driven by the European Commission and so is its implementation.

The staff of the MKSF is 60% civilian and 40% military. The former, except the political appointees¹⁴ (some 10% of the staff in February 2013), are within the scope of the civil service. Civil servants are classified into four categories.

The civil service is legally differentiated and separated from the politicians. The political positions at the MKSF are the minister and deputy ministers, the political advisors, the personal assistants and drivers of the minister and deputy ministers. The civil servants are tenured (or career civil servants) or temporary up to two years for the implementation of specific programmes. During 2011 and 2012 the majority of institutions transformed fixed term contracts into open ended contracts, thus giving more stability to the civil service, a precondition for professionalization. The staff employed after 2010 received fixed terms contracts.

The Law on Civil Service intended to introduce the merit system in the public administration, but its sloppy implementation is weakening the meritocratic principle in practice. The principle of impartiality and political neutrality is obligatory both for civil servants and for military personnel under the Law on KSF. These latter are forbidden from being members of political parties.

For the KSF staff (some 2500 active and 800 reserves) and the civil service, meritocratic recruitment is compulsory. The MKSF prepares an annual recruitment plan, which is submitted to the Ministry of Public Administration (MPA) for approval. The recruitment procedures are handled by the MKSF

¹⁴ The political appointees are regulated by the Regulation 02/2011 on the Field of Administrative Responsibilities of the Office of Prime Minister and Ministers.

through a public announcement of the vacancies, a written test and a recruitment panel. For recruitment at the KSF the MKSF Regulation 2/2010 is applicable.

Promotion is done by ascending in grade. Aspirants should pass a test and produce evidence of the merits, skills and professional competence. Secondary legislation on promotion was passed only at the end of 2012 and therefore it is too early to judge the new practice. The new Regulation for Career Development is approved. Promotion of the members of the KSF shall be based on merit and carried out through competitive, transparent procedures. Past performance has to be taken into account. A promotion plan is worked out every year in the KSF and its implementation is controlled by the Promotion Board of the MKSF.

It is too early to say whether or not this legal framework, both for the civilian and military personnel, sufficiently supports the development of the merit system in practice, as it is very recent. On paper it seems to be good enough, but given the fact that the public administration is much politicised, there are reasons to believe that the political connections will remain important for recruitment and promotion. Some international organisations, such as the European Commission, voice their fears of an excessive politicisation in the civil service, leading to unfair recruitment. The local media and NGOs also express their concern for the high level of politicised management of the civil service. Similar concerns have been raised with regard to recruitment to the KSF¹⁵.

The Independent Oversight Board for the Civil Service (IOBCS) is the highest body for the control of the civil service statute rights. It reports annually to the Assembly. The main functions of this Board are: reviewing complaints by civil servants and candidates to the civil service; monitoring the recruitment of managers to the civil service; and overseeing the implementation of the civil service legislation. The IOBCS is not well known yet and its decisions are not much complied with yet by institutions. According to the OSCE, 23% of the decisions of the IOBCS were not complied with in 2011¹⁶. The IOBCS considers that the merit principle is not yet accepted and respected in the country. The number of cases referred to it is on the increase for political and clan encroachments in civil service management. There seems to be a very low political will to end the practice of nepotism and patronage in the public administration and in general to reform the public administration beyond rhetoric. Recommendations by the IOBCS are hardly heard by the authorities. Hurdles to the functioning of the IOBCS are galore in terms of lack of sufficient budget and adequate premises. With respect to MKSF, IOBCS regularly observes the selection of senior level. According to MKSF officials, the IOBCS approved all of the senior level selection of the institution.

¹⁵ Clewlow, Ade (2010), *“Kosovo’s Security Transition: A Critical Study into the Establishment of the Kosovo Security Force”*. Norwegian Institute of International Affairs (NUPI), Security in Practice, Report No. 13, Oslo.

¹⁶ OSCE (2012), *“The State of Independent Institutions in Kosovo”*.

A Law on Pensions for the KSF was adopted in 2012 amidst great controversy involving the Parliament, the President of the Republic and the Constitutional Court which finally decided that the law was adopted in compliance with parliamentary procedures. The Constitutional Court decided not to send back the draft law to the Kosovo Assembly. The World Banks also took sides with the President against the Law. This Law establishes higher pensions for the soldiers than for the ordinary citizens.

The remuneration scheme for the civil service is regulated by the 2010 Law on Salaries for Civil Servants, which is still to be implemented. According to SIGMA *“the salary system continues to be unfair, unbalanced and incoherent. The old salary system based on coefficients and fixed salaries is still in place. The discretionary practice of adding several supplements to the basic salary is continuing. In certain cases these supplements represent up to 2 or 3 times the basic salary, thereby distorting the overall salary system and increasing the difficulties in implementing the new system. The legal situation concerning salaries in the civil service is a paradox at the moment. The new law has formally been in force since mid-2010, but it has not yet been implemented. The old legislation, which was abrogated by the 2010 law, is still implemented in the area of salaries”*¹⁷.

Salaries at the MKSF are different, and higher, from those of the civil service. They are regulated by Government Decision 06/44. This could explain why the 2010 Law on Salaries for Civil Servants remains non-implemented. It is being resisted by the MKSF. Harmonising the salary scheme across the administration could be very expensive. More so given the profligate, wholesale salary increases carried out in the run up to elections in 2011¹⁸. The matter is expected to be considered after the adoption of the report on Strategic Security Sector Review. In addition, the Government has established a Cadre Fund Scheme, administered by the Prime Minister and designed to provide top ups in the remuneration of high qualified civil servants, which is likely to further distort the remuneration scheme.

Staff at the MKSF did not receive paid bonuses which are not explicitly forbidden by the Decision 06/44.¹⁹ Overtime is compensated by free time at the end of the year. Bonuses and allowances will be paid in case the Law on Salaries for Civil Servants is eventually implemented. This Law will reduce the number of allowances by putting an end to the practice of accumulating salary supplements.

Weaknesses regarding key elements of human resources management in the MKSF may be summarized as follows:

- HR planning – to the extent it is performed at all – is not based on systematic or evidence-based methods to forecast future personnel and

¹⁷ SIGMA/OECD 2012 Kosovo Assessments.

¹⁸ An increase of 30% for the civil service, of 50% for the health system.

¹⁹ The reason could be that civil servants of the MKSF are paid higher salaries than their colleagues in other ministries.

competency needs. A proper system HR planning is necessary, not least because of the new tasks and working methods that follow from the changing security environment of Kosovo and the country's NATO and EU aspirations.

- Job descriptions are obsolete; they do not adequately describe the tasks actually performed by the position holders. The lack of correspondence between actual and formal job content creates serious problems for most other parts of HRM, not least recruitment, performance appraisal and management of grievances/disciplinary matters. Closely related to the description of the work tasks is the assessment of the competence required to perform them. In Kosovo there is a tendency to mix *sources* of competencies up with *competencies per se*. The notion of competencies is still insufficiently developed and, hence, has no impact on job descriptions or on any other elements of HRM.
- The way in which key elements of recruitment processes, i.a. job are normally conducted makes them poorly suited to distinguish between qualified and less qualified candidates.
- The performance appraisal scheme as currently applied is neither suited to objectively appraise civil servants' performance or motivate them to perform better

The weaknesses identified here means the system of HRM can hardly be said to support the principle of meritocratic professionalism as laid down in the Law on Civil Service.

The 2011 Law on Protection of Informants or Reporters (whistle blowers), adopted upon request of the European Commission, is applicable to all public administration settings, including the MKSF, but there is little regard to the existence of this law among the officials of the MKSF. In fact this Law was the object of dislike by the civil society organisations and by parliamentarians, as the notion of informant has very negative denotation in the country, as associated to the former police state under Communism. There is a phone number at the Anticorruption Agency (ACA) to receive denunciations of corruption, a hot line of sorts. The Law on Witness Protection foresees further protection measures for when a whistle blower becomes a witness.

In summary, the civil service is still challenged by some elements of patronage, politicisation and clannish ways of management. Hence it may be difficult to realize the Euro Atlantic ambitions.

5 Anti-corruption policies and the Anti-corruption Agency

Despite the fact that the ruling parties campaigned on an anticorruption plank in the 2011 elections, little political action is observable in this regard since the establishment of the current government in March 2011. The Ministry of Justice is mandated with preparing anticorruption-related legislation, but no specific Department within that Ministry seems to be in charge. The enforcement of that legislation is entrusted to the Anticorruption Agency (ACA) and the State Prosecution Office.

An Anticorruption Strategy 2009–2013 drafted by the ACA has been replaced by a new Anticorruption Strategy 2013–2017, which was approved by the Assembly in February 2013. The former strategy was half-heartedly implemented. The latter is not substantially different from the previous one. It has been drafted with the support of international organisations and with consultations with CSO. The Assembly, in particular its chairman, criticised the strategy and asked for more implementable and realistic measures than the proposed ones. The main criticism against this strategy is that it does not address the country specific challenges in the field of anticorruption, even if on this occasion the involvement of the international community in the drafting of the strategy has been more discreet than previously, so slightly allowing for more local ownership²⁰. The European Commission still plays a considerable watchdog role concerning the implementation of the strategy.

The strategy does not contain any specific reference to the armed and security forces, although it is organised into sectors and one of them refers to the “law enforcement, prosecution and judiciary”. The police could fall within this sector. Although the strategy describes objectives to be attained in each sector, the Action Plan does not contain any budget or resources foreseen for the attainment of the objectives. This fact puts into question the credibility of the whole document and the authenticity of the political will behind it. The Action Plan does not mention the KSF.

The Parliamentary Committee on Legislation and the Judiciary is responsible for overseeing the implementation of legislation linked to the anticorruption policy, but its failure to oversee the previous strategy was much criticised. Whether or not this Committee will be more dynamic in overseeing the new strategy remains to be seen.

One problem with adopting strategies is the lack of domestic understanding of these documents. They are promoted mainly by internationals. The political will to adopt strategies and pursue reforms is much intermediated by international pressure. Internal demand for anticorruption policies is low. Opposition parties and some CSOs opposed the anticorruption strategy on allegations that it did not reflect a true, adequately assessed country need.

²⁰ It was supported by the Council of Europe and by the UNDP.

The National Security Strategy highlights corruption as one of the security challenges facing the country and considers corruption as a serious problem affecting the stability and security of the country. The document considers the police, the prosecutor and the judiciary as the main bulwarks against corruption. Criticism against this strategy was sharp while considering it inconsistent with the country security context. In fact, the strategy did not contain implementation mechanisms. The specific KSF 2001–2013 Strategy did not make any explicit reference to corruption in the armed and security forces, and obviously it does not contain any corruption risk analysis. The credibility of all those documents is low.

There is no specialised anticorruption unit at the MKSF. One officer has been tasked to liaise with the ACA on issues linked to the income and asset declarations, in addition to his other job-related obligations. The Inspector General, in an indirect way, as it is in charge of ensuring discipline, could impact on reducing corruption at the MKSF. Establishing a separate unit within the MKSF to deal with fighting corruption or promoting integrity is not on the Ministry agenda for the time being. The internal audit unit of the MKSF is the only unit that raised its concerns with regard to likely corruption risks in procurement.

The MKSF, a relatively new institution, has little practice in reporting about its performance in general and on its anticorruption efforts in particular. So far very little has been done to increase its institutional capacities in preventing and reducing corruption. However, a Deputy Minister has been appointed in charge of chairing the ministerial Internal Audit Committee.

A number of reports by CSOs (FOL Movement, ÇOHU Organisation) monitor corruption in public institutions. The European Commission observed some progress in its 2011 progress report. SIGMA²¹ observes that “the integrity and professionalism of the public administration continues to constitute a problem for the overall progress of Kosovo”. Nevertheless, the international community, especially EULEX, has been itself involved in corruption cases too²².

The Anticorruption Agency (ACA) was created in 2006 by the UNMIK and revamped by the 2009 Law on the Anticorruption Agency, which entered into force in 2010. The ACA is the body in charge of implementing policies to combat and prevent corruption. Along with the ACA, the President established the National Council on Anticorruption in 2012 to coordinate institutional efforts in fighting corruption, but it seems to be rather lethargic. Likewise an Anticorruption Task Force was established by the Government with the same purpose. The creation of these two units was heavily criticised by the CSO as

²¹ SIGMA/OECD 2012 Kosovo Assessment.

²² See Special Report 18/2012 of the European Court of Auditors on the European Union Assistance to Kosovo Related to the Rule of Law, cited above.

an attempt to neutralise the ACA. The coordination among anticorruption bodies has not improved in any visible way, according to many observers²³.

The ACA is independent from the executive and reports to the Parliament, but it has no constitutional standing. Although its responsibilities cover a wide range of issues, it has little or no influence on policy design or in the preparation of the legal framework, which is entrusted to the Ministry of Justice. The ACA is the body responsible for the verification of assets and income declarations, but its capacity for carrying out these investigations is weak. The ACA can initiate preliminary investigation before forwarding a case to the prosecutor. It can also monitor property and wealth variations of senior public officials. Public and private persons are criminally obliged to provide information, as requested by the ACA, except if it is information classified in accordance with the Law on Classification of Information and Security Clearance.

The ACA is led by a Director, with civil service status, appointed by the above mentioned parliamentary committee by simple secret majority vote. There are no provisions on the dismissal of the Director. The staff, 35-strong at the end of 2011, are also civil servants, which the ACA management considers to be insufficient. The constant government interference with the budgetary allocations to the ACA is progressively hampering its independence. The Kosovo Institute of Public Administration (KIPA) provides training to the staff of the ACA, mostly financed by international donors. The ACA has never provided training to the KSF on anticorruption.

The budget proposal for the ACA is prepared by itself and approved by the Assembly and its current Law provides sufficient managerial and organisational autonomy. It submits annual reports to the Assembly where Parliamentary Committee on Legislation and Judiciary is the supervising body. It appraises the performance of the ACA Director as well as conducts the verification of assets and income of the ACA staff members. ACA's reports are publicly available if they do not contain classified information.

The ACA is struggling to establish itself, as it has encountered severe and open criticism from leading political figures in the country such as the chairman of the Assembly. Many other pressures are exercised upon the ACA, particularly from those in the CSO who believed that the creation of the ACA would immediately translate into results. Despite the domestic hostility to the ACA, the international community, especially the European Commission, keeps insisting on reinforcing the ACA in terms of independence, budget and staff.

²³ See the 2012 European Commission Kosovo Progress Report.

6 Recommendations

6.1 Recommendations to the MKSF

1. Public procurement

There is a need to reduce corruption risks in and to further professionalize MKSF procurement, i.a. through following measures:

- The extent of single source procurement and classified procurement should be reduced from the levels of previous years and kept at a minimum;
- The Ministry should seriously examine the validity of media's allegations of mismanagement of public funds in the MKSF;
- There is a need to strengthen the staff of the MKSF Procurement Department, and to enhance the competence of existing staff members, both when it comes to procurement generally and military procurement specifically.

2. Human resources management

The MKSF needs to continue efforts to strengthen meritocratic HRM and ensure proper implementation of the Law on Civil Service. The problems and challenges identified in this report can only be adequately addressed by truly professional institutions. Specifically there is a need to strengthen and professionalize key HRM practices:

- HRM planning;
- Job-descriptions;
- Recruitment and promotion;
- Performance appraisal;
- Professional development.

Moreover,

- the salary system for the MKSF should, in principle, be based on the Law on Salaries of Civil Servants.
- members of the MKSF and the KSF should be informed about the Law on the Protection of Whistle-Blowers.

3. Transparency

MKSF officials need to be trained in greater transparency. In the Ministry information is withheld from public access – not because it is classified but because the official in charge feels insecure and tend to favour confidentiality over openness.

4. Corruption risk management

There is a need to establish a system for systematic and continuous identification and reduction of corruption risks. Specialised professional functions need to be created or significantly strengthened.

5. Improved integrity framework

Reform needs identified in this report could usefully be addressed in a comprehensive effort to improve integrity frameworks in the area of the MKSF.

6.2 General recommendations

1. Mechanisms for civilian democratic control over the executive, including the MKSF and the KSF are weak. Further efforts are needed to strengthen Parliamentary oversight, i.a. in the area of military procurement.
2. The civil service needs to be depoliticized and professionalized by clearly implementing the merit principle.
3. The conflict of interest regime needs to be improved, i.a. by clarifying exemptions to the legal provision that the duties of public office is incompatible with any other employment. Current derogations allow for blatant circumventions of the regime in place. In addition, questionable will to investigate breaches of the conflict of interest regime leads to poor compliance.

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