

Overall Score:

67 - Weak

Legal Framework Score:

78 - Moderate

Actual Implementation Score:

60 - Weak

Category I. Civil Society, Public Information and Media

I-1. ⁷⁴Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

Comments:

With law it is not mentioned what kind of nongovernmental organization can be formed (like human rights, research NGO, anti corruption, etc.). It is just mentioned that every person is eligible to register an NGO.

References:

LAW No. 03/L-134 – ON FREEDOM OF ASSOCIATION IN NON-GOVERNMENTAL ORGANIZATIONS

Article 9

Registration

Every person, notwithstanding the race, nationality, religion, gender etc. shall be eligible to register NGO under the terms and conditions of this Law

<http://kuvendikosoves.org/>

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within

last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

In law, it is not stated specifically for anti-corruption nongovernmental organizations, but in general.

References:

LAW No. 03/L-134 – ON FREEDOM OF ASSOCIATION IN NON-GOVERNMENTAL ORGANIZATIONS

Article 16

Property and Resources

1. The income of an NGO may include donations of cash, securities, and in-kind contributions; bequests; membership fees; gifts; grants; real or personal property; and income generated from any lawful activities undertaken by the NGO with its property and resources.

<http://kuvendikosoves.org/>

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

References:

No this is not regulated!

LAW No. 03/L-134 – ON FREEDOM OF ASSOCIATION IN NON-GOVERNMENTAL ORGANIZATIONS

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YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

83

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

Everyone can establish a CSO no matter its focus. This is thanks to the Regulations made by internationals (UNMIK) after the war”.

Armend Bekaj, civil society activist, Deputy Chief of Party for The Institute for Sustainable Communities – ISC
“It does not create barriers as such, that much I would say is true. But this is not to say that their cooperation is necessarily constructive or proactive. This is not ensuring that CSOs’ advice is being taken into account”.

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

References:

Civil Organisation and Development – Human Development Report, Kosovo 2008, United Nations Development Programme (UNDP), Faton Bislimi, Project Manager, Research and Policy Unit, UNDP Kosovo Mytahir Haskuka, Programme Analyst, Head of Research and Policy Unit
UNDP Kosovo Iris Duri, Statistician, Research and Policy Unit UNDP Kosovo

<http://www.kosovo.undp.org/?cid=2,127>

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

There is no still such a culture here to hear the voice of a CSO”.

Armend Bekaj, civil society activist

“Only a handful of them. These few are engaged at municipal and national level, with the executive and legislative. In general, there is a real need for CSOs themselves to adopt a much more proactive and energizing attitude”.

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | **NO**

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

I have been working as a journalist for for more than 6 years and I am not aware of any case.”

Armend Bekaj, civil society activist

“Not that I am aware of. However, we have had examples when an NGO has been searched by NGO monitoring bodies, with a clearly political motive, I would say. The case of Cohu springs to mind”.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO’s work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

I am not aware of any case.

Armend Bekaj, civil society activist

Not that I am aware of.”

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person’s work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned” is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

There have been some threats against journalists dealing with alleged corruption cases. No actions taken by the Courts until now.

Armend Bekaj, civil society activist,

Not that I am aware of.”

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist’s work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

I am not aware of any case.”

Armend Bekaj, civil society activist

“Not that I am aware of.”

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual’s history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Freedom of association: The new Constitution (in force since June 15) guarantees the freedom to establish and join trade unions for the protection of interests. The right to organize may be limited by law for specific categories of employees.

The United Nations Mission in Kosovo (UNMIK) regulation 2001/27 on the Essential Labour Law of Kosovo stipulates basic trade union rights in line with ILO conventions 87 and 98. However, there are no specific laws protecting trade union rights and freedoms, so the unions’ position is not facilitated.

References:

Constitution of Kosovo, Article 44 [Freedom of Association] – Point 2 The freedom to establish trade unions and to organize with the intent to protect interests is guaranteed. This right may be limited by law for specific categories of employees.”

REGULATION NO. 2001/27, ON ESSENTIAL LABOUR LAW IN KOSOVO, Section 5 Rights to Organize and to Collective Bargaining – “5.7 Unions shall register and submit a copy of their constitution and a list of the names, surnames, dates of birth, and addresses of the persons responsible for the management and administration of the union, with the Department, or the authority that will succeed it.”

<http://www.unmikonline.org/regulations/2001/reg27-01.pdf>

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | **50** | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

The high rate of unemployment is killing the trade union activities. Kosovo workers do not protest on May 1 (Labor Day). They always tend to celebrate it.

Armend Bekaj, civil society activist

I would say so, with no problems. However, I have my doubts about the influence that a trade union would have in this country. And this is all due to the lack of overall lack of culture of rights for employees, in the state but particularly private sector.”

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Constitution of Kosovo

Article 42 [Freedom of Media]1. Freedom and pluralism of media are guaranteed.

2. Censorship is forbidden. No one shall prevent the dissemination of information or ideas through media, except if it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion.

3. Everyone has the right to correct untrue, incomplete and inaccurate published information, if it violates her or his rights and interests in accordance with the law.

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YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Constitution of Kosovo

Article 40 [Freedom of Expression]1. Freedom of expression is guaranteed. Freedom of expression includes the right to express oneself, to disseminate and receive information, opinions and other messages without impediment.

2. The freedom of expression can be limited by law in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion.

www.kuvendikosoves.org

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a

NO score.

6. Are citizens able to form print media entities?

94

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

It is easy to obtain such a license. The large number of Kosovo dailies, despite the low circulation can explain it very well."

Armend Bekaj, civil society activist

"I would not say so. However, I am quite sure that one would get quite some pressure to take sides, once one becomes a factor."

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

References:

TMC Rule 2005/1 Qualifications for a Broadcast License

11. Appeal of Denial: Any applicant who is denied the award of a license or who is denied approval of an ownership share of a license may appeal this decision to the Media Appeals Board within 30 days of such denial by the TMC.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no need to obtain a licence for print media in Kosovo. The only requirement is to have a registered company with the Business Registration Agency in Kosovo

References:

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtinë

The State of Media Freedom in Kosovo", The Representative on Freedom of the Media, Miklós Haraszti, Organization for Security and Co-operation in Europe, July 3, 2006

http://www.osce.org/documents/rfm/2006/07/19767_en.pdf

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

You need to have a registered business in Kosovo. No need for print media license.

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

I don't think that you need a licence for this.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | **50** | 25 | 0

References:

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

State creates barriers. You need to know people working for government if you want to form a broadcast TV.

The State of Media Freedom in Kosovo", The Representative on Freedom of the Media, Miklós Haraszti, Organization for Security and Co-operation in Europe, July 3, 2006

http://www.osce.org/documents/rfm/2006/07/19767_en.pdf

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

References:

Law No. 02/L-15 ON THE INDEPENDENT MEDIA COMMISSION AND BROADCASTING

21.3. The Media Appeals Board shall adjudicate appeals of parties that are directly affected by the decision regarding:

- a. Granting, denying, non-renewal or revocation of broadcasting licenses;
- b. Imposition or modification of broadcasting license conditions, excluding conditions relating to frequency allocation or other technical criteria;
- c. The issuance of sanctions; and
- d. Such other matters as may be provided for in an administrative direction, or regulation.

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YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

It is not easy.

There are some strict procedures. It is very easy to obtain a license for a cable or regional terrestrial operator. As of national license, it is very difficult.

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

Not always. You need to know people working for government.

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

I guess this is easy. Not so sure.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

88

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

The Kosovo government is publishing its Official Gazette (www.gazetazyrtare.com) online. But there are questions raised if all government decisions are published on it. That is because lack of staff and logistical problems.

Armend Bekaj, civil society activist

No. Nor do they have the means to do that, I think.”

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

Everybody can create online content.

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

People do not do this often here.

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

In law it is not mentioned precisely but it is said in this way:

CODE OF CONDUCT FOR THE BROADCAST MEDIA IN KOSOVO
(Pursuant to Section 1 of UNMIK Regulation No. 2000/36
On the Conduct of the Broadcast Media in Kosovo of June 17, 2000)

- 4.1. Broadcasters will strive to ensure accuracy, fairness, and impartiality in all reporting.
- 4.2. Broadcasters will strive to present differing points of view accurately and fairly.
- 4.3. Broadcasters will not promote the interests of one political party, or political point of view, nor engage in a practice that could have the effect of promoting the interests of one political party or political point of view, or of any group or individual, to the exclusion of other parties, points of view, groups or individuals.

http://www.imc-ko.org/IMG/pdf/Broadcast_Code_of_Conduct_ENG-2.pdf

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

In fact, self-censorship is well-presented in Kosovo. Many media outlets fear publishing corruption stories because they fear they will lose advertisers from the respective institution or public company.

Armend Bekaj, civil society activist

I guess government knows that Kosovo is not able to fight corruption, so it does undertake any measures to discourage media.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

There are examples when the government has tried to pressure the media before publishing the investigative article. It happens in practice, that before you publish something, the government calls you and begins the pressure.

Armend Bekaj, civil society activist

Sometimes government creates pressure on media.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

30

10a. In law, print media companies are required to publicly disclose their ownership.

YES | **NO**

References:

It is not mentioned at all.

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | **NO**

References:

In all documents that regulate media sector it is not mentioned that media companies should disclose their ownership.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

Some of them are courageous despite pressures. Some of them are silent, and do not investigate because of their political affiliation with some institutions.

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

It depend from the media. In some media you have very inexperienced journalists.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | **50** | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

It depends. The main political parties seem to have equal space. But the small political parties are not present at all. This is because of a large number of political parties in Kosovo (around 40).

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

No it still depend on the media. For example, the owner of the biggest private TV station, ran for elections and he did not give fair coverage to all political parties.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

RTK is the only public media in Kosovo. By the rules, it is not state- owned. But the government has always had its influence in the editorial issues.

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

No, only the political party in power has more access.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

No.

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

No.

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

It could have happened, but cases are isolated.

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

Not as far as I am informed.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

No

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

No

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

77 I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

67

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

References:

Law No. 2003/12 Law on Access to official documents

3.1 Any habitual resident of Kosovo or any person who meets eligibility requirements for registration as a habitual resident of Kosovo, and any natural or legal person residing or having their registered office in Kosovo, has the access to documents of the intuitions, subject to principles, conditions and limits defined in this law.

www.kuvendikosoves.org

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

References:

Law No. 2003/12 Law on Access to official documents

7.1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with section 9 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against the institution pursuant to the provisions of the relevant applicable law and/or filing a complaint with the ombudsperson pursuant to chapter 10 of the constitutional framework and UNMIK regulation No. 2000/38.

www.kuvendikosoves.org

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

References:

No. In law there are no mechanisms through which citizens can request government records.

LAW NO. 2003 / 12 LAW ON ACCESS TO OFFICIAL DOCUMENTS

II. PROCESSING OF APPLICATIONS**Section 5****Applications**

5.1. Applications for access to a document shall be made in any written form, including electronic form, and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.

http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=91&Itemid=28&lang=en

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

58

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

The Kosovo Assembly has approved the Law on Access in Official Documents. It is very ambiguous, and citizens find themselves confused when they face a rejection of their requests.

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

Not always.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

We do not pay for information. It is free of charge.

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

Free of charge.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | **50** | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

It depends on the case, when it is a sensitive case as for money or any tender, it is not such a high quality.

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

Not at all.

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

It is the same, even if they appeal, still it takes more than 15 days to get an answer, or they do not answer at all.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

There is no need to pay.

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

No need to pay

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

References:

Perparim Isufi, freelance journalist (works for different electronic and printed media), August 1, 2009, Prishtina

Not always.

Migjen Kelmendi, Owner of JAVA Multimedia Production, September 26, 2009, Prishtina

Only sometimes.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁶⁹Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES

NO

References:

Law No. 03/L-073 – ON GENERAL ELECTIONS IN THE REPUBLIC OF KOSOVO

Article 5 Voter Eligibility

5.1 A person is eligible to vote in an election in accordance with the present law if he or she is at least eighteen (18) years of age on the day of the election and satisfies at least one of the following criteria.

www.kuvendikosoves.org

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Law No. 03/L-073 ON GENERAL ELECTIONS IN THE REPUBLIC OF KOSOVO

Article 4 Date and Announcement of Elections

4.2 Elections for the Assembly of Kosovo shall take place on a Sunday every four (4) years. Elections may not be held earlier than sixty (60) days and shall be held no later than thirty (30) days before the end of the mandate.
www.kuvendikosoves.org

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

References:

Press release of Security Council

The number of eligible voters in Kosovo was more than 1.2 million, with the UN peacekeeping operation (UNMIK) estimating that some 150,000 eligible voters were Kosovo Serbs. The overall turnout was 64.3 percent of Kosovo's 1.25 million registered voters.

<http://www.un.org/peace/kosovo/news/kosovo2.htm>

Armend Bekaj, civil society activist

Yes, of course.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

Many international monitoring organization have rated very high the security of the ballots. All security elements are in it.

Armend Bekaj, civil society activist

Ballots are very protected.

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

Yes since it is regulated with law.

Armend Bekaj, civil society activist

Yes always.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

100

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

RULE No 01/2008 ON REGISTRATION AND OPERATION OF POLITICAL PARTIES

(b) At least five hundred (500) signatures of registered voters in Kosovo, support of the applicant political party, on the form prescribed by the office, along with the name, date, and place of birth of each signatory, personal number of accepted documents in Kosovo, attached as Annex (2);

www.kqz-ks.org

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

RULE No 01/2008 ON REGISTRATION AND OPERATION OF POLITICAL PARTIES

2.1 The Office of Political Party Registration and Certification (Office) is responsible for registering 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.

2.2 The Office shall be headed by an executive director who shall report directly to the CEC.

www.kqz-ks.org

References:

Law No. 03/L-073 ON GENERAL ELECTIONS IN THE REPUBLIC OF KOSOVO

– Every citizen of Kosovo has the right to vote and be elected without discrimination on the ground of race, ethnicity, color, language, gender, religious belief or political convictions, education, social affiliation or any other similar criteria pursuant to the provisions of this law.

www.kuvendikosoves.org

Constitution of Republic of Kosovo

Article 45 [Freedom of Election and Participation]¹. Every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the day of elections, has the right to elect and be elected, unless this right is limited by a court decision.

www.rktlive.ocm

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

The regulations are very easy to achieve. You need 4,000 signatures to form a political party by applying to the Registration of Political Parties Office within Central Election Commission.

Armend Bekaj, civil society activist

Yes they are.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

Yes they can.

Armend Bekaj, civil society activist

Yes they can.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

Comments:

Aleance for the future of Kosovo (AAK), Aleance for New Kosova (AKR), Democratic League of Dardania (LDD), 7+(Minority representatives political party), SLS (Serb Liberal party) are opposition parties and all of them are represented in the legislature (Kosovo Assembly)

www.kuvendikosoves.org

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina
Of course.

Armend Bekaj, civil society activist

Yes.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

65

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

References:

Central Election Commission (CEC) is established in accordance with article 139 of the Constitution of Kosovo, and is a permanent independent body.

<http://www.kqz-ks.org/SKQZ-WEB/en/rrethkqz/themelimidheorganizimi.html>

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | **50** | 25 | 0

Comments:

There is a general feeling that parties which are in power always find their own people/supporters or their relatives to appoint to some bodies that have to deal with election process or have to do with giving accreditation to nongovernmental organizations that, in the past, cooperated with local or central government or ,in the past, were more positive toward them.

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

Not always.

Armend Bekaj, civil society activist

Agency appointments are not independent.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

CEC has its full-time staff but the way they run the elections show that they lack training.

Armend Bekaj, civil society activist

Yes they have full-time staff.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

There are results and decisions posted on the CEC website, but it is hard to navigate.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

The organization that imposes penalties to the political entities is the Election Commission for Appeals and Complaints (ECAC). There are difficulties for it to become functional because of budget issues. But it is very strict implementing its mandate and political parties are often fined because of their misconduct.

Armend Bekaj, civil society activist

They put penalties, but not very often.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

96

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina
Yes it is.

Armend Bekaj, civil society activist

Yes, it is very transparent.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Law No. 03/L-073 ON GENERAL ELECTIONS IN THE REPUBLIC OF KOSOVO

Article 115

Appointment of Election Complaints and Appeals Commission

115.1 The ECAC shall be a permanent independent body competent to adjudicate complaints and permitted appeals concerning the electoral process as established in this law and electoral rules.

115.2 The President of the Supreme Court shall appoint the ECAC members from among the judges of the Supreme Court and the District Courts. Upon the entry into force of this law the President of the Supreme Court shall appoint the ECAC members within sixty (60) days.

118.5 The ECAC decision is binding upon the CEC to implement, unless an appeal allowed by this law or by the constitution is timely filed and the higher court determines otherwise.

www.kuvendikosoves.org

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

Until now the process has been very effective and there were no major (substantial) complaints about the results. Elections were run by internationals and the results were easily accepted by the parties.

Armend Bekaj, civil society activist

It is not a practice in our country.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

Very professional, indeed.

Armend Bekaj, civil society activist

Yes, of course.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

Law No. 03/L-073 ON GENERAL ELECTIONS IN THE REPUBLIC OF KOSOVO

54.1 Certified Political Entities, nongovernmental organizations and governmental and inter-governmental organizations as well as international organizations, specialized and engaged in elections or the protection of human rights, and representatives of foreign countries have the right to request the accreditation of observers to the elections.

www.kuvendikosoves.org

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

There are very good conditions for monitors to do their job effectively.

Perparim Isufi, freelance journalist (works for different electronic and printed media), August 1, 2009, Prishtina

Armend Bekaj, civil society activist

Monitors are chosen very carefully. They are very effective.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

References:

Law No. 03/L-073 ON GENERAL ELECTIONS IN THE REPUBLIC OF KOSOVO

Article 59 The CEC

59.1 The Central Election Commission (hereinafter the CEC) as established pursuant to article 139 of the Constitution, shall be a permanent and independent body within the meaning of this Law.

59.2 The CEC of Kosovo ensures preparation and conduct of elections in accordance with the principles and requirements of this law.

59.3 In carrying out its mandate the CEC, shall, inter alia:

- a) undertake voter education activities designed to increase voter awareness of and participation in elections;
- b) undertake projects or research in relation to electoral system and related matters;
- c) establish appropriate procedures and undertake activities to ensure that all persons with disabilities are able to exercise their right to vote and participate fully in electoral processes in Kosovo; and
- d) perform any other functions ancillary to the holding of elections in Kosovo assigned to it by relevant rules and subsidiary instruments there under, including actions necessary to protect the integrity of elections process in the face of force major.

www.kuvendikosoves.org

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

20. Are there regulations governing the financing of political parties?

50

20a. In law, there are limits on individual donations to political parties.

YES | NO

References:

RULE No 01/2008 ON REGISTRATION AND OPERATION OF POLITICAL PARTIES

Section 17 The finances of Political Parties

17.1 A registered Political Party shall not accept any contribution except:

(a) Contributions from individuals of no more than 20,000 euro (US\$29,684) per calendar year per individual, provided that contributions in currency meet the requirements of section 5 of Regulation No. 2004/2 – On the Deterrence of Money Laundering and Related Criminal Offences

(b) membership fees or dues from members of the party in accordance with the Party Statute;

(c) funding and other support from the Kosovo Consolidated Budget as provided under section 18 of this rule.

www.kqz-ks.org

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | **NO**

References:

According to the regulation, the political party does not have any limit on corporate donation.

RULE No 01/2008 ON REGISTRATION AND OPERATION OF POLITICAL PARTIES

www.kqz-ks.org

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

YES | **NO**

References:

The document which regulates the functioning of political parties, does not mention at all expenditures of political parties.

RULE No. 01/2008 ON REGISTRATION AND OPERATION OF POLITICAL PARTIES

www.kqz-ks.org

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

NO: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

References:

RULE No 01/2008 ON REGISTRATION AND OPERATION OF POLITICAL PARTIES

17.2 A political party shall not accept a contribution from an individual who does not, before making the contribution, disclose to the party his or her:

- (a) full name;
- (b) address;
- (c) personal number (passport number or drivers licence number).

www.kqz-ks.org

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | **NO**

Comments:

In Kosovo, we still do not have a law on political parties.

References:

RULE No 01/2008 ON REGISTRATION AND OPERATION OF POLITICAL PARTIES

In regulation it is mentioned only that that the office may audit any annual financial report.

www.kqz-ks.org

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

References:

Electoral Rule 10/2007

Political Entities shall give the CEC Secretariat and the Office with copies of receipt for each administrative fee paid.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

21a. In law, there are limits on individual donations to political candidates.

YES | **NO**

References:

Not regulated

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | **NO**

References:

Not regulated

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | **NO**

References:

Not regulated

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | **NO**

References:

Not regulated

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | **NO**

References:

Not regulated

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

21

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist

I dont think this is regulated.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

Political parties do whatever they want, since it is not regulated very strictly.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist

Not regulated very well.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

Not regulated strictly.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that

advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | **25** | 0

References:

Armend Bekaj, civil society activist

Not so effective

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

They are not effective

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | **25** | 0

References:

Armend Bekaj, civil society activist
Not the case in Kosova.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

I did not hear anything regarding this.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

References:

Armend Bekaj, civil society activist

Not the case.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

It does not happen.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist

Not as far as I know.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

I think no.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

25

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist,

Sometimes.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

It depends on the donor.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | **25** | 0

References:

Armend Bekaj, civil society activist

Not the case in Kosovo.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

Not effective

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist
Not the case in Kosovo

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

It does not happen here.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist

Not the case.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

I am not sure on this.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist

I do not think so.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

Not audited.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

6

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist

It takes quite a long time.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

They are not so effective.

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist

No we can not have access.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

Access denied for citizens.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist
No access.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

Access denied for citizens.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist
No access.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

Access denied.

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

13

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | **25** | 0

References:

Armend Bekaj, civil society activist,
Not at all, only when media makes pressure.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

They are very closed.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Armend Bekaj, civil society activist

Access denied.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

Access denied for citizens.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist

Access denied.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

No access for citizens.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

Armend Bekaj, civil society activist

Not public.

Saranda Bogaj, Lawyer, former civil society activist, September 20, 2009, Prishtina

They are not public.

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category III. Government Accountability

III-1. ⁴⁶Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

38

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | **50** | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

To some extent it does, though not to a desired extent. There is space for improvement. A system of accountability should be introduced in which the certain chief executive will be informed of his/her competencies and also be careful when taking or not taking a decision of the consequences that he/she may face. This would help very much in good governance and also allow for greater accountability before his/her superiors and especially before the public. Related to this, of utmost importance, are media and especially investigative journalists who can and have revealed numerous cases of lack of accountability in public service.

There are some positive cases that senior staff started feeling accountable toward their actions, this is a very good step and they started thinking that they really should give explanation for their actions and policies. People started thinking differently, asking more questions and not blindly believing them. Sometimes they feel that the only institution that they need to be accountable is their political party because that's how they got that job.”

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | **NO**

References:

This is not foreseen by law

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | **50** | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Not many cases in practice have happened in the past and also not now in the present. Justification for the past is international administration of UNMIK, which despite of the ombudsperson's reports presenting incorrect actions, they have not undergone any judicial review because UNMIK was not at all accountable to Kosovo citizens. When it comes to Republic of Kosovo institutions I hope that we will have more cases of judicial review, especially now that we have established our Constitutional Court.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

There are some decisions of Supreme Court of Kosovo that has the power to act on second level in administrative cases to annul decisions taken by institutions and take them back. It is very difficult to follow the procedures and the entire process because sometimes the case is settled and parties stop following the case."

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | **50** | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

As far as I am informed, there were limits.

Krenare Sogojeva, Civil Society activists, Legal Adviser, September 2009, Prishtina, Kosovo

I think that there are some limits, but even for me it is not so clear why and when they decide to not make a regulation or not make it. I have a feeling that it is something that makes them act like that."

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

0

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | **NO**

References:

Not regulated

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | **NO**

References:

Not strictly regulated for this level

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

72

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Law No.2004/34 SUPPRESSION OF CORRUPTION LAW

SUPERVISION OF ASSETS

Article 39

The Agency shall supervise the senior official person's assets on the basis of information submitted by the senior official person on a special form, which shall be determined by the Agency.

Article 41

41.1. Information regarding the status of the assets of the senior official person or the person living with the senior official person in his/her domestic relationship shall comprise information about all their assets and income, as follows:

- a. real estate,
- b. movable property of greater value,
- c. their holding of shares in commercial companies,
- d. securities,
- e. cash held in banks, savings banks and other savings and loans institutions,
- f. debts, undertaken sureties and other obligations, and
- g. annual income (serving as a tax base).

41.2. Movable property of greater value as referred to point (b) of the preceding paragraph shall be considered to be movable property whose value exceeds 5,000 Euros (US\$7,421)

41.3. The Agency may demand appropriate proof from the senior official person for the information referred to in paragraph one of this article.

<http://kuvendikosoves.org/>

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Law No.2004/34 SUPPRESSION OF CORRUPTION LAW

SUPERVISION OF ASSETS

Article 39

The Agency shall supervise the senior official person's assets on the basis of information submitted by the senior official person on a special form, which shall be determined by the Agency.

Article 41

41.1. Information regarding the status of the assets of the senior official person or the person living with the senior official person in his/her domestic relationship shall comprise information about all their assets and income, as follows:

- a. real estate,
- b. movable property of greater value,
- c. their holding of shares in commercial companies,
- d. securities,
- e. cash held in banks, savings banks and other savings and loans institutions,
- f. debts, undertaken sureties and other obligations, and
- g. annual income (serving as a tax base).

41.2. Movable property of greater value as referred to point (b) of the preceding paragraph shall be considered to be movable property whose value exceeds 5,000 Euros (US\$7,421).

41.3. The Agency may demand appropriate proof from the senior official person for the information referred to in paragraph one of this article.

<http://kuvendikosoves.org/>

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | **NO**

References:

Law No.2004/34 SUPPRESSION OF CORRUPTION LAW

CHAPTER 4 ACCEPTANCE OF GIFTS

Article 33

33.1. An official person shall not accept gifts or other benefits (hereafter gifts") in connection with their execution of office, except for formal gifts and occasional gifts of small value.

<http://kuvendikosoves.org/>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

Law No. 02/L-74 ON INTERNAL AUDIT

CHAPTER I I. GENERAL PROVISIONS

Article 1

Purpose

1.1. This purpose of the present law is to ensure greater operational efficiency, budgetary and financial discipline and legal and regulatory compliance by public sector entities by requiring each such public sector entity to subject its operations, records and management and control systems to regular, systematic and comprehensive internal audits.

1.2. It is also the purpose of the present law to ensure that such internal audits are conducted for the purpose of adding value to public sector entities in a manner that enhances the benefits provided by public sector entities to their users and beneficiaries and the people of Kosovo.

1.3. Consistent with such purposes, the present law also establishes an institutional system to ensure the proper conduct of such internal audits.

www.kuvendikosoves.org

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

No, the law does not tell anything after the officials leave their work, it only regulates this are during the time they serve in government.

Law No.2004/34 SUPPRESSION OF CORRUPTION LAW

Article 26

26.1. A professional official person shall not perform administrative, supervisory or representative functions in commercial companies, firms, institution, cooperatives, funds or agencies.

26.2. By way of derogation from the previous paragraph, a professional official person may, as a representative of their body, be a board member of a public institution or public agency, or a supervisory board member of a public company, public fund or commercial company in which the central or a local authority is a holder of shares or other rights on the basis of which it participated in the management or capital.

www.kuvendikosoves.org

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

They are effective but it remains to be seen how much will they be implemented.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

I think that it is not regulated even when they are in government position so it would be very difficult for implementing the law itself, a lot of ministers and vice-ministers have or are part of private sector companies that even take tenders and bid with them.”

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

This appeared also in this new draft for supplementation and amendments to the existing Law on Anti-Corruption, though I am not very much sure if they will remain in the text of the draft after the second reading in the Assembly and its adoption of this is because of the proposals to remove the part about gifts and have it regulated in some other law, perhaps a special one governing gifts and hospitality. So these regulations are not effective yet.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

No. I think that it is not effective at all, they do not respect the list of gifts and they do not make them public. Sometimes they receive gifts from different channels and they do not tell them, but when it comes to the news they say, 'Yeah here it is and so on'."

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

They are audited. Though I am not aware of any penalization even after the report of the Auditor-General has been published and has proven misuse of funds.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

Yeah, they are audited and everything goes according to procedures but in the end, the recommendation given by the General Audit is not followed by the ministries."

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

References:

Law No. 2004/34 SUPPRESSION OF CORRUPTION LAW and Law No.2004/34

SUPPRESSION OF CORRUPTION LAW does not foresee if a citizen can have access or not in asset disclosure records.

www.kuvendikosoves.org

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

This is still not possible. I hope it will one day be through adoption and implementation of the respective laws that regulate this matter.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

I am not sure. I have never tried to but I read in newspapers about the declarations of their asset records. It seems that journalists have access if they make a regular request to the Anti-Corruption Agency of Kosovo.”

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

This is still not possible. I hope it will one day be through adoption and implementation of the respective laws that regulate this matter.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

You do not need to pay for that, but still there are some bylaws and administrative decisions that need to be drafted in order to have access to all this data.”

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Not yet of high quality. This only happens before the general elections are held and there are discrepancies because often times what was disclosed could not have been examined well enough.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

I do not know what kind of quality you consider high, but for me they are all just 50 percent of what they have. When they run for elections they want to look poor, and then people will think that they are similar with them and vote for them. All these records are almost the same every election so they do not earn or lose anything within four years. So strange.”

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals’ sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

26. In law, can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Yes, citizens can sue the government after they complain in to an ombudsperson.

The Ombudsperson Institution in Kosovo (OIK) is an independent organization, which has a mandate to address alleged human rights violations or abuses of authority by public institutions in Kosovo. We conduct investigations, issue reports and provide legal services and public advocacy. The institution is mandated to monitor the policies and laws adopted by local authorities to ensure that they respect human rights standards and the requirements of good governance. If we find that a general practice or situation affecting the public as a whole, not only one person or group of persons, has violated international human rights standards, we may issue a special report with recommendations to the Provisional Institutions of Self-Government (PISG). We are also competent to act independently on information we have received and to open ex-officio investigations in the absence of a formally-filed complaint (see our ex-officio reports).

<http://www.ombudspersonkosovo.org/?cid=2,54>

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

50

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

In general, there is a practice of separation and distinction. But if we are to consider also the President as government, giving the government a wider interpretation. Then the actual situation is not promising because we have the head of state, who at the same time is president of the second biggest party in Kosovo. At the same time it is also a violation of the Constitution of Kosovo, which does not allow such a thing, and which is in contradiction to the very position he or she holds. That is a unifying position for the Kosovo people.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

No there is no distinction at all. The Prime Minister and the Vice Prime Minister are also President and Vice President of the ruling party. The President of the Assembly is also Secretary General of the ruling party. They have the feeling that they need to be there, too, because they were voted in by the people.”

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

0

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

No, this is not regulated by law

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

I am not informed of any case of a court review.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

I am not informed that the Supreme Court did this any time. This never happened because it was UNMIK that had that power so they used it.”

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

References:

RULES OF PROCEDURE OF THE ASSEMBLY OF KOSOVO

1) Members of the Assembly shall be immune from all civil and criminal proceedings with regard to words spoken or written or other acts performed in

their capacity as members of the Assembly. This immunity does not include acts which openly encourage violence among communities.

2. The Member shall also be immune from arrest and prosecution with regard to his or her actions unless the Assembly of Kosovo takes a decision to waive his immunity

<http://www.assembly-kosova.org/common/docs/Z-Rregullore%20e%20punes-anglisht-20%20maj%202005-me%20ndryshime.pdf>

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

61

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Law No.2004/34 SUPPRESSION OF CORRUPTION LAW

CHAPTER 5 SUPERVISION OF ASSETS

Article 37

37.1. The Agency shall supervise the assets of senior official persons.

37.2. Should the Agency, in the course of its supervision as provided for by this Law, find that there is apparent non-conformity between the submitted information on the assets of the senior official person or the person living with the official person in his/her domestic relationship and the actual status of the assets, the Agency shall notify the body of which the senior official person holds their office and, if necessary, other competent bodies as well.

37.3. The bodies referred to in the preceding paragraph shall inform the Agency of their measures and decisions.

www.kuvendikosoves.org

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

There is no restriction on this. There were cases in past and no one could do anything.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

RULES OF PROCEDURE OF THE ASSEMBLY OF KOSOVO, ANNEX No1 – CODE OF CONDUCT FOR MEMBERS OF THE ASSEMBLY

Register of Members' Interests (e) 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.

<http://www.assembly-kosova.org/common/docs/Z-Rregullore%20e%20punes-anglisht-20%20maj%202005-me%20ndryshime.pdf>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

Law No. 03/L-075, ON THE ESTABLISHMENT OF THE OFFICE OF THE AUDITOR GENERAL OF KOSOVO AND THE AUDIT OFFICE OF KOSOVO, Article 3 – Powers and Responsibilities of the Auditor-General – 3.2 The Auditor-General shall annually conduct a Regularity Audit of the Kosovo Consolidated Budget, budget organizations, including but not limited to the Assembly of the Republic of Kosovo .

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

They are effective, but it remains to be seen how much will they be implemented.

Krenare Sogojeva, Civil Society Activist, Legal Adviser, September 2009, Prishtina, Kosovo

No they are not, because that regulation as far as I am informed is part of the Code of Conduct and they do not respect it fully.”

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina, Kosovo

Not at all. There are no mechanisms to observe gifts. You can be Prime Minister here and someone might give you a plane as birthday gift.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina, Kosovo

Yes. Kosovo General Audit does it every year.

Krenare Sogojeva, Civil Society Activist, Legal Adviser, September 2009, Prishtina, Kosovo

Yes they are audited, but they do not follow most of the time their recommendations at all.”

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

References:

This is not regulated by law, and citizens have no access to records of them.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

This is still not possible. I hope it will one day be through adoption and implementation of the respective laws that regulate this matter.

Krenare Sogojeva, Civil Society Activist, Legal Adviser, September 2009, Prishtina, Kosovo

I have no exact answer to this, I am not sure that you can do that.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | **0**

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

This is still not possible. I hope it will one day be through adoption and implementation of the respective laws that regulate this matter.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

This is still not possible. I hope it will one day be through adoption and implementation of the respective laws that regulate this matter.

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Everything is online, all laws and other documents:

Kosovo Assembly webpage:
<http://www.assembly-kosova.org/>

Kosovo government Official Gazette:
<http://www.gazetazyrtare.com/>

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina

Yes, but there are difficulties accessing the official documents because of ambiguity on the law.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina, Kosovo

There are difficulties accessing the official documents because of ambiguity of the law.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Yes, citizens can access records of legislative processes and documents within a reasonable time. Actually, the Assembly of Kosovo was the first most transparent institution to make accessible the documents within a reasonable time period.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous (works for different electronic and printed media), August 1, 2009, Prishtina, Kosovo

They are free of charge and can be navigated on Kosovo Assembly website.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Yes they can.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

36
III-3. Judicial Accountability

36. Are judges appointed fairly?

100

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

The Kosovo Judicial Council (KJC) is the highest body of the Kosovo Judicial System. Establishment of the KJC represents something new that will be responsible for administration of the entire judicial system.

The KJC is competent and responsible for the appointment of judges, prosecutors and lay-judges, disciplinary measures imposed against judges, prosecutors and lay-judges whenever misconduct is committed as well as with regard to their professional development.

Pursuant to UNMIK Regulation NO. 2005/52 of Dec. 20, 2005, the KJC will be responsible for the SRSG's counseling with regard to appointment, sanction to be imposed and dismissal of prosecutors from their office until a respective body related to prosecutors will be established.

<http://kgjk-ks.org/?cid=2,1>

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

This is done by the Kosovo Judicial Council respectively. The Independent Judicial and Prosecutorial Commission, which is a body comprised of internationals only, guarantees impartiality. The very professional criteria are followed and especially when it comes to ethics for judges and prosecutors.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

Yes they are followed in most of the times, sometimes there are allegations that political parties interfere but I do not know if this is real."

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

This process was done by the Special Representative of the Secretary General of United Nations. Now it is conducted by the President of Kosovo.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

71

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

No they are not required and they do not normally do this.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

References:

Behlul Zeka, Legal Officer, EULEX Mission, September 25, 2009 Prishtina, Kosovo

Yes they do.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

I am not sure that they do that on a regular basis, or at least I am not aware that they do it or have it written.”

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

The Kosovo Judicial Council (KJC) is the highest body of the Kosovo Judicial System. Establishment of the KJC represents something new that will be responsible for administration of the entire judicial system.

<http://kgjk-ks.org>

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

In practice I am not 100 percent sure that they are protected from political interference.

References:

The Kosovo Judicial Council (KJC) is the highest body of the Kosovo Judicial System. Establishment of the KJC represents something new that will be responsible for administration of the entire judicial system.

<http://kgjk-ks.org>

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, EULEX Mission, September 25, 2009 Prishtina, Kosovo

It is within the Kosovo Judicial Council but it has acted in only a few cases. There is a need for a much stronger and greater response to cases of misuse of position by a judge or a prosecutor. There are cases when it was very much needed action and where the KJC mechanism has not acted. Such cases should be avoided in the future.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, EULEX Mission, September 25, 2009 Prishtina, Kosovo

Yes it does.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

Yes, they can do that, and they sometimes do.”

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

39

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Not regulated by law

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Code of Ethics and Professional Conduct for Judges, Referring to UNMIK Administrative Direction No. 2006/8

9. A judge and his/her family shall not, under any circumstance, accept gifts, favors, privileges, or promises for material help from any person having a direct or indirect interest in a case being tried by the judge.”

<http://kgjk-ks.org/repository/docs/Gjyqtar%20anglisht.pdf>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

Office of the Auditor General of Kosovo –
The OAG shall annually conduct a Regularity Audit of the Kosovo Consolidated Budget
<http://www.ks-gov.net/oag/english/anglisht.htm>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

References:

Not strictly regulated for private sector. Judges can still practice law and be lawyers.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, EULEX Mission, September 25, 2009 Prishtina, Kosovo

They are effective, but it remains to be seen how much will they be implemented.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

I am not so sure how they are implemented, but I know of some cases in which former judges are now lawyers.”

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, EULEX Mission, September 25, 2009 Prishtina, Kosovo

This appeared also in this new draft for supplementation and amendments to the existing Law on Anti-Corruption, though I am not very much sure if they will remain in the text of the draft after the second reading in the Assembly and its adoption. This is because of the proposals to remove the part about gifts and have them regulated in some other law, perhaps a special one governing gifts and hospitality. So these regulations are not effective yet.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

I am not so sure that they are effective because I know from practice that judges and their families drive very expensive cars and have fancy houses, etc.”

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, EULEX Mission, September 25, 2009 Prishtina, Kosovo

I am not aware of such a case.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

I did not hear of any case in which they were audited.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

13

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

References:

No, there is no procedure that foresees that citizens have access to them.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | **25** | 0

References:

Behlul Zeka, Legal Officer, EULEX Mission, September 25, 2009 Prishtina, Kosovo

In believe this is possible within a reasonable time period.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo
I am not sure for citizens but for journalists yes, they can do this for a period of time.”

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, EULEX Mission, September 25, 2009 Prishtina, Kosovo

I am not aware of such a case.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

I am not informed that you have to pay and also have access to them.”

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer, EULEX Mission, September 25, 2009 Prishtina, Kosovo

This is still not possible. I hope it will one day be through adoption and implementation of the respective laws that regulate this matter.

Ardian Kryeziu, Civil Society Activist, Legal Expert, September 2009, Prishtina, Kosovo

I do not think that this is the case in our justice system, never saw a record of a single judge in Kosovo.”

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals’ sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

67

40a. In law, the legislature can amend the budget.

YES | NO

Comments:

Since the ruling party has the government and also has the majority of the Assembly, they in one way or another set the priorities on their own, in a non-formal way.

References:

Kosovo Assembly can do this through its Committee for Budget and Finance, which has mandate to amend and discuss.

<http://www.assembly-kosova.org/?cid=2,110,76>

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer at International Civilian Office – ICO, September 25, 2009 Prishtina, Kosovo

Only very high ones do require this. I think this should be extended to the other ones not thought of as very significant, but which could actually increase extent of accountability and transparency.

Yes, the government makes the proposal to the Assembly, they discuss and try to convince them, they invite a formal session and approve or send it back.”

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive’s personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | **50** | 25 | 0

References:

Behlul Zeka, Legal Officer at International Civilian Office – ICO, September 25, 2009 Prishtina, Kosovo

I believe that the legislative needs to improve its capacities of monitoring of the budget process. A great assistance would be to increase the number of staff of the Committee for Budget and Finance of the Assembly of Kosovo, perhaps by employing two more officers exclusively responsible for this matter.

Ardian Kryeziu, Civil Society Activist, September 2009, Prishtina, Kosovo

I think that they have capacities, but still they might need to get more professionalism on this because they need time to monitor and know everything that it is going on with the budget lines.”

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer at International Civilian Office – ICO, September 25, 2009 Prishtina, Kosovo

It is conducted in a transparent way – the debating stage – though it is concerning that each time it happens, this budget does not change almost at all in the debating stage because almost everything is finalized.

The government and the Assembly of Kosovo cannot play its oversight role. Another justification for this is that International Monetary Fund and World Bank recommendations are strictly observed by the government. They do not allow for the changes even when deemed for the betterment of the life of the citizen.

Ardian Kryeziu, Civil Society Activist, September 2009, Prishtina, Kosovo

I do not think that it is done completely in a transparent way because Assembly was criticized recently that they are under control of the government and they do not change anything for what they want. Even though the debates are transparent and you can hear them speaking they do not change anything for real. They speak more about stuff that it is not so important for citizens.”

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer at International Civilian Office – ICO, September 25, 2009 Prishtina, Kosovo

I am not aware of even one single case of this. I think it is very hard even for a deputy to provide much input, as I mentioned above. Almost everything is finalized when it comes to the Assembly. I can only remember one case in the second legislature of the Assembly when one deputy from one of the greatest political parties, the position party, in the main voting session, voted against the budget proposed from the government. This was an exceptional action from a decent deputy who did not agree especially with the position of the pensioners determined by the budget of that year.

Ardian Kryeziu, Civil Society Activist, September 2009, Prishtina, Kosovo
I am not sure on this, I do not believe so.”

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer at International Civilian Office – ICO, September 25, 2009 Prishtina, Kosovo

Yes they can, though I do not see a point when there is no role either for them, not for their representative, in the Assembly.

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

67

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer at International Civilian Office – ICO, September 25, 2009 Prishtina, Kosovo

I think this practice is regularly observed

Ardian Kryeziu, Civil Society Activist, September 2009, Prishtina, Kosovo

Yes this is done on a regular basis

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

References:

Behlul Zeka, Legal Officer at International Civilian Office – ICO, September 25, 2009 Prishtina, Kosovo

Yes, everything runs smoothly with this.

Ardian Kryeziu, Civil Society Activist, September 2009, Prishtina, Kosovo

Too slow. I think that they do it just for TV or political campaign sometimes.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | **50** | 25 | 0

References:

Behlul Zeka, Legal Officer at International Civilian Office – ICO, September 25, 2009 Prishtina, Kosovo

This does not happen as regular as it is necessary. On the other hand the Assembly had established in the past a special investigative committee which had worked for months and came out with the findings on the misuse of the Assembly of Kosovo budget, respectively, Republic of Kosovo's tax-payers' money. But these findings were never discussed and to date nothing has been undertaken about this.

Ardian Kryeziu, Civil Society Activist, September 2009, Prishtina, Kosovo

I am not sure when they decide or when but it is more on chair and vice chairs of the committee, and then they decide on the political party level and then they can start doing that. Otherwise they need to have the support of the majority, or at least 20 signatures of the deputies.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. In law, is there a separate legislative committee which provides oversight of public funds?

0

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | **NO**

References:

No, there is no separate body that does any oversight of public funds, sometimes some nongovernmental organizations make some reports or declarations.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁶³ Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Constitution of the Republic of Kosovo, Article 101: Civil Service

2. An independent oversight board for civil service shall ensure the respect of the rules and principles governing the civil service, and shall itself reflect the diversity of the people of the Republic of Kosovo.

(Constitution of the Republic of

Kosovo, <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>).

UNMIK Regulation No. 2001/36 on the Kosovo Civil Service

Chapter II, Section 2

2.1 The Civil Service shall be governed by the following principles: (a) Equity: fair and equitable treatment of civil servants and others, in accordance with the law; (b) Political neutrality and impartiality: loyal service to the institutions of government without fear or favour, and irrespective of political views or affiliations.

(UNMIK Official Gazette,

http://www.unmikonline.org/regulations/unmikgazette/02english/E2001regs/RE2001_36.pdf).

UNMIK Regulation No. 2001/36 on the Kosovo Civil Service

Chapter II, Section 6 – The Civil Service Code of Conduct (Annex to the UNMIK Regulation No. 2001/36)

Rule 1

Civil servants shall carry out their tasks reasonably, honestly, impartially, with integrity, and in accordance with the law.

Rule 11

Civil servants shall not take part in any political or other public activity which might compromise, or might be seen to compromise, their impartiality.

(UNMIK Official Gazette,

http://www.unmikonline.org/regulations/unmikgazette/02english/E2001regs/RE2001_36.pdf).

UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, Chapter III, Section 7

7.1 An Independent Oversight Board for Kosovo (hereinafter the Board”) is hereby established.

7.2 The Board shall be an autonomous unit located within the Ministry of Public Services, and shall report directly to the Minister of Public Services. A copy of all such reports shall be sent to the Prime Minister and the Special Representative of the Secretary-General. The status of the Board shall be reviewed within two (2) years after its establishment, with a view to transforming it into an autonomous body reporting directly to the Assembly.

(UNMIK Official Gazette,
http://www.unmikonline.org/regulations/unmikgazette/02english/E2001regs/RE2001_36.pdf)

Administrative Instruction No. MPS/DCSA 2003/01: Recruitment Procedures, Step 1e
The Independent Oversight Board has a specific role in determining whether appointments at the level of Head of Department have been made in accordance with the principles in the UNMIK/Reg (2001/36) on Civil Service.
(Ministry of Public Administration, <http://www.ks-gov.net/map>).

Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, Article 9
9.1 The official should perform his work with integrity, consciousness, impartiality in order to protect the authority of an official and the body; at the same time with his work increase the trust of the citizen in the institutions.
9.5 While exercising the public function, the official has no right to create dependence relations from other persons who could influence in the impartiality and free will expression in the decision making.
(Assembly of Kosovo, <http://www.assembly-kosova.org/>).

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

UNMIK Regulation No. 2001/36 on the Kosovo Civil Service
Chapter II, Section 6 – The Civil Service Code of Conduct (Annex to the UNMIK Regulation No. 2001/36)
Rule 3

Civil servants shall not misuse their official position for their own or others' personal gain.

Rule 7

Civil servants shall not accept from any person, entity or group other than the employing authority for which they work, any money, gift, hospitality or benefit in connection with their official duties or contacts made or information acquired in connection therewith.

(UNMIK Official Gazette,
http://www.unmikonline.org/regulations/unmikgazette/02english/E2001regs/RE2001_36.pdf)

Administrative Direction No. 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, Chapter II, Section 3

3.3 Recruitment to the Civil Service shall be done after fair and open competition, on the basis of merit and in conformity with the principle of equitable representation of communities in Kosovo, and equitable gender representation [&].

(UNMIK Official Gazette,
http://www.unmikonline.org/regulations/unmikgazette/02english/E2003ads/ADE2003_02.pdf)

Administrative Direction No. 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, Chapter II, Section 8

8.1 Each employing authority shall designate the personnel manager and one or more staff members under his/her supervision as alternates to serve as the appointing authority. The appointing authority shall be the sole authority authorized to make appointments for Civil Service posts within the relevant employing authority.

8.2 Following the selection process pursuant to section 7, the panel shall submit to the appointing authority a list of the selected candidate(s) in order of merit.

8.3 Appointments shall be made by the appointing authority in accordance with the panel's recommendations and given effect by a written contract that shall refer to UNMIK Regulation No. 2001/36 and subsidiary instruments issued thereunder, including the present Administrative Direction, and shall set out other relevant detailed terms and conditions of employment that may apply.

(UNMIK Official Gazette,
http://www.unmikonline.org/regulations/unmikgazette/02english/E2003ads/ADE2003_02.pdf)

Administrative Direction No. 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, Chapter III, Section 11

11.1 Where the needs of the Civil Service so require, civil servants may be reassigned to a different post at the same level and salary rate by the employing authority, provided the new post is appropriate to their qualifications and competence. Such

reassignments may involve a move to a different location, provided that reasonable allowance is made for personal circumstances.

(UNMIK Official Gazette,

http://www.unmikonline.org/regulations/unmikgazette/02english/E2003ads/ADE2003_02.pdf).

Administrative Direction No. 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, Chapter III, Section 14

14.1 All promotions shall be based on an objective and considered decision as to the suitability of the civil servant, based on merit and other relevant criteria, to undertake the duties of a higher level post. Such decisions shall be taken by multi-ethnic and gender-balanced panels constituted in accordance with the provisions of sections 7.2 and 7.3.

14.2 Promotion opportunities shall be widely advertised and candidates shall be selected following an open and competitive process. Any departures from this principle in exceptional cases must be justified in writing and approved by the Permanent Secretary and subject to his or her approval.

(UNMIK Official Gazette,

http://www.unmikonline.org/regulations/unmikgazette/02english/E2003ads/ADE2003_02.pdf).

Administrative Direction No. 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, Chapter III, Section 28

28.1 Civil servants may be members of political parties and other political organizations, but shall not be actively involved in political activity, which shall be understood as holding leadership or paid positions at any level of a party or political organization.
28.2 A civil servant may not hold any elected public office, except that, subject to section 34.7 of UNMIK Regulation No. 2000/45, eligible civil servants may also serve as members of municipal assemblies.

28.3 Permanent secretaries, chief executive officers and heads of departments shall resign if they intend to participate as a candidate in an election for public office.

28.4 Civil servants other than permanent secretaries, chief executive officers and heads of departments may stand for elected public office, but they shall take unpaid leave from the Civil Service with effect from the date they publicly announce their candidacies. A civil servant elected for a public post shall resign, effective from the date that he or she takes the oath or confirms acceptance of the elected post. If not elected, the civil servant shall be entitled to return to his or her duties in the Civil Service within one (1) week from the date on which the results of the election are formally declared.

(UNMIK Official Gazette,

http://www.unmikonline.org/regulations/unmikgazette/02english/E2003ads/ADE2003_02.pdf).

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

References:

Constitution of the Republic of Kosovo, Article 32: Right to Legal Remedies

Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.

Constitution of the Republic of Kosovo, Article 101: Civil Service

2. An independent oversight board for civil service shall ensure the respect of the rules and principles governing the civil service, and shall itself reflect the diversity of the people of the Republic of Kosovo.

(Constitution of the Republic of

Kosovo, <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>).

UNMIK Regulation No. 2001/36 on the Kosovo Civil Service

Chapter III, Section 7

7.1 An Independent Oversight Board for Kosovo (hereinafter the Board") is hereby established.

Chapter III, Section 10: Functions of the Board

10.1 The Board shall:

(a) Hear and determine appeals against decisions of employing authorities in accordance with section 11 of the present regulation.

(UNMIK Official Gazette,

http://www.unmikonline.org/regulations/unmikgazette/02english/E2001regs/RE2001_36.pdf).

UNMIK Regulation No. 2001/36 on the Kosovo Civil Service
Chapter III, Section 11: Appeals

11.1 A civil servant who is aggrieved by a decision of an employing authority in breach of the principles set out in section 2.1 of the present regulation may appeal such decision to the Board in accordance with the provisions of the present section. Each such appeal shall be heard by a panel of three (3) Board members, who shall act for the Board in connection with the appeal assigned to them.

(UNMIK Official Gazette,

http://www.unmikonline.org/regulations/unmikgazette/02english/E2001regs/RE2001_36.pdf)

Administrative Instruction No. 2005/01-MPS on Rules of Procedure of the Independent Oversight Board
Section 2

The Independent Oversight Board of Kosovo (herein after the Board) is autonomous unit within the Ministry of Public Services and directly reports to the Minister of Ministry of Public Services. One copy of all these reports will be sent to the Prime Minister and Special Representative of Secretary General. The Board performs its functions in conformity with UNMIK Regulation 2001/36 on Civil Service of Kosovo and with other sub legal acts.

(Ministry of Public Administration, <http://www.ks-gov.net/map>).

Administrative Instruction No. 2005/02-MPS on Rules of Procedure for Appeals of the Independent Oversight Board of Kosovo,
Section II

2.1 A civil servant or applicant for employment in civil service (hereinafter called appellant) has right to appeal to the BOARD after exhausting internal appeal procedures within the employing authorities.

(Ministry of Public Administration, <http://www.ks-gov.net/map>).

Administrative Instruction No. MPS/DCSA 2003/01 : Appeals Procedures, Step 5

5.1 Every Ministry/Municipality will establish an Appeals Board to hear and decide on cases brought by individual civil servants.

(Ministry of Public Administration, <http://www.ks-gov.net/map>).

Administrative Direction No. 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, Chapter I, Section 1

(a) For the purposes of the present Administrative Direction: (a) Appeals Board shall mean the body appointed by the employing authority to hear appeals against disciplinary penalties or grievances arising out of decisions of managers.

(UNMIK Official Gazette,

http://www.unmikonline.org/regulations/unmikgazette/02english/E2003ads/ADE2003_02.pdf)

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES

NO

References:

Not regulated

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

They are not protected from political interference. In most cases, political interference starts when they are employed, with political party loyalty being, in practice, the most important element, which, in other words, creates legions.

On the other hand, a handful of those employed through meritocracy are always under the risk of becoming subject to political interference in order to prevent being fired/dismissed from their positions.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

No, they're not. There are cases when civil servants are politically influenced, mostly those in managerial posts.
(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

No, they are not protected. Many of them are politically appointed.
(Interview with an international policy adviser | Friday, September 18th, 2009, Prishtina, Kosovo)

No, many of civil servants employed are results of political interference. Also while performing public duties civil servants tend to be more favourite to people coming from their political party.
(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No.
(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

The Senior Public Appointments Committee is not fully functional and its secretariat should be further strengthened by additional staff and training.
(Kosovo (under UNSCR 1244/99) Progress Report 2008, pg. 13, European Commission, November 5, 2008, Brussels, http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/kosovo_progress_report_en.pdf).

Kosovo's ruling party is routinely axing civil servants and inserting its supporters into public posts, whether or not they are qualified.
(Political Clients take Over Kosovo Civil Service, by Krenar Gashi and Arbana Xharra, June 12, 2008, BalkanInsight: <http://www.balkaninsight.com/en/main/investigations/10956/>).

Not at all; particularly those in higher levels are less protected.
(Interview with Mr. Bashmir Xhemaj, Journalist/Editor, Koha Vision National Non-public TV Station (KTV), Prishtina, Kosovo | Thursday, September 24, 2009, Prishtina, Kosovo)

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | **25** | 0

References:

That is absolutely very rare. For instance, if there are three relatively equally-qualified applicants competing for the same position, the party preference is usually decisive. Moreover, the civil service in Kosovo also faces the problem of adverse selection, with most applicants being low-qualified and professionally weak individuals. As I said before, professionalism is not the first and foremost criteria, but rather political party preference and patronage.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Relatively yes, it depends on the post held by a civil servant (managerial, professional or supporting). Lower posts are less political-party influenced.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

In some cases yes, in others probably not.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes, however the evaluation is questioned.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, to a certain extent.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

Yes, but in many cases if you are member of a political party such criteria are usually easily compromised.

(Interview with Mr. Bashmir Xhemaj, Journalist/Editor, Koha Vision National Non-public TV Station (KTV), Prishtina, Kosovo | Thursday, September 24, 2009, Prishtina, Kosovo)

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

References:

In practice, they are based on patronage, and patronage is the way how political parties in Kosovo manage to get votes. Patronage is still strong and adverse selection still very much present.
(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Nowadays, almost 80 percent of the civil service management actions are based on nepotism, cronyism or patronage.
(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

No, that is not true.
(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

No, many hiring, firing and promotions are based on nepotism.
(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No, we have cases demonstrating the opposite.
(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

No, they usually are based on nepotism, cronyism and patronage. In many cases vacancy announcements are published just formally, after people are actually hired on basis of nepotism.
(Interview with Mr. Bashmir Xhemaj, Journalist/Editor, Koha Vision National Non-public TV Station (KTV), Prishtina, Kosovo | Thursday, September 24, 2009, Prishtina, Kosovo)

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

References:

They might have clear job descriptions, yet in most cases they wouldn't respect them rigorously, for in some cases an assistant is the de facto stronger than his/her boss, and this is because of patronage.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

No, they do not have. In most cases, there is a serious discrepancy between job titles and job descriptions. In most cases, civil servants' job titles sound as too senior comparing to their tasks, namely what they do in practice.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

Yes, they do.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes, although in some cases there is clear interference of higher ranking officers towards this regard.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No, there is no job description for every position.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

The DCSA [Department of Civil Service Administration] has the right and the obligation to check whether ministries and other public bodies implement the Civil Service Law in a correct manner (i.e. if job descriptions and classifications are comparable across institutions and if recruitment and promotion criteria and procedures are respected). However, in practice these tasks are not performed in an appropriate manner, mainly due to the DCSA's lack of capacity.

Formal job descriptions, which are the basis for the classification of a position, are not provided in a comparable format, and no common framework for job titles is implemented across the civil service. Positions with similar job titles are classified at different levels. These positions may have similar job contents, which would make the classification wrong, but they may also have different job contents and the classification could be right while the job title would then be wrong. Administrative Instruction 2003/07 of May 2003, issued by the MPS -then Ministry of Public Services, now (since June 2009) Ministry of Public Administration, should have remedied this, but the administration never fully complied with this instruction.

(Kosovo Public Service and the Administrative Framework: Assessment May 2008, pg. 12, SIGMA Support for Improvement in Governance and Management, May 2008, <http://www.sigmaweb.org/dataoecd/48/31/41637624.pdf>)

In general yes, but most of them are too general.

(Interview with Mr. Bashmir Xhemaj, Journalist/Editor, Koha Vision National Non-public TV Station (KTV), Prishtina, Kosovo | Thursday, September 24, 2009, Prishtina, Kosovo)

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

References:

That is true. Bonuses constitute a very small fraction of total pay of civil servants in Kosovo.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Yes, they do.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

Yes, they are; moreover still only a few civil servants can get bonuses.

(Interview with Mr. Bashmir Xhemaj, Journalist/Editor, Koha Vision National Non-public TV Station (KTV), Prishtina, Kosovo | Thursday, September 24, 2009, Prishtina, Kosovo)

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

References:

According to my information, this has never been the case in Kosovo.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Not always. There are only a couple of cases.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

I am not informed on the number of authorized civil service positions published by the government, if such a thing has ever been published.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, such numbers are published annually, in each institution's annual budget plan, which can be found with the Treasury, Ministry of Economy and Finance.
(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

Yes, but still only on ad hoc basis.

(Interview with Mr. Bashmir Xhemaj, Journalist/Editor, Koha Vision National Non-public TV Station (KTV), Prishtina, Kosovo | Thursday, September 24, 2009, Prishtina, Kosovo)

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | **25** | 0

References:

I have not yet seen any results of such a mechanism being effective.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

No. IOB's proceedings are very slow and it is overburdened due to the expired mandate of the previous members and delays in appointing the new ones. Too many cases are pending.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

Not yet functional.

(Interview with an international policy adviser | Friday, September 18th, 2009, Prishtina, Kosovo)

No, I wouldn't say so.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

Despite structural changes during the reporting period, the Board continues to have no full financial independence. Its continued dependence upon ministry and assembly authorities leaves it exposed to political interference.

(Background Report: Human Rights, Ethnic Relations and Democracy in Kosovo (Summer 2007 – Summer 2008), pg. 22, OSCE Mission in Kosovo, Summer 2008, Prishtina, http://www.osce.org/documents/mik/2008/09/32879_en.pdf)

No, it is not.

(Interview with Mr. Bashmir Xhemaj, Journalist/Editor, Koha Vision National Non-public TV Station (KTV), Prishtina, Kosovo | Thursday, September 24, 2009, Prishtina, Kosovo)

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Usually yes, there are no problems in this regard.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Yes, it has.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

Yes

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

Yes, all the budget means of this category are usually spent on time.

(Interview with Mr. Bashmir Xhemaj, Journalist/Editor, Koha Vision National Non-public TV Station (KTV), Prishtina, Kosovo | Thursday, September 24, 2009, Prishtina, Kosovo)

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

References:

This happens very rarely. In my opinion, this is not at all the case. So far there have only been cases of suspension of civil servants who have been found dubious of being involved in corruption (through media reporting), however they are usually, after some time, returned back to the service, either at the same positions or in other positions within the same organization or civil service.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

No. If they are dismissed from an institution they would usually take a position in another institution of civil service, like from central to a local level.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

No, they are not.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Not anyone convicted so far.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

No, this is not enforced.

(Interview with Mr. Bashmir Xhemaj, Journalist/Editor, Koha Vision National Non-public TV Station (KTV), Prishtina, Kosovo | Thursday, September 24, 2009, Prishtina, Kosovo)

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

47

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

Law No.2004/34 – Suppression of Corruption Law, Article 37

37.1. The Agency shall supervise the assets of senior official persons.

37.2. Should the Agency, in the course of its supervision as provided for by this Law, find that there is apparent non-conformity between the submitted information on the assets of the senior official person or the person living with the official person in his/her domestic relationship and the actual status of the assets, the Agency shall notify the body at which the senior official person holds their office and, if necessary, other competent bodies as well.

37.3. The bodies referred to in the preceding paragraph shall inform the Agency of their measures and decisions.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

Law No.2004/34 – Suppression of Corruption Law, Article 39

The Agency shall supervise the senior official person's assets on the basis of information submitted by the senior official person on a special form, which shall be determined by the Agency.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, Article 16

16.1 If during the public function, a direct or indirect influence is exercised against the official, openly or anonymous influence for voting or undertaking certain decisions, he/she shall inform in writing the manager or managing body, in order to avoid the influence over his/her volition.

16.2 Attempt to influence an official's volition under paragraph 1 of the present article, shall be reported to the institution that selected or appointed him/her and to the Agency, which after reviewing shall decide if there is a need to report the case to the investigation body.

16.4 Voting and the decision taken under the influence on official's volition are not valid.

(Assembly of Kosovo, <http://www.assembly-kosova.org/>).

Administrative Direction No. 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, Chapter VI, Section 29

29.3 A civil servant shall declare, and shall be excluded from any discussions or decisions relating to any matter in which he or she, or an immediate family member, has a significant personal or financial interest.

(UNMIK Official Gazette,

http://www.unmikonline.org/regulations/unmikgazette/02english/E2003ads/ADE2003_02.pdf).

Law No. 03/L-040 on Local Self Government, Article 38: Conflicts of Interest

38.1. A member of the Municipal Assembly or of a committee shall be excluded from the decision-making and administrative procedures relating to any matter in which he or she, or an immediate family member of his or hers, has a personal or financial interest.

38.2. Each member is required to disclose all conflicts of interest immediately as they arise at any meeting at which the member is present. Any member may supply information about the interests of another member.

38.3. Before the first meeting of the Municipal Assembly, members of the Assembly shall record a full and open statement of their financial interests in a public register to be kept by an authorized officer of the municipality. Members shall record any change in their financial interests as they occur.

(Assembly of Kosovo, <http://www.assembly-kosova.org/>).

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

Not regulated

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Law No.2004/34 – Suppression of Corruption Law, Article 33

33.1. An official person shall not accept gifts or other benefits (hereafter gifts") in connection with their execution of office, except for formal gifts and occasional gifts of small value.

33.2. Formal gifts shall be considered gifts presented by the representatives of foreign countries and international organizations during visits and other opportunities, as well as other gifts presented under similar circumstances.

33.3. Occasional gifts of small value shall be considered gifts presented at various working and personal jubilees, holidays and similar occasions, and shall not exceed 50 Euros (US\$74) in value, or their total value shall not exceed 100 Euros (US\$148) in a single year if they are presented by the same person.

33.4. Official persons may not accept more than 10 occasional gifts within a year.

33.5. The prohibitions and restrictions arising from this article are also applicable to the persons living in the domestic relationship with the official person.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, Article 11: Actions forbidden to the official
While exercising his/her function, the official is forbidden the following:

- iv. to require, adopt or accept any valuable thing or rewards compensating his/her vote in decision making;
- vi. to promise employment or any other right in the exchange of a gift or promised gift.

Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, Article 16

16.3 Attempting to influence in official's volition, according to paragraph 1 of the present article, the official should act according to the law, by undertaking the following steps:

- iii. if the word is about a gift, which according to the circumstances can not be returned, the official should immediately inform in writing as soon as possible to the manager, within 5 days.

(Assembly of Kosovo, <http://www.assembly-kosova.org/>).

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

References:

Law No.2004/34 – Suppression of Corruption Law, Article 44

44.1. Members of the Agency, the Agency Council and any persons employed by the Agency shall be required to guard as an official secret any information acquired by the Agency in the execution of its duties that is considered an official secret.

44.2. All persons who come into contact with official secrets during their co-operation with the Agency shall be informed about the obligation to protect official secrets and the consequences of their release. Individuals shall confirm by signature that they have been acquainted with the warning.

44.3. Even after the termination of the employment, persons referred to in Paragraph 1 of this Article shall be obliged to keep the professional secret within the following 15 years, unless the director of the Agency decides otherwise.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

Law No. 03/L-075 on the Establishment of the Office of the Auditor General of Kosovo and the Audit Office of Kosovo, Article 4

4.9. The Auditor General shall not publish or otherwise disclose in a public report any information, which is classified by law as confidential information.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

There are no such regulations in Kosovo.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

No, there are no such regulations.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

No.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Such regulations are not effective.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

No, they are not.

(Interview with Mr. Bashkim Saihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

It is too difficult to prevent, because you have to monitor all of them continuously.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

No, in many cases gifts are not even registered.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

FOL 08 – an organisation engaged in increasing transparency in the public administration asked the five main institutions (Presidency, Assembly of Kosovo, [Office of the] Prime Minister, Kosovo Anti-Corruption Agency and Ministry of Energy and Mining) to provide information in line with Chapter Four of the Anti-Corruption Law, issued on April 22, 2008 (on formal and official gifts to official persons); these benefits are to be tracked by relevant institutions, dully transmitted to the Kosovo Anti-Corruption Agency (ACA) and made available to qualifying requesters, in accordance with the Law on Access to Official Documents No. 2003/12. Out of the five requests, three remained unanswered while two feedbacks did not anyhow include data on gifts: ACA communicated that in 2008 only three of the eighteen institutions compelled to submit catalogues on gifts fulfilled their obligations (but did not disclose which institutions nor the submitted data), while the Office of the Prime Minister replied to have sent their information to ACA (but did not forward the list to FOL 08)

(EULEX Programme Report, pg. 145, EULEX Programme Office/Office of the Head of Mission of EULEX Kosovo/European Union Rule of Law Mission, July 2009, Prishtina, <http://www.eulex-kosovo.eu/news/docs/programmereport/EULEX-PROGRAMME-REPORT-July-2009-new.pdf>)

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | **25** | 0

References:

I would not say they are effective. Most civil servants look for some profit, mostly due to low salaries.
(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Such requirements are effective only to a certain extent.
(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

No, they are not. There are too many family interests in Kosovo.
(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes, but no transparency of the information for the public.
(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No.
(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

The KACA has investigated 15 cases of conflict of interest. The Agency is developing close co-operation with other entities, especially with the Financial Intelligence Unit and the police.
(Kosovo Public Service and the Administrative Framework: Assessment May 2008, pg. 11, SIGMA Support for Improvement in Governance and Management, May 2008, <http://www.sigmaweb.org/dataoecd/48/31/41637624.pdf>)

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

According to my information, they are not audited.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

It can happen but very rarely or in cases when it is initiated by an international audit.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

I believe so. Most of them should be.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

The relevant legal framework in force allows us to audit any public institution in Kosovo. We have not yet started auditing asset declaration forms, but we are planning to start with them from the next year.

(Interview with Mr. Lage Olofsson, Auditor General of Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

25

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

Law No.2004/34 – Suppression of Corruption Law, Article 44

44.1. Members of the Agency, the Agency Council and any persons employed by the Agency shall be required to guard as an official secret any information acquired by the Agency in the execution of its duties that is considered an official secret.

44.2. All persons who come into contact with official secrets during their co-operation with the Agency shall be informed about the obligation to protect official secrets and the consequences of their release. Individuals shall confirm by signature that they have been acquainted with the warning.

44.3. Even after the termination of the employment, persons referred to in Paragraph 1 of this Article shall be obliged to keep the professional secret within the following 15 years, unless the director of the Agency decides otherwise.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

No, they are not allowed.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

No, that doesn't occur in practice.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

Access is denied.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

References:

No, they are not allowed to do so.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

No.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

No, access is denied.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

References:

I am not informed on the quality of such records.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

I am not informed on this issue.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

There is no transparency of records of senior civil servants.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

56

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

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

16.1. Official persons shall report cases of corruption, which come to their knowledge, to the Agency. The Agency shall forward all such cases to the Office of the Public Prosecutor of Kosovo (OPPK) for consideration.

16.2. Any person that had discovered information that indicates existence of corruption in a good faith will not suffer any harmful consequences.

16.3. A person that had given a statement or acted as a witness in a process on a corruption offence is provided with protection provided for in the Criminal Procedure Code of Kosovo and is entitled to damage compensation that s/he or a member of his/her family may suffer due to the given statement or testimony.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

References:

Definitely not

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Usually not, sometimes it depends on a civil servant's position: the less senior the less protected from recrimination or other negative consequences from their managers.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

Not protected.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

I don't think they are protected in practice.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

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

16.1. Official persons shall report cases of corruption, which come to their knowledge, to the Agency. The Agency shall forward all such cases to the Office of the Public Prosecutor of Kosovo (OPPK) for consideration.

16.2. Any person that had discovered information that indicates existence of corruption in a good faith will not suffer any harmful consequences.

16.3. A person that had given a statement or acted as a witness in a process on a corruption offence is provided with protection provided for in the Criminal Procedure Code of Kosovo and is entitled to damage compensation that s/he or a member of his/her

family may suffer due to the given statement or testimony.
(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

No, they are not protected.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

It is almost the same as with civil servants.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

No.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

63

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

References:

The Kosovo Anti-Corruption Agency is the only reporting mechanism for public sector corruption, and it is staffed. There have been cases of civil servants reporting corruption.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Yes, it has.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

Yes, it has professional and full-time staff, yet the question is whether they act professionally. In my opinion, there are problems in terms of motivation, due to their low salaries.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

The only mechanism within the public sector to report corruption to, the Kosovo Anti-Corruption Agency, currently has only 15 out of 35 officials foreseen on the staffing table. Some of the members of the supervisory council are employed by the same institutions that the Anti-Corruption Agency assesses for corruption, raising a potential conflict of interest.

(Background Report: Human Rights, Ethnic Relations and Democracy in Kosovo (Summer 2007 – Summer 2008), pg. 26, OSCE Mission in Kosovo, Summer 2008, Prishtina, http://www.osce.org/documents/mik/2008/09/32879_en.pdf)

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

References:

Usually there are problems with funding.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Yes, they do.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

No, they have complained about the budget.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Yes, there have been cases when the Kosovo Anti-Corruption Agency has reacted and managed to prevent corruption. (Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

It depends on the person involved. if a civil servant has any connections to a figure holding a political post, then the action will be anemic or it will not be taken at all. (Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

Not on time.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

References:

No, this is not allowed by law.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

It depends; it is the same as above (Q. 34). It depends on the person involved: if a civil servant has any connections to a figure holding a political post, then the action will be anemic or it will not be taken at all.

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

No.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

By the end of September, the KAA had submitted 35 cases to the prosecution, which initiated seven criminal proceedings. Public reports of corruption to the agency increased significantly.

(Kosovo (under UNSCR 1244/99) Progress Report 2008, pg. 15, European Commission, November 5, 2008, Brussels, http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/kosovo_progress_report_en.pdf).

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | **NO**

Comments:

There is no internal mechanism (i.e. phone hotline, e-mail address, local office) which offers civil servants to report corruption.

The Kosovo Anti-Corruption Agency deals with all cases and they do not have special line or special treatment for civil servants, they include them too of course.

References:
Not regulated.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

40 IV-3. Procurement

51. Is the public procurement process effective?

80

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Law No. 2003/17 on Public Procurement in Kosovo, Article 1

1.2 The present law also aims to ensure the integrity and accountability of public officials, civil servants and other persons conducting or involved in a procurement activity by requiring that the decisions of such individuals, and the legal and factual bases for such decisions, are free of any personal interest, are characterized by non-discrimination and a high degree of transparency, and are in compliance with the procedural and substantive requirements of the present law.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

Law No. 2003/17 on Public Procurement in Kosovo, Section 95

95.6 The Rules Committee shall also develop a procurement code of ethics to be observed by public officials, civil servants and other persons employed by contracting authorities. Such code of ethics shall, at a minimum, contain a clear set of mandatory rules on the avoidance of conflicts to interest.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Law No. 2003/17 on Public Procurement in Kosovo, Section 21

21.1 Each contracting authority shall establish a Procurement Department to conduct the procurement activities of such contracting authority. Each contracting authority shall ensure that its Procurement Department is staffed with a sufficient number of trained personnel to enable it to efficiently and professionally conduct the contracting authority's procurement activities in strict accordance with the present law.

21.2 The contracting authority shall designate one person to serve as its Procurement Officer. The Procurement Officer shall serve as the head of the contracting authority's Procurement Department. The contracting authority may only designate a person to serve as its Procurement Officer if such person holds a current and valid procurement professional certificate, issued by the PPRC, evidencing that such person has satisfactorily completed the PPRC's course of training on the present law.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

References:

No, I do not believe they are enforced.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Relatively yes

(Interview with Mr. Bashkim Salihu, Legal Expert, OSCE Mission in Kosovo | Friday, September 18, 2009, Prishtina, Kosovo)

No, they are not.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

I do not have specific information, however I doubt this is enforced.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, to a certain extent.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

References:

Not regulated

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

Law No. 2003/17 on Public Procurement in Kosovo, Section 6

6.6 When conducting any procurement activity, all contracting authorities shall take reasonable and necessary measures to ensure (i) the widest possible participation, in light of the value and object of the procurement, of potentially interested economic operators;

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

Law No. 2003/17 on Public Procurement in Kosovo, Section 81

81.1. Pursuant to this law there shall be established by the government a procurement regulatory commission to be known as the Public Procurement Regulatory Commission (the PPRC). The PPRC shall be responsible for (i) the overall development and operation of the public procurement system in Kosovo, (ii) ensuring that such system operates in manner that achieves a highly rational, efficient and transparent use of public funds and public resources, and encourages competition and respects the equality of participants in the public procurement process, and (iii) carrying out the functions assigned to it by the present law.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

Law No. 2003/17 on Public Procurement in Kosovo, Section 58

58.3 The Rules Committee shall establish in the public procurement rules a detailed procedure that contracting authorities shall be required to follow when examining, evaluating and comparing tenders and awarding public contracts. The Rules Committee shall ensure that such procedure is (i) in accordance with best international practice, (ii) provides for adequate competition and transparency, (iii) implements the principle of non-discrimination and (iv) and otherwise complies with all applicable provisions of the present law.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Law No. 2003/17 on Public Procurement in Kosovo, Section 31

31.7 If less than three (3) requests to participate are received from qualified candidates, or if less than three (3) responsive tenders are received from qualified candidates that were invited to submit a tender, the contracting authority shall cancel the procurement activity; in such event, the contracting authority shall, if it still desires to procure the concerned objects, initiate a new procurement activity for such objects.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Law No. 2003/17 on Public Procurement in Kosovo, Section 27

For each proposed public contract, other than a minimal value contract, a contracting authority shall draw up a tender dossier providing all relevant information on the concerned contract, including all material terms and conditions thereof, the applicable procurement procedure, any applicable eligibility requirements or selection criteria, the procedure governing complaints and such other information as the present law may require or the contracting authority deems necessary.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

Law No. 2003/17 on Public Procurement in Kosovo, Section 101

101.2 A review panel established by the PPRC shall have the competence, authority, power and responsibility, under the conditions specified in this Title VIII, to:

- a. review complaints received by the PPRC from interested parties containing allegations of violations of the present law;
- b. conduct investigations and procurement review proceedings for the purpose of determining the facts giving rise to such complaints and allegations;

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

Law No. 2003/17 on Public Procurement in Kosovo, Section 105

105.1 A complaint may be submitted by an interested party at any stage of any procurement activity and with respect to any act or omission of the concerned contracting authority that is alleged to be in violation of the present law.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Law No. 2003/17 on Public Procurement in Kosovo, Section 114

114.1 If a complainant believes that a final decision or determination of a review panel or the PPRC is contrary to the facts or the present law, the complainant may appeal such decision to a court of competent jurisdiction in accordance with the applicable normative acts establishing the procedure for such an appeal. However, the filing, conduct or outcome of such appeal shall have no further effect on the conduct of the concerned procurement.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Law No. 2003/17 on Public Procurement in Kosovo, Section 61

61.2 An economic operator shall not be eligible to participate in a procurement activity or in the performance of any public contract if such economic operator, or any executive, manager or director thereof, has, in the past ten years:

a. been determined by a court of competent jurisdiction to have committed a criminal or civil offence involving corrupt practices, money laundering, bribery, kickbacks or activities described, or similar to those described, in Section 117.1 of the present law under the laws or regulations applicable in Kosovo or any country, or under international treaties or conventions;

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

References:

I do not think this is the case in Kosovo.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

I am not aware of any such case.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

75

52a. In law, citizens can access public procurement regulations.

YES | NO

References:

Constitution of the Republic of Kosovo, Article 41: Right of Access to Public Documents

1. Every person enjoys the right of access to public documents.

2. Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification.

(Constitution of the Republic of Kosovo,

<http://www.kushтетutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>)

Law No. 2003/17 on Public Procurement in Kosovo, Section 10

10.3 A contracting authority may classify other information as confidential business information only if such information meets the following three criteria: a. it has been furnished by an economic operator pursuant to a requirement established by such contracting authority under Section 63 or 64 of the present law;

b. the concerned economic operator has provided the contracting authority with a written request expressing its desire that the contracting authority maintain such item as confidential; and c. such written request contains a statement (i) attesting that such item is not in the public domain and is protected from intentional and negligent disclosure by the economic operator, and (ii)

setting forth reasons that convincingly demonstrate, in the reasonable judgment of the contracting authority, that public access to

such item would result in material harm to the legitimate commercial interests of such economic operator. (Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Law No. 2003/17 on Public Procurement in Kosovo, Section 40

40.3. A contracting authority shall publish a notice that it has prepared in the required languages in a major Albanian language publication of general circulation in Kosovo and a major Serbian language publication, provided, however, that this publication requirement shall not apply to contract award notice for a low or minimal value contract. If the contracting authority is not the PPA, it shall comply with this Section 40.3 within three (3) business days after submitting the concerned notice to the PPA as required by Section 40.1. If the contracting authority is the PPA, it shall comply with this Section 40.3 within three (3) business days after it prepares the concerned notice.

Law No. 2003/17 on Public Procurement in Kosovo, Section 71

71.1 The rules governing the publication of a design contest notice shall be the same as those set forth in Section 40 governing the publication of a contract notice for a contract having the same value as the concerned design contest.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

I do not think they can.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

I think they cannot.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Yes, they are.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | **50** | 25 | 0

References:

I do not think they can.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

The winner is announced publicly; however the assessment information is not accessible.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Law No. 03/L-067 on the Privatization Agency of Kosovo, Article 10

10.2 With respect to the exercise of the Agency's powers under Article 6.2, the operational policies shall:

a) set out transparent and uniformly applied rules governing the bidding procedures as required by Article 8.3 thereby ensuring fair competition of bidders, obtaining a fair market value for shares in Corporations and the payment of transaction costs. The rules so established shall be made available to the public; [∧]10.3 The operational policies shall include procedures for public notification of actions of the Agency.

(Assembly of Kosovo, <http://www.assembly-kosova.org/>)

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

As far as I know, there are such regulations.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Yes, the Law on Prevention of Conflict of Interests and in subsidiary legislation.
(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | **50** | 25 | 0

Comments:

One interviewee mentioned some cases of some high officials that were involved in privatization process of some companies that after six or seven months they were directly or members of their family took management positions in these privatized companies.

References:

As far as I know, there are such regulations.
(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Not entirely.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

95

54a. In law, citizens can access privatization regulations.

YES | NO

References:

Yes, they can access privatization regulations and laws directly on the webpage of the Privatization Agency of Kosovo at <http://www.pak-ks.org/>

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Yes, they usually are.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Yes.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

Law No. 2003/17 on Public Procurement in Kosovo, Section 40

40.3. A contracting authority shall publish a notice that it has prepared in the required languages in a major Albanian language publication of general circulation in Kosovo and a major Serbian language publication, provided, however, that this publication requirement shall not apply to contract award notice for a law or minimal value contract. If the contracting authority is not the PPA, it shall comply with this Section 40.3 within three (3) business days after submitting the concerned notice to the PPA as required by Section 40.1. If the contracting authority is the PPA, it shall comply with this Section 40.3 within three (3) business days after it prepares the concerned notice.

Law No. 2003/17 on Public Procurement in Kosovo, Section 71

71.1 The rules governing the publication of a design contest notice shall be the same as those set forth in Section 40 governing the publication of a contract notice for a contract having the same value as the concerned design contest.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Yes.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

Yes, I think so.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

References:

No.

(Interview with Mr. Seb Bytyçi, MPA in Policy Analysis, International and Comparative Affairs / MES in European Integration and Regionalism | Executive Director, Balkan Policy Institute (IPOL), Prishtina, Kosovo | Lecturer of South East European Politics, Department of Political Science and Public Administration University of Prishtina, Kosovo | Thursday, September 17, 2009, Prishtina, Kosovo)

No cost is involved.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁸⁰National Ombudsman

56. Is the national ombudsman effective?

73

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo, Section 1: Nature of the

Ombudsperson

2.1 The Ombudsperson shall act independently. No person or entity may interfere with his or her functions.
(UNMIK Official Gazette, <http://www.unmikonline.org/regulations/2000/reg38-00.htm>)

Constitution of the Republic of Kosovo, Article 133: Office of Ombudsperson

1. The Office of the Ombudsperson shall be an independent office and shall propose and administer its budget in a manner provided by law.

Constitution of the Republic of Kosovo, Article 132: Role and Competencies of the Ombudsperson

2. The Ombudsperson independently exercises her/his duty and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo.

Constitution of the Republic of Kosovo, Article 134: Qualification, Election and Dismissal of the Ombudsperson

1. The Ombudsperson is elected by the Assembly of Kosovo by a majority of all its deputies for a non-renewable five (5) year term.

3. The Ombudsperson and Deputy Ombudspersons shall not be members of any political party, exercise any political, state or professional private activity, or participate in the management of civil, economic or trade organizations.

(Constitution of the Republic of Kosovo,

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>)

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Yes. The Ombudsperson is elected for a five-year term and cannot be removed by the Parliament without serious justification. In practice, this procedure guarantees a high level of protection from ungrounded dismissal of the Ombudsperson.

(Interview with Ms. Iliriana Çollaku-Tafa, Independent Legal Expert (formerly a Senior Legal Officer at the Ombudsperson Institution in Kosovo) Monday, September 21, 2009, Prishtina, Kosovo)

So far, s/he has been protected.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

No, in practice ombudsman acts and behaves based on the political trend.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No, because of the way the Assembly of Kosovo works, it is too dependent on political parties.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Yes. Upon a motion of any member of the Assembly, signed by five additional members, the Assembly of Kosovo may remove from office or temporarily suspend the Ombudsperson, by a vote of two-thirds of the Members of the Assembly of Kosovo, where the Assembly of Kosovo considers that one or more of the grounds prescribed in law have been established in respect of the Ombudsperson.

(Interview with Ms. Iliriana Çollaku-Tafa, Independent Legal Expert (formerly a Senior Legal Officer at the Ombudsperson Institution in Kosovo) Monday, September 21, 2009, Prishtina, Kosovo)

Yes.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

In practice, the ombudsman has no political protection.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

So far yes, but it is not difficult for political parties to come up with some justification.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Yes. The ombudsman has sufficient professional staff to fulfil its mandate.

(Interview with Ms. Iliriana Çollaku-Tafa, Independent Legal Expert (formerly a Senior Legal Officer at the Ombudsperson Institution in Kosovo) Monday, September 21, 2009, Prishtina, Kosovo)

More or less. It is not fully staffed.

(Interview with an international policy adviser I Friday, September 18, 2009, Prishtina, Kosovo)

Yes, it has professional and full-time staff, yet the question is whether they act professionally. In my opinion, there are problems in terms of motivation, due to their low salaries.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert I Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo I Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | **50** | 25 | 0

References:

The Ombudsperson independently appoints the staff members working for the Ombudsperson Institution. Generally, appointments made support the independence of this Institution.

(Interview with Ms. Iliriana Çollaku-Tafa, Independent Legal Expert (formerly a Senior Legal Officer at the Ombudsperson Institution in Kosovo) Monday, September 21, 2009, Prishtina, Kosovo)

Such a support is still ambivalent, as demonstrated by the fact that the Assembly of Kosovo had to vote five times on the Ombudsperson, and in the end it succeeded in appointing the new (first local) Ombudsperson mostly due to international pressure. (Interview with an international policy adviser I Friday, September 18, 2009, Prishtina, Kosovo)

The appointment of the current Ombudsman has undergone serious criticism for political interference. On bases of the candidates for this position I think there was political interference.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo I Tuesday, September 22, 2009, Prishtina, Kosovo)

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Yes. The Ombudsperson Institution is allocated sufficient funds from the Kosovo Consolidated Budget to allow it to carry out its functions.

(Interview with Ms. Iliriana Çollaku-Tafa, Independent Legal Expert (formerly a Senior Legal Officer at the Ombudsperson Institution in Kosovo) Monday, September 21, 2009, Prishtina, Kosovo)

Yes.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes, they receive regularly what is allocated annually from the state budget.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

Other institutions such as the Ombudsperson Institution only received additional amounts after intervention by the international community. In the Ministry's budget proposal for 2008, a number of independent bodies, such as the Ombudsperson Institution, have suffered severe reductions of the funds requested by them.

(Independent Agencies and Institutions in Kosovo Democracy, pp. 5 -6, OSCE Mission in Kosovo, December 2007, Prishtina, http://www.osce.org/documents/mik/2007/12/28703_en.pdf).

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

The Ombudsperson annually presents the Institution's report before the Assembly of the Republic of Kosovo. The Ombudsperson Institution releases a special report to the Assembly of Kosovo when circumstances are warrant. All the Ombudsperson Institution's reports are public.

(Interview with Ms. Iliriana Çollaku-Tafa, Independent Legal Expert (formerly a Senior Legal Officer at the Ombudsperson Institution in Kosovo) Monday, September 21, 2009, Prishtina, Kosovo)

Yes.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes, on its web site.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | **75** | 50 | 25 | 0

References:

The Ombudsperson Institution has the competence to conduct investigations either in response to a complaint or on its own initiative.

(Interview with Ms. Iliriana Çollaku-Tafa, Independent Legal Expert (formerly a Senior Legal Officer at the Ombudsperson Institution in Kosovo) Monday, September 21, 2009, Prishtina, Kosovo)

Yes.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes upon request of a citizen. On the web site of the ombudsman there is an application for citizens to apply for legal aid. (Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Another advantage is also that the Ombudsperson Institution can open ex officio investigations if it has information from different sources that violation might have occurred.

(Implementation of the Anti-Discrimination Law: A Challenge for Kosovo, pg. 22, OSCE Mission in Kosovo, June 2007, Prishtina, http://www.osce.org/publications/mik/2007/06/25298_914_en.pdf).

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

No, s/he has no legal power to impose penalties. Following an investigation, s/he can only recommend to the competent authorities that administrative, civil or criminal proceedings be initiated against any person.
(Interview with Ms. Iliriana Çollaku-Tafa, Independent Legal Expert (formerly a Senior Legal Officer at the Ombudsperson Institution in Kosovo) Monday, September 21, 2009, Prishtina, Kosovo)

Yes.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

No, the ombudsman can only refer cases to the court.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

The Ombudsperson Institution cannot enforce those recommendations or make sure that they are implemented in some other way. This is different in other countries and regions where the Ombudsperson may impose fines for non-compliance or initiate court proceedings.

(Implementation of the Anti-Discrimination Law: A Challenge for Kosovo, pg. 22, OSCE Mission in Kosovo, June 2007, Prishtina, http://www.osce.org/publications/mik/2007/06/25298_914_en.pdf).

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

There are numerous examples of public authorities reacting positively to the Ombudsperson's interventions, and there have been many cases where complaints pending before the Institution have been resolved following successful collaboration. There are, however, a number of negative examples where certain public administrative offices have not responded adequately or at all to the Institution's requests or interventions.

(Interview with Ms. Iliriana Çollaku-Tafa, Independent Legal Expert (formerly a Senior Legal Officer at the Ombudsperson Institution in Kosovo) Monday, September 21, 2009, Prishtina, Kosovo)

I do not have this information; however having in mind the general performance of the government, I think it is very negligent. (Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | **75** | 50 | 25 | 0

References:

Yes, in most cases.

(Interview with Ms. Iliriana Çollaku-Tafa, Independent Legal Expert (formerly a Senior Legal Officer at the Ombudsperson Institution in Kosovo) Monday, September 21, 2009, Prishtina, Kosovo)

Yes and no – their workload is heavy.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes, to a certain extent

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo, Section 17: Reports

17.1 The Ombudsperson shall provide an annual report to the Special Representative of the Secretary-General and make his or her findings public.

17.2 A special report may also be released whenever the Ombudsperson deems it appropriate.

(UNMIK Official Gazette, <http://www.unmikonline.org/regulations/2000/reg38-00.htm>)

Constitution of the Republic of Kosovo, Article 41: Right of Access to Public Documents

1. Every person enjoys the right of access to public documents.

2. Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification.

(Constitution of the Republic of Kosovo,

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>)

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Reports are available online, on the website of the Ombudsperson Institution.

(Interview with Ms. Iliriana Çollaku-Tafa, Independent Legal Expert (formerly a Senior Legal Officer at the Ombudsperson Institution in Kosovo) , Monday, September 21, 2009, Prishtina, Kosovo)

I guess so – they are public as soon as published.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes, through the website.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, to a reasonable extent.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

All reports are available free of charge at the website of the Ombudsperson Institution.

(Interview with Ms. Iliriana Çollaku-Tafa, Independent Legal Expert (formerly a Senior Legal Officer at the Ombudsperson Institution in Kosovo), Monday, September 21, 2009, Prishtina, Kosovo)

No cost is applied for the access to the reports: the web site of the ombudsman provides the reports.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

There is no cost involved.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo, Section 1: The Establishment of the Ombudsperson Institution in Kosovo

1.1 The Ombudsperson shall promote and protect the rights and freedoms of individuals and legal entities and ensure that all persons in Kosovo are able to exercise effectively the human rights and fundamental freedoms safeguarded by international human rights standards, in particular the European Convention on Human Rights and its Protocols and the International Covenant on Civil and Political Rights.

1.2 The Ombudsperson shall provide accessible and timely mechanisms for the review and redress of actions constituting an abuse of authority by the interim civil administration or any emerging central or local institution.

(UNMIK Official Gazette, <http://www.unmikonline.org/regulations/2000/reg38-00.htm>)

Constitution of the Republic of Kosovo, Article 132: Role and Competencies of the Ombudsperson

1. The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.

3. Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law.

(Constitution of the Republic of Kosovo,

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>)

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

81

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

Constitution of the Republic of Kosovo, Article 136: Auditor-General of Kosovo

3. The Auditor-General of the Republic of Kosovo is elected and dismissed by the Assembly by a majority vote of all its deputies on the proposal of the President of the Republic of Kosovo.
4. The Assembly decides on the dismissal of the Auditor-General of the Republic of Kosovo by a two thirds (2/3) majority of all its deputies upon the proposal of the President of the Republic of Kosovo or upon the proposal of one third (1/3) of all its deputies.
5. The mandate of the Auditor-General of the Republic of Kosovo is five (5) years with the possibility of re-election to only one additional mandate.

Constitution of the Republic of Kosovo, Article 138: Reports of the Auditor-General of Kosovo

2. The Auditor-General of the Republic of Kosovo submits an annual report on the activities of the office to the Assembly. (Constitution of the Republic of Kosovo,

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>)

Constitution of the Republic of Kosovo, Article 157

Until the end of the international supervision of the implementation of the Comprehensive Proposal for Kosovo Status Settlement, dated 26 March 2007, the Auditor-General of the Republic of Kosovo shall be an international appointed by the International Civilian Representative.

(Constitution of the Republic of Kosovo,

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>)

Law No. 03/L-075 on the Establishment of the Office of the Auditor General of Kosovo and the Audit Office of Kosovo, Article 5

- 2.1 The Auditor-General shall carry out his or her functions independently and not subject to the direction or control from any other person or institution.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>)

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Yes, it is, at least as long as I will be leading it – I don't know what will happen afterwards. It is legally protected, whereas in practice OAG's independence has not yet been tested through.

(Interview with Mr. Lage Olofsson, Auditor General of Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, the Auditor General is appointed for a term of five years, as provided for by the Law on Office of Auditor General (OAG).

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

The responsibility for removal of the director of the agency is on the International Civilian Representatives who answers to European Parliament, which makes me believe that the head of agency protected from removal without relevant justification.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, so far.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Yes and no. For the time being, our staff is sufficient to carry out the tasks currently being carried out, which is not yet in line with international standards, and we will for sure need more staff to develop the institution in line with these standards. (Interview with Mr. Lage Olofsson, Auditor General of Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

More or less; in terms of numbers, OAG has sufficient staff, but it still needs to increase the capacities of its existing staff. (Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes, it has professional and full-time staff, yet the question is whether they act professionally. In my opinion, there are problems in terms of motivation, due to their low salaries.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

The OAG has a total of approximately 100 staff, about two-thirds of whom are auditors. The OAG has recognised that training needs are substantial due to the significant level of accountancy and audit training required for staff to obtain a professional qualification and to acquire the practical experience of translating theory into practice. The training programme offers high quality training in all areas that are relevant for a modern external auditor. The criterion to be qualified to perform audits is certification as an accountant, followed by a minimum of three years' training and work experience. Trainees carry out a ten-month intensive accounting and audit training. The training programme is completed with training-on-the-job in outsourced audits. The OAG has continued to conduct intensive training for more than 60 trainee auditors. However, staff turnover is high, as staff leave the OAG as soon as they have passed their examinations. The main reason for this is that the salaries for OAG auditors are significantly lower than comparable salaries in the private sector.

(Kosovo External Audit: Assessment May 2008 pg. 2, SIGMA Support for Improvement in Governance and Management, May 2008, <http://www.sigmaweb.org/dataoecd/48/26/41637566.pdf>).

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Yes of course.

(Interview with Mr. Lage Olofsson, Auditor General of Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, it does. The institution which has appointed the Auditor General also gives political support to the independence of the OAG, plus some financial support (the salaries of the Auditor General and one of its advisors).

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

So far the audit agency has proven to be independent. The International Civilian Office has the competency to appoint the Auditor General.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Yes, we do receive funding regularly, yet so far it has proven to be insufficient. When I took the office, the agreement with the Kosovan authorities has been to increase OAG's budget for 20 percent every new budget year; on the contrary, our budget for this year is 20 percent lower compared to the last year. While being accountable to the Assembly of Kosovo, another shortcoming is financial dependence on the Government of Kosovo, and it is difficult to overcome such a shortcoming, simply due to the fact that the latter is politically stronger than the former. Moreover, the budget spending model applied by the Kosovo Treasury also limits us in terms of the way we need to distribute internally and spend the budget we are provided with.

(Interview with Mr. Lage Olofsson, Auditor General of Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, it is regular, but insufficient for the development of the institution in compliance with international audit standards.
(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.
(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes.
(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

OAG produces annual audit reports, which start to be drafted in March each year and are finalized and published in August. Yes, all our reports are publicly available as soon as they are finalized. They can be found online, on our website, but we also send them to all the public institutions audited.

(Interview with Mr. Lage Olofsson, Auditor General of Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, this has started from this year. All the OAG audit reports are regularly published on its website.
(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.
(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes.
(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.
(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | **50** | 25 | 0

References:

No, so far our recommendations have not been addressed. We are currently working with the public institutions on establishing a system of dialogue designed to make Ministers and managers of all auditees directly accountable to our findings and recommendations, which would help us to follow-up on our recommendations more easily.

(Interview with Mr. Lage Olofsson, Auditor General of Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

It does very rarely. So far only a few recommendations given by OAG have been implemented by the public institutions concerned.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, though not consistently.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

No, so far most of the government bodies have failed to implement the audit report recommendations. For example, the Ministry of Health implemented only one (1) recommendation out 8 recommendations contained in the 2008 Audit Report of the Ministry of Health.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | **50** | 25 | 0

References:

No, the police and judiciary are responsible to investigate. We can just provide them with our findings.
(Interview with Mr. Lage Olofsson, Auditor General of Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

I do not think so.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes, they perform independent audits to government institutions.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

92

60a. In law, citizens can access reports of the audit agency.

YES | NO

References:

Constitution of the Republic of Kosovo, Article 41: Right of Access to Public Documents

1. Every person enjoys the right of access to public documents.

2. Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification.

(Constitution of the Republic of Kosovo,

http://www.kushtetutakosoves.info/repository/docs/Constitution_of_the_Republic_of_Kosovo.pdf)

Law No. 03/L-075 on the Establishment of the Office of the Auditor General of Kosovo and the Audit Office of Kosovo, Article 3 d) copies of the report of the Auditor General shall be made available to the public.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

Law No. 03/L-075 on the Establishment of the Office of the Auditor General of Kosovo and the Audit Office of Kosovo, Article 4 4.9 The Auditor General shall not publish or otherwise disclose in a public report any information, which is classified by law as confidential information,

4.10 If the Auditor General omits from public report information pursuant to paragraph 9 of this Article, the Auditor General shall

prepare and submit to the Presidency of the Assembly of Kosovo, upon its written request, a confidential report identifying such information and providing justification for their omission.
(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Yes, they can have them as soon as they are public.

(Interview with Mr. Lage Olofsson, Auditor General of Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, they can, as soon as they are finalized and published. OAG drafts and publishes annual audit reports.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, on the OAG website.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

There is no cost involved.

(Interview with Mr. Lage Olofsson, Auditor General of Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

There is no cost involved.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Audit Reports are available on the OAG website and can be accessed for free.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES

NO

References:

Constitution of the Republic of Kosovo, Article 136: Auditor-General of Kosovo

1. The Auditor-General of the Republic of Kosovo is the highest institution of economic and financial control.

(Constitution of the Republic of Kosovo,

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>)

Law No. 03/L-075 on the Establishment of the Office of the Auditor General of Kosovo and the Audit Office of Kosovo, Article 5

5.1 The Audit Office of Kosovo is hereby established.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

Law No. 03/L-075 on the Establishment of the Office of the Auditor General of Kosovo and the Audit Office of Kosovo, Article 3: Powers and Responsibilities of the Auditor-General

3.1 The Auditor-General shall report to the Assembly.

3.2 The Auditor-General shall annually conduct a Regularity Audit of the Kosovo Consolidated Budget, budget organizations, including but not limited to the Assembly of the Republic of Kosovo, the Office of the President of the Republic of Kosovo, each Ministry and executive agency, municipalities, independent bodies, the Central Bank of the Republic of Kosovo (CBK), and other entities that are either more than 50 percent publicly owned or receive funding from, or provide dividends or other non tax

revenue to, the Kosovo Consolidated Fund including but not limited the Kosovo Customs Service, the Kosovo Privatization Agency and the Ombudsperson.
(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

91 V-3. Taxes and Customs

62. Is the tax collection agency effective?

75

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

References:

More or less; in terms of numbers, TAK has sufficient staff, but it still needs to increase the capacities of its existing staff.
(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Not really

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

I do not have specific information on this, yet I do not think that the tax collection system in Kosovo is effective: many workers employed in the private sector are not even registered as taxpayers.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, it has professional and full-time staff, yet the question is whether they act professionally. In my opinion, there are problems in terms of motivation, due to their low salaries.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Yes.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

88

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Yes.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

More or less OK

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

In May 2009, the total staff of Kosovo Customs, including managers, supervisors and officers, stood at 555. Depending on recruitment, the staffing level of the customs administration seems to fluctuate between 540 and 560. (EULEX Programme Report, pg. 119, EULEX Programme Office/Office of the Head of Mission of EULEX Kosovo/European Union Rule of Law Mission, July 2009, Prishtina, <http://www.eulex-kosovo.eu/news/docs/programmereport/EULEX-PROGRAMME-REPORT-July-2009-new.pdf>)

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Yes.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. In law, is there a national tax collection agency?

61. In law, is there a national tax collection agency?

YES | NO

References:

Law No. 2004/48 on Tax Administration and Procedures, Article 2: The Tax Administration of Kosovo
2.1. The Tax Administration of Kosovo (hereinafter TAK) shall be established as a separate service within the Ministry of Finance and Economy, with specific independence.
(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Sometimes discrimination occurs (tax forms in one official language are sent to citizens speaking the other official language), but it is not intentional.
(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Not always. Sometimes there are language problems with tax forms, when they are not translated into one of the official languages in the country.
(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Tax laws in Kosovo are in full compliance with the European Union standards; however when it comes to law enforcement there is still discrimination throughout the legal system.
(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No, there are still problems in this regard; at least that is the public perception so far.
(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

Code No. 03/L-109: Customs and Excise Code of Kosovo, Article 4

For the purposes of this Code, the following definitions shall apply: (3) Customs means Customs of Kosovo, designated as responsible amongst others for applying customs legislation.

Code No. 03/L-109: Customs and Excise Code of Kosovo, Article 9

1. The Customs shall be the sole institution in Kosovo that shall have the authority to perform customs functions and any other matter assigned to the Customs by the Government of Kosovo.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

References:

Not yet: there are still problems in the country's northern border points due to the destruction of two custom points, in February 2008, following the Declaration of Independence.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

In Kosovo we have 3 types of legal systems still operating: the Yugoslav applicable laws, the UNMIK regulations and the laws of Kosovo authorities.
(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

65

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES

NO

References:

According to Law No. 03/L-087 ON PUBLICLY OWNED ENTERPRISES and its Article 33

External Audit of Publicly Owned Enterprises and Article 37 The Publicly Owned Enterprises Policy and Monitoring Unit at the Ministry

http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L087_en.pdf

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Some of them still lack competent staff, because they are types of institutions that have been recently established, and expertise is not yet established.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

No, I wouldn't say so. In a few of them, the staff is under political pressure.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Regular yes, but the question is whether it is adequate and sufficient.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Regular, but not adequate

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Very selectively: it is not consistent, not adequate and not proportional.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Most of them do, some of them don't.

(Interview with an international policy adviser | Friday, September 18, 2009, Prishtina, Kosovo)

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

In very few cases: a lot more should be done.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with an international policy adviser | Friday, September 18th, 2009, Prishtina, Kosovo)

They may, I am not informed of such actions taken.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

65

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

Constitution of the Republic of Kosovo, Article 41: Right of Access to Public Documents

1. Every person enjoys the right of access to public documents.

2. Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification.

(Constitution of the Republic of Kosovo,

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>)

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

I have no specific information on this.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

No, so far I haven't seen them regularly updated.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

References:

No, access is prohibited.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

Yes, the relevant legislation in force allows us to audit any activity of any public institution in Kosovo.

(Interview with Mr. Lage Olofsson, Auditor General of Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

The Government's Anti-Corruption Action Plan expects the Auditor General to conduct financial audits of governmental agencies (currently underway in the Assembly of Kosovo) as well as public corporations (aka Public-Owned Enterprises – POEs) (PTK, KEK, RTK, etc.)

(The Anti-Corruption Action Plan: Social and Economic Necessity for Kosovo, pg. 34, OSCE Mission in Kosovo, October 2006, Prishtina, http://www.osce.org/publications/mik/2006/10/21712_685_en.pdf).

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

No, access is prohibited.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, to a certain extent

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

No, access is prohibited.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES

NO

References:

Constitution of the Republic of Kosovo, Article 160: Publicly Owned Enterprises

1. The Republic of Kosovo shall own all enterprises in the Republic of Kosovo that are Publicly Owned Enterprises. All obligations related to such ownership rights shall be the obligations of the Republic of Kosovo. The Government of Kosovo may privatize, concession or lease a Publicly Owned Enterprise as provided by law.

2. The ownership rights in a Publicly Owned Enterprise that provides services only in a specific municipality or in a limited number of municipalities shall be the ownership rights of the concerned municipality or municipalities. Obligations related to such ownership rights shall be the obligations of the concerned municipality or municipalities. The Assembly of Kosovo shall, by law, identify such Publicly Owned Enterprise and the concerned municipality or municipalities having ownership rights and related obligations with respect thereto. If authorized by law, the concerned municipality or municipalities may privatize, concession or lease such a Publicly Owned Enterprise.

(Constitution of the Republic of Kosovo,

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>)

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

V-5. Business Licensing and Regulation

77

70. Are business licenses available to all citizens?

81

70a. In law, anyone may apply for a business license.

YES | NO

References:

Law No. 02/L-123 on Business Organizations, Article 5

5.2 Any person, organization, or group composed of one or more persons and/or one or more organizations may establish and register a business organization.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Law No. 02/L-123 on Business Organizations, Article 10

10.5 If any person believes that the Registry, or any official or employee working at the Registry, is failing to fully and routinely observe and implement any requirement of this Article 10, such person shall file a complaint with the Head of the Registry and the Minister. The Minister shall have the authority and responsibility to investigate the alleged failure and to cause the Head of the Registry to take any action required to correct such failure. If, the alleged failure has not been corrected within sixty (60) days from the filing of such complaint, the person who filed that complaint may file a new complaint with the Court. If the Court determines that the original complaint was valid and that the failure was not corrected within the specified sixty (60) day period, the Court shall issue an order (i) permanently terminating the Head of the Registry and any other culpable person at the Registry, (ii) requiring the body responsible for his/her appointment to appoint a new Head of the Registry; and (iii) requiring the Minister to take whatever action may be necessary to cause the Registry to correct such failure.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

Law No. 02/L-123 on Business Organizations, Article 17

17.1 Any affected person or organization who in good faith believes that an act, failure to act, requirement or decision of the Registry is inconsistent with or not authorized by the present Law, such person or organization may submit a written request to the Head of the Registry requesting him to review the matter.

17.2 Within twenty (20) calendar days after receiving such a request, the Head of the Registry shall: (i) review the concerned matter, (ii) take all necessary measures required to correct the matter, and (iii) provide a written decision to the concerned person

or organization.

17.3 If, after receiving the Head of the Registry's decision or the expiration of the aforementioned twenty (20) calendar day period, whichever occurs earlier, the concerned person or organization may file a complaint with the office of administrative complaints within the Ministry. Such office must provide the concerned person or organization with a written decision on such complaint within twenty (20) calendar days after receiving such complaint.

17.4 If, after receiving the decision of the Ministry's office of administrative complaints or the expiration of the afore-mentioned twenty (20) calendar day period, whichever occurs earlier, the concerned person or organization may file a complaint with the Court requesting the Court to review the matter. If such a complaint is filed with the Court in accordance with this Section 17, the Court shall review and decide the matter.

17.5 In particular, the Court shall have the authority to invalidate or uphold, in whole or in part, a decision, act or requirement of the Head of the Registry or the Registry. The Court shall also have the authority to issue an order requiring the Head of the Registry and/or the Registry to take whatever action the Court deems necessary and appropriate to remedy the matter. If the Head of the Registry fails to comply with such an order, the Court (i) may issue, and shall have the authority to issue, an order removing the Head of the Registry from that position, and/or (ii) may impose any other penalty provided for under any other primary normative act for failure to comply with a court order.

(Official Gazette of the Republic of Kosovo, <http://www.gazetazyrtare.com>).

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Ekrem Jakupi, small enterprise owner, NTP HANA", September 20, Gjilan, Kosovo

"Yes in practise there is a need for license and takes around two weeks maximally, its pretty fast"

"Registering a business in Kosovo is both simple and inexpensive. The following types of business entities can be registered in Kosovo: a single person enterprise, a general partnership, a limited liability company, a limited partnership and a joint stock company. All business and trade names are listed with the Registry of Business Organization and Trade Names".

<http://www.invest-ks.org/?cid=2,137>

So far this is functioning quite well.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

No, it is still too slow: citizens have to undergo 9 steps taking 30 days.

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Ekrem Jakupi, Small Enterprise owner, NTPHANA, Gjilan Kosovo –

“The costs of bussines registration is cheap, as far as I remeber it was 5 Euro for personal business and 20 Euro for all other forms of business entities. You have to pay this amount in bank account and then with the bank receipt of the 5 or 20 Euros (US\$7.44 or US\$29) to The Business Registration Agency, your application for the new business entity will be processed, and completed within app. one week.”

Registration Requirements Summary see at this link:

<http://www.doingbusiness.org/Subnational/ExploreTopics/StartingBusiness/Details.aspx?economyid=308>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

67

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

Constitution of the Republic of Kosovo, Article 52: Responsibility for the Environment

3. The impact on the environment shall be considered by public institutions in their decision making processes.

(Constitution of the Republic of Kosovo,

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Not regulated

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

Nor regulated

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

References:

Not effectively.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

I don't have specific information on this matter. However, I am not aware of any inspection at all the government official conduct. I think carrying out inspection is very important issue that government does not truly utilize.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

Yes, to a certain extent

(Interview with Mr. Shpend Ahmeti, Independent Public Policy Expert | Executive Director, Institute for Advanced Studies GAP, Prishtina, Kosovo | Wednesday, September 23, 2009, Prishtina, Kosovo)

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

References:

Not effectively.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

I don't have specific information on this matter.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

References:

Not effectively.

(Interview with an independent policy expert | Tuesday, September 22, 2009, Prishtina, Kosovo)

I don't have specific information on this matter.

(Interview with Mr. Ramadan Ilazi, Executive Director, FOL Movement, Prishtina, Kosovo | Tuesday, September 22, 2009, Prishtina, Kosovo)

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁷³Anti-Corruption Law

73. Is there legislation criminalizing corruption?

67

73a. In law, attempted corruption is illegal.

YES | NO

References:

Law No.2004/34 SUPPRESSION OF CORRUPTION LAW

Article 4

4.1. Everyone has the right to an equal approach in the performance of activities of public interest and equal treatment on the part of official persons, without being the victim of corruption.

4.2. The official person is obligated to carry out his/her function or duty conscientiously, expertly, without discrimination or privileges for anyone, with due respect for human freedoms and rights and human dignity.

4.3. Everyone has the right to free appearance on the market and to free competition, without fearing becoming a victim of monopolistic or discriminatory behaviour, which results from corruption

www.kuvendikosoves.org

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

With the Law No.2004/34 SUPPRESSION OF CORRUPTION LAW, extortion is not mentioned at all.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:
PROVISIONAL CRIMINAL CODE OF KOSOVO

Giving Bribes
Article 344

(1) Whoever confers or promises to confer a gift or other benefit on an official person, so that such person perform within the scope of his or her official authority an official or other act which he or she should not have performed or fail to perform an official or other act which he or she should have performed or whoever serves as an intermediary in bribing an official person shall be punished by imprisonment of three months to three years.

(2) Whoever confers or promises to confer a gift or other benefit on an official person so that such person perform within the scope of his or her official authority an official or other act which he or she should perform or fail to perform an official or other act which he or she may not perform or whoever serves as intermediary in bribing an official person shall be punished by a fine or by imprisonment of up to one year.

(3) When the perpetrator of the offence provided for in paragraph 1 or 2 of the present article gave the bribe on the request of an official person and reported the offence before it was discovered or before knowing that the offence was discovered, the court may waive the punishment.

(4) The gift or other benefit shall be confiscated or, in the case of paragraph 3 of the present article, it shall be restored to the person who gave it.

http://www.unmikonline.org/regulations/2003/RE2003_25_criminal_code.pdf

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:
PROVISIONAL CRIMINAL CODE OF KOSOVO

Accepting Bribes
Article 343

(1) An official person who solicits or accepts a gift or some other benefit for himself, herself or another person or who accepts a promise of a gift or some other benefit to perform within the scope of his or her authority an official or other act which he or she should not perform or to fail to perform an official or other act which he or she should or could have performed shall be punished by imprisonment of six months to five years.

(2) An official person who solicits or accepts a gift or some other benefit for himself or herself or another person or who accepts a promise of a gift or some other benefit to perform within the scope of his or her authority an official or other act which he or she should have carried out or to fail to perform an official act which he or she may not perform shall be punished by imprisonment of three months to three years.

(3) An official person who, following the performance or omission of an act provided for in paragraph 1 or 2 of the present article, solicits or accepts a gift or some other benefit for himself, herself or another person in relation to such performance or omission shall be punished by a fine or by imprisonment of up to one year.

(4) The gift or other benefit received shall be confiscated.

http://www.unmikonline.org/regulations/2003/RE2003_25_criminal_code.pdf

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | **NO**

References:

No, it is not foreseen with law.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | **NO**

References:

Use of public resources for private gain it is not mentioned at all.

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

PROVISIONAL CRIMINAL CODE OF KOSOVO

Unauthorised Disclosure of Confidential Information
Article 169

(1) An attorney, a defence counsel, physician or any other person, who without authorisation, discloses confidential information that he or she became aware of while exercising his or her profession shall be punished by a fine or by imprisonment of up to one year.

(2) A person is not criminally liable under paragraph 1 of the present article if he or she disclosed the confidential information in the general interest, if such interest outweighs the interest in the non-disclosure of the confidential information.

(3) Criminal proceedings for the offence provided for in paragraph 1 of the present article shall be initiated following a motion.

http://www.unmikonline.org/regulations/2003/RE2003_25_criminal_code.pdf

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

UNMIK REGULATION NO. 2004/2
ON THE DETERRENCE OF MONEY LAUNDERING AND RELATED
CRIMINAL OFFENCES
Money Laundering

10.2 Whoever, knowing or having cause to know that certain property or proceeds of some form of criminal activity, and which property is in fact proceeds of crime, or whoever, believing that certain property is proceeds of some form of criminal activity based on representations made as part of an undercover investigation conducted pursuant to UNMIK Regulation No. 2002/6 of March 18, 2002 on Covert and Technical Measures of Surveillance and Investigation:

- (a) Converts or transfers, or attempts to convert or transfer, the property for the purpose of concealing or disguising the nature, source, location, disposition, movement or ownership of the property;
- (b) Converts or transfers, or attempts to convert or transfer, the property for the purpose of assisting any person who is involved in, or purportedly involved in, the commission of the criminal offence that produced the property to evade the legal consequences, or apparent legal consequences, of his or her actions;
- (c) Converts or transfers, or attempts to convert or transfer, the property for the purpose of avoiding a reporting obligation under the present Regulation;
- (d) Converts or transfers, or attempts to convert or transfer, the property for the purpose of promoting the underlying criminal activity; or
- (e) Acquires, possesses or uses, or attempts to acquire, possess or use, the property

commits a criminal offence punishable by a term of imprisonment of up to ten years and a fine of up to three times the value of the property which is the subject of the criminal offence.

http://www.unmikonline.org/regulations/2004/RE2004_02.pdf

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES

NO

References:

PROVISIONAL CRIMINAL CODE OF KOSOVO

Organized Crime

Article 274

(1) Whoever commits a serious crime as part of an organized criminal group shall be punished by a fine of up to 250,000 EUR and by imprisonment of at least seven years.

120

(2) Whoever actively participates in the criminal or other activities of an organized criminal group, knowing that his or her participation will contribute to the commission of serious crimes by the organized criminal group, shall be punished by imprisonment of at least five years.

(3) Whoever organizes, establishes, supervises, manages or directs the activities of an organized criminal group shall be punished by a fine of up to 500,000 Euros (US\$744,225) and by imprisonment of seven to 20 years.

(4) Whoever commits the offence provided for in paragraph 2 of the present article shall be punished by a fine of up to 500,000 Euros (US\$744,225) and by imprisonment of at least 10 years or by long-term imprisonment if the activities of the organized criminal group result in death.

(5) The court may waive the punishment of a perpetrator who commits the offence provided for in paragraph 2 or 3 of the present article if, before the group has committed a crime, such person reports to the police or public prosecutor the existence, formation and information of the organized criminal group in detail to allow the police to arrest or the prosecutor to prosecute the group.

(6) Whoever is punished by the accessory punishment provided for in Article 57 of the present Code for the commission of a criminal offence provided for in the present Article and violates the terms of such accessory punishment shall be punished by imprisonment of up to one year.

http://www.unmikonline.org/regulations/2003/RE2003_25_criminal_code.pdf

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

75

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES

NO

References:

Law No.2004/34 SUPPRESSION OF CORRUPTION LAW

Article 9

9.4. The function of the director of the Agency shall not be compatible with any position in the Government, Assembly, local authorities, political parties or trade unions, or with performing any work in a public domestic, international or supranational organization or local authority.

www.kuvendikosoves.org

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | **50** | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

– This is how it should be, whether it is respected by the agency or agencies is another issue. I think in reality the agency is not protected from political interference.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

They are protected to some extent but not yet at the most desired level. This is due to the fact that in the Republic of Kosovo we have a very fragile democracy and we are new to this system, therefore it will take some time in order to achieve a full impartial, apolitical and independent agency which will be protected from political interference.

But, from what I have seen so far, the actual fight against corruption is very much linked itself to the political will. We lack political will to fight it and by this also the agency is not fully protected from political interference. One of the suggestions in the draft-Law on Anti-Corruption, which will replace the existing Law on Anti-Corruption, foresees establishment of a new body comprised of the political parties from the opposition. Perhaps this is a good tool to at least make a balance in political dependency of the agency and thus through this body make protected it from the political interference of the Government and the Assembly, meaning the position governing the country.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Yes he is protected.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

I believe that the head of the agency is protected from such a removal, because nowadays it is not very hard to prove a case when a head of agency, chief-executive or a permanent secretary was removed without a relevant justification. A recent case of burglary in the flat of the existing agency head and where it was claimed that some agency's documents were stolen was not a justification enough to have him removed from the position of the head of the agency.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Well, I think there are political interferences when it comes to appointments.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Based on the information I have, I believe that the appointments are based on professional criteria, especially of the legal staff working for the agency.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Yes they have.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

The staff is never enough, and bearing in mind the Kosovo circumstances, I think that there is a need to increase or perhaps even double the staff of this agency in order to have even more efficient work. This would help in also accelerating the work and preparation of cases to be sent to the prosecution.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Yes, and the regular funding (as far as I remember) must not be from governing institutions.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Each agency has its own specifics. In the case of the anti-corruption agency, I think that it receives regular funding as well as other agencies. But I remain with hope that the budget of Kosovo will grow and one day make available more funds for the agency and its staff, especially in creating even better conditions for the staff due to the work it does and which is of special importance to the state.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Yes, they do (usually a report per year).

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

I think it does, even though I have not read any reports. I do, time to time, follow press releases and especially media appearances of the head of the agency.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Well, I am not sure if these powers are sufficient. In Kosovo, the anti-corruption agency has, in fact, not such powers. It has more an advising role.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

The agency does not have sufficient powers to carry out its mandate. This is because it does not receive enough assistance from law-enforcement agencies. There is news that the agency has sent numerous cases to the prosecution but which, to this date, have not been prosecuted. The agency has also requested removal/discharge of six senior officials for non-declaration of their wealth, on Aug. 17, 2009. To this date nothing has been undertaken from the requested bodies, which in this case are courts, prosecution, and ministry of health. Without assistance from the Kosovo Police and Kosovo Judiciary, it is almost impossible to carry out the mandate.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Well, to initiate an investigation the agency needs to have the necessary information. Citizens can serve as a good source for this information. Yes they can initiate.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

From what I have followed it can and it did, though this is much harder than in cases when there is other information provided by another institution or from the citizens of any official who has information for misuse of public funds etc.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

63

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

– I think so.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

I think it does. It usually acts on complaints within a reasonable time period.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

References:

Freelance journalist who wishes to remain anonymous

– Well, in fact there is always some fear of recrimination, keeping in mind that in Kosovo there is no defense mechanism in this direction.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Despite of the fact that they are requested to submit the complaint or request in person, I think that they can do it without fear of being recriminated

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

Law No.2004/34 SUPPRESSION OF CORRUPTION LAW – CHAPTER 2

KOSOVO ANTI-CORRUPTION AGENCY

Article 8

8.1. For the purpose of discharging the responsibilities defined by this Law, and independent body known as the Kosovo Anti-Corruption Agency (hereinafter the Agency”) shall be created.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

79
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

75

77a. In law, there is a general right of appeal.

YES | NO

References:

Constitution of the Republic of Kosovo

5. The right to appeal a judicial decision is guaranteed unless otherwise provided by law. The right to extraordinary legal remedies is regulated by law. The law may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal.

www.kuvendikosoves.org

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous, September 2009, Prishtina, Kosovo

It depends on cases; some of them take more time and procedures than others.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

The area of criminal cases is much better compared to the civil one. There is an appeals mechanism, and also the appeals are resolved within a reasonable time period.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous, September 2009, Prishtina, Kosovo

Yes, in Kosova life is cheap and it does not cost so much.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Based on Kosovo circumstances, they can. While for the citizens whose monthly income is less than 150 Euros (US\$223) per month, there is the possibility of receiving free legal aid from the commission that was established to deal with such cases. While the economic situation is very bad in Kosovo, this legal aid is more than welcome for such parties.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

75

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous, September 2009, Prishtina, Kosovo

– In Kosovo, it depends on the cases and on the judges. From December 9, 2008, when the European Rule of Law mission became operational in Kosovo, cases are preceded by them. The decisions on these cases are made based on applicable laws in Kosovo (meaning the laws of the Republic of Kosovo, former Yugoslavian laws, etc.)

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

In general, they do follow the written law, though there are cases when the written law is manipulated to the extent of bringing injustice for the other party or not to adequately punish the accused.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

75

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous, September 2009, Prishtina, Kosovo

They should not be, but there might be cases when it happens.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

When we talk of the criminal area, I know that majority of them are enforced by the state. While when we talk of the civil and administrative cases, there is a different story.

There are way too many cases not enforced. This is very negative since it weakens the already weakened citizen's trust of the judiciary. The alarming situation is also with the cases concerning the labor relations where many decisions of the court remain unenforced, just to mention here the cases against the Ministry of Education and University of Pristina, where parties – even after winning their case – their decision is not enforced. They have not returned to their work or been compensated for the time wrongfully left without work from the educational institutions and others, too.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

63

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitution of the Republic of Kosovo

Chapter VII Justice System

2. The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.

www.kuvendikosoves.org

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | **50** | 25 | 0

References:

Freelance journalist who wishes to remain anonymous, September 2009, Prishtina, Kosovo

– So far, I have no certain knowledge about cases being politically interfered. There is no mechanism for saving judges while adjudicating corruption cases and cases of other natures

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Based on legislation they are, in practice they are not. Thus is due to the blackmailing as well as threats they can receive when dealing with certain issues related to the political parties, the ministers or other officials, may be incriminated for , especially misuse of public funds respectively for economic crimes.

Due to this interference, I can not recall any case against a political party or person related to have been prosecuted or convicted for such crimes. The same has happened with international judges and prosecutors who have been working in frame of UNMIK and who have not undertaken measures to prosecute and convict such persons only because of the political interference, in this case international ones, in putting the security and stability over justice. For more see: Peace at any price, How the World Failed Kosovo, Ian King, Whit Mason published in 2006, pages 107-147, 245-265.

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

Regarding this question I (the lead researcher) want to make clear that this issue is not regulated by law but every and each court in Kosovo has its own Internal Rules that the President of the Court distributes cases randomly with from the registry file number. The executive branch until now has no control over the distributing of the cases however it might be some pressure sometimes that we not are aware of.

According to the Code of Ethics and Professional Conduct for Judges” – Part III. SPECIFIC RULES OF PROFESSIONAL CONDUCT, under B. Administrative responsibilities, Nr5: “A Court President and any judge in charge of case allocation should not be influenced by the wishes of any party to the case or any person concerned with the results of the case. Therefore, allocation based on drawing of lots, automatic distribution according to alphabetic order or some similar system should be privileged.”

<http://www.kgjk-ks.org/repository/docs/Gjyqtar%20anglisht.pdf>

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Since judges and prosecutors in Kosovo were named from the Special Representatives of the Secretary General of United Nations – SRSG of UNMIK the process of nominations was not transparent at all. There are sometimes some news that some judges for instance that might be removed or suspended but never happens. They make them give resignation letters, and it is easy for them to continue like that. The process is not transparent until now. I (the lead researcher) strongly believe that now the Kosovo President and Kosovo Assembly will pay special attention to this issue and make clear that the procedures will be transparent.”

REGULATION NO. 2005/52 – ON THE ESTABLISHMENT OF THE KOSOVO JUDICIAL COUNCIL Section 7 – Judicial Disciplinary Committee

http://www.unmikonline.org/regulations/unmikgazette/02english/E2005regs/RE2005_52.pdf

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

Freelance journalist who wishes to remain anonymous

-Have no information on judges being killed because of adjudicating corruption cases.

BBehlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Not enough cases of corruption have been adjudicated. I am only aware of some petty cases, which are ridiculous to mention, such as the ones of bribery receiving 150 Euros (US\$223) and similar.

That is why I do not also recall any case of physically harmed judge. The reason for this is that cases of misuse of funds of thousands of euros have not been yet adjudicated. Because if such cases are to be adjudicated, of course that there is a risk for even physical assaults, despite of the blackmail and other threats they might receive. This is why the option to provide weapons for judges and prosecutors should be carefully considered and after also approved because this is of crucial importance to fight and adjudicate cases of corruption from the judiciary. I have seen a number of cases when certain judges and prosecutors have requested permission to carry weapons but have been denied so. And in the near future this should be considered and also approved.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Freelance journalist who wishes to remain anonymous

– Didn't read or hear anything about such cases during the last year.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Thank God such a thing did not happen, and I hope it will never happen in our state. Nevertheless, I believe that one of the best options is the one I mentioned above, carrying of weapons of the judges and prosecutors as well as a provision of even tighter security in cases involving corruption and bigger amounts of money.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Decisions might be affected on ethnic bases.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Judicial decisions are not affected by racial or ethnic bias.

It is great feeling to know that there were no cases of revenge in the Kosovo judiciary and this makes me proud very much. Bearing in mind the Serbian occupation time 1989-1999, where Kosovo citizens were very badly discriminated on ethnic basis in the courts. This did not happen in Kosovo after 1999. This showed that the majority of Kosovo people, the Albanians, are not vengeful people, and Kosovo judges and prosecutors have tried to consider all equal in front of the courts despite of their ethnic, racial, religious or social origins. This was not enough and in order to remove any doubts, it was exactly international judges and prosecutors from UNMIK who have overtaken and adjudicated almost all, not to say all, cases involving a Kosovo citizen of the Serb ethnicity. See: Peace at any price, How the World Failed Kosovo, Ian King, Whit Mason published in 2006

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Yes of course.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Kosovo may serve as an example to the region of the Balkans and to even more for this matter. Women have full access to judicial access, and they are even more encouraged to get involved – be it judges and prosecutors and also like lawyers. The same when women appear as party to the cases in the procedure.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Freelance journalist who wishes to remain anonymous

– Yes, in Kosovo at least it is the case.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Yes, this was always to the best level. In past there were also projects that helped in developing of a very system for this. Later on and now it is the Kosovo Chamber of Lawyers, who – in close cooperation with courts – provide adequate legal counsel for the defendants who cannot afford it. Also the free legal aid provides assistance to the parties in the field of cases related to civil, administrative and economic areas.

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Yes the state provides it through legal aid.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

– Well, keeping in mind the GDP in Kosovo, they cannot always afford it.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Yes, the Kosovo Chambers of Lawyers have set the price list for the legal proceedings. A citizen with a median yearly income can afford to use a decent lawyer/jurist in bringing a legal suit.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Yes, when it is to businesses they can afford it, but usually they do not send cases to courts, but they prefer agreements.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Yes they can.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Yes they do. We have courts in every city so it is not hard to have access.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

Yes they have.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

58

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

Not always, there are political interferences.

Behlul Zeka, Legal Officer, International Civilian Office of Kosovo (ICO), September 25, 2009, Prishtina, Kosovo

In general, yes. Though there are sporadic cases when these criteria are surpassed.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Edona Peci, freelance journalist

– Well, the budget might be enough to carry out its mandate, but one of the problems is that police officers have small payments. This can pretty much affect law enforcement.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

I think that their budget should very well be increased in order to have more efficient law enforcement from such agencies. We should begin with the raise for the law enforcement officers and continue with increasing their equipment.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | **50** | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

– Well, unfortunately this is not the case in Kosovo.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

There is space for improvement. In general it is, though it can be improved through more independence, and then we can say it is fully protected. For the time-being, I consider it is not fully protected yet.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

79

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

References:

Kosovo Police Inspectorate – KPI, Kosovo Assembly approved Law on Kosovo Police Inspectorate, which <http://www.ks-gov.net/ipk/#>

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

– No, there have been cases when the police were on the ground after some hours.

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

I do not know any practical examples. But I have not heard of any delays.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

Law Nr. 03/L-036 – ON KOSOVA POLICE INSPECTORATE, Article 29 – Investigation of appeals for grave disciplinary violations

29.2 If received, the appeal by the Kosovo Republic Police Inspectorate determines that the committed act contains also the elements of criminal offense, which is prosecuted ex officio, the competent public prosecutor will be informed, be that after the investigations for grave disciplinary violation or immediately after the reception of appeal.

29.3 Chief Executive of the Inspectorate will sent a copy of official notification to the police employee against whom it has initiated a disciplinary investigation, except in cases where it is suspected that it might endanger or hinder the investigations.”

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | **50** | 25 | 0

References:

Behlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

I think they can undertake such actions, though the result is still not the one expected from the citizens. This is due to the motivation of the officers for which I believe there is an urgent need for improvement of the salaries, health insurances, pensions and any other decent benefit he/she might receive if he/she loses his/her life.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Law Nr. 03/L-036 – ON KOSOVO POLICE INSPECTORATE, Article 29 – Investigation of appeals for grave disciplinary violations

29.2 If received appeal by the Kosovo Republic Police Inspectorate determines that the committed act contains also the elements of criminal offense, which is prosecuted ex officio, the competent public prosecutor will be informed, be that after the investigations for grave disciplinary violation or immediately after the reception of appeal.”

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

References:

Freelance journalist who wishes to remain anonymous

No, they are not.

BBehlul Zeka, Legal Officer, The EU Rule of Law Mission in Kosovo (EULEX), September 25, 2009, Prishtina, Kosovo

They are not.

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
