

Overall Score:

**77 - Moderate**

Legal Framework Score:

**93 - Very Strong**

Actual Implementation Score:

**62 - Weak**

Category 1. Non-Governmental Organizations, Public Information and Media

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### 1.1. <sup>81</sup>Anti-Corruption Non-Governmental Organizations

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

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

**Yes** | No

**Comments:**

The law states that every person shall enjoy the full freedom of association and establishment in an NGO.

**References:**

Law No. 04/L-057 on Freedom of Association in Nongovernmental Organizations, Article 3

**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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

**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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

**Yes** | No

**Comments:**

Law No. 04/L-057 on Freedom of Association in Nongovernmental Organizations, Article 16, on Property and Resources, states that 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.

**References:**

Law No. 04/L-057 on Freedom of Association in Nongovernmental Organizations, Article 16, Property and Resources

**Yes:** A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

**Comments:**

The NGOs with public benefit status are required to disclose to the governmental NGO unit information on their sources of funding.

**References:**

Law No. 04/L-057 on Freedom of Association in Nongovernmental Organizations, Article 18, Paragraph 6.2

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

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

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

83

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

**Comments:**

No, there aren't any barriers to NGOs. As stated by the Civicus report:

"Civil society considers itself free to engage in criticizing the government, with only 18.2 percent of CSOs (civil society organizations) surveyed in the Organizational Survey reporting illegitimate restrictions or attack by local or central government. However, a recent intensive campaign by media close to the government attacking a civil society initiative and particular individuals criticizing the government indicates how fragile the relations between (the) two sectors are."

It must be noted that if an NGO activist criticizes the government heavily, the chance of getting a project from any of the ministries is smaller.

**References:**

Kosovar Civil Society Foundation and Civicus. Civil Society Index Analytical Country Report for Kosovo. <http://civicus.org/downloads/CSI/Kosovo.pdf>

Interview with Taulant Hoxha, program manager for Kosovo Civil Society Foundation. Oct. 11, 2011. Pristina, Kosovo

**100:** NGOs 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:** NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

**Comments:**

In general, yes. For example, FOL Movement often criticizes the government and other public institutions for corruption, but it has also participated in several working groups to draft laws or policies.

**References:**

Interview with Taulant Hoxha, program manager for Kosovo Civil Society Foundation. Oct. 11, 2011. Pristina, Kosovo

2009 NGO Sustainability Index for Central and Eastern Europe and Eurasia 13th Edition. June 2010. Page 126. [http://www.usaid.gov/locations/europe\\_eurasia/dem\\_gov/ngoindex/2009/complete\\_document.pdf](http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/complete_document.pdf)

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

**75:**

**50:** Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

**Comments:**

No NGO has been ever been shut down by the government, according to Taulant Hoxha.

**References:**

Interview with Taulant Hoxha, program manager for Kosovo Civil Society Foundation. Oct. 11, 2011. Pristina, Kosovo

Civics Civil Society Index. Better Governance for a Better Impact — A Call for Citizens. Kosovo Civil Society Foundation. March 2011. Pristina, Kosovo. <http://civics.org/downloads/CSI/Kosovo.pdf>

**Yes:** A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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.

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3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

**Comments:**

No such case has been reported or seen.

**References:**

Interview with Fadil Miftari, consultant to the Anti-Corruption Agency. Sept. 12, 2011. Pristina, Kosovo

Interview with Taulant Hoxha, program manager for Kosovo Civil Society Foundation. Oct. 11, 2011. Pristina, Kosovo

**Yes:** A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

**Comments:**

No, there is no such case.

**References:**

Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept.12, 2011. Pristina, Kosovo

Interview with Taulant Hoxha, program manager for Kosovo Civil Society Foundation. Oct. 11, 2011. Pristina, Kosovo

**Yes:** A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

**Comments:**

There is no case.

**References:**

Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept.12, 2011. Pristina, Kosovo

**Yes:** A YES score is earned if there were no documented cases of NGO 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?

88

04a. In law, citizens have a right to organize into trade unions.

Yes | No

**Comments:**

Law No.03/L –212 on Labor, Article 88, Freedom of Trade-Union Organization, states:

1. Employees and employers are guaranteed the freedom of association and action without undue interference from any other organization or public body.
2. The rights and freedoms of trade-union organization in the Republic of Kosovo shall be regulated through a special law.

**References:**

Law No.03/L –212 on Labor, Article 88, Freedom of Trade-Union Organization

**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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

**Comments:**

The lowest indicator of this sub-dimension and one of the lowest overall is the one looking at the percentage of paid staff that are members of trade unions. This indicator scored only 9.9 percent, confirming the perceptions of the Kosovar Civil Society Foundation's advisory committee and focus groups on the low level of development of trade unions in Kosovo. The low trend of unionization has been continuing in Kosovo since 1999, after the end of the war.

**References:**

Kosovar Civil Society Foundation and Civicus. Civil Society Index Analytical Country Report for Kosovo. <http://civicus.org/downloads/CSI/Kosovo.pdf>

Kosovar Civil Society Foundation. March 2011. Pristina, Kosovo  
[www.kcsfoundation.org](http://www.kcsfoundation.org)

Interview with Taulant Hoxha, program manager for Kosovo Civil Society Foundation. Oct. 11, 2011. Pristina, Kosovo

**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.

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## 1.2. Media's Ability to Report on Corruption

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### 5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

**Comments:**

Constitution of Republic of Kosovo. Article 42, Freedom of Media:

1. Freedom and pluralism of media is 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 his or her rights and interests in accordance with the law.

**References:**

Constitution of Republic of Kosovo, Article 42, Freedom of Media

**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.

05b. In law, freedom of speech is guaranteed.

Yes | No

**Comments:**

Constitution of Republic of Kosovo, Article 40, Freedom of Expression, states:

1. Freedom of expression is guaranteed. Freedom of expression includes the right to express oneself and 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.

**References:**  
Constitution of Republic of Kosovo, Article 40, Freedom of Expression

**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?

100

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

**Comments:**  
Print media outlets are registered as any other undertaking is; no other specific requirement is applicable.

**References:**  
Interview with Nehat Islami, director of Kosovo Press Council. Sept. 12, 2011. Pristina, Kosovo

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

**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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

**Comments:**  
No print license is necessary.

**References:**  
Interview with Nehat Islami, director of Kosovo Press Council. Sept. 12, 2011. Pristina, Kosovo

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

**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.

06c. 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 for a license.

**References:**

Interview with Nehat Islami, director of Kosovo Press Council. Sept. 12, 2011. Pristina, Kosovo

**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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no need for a license.

**References:**

Interview with Nehat Islami, director of Kosovo Press Council. Sept. 12, 2011. Pristina, Kosovo

**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.

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

75

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

**Comments:**

No, there is no kind of barrier. Anyone can open a TV or radio station if it fulfills the criteria set forth in Law No. 02/L-15.

**References:**

Interview with Naile Selima, chief executive officer, Independent Media Commissioner. Oct. 10, 2011. Pristina, Kosovo

Interview with Nehat Islami, director of Kosovo Press Council. Sept. 12, 2011. Pristina, Kosovo

**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.

07b. 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

**Comments:**

Law No. 02/L-15 on the Independent Media Commission and Broadcasting, 21.3, states:

The Media Appeals Board shall adjudicate appeals of parties that are directly affected by the decision regarding granting, denying, nonrenewal or revocation of broadcasting licenses.

**References:**

Law No. 02/L-15 on the Independent Media Commission and Broadcasting, 21.3

**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.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the Independent Media Commission Law, Paragraph 13.3, the Council shall, within 120 days following the closing date for applications, decide on a competitive basis whether to issue a broadcasting license to an applicant according to the rules set forth in Article 11 and 12. The Council may, upon the proposal of the office of the executive chief, in exceptional circumstances, extend the 120-day limit. When the closing date is extended, the office of the executive chief shall inform all applicants and the public of the extension and the reasons for it.

**References:**

Interview with Naile Selima, chief executive officer, Independent Media Commissioner. Oct. 10, 2011. Pristina, Kosovo

Interview with Nehat Islami, director of Kosovo Press Council. Sept. 12, 2011. Pristina, Kosovo

**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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

The cost depends on the type of radio or TV (local, national) station. It varies from 500 to 3700 euros.

**References:**

Interview with Naile Selima, chief executive officer, Independent Media Commissioner. Oct. 10, 2011. Pristina, Kosovo

Interview with Nehat Islami, director of Kosovo Press Council. Sept. 12, 2011. Pristina, Kosovo

**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.

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## 8. Can citizens freely use the Internet?

100

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nehat Islami, director of Kosovo Press Council. Sept. 12, 2011. Pristina, Kosovo

**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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nehat Islami, director of Kosovo Press Council. Sept. 12, 2011. Pristina, Kosovo

**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.

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## 9. Are the media able to report on corruption?

67

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

**Comments:**

There is no law that sanctions such an issue.

**References:**

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

**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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

"The government institutions, both national and local, tend to control the editorial content of media through advertisement sponsored by government," according to the OSCE Mission in Kosovo.

In general, yes, media are able to report on corruption; however some media do less in order not to lose the advertisement from public institutions, which remain the biggest clients in terms of advertisement, according to Arben Ahmeti.

**References:**

Organization for Security and Co-operation in Europe's Mission in Kosovo, Department of Democratization. Circulation and Politicization of the Print Media in Kosovo. March, 2010. <http://www.osce.org/kosovo/67790>

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

**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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

Institutions in Kosovo at both the local and central level have a tendency to control editorial content of newspapers by favoring them when it comes to publication of government-sponsored ads. Newspapers that benefit mostly from ads coming from public funds that are controlled by certain political parties tend to be heavily biased in supporting these political entities and their programs. Some newspapers are assessed to be mouthpieces of politicians, or companies, that are heavily influenced by some political parties.

**References:**

Organization for Security and Co-operation in Europe, OSCE Mission in Kosovo, Department of Democratization. Circulation and Politicization of the Print Media in Kosovo. March, 2010. <http://www.osce.org/kosovo/67790>

**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.

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

Yes | **No**

**Comments:**

This is not regulated by any law.

**References:**

Interview with Nehat Islami, director of Kosovo Press Council. Sept. 12, 2011. Pristina, Kosovo

**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**

**Comments:**

There is no such requirement by any law in force.

**References:**

Interview with Naile Selima, chief executive officer, Independent Media Commissioner. Oct. 10, 2011. Pristina, Kosovo

**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

**Comments:**

This is not always the case. There are media outlets and journalists who are biased and nonprofessional in their reports. Professionalism depends on a journalist's professional capacity, knowledge of journalism ethics and relationship with the publisher and political parties.

**References:**

Organization for Security and Co-operation in Europe, OSCE Mission in Kosovo, Department of Democratization. Circulation and Politicization of the Print Media in Kosovo. March, 2010. <http://www.osce.org/kosovo/67790>

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

**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

**Comments:**

As stated in a report by Democracy in Action, in principle, media outlets have reported election coverage correctly, but they have not provided equal space to all political entities running for election. Political parties represented in parliament have been given more space than small political entities not represented in parliament.

The media has reported quite fairly during the campaign, with a few exceptions for small parties.

**References:**

Democracy in Action. Monitoring Media During Election Campaign in Kosovo. March 2010. Prishtina, Kosovo. [http://www.demokracianeveprim.org/publikime/Media\\_ALB\\_vf.pdf](http://www.demokracianeveprim.org/publikime/Media_ALB_vf.pdf)

Leon Malazogu, election expert and founder of Democracy in Action; founder and executive director of Democracy for Development. Sept. 15, 2011. Pristina, Kosovo

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.

100 | 75 | 50 | 25 | 0

**Comments:**

During the last national election campaign, the public television station RTK reported mainly in a balanced away. Special election campaign editions were broadcast after the main evening news at 7:30 p.m., according to Democracy in Action.

**References:**

Democracy in Action. Monitoring Media During Election Campaign in Kosovo. March 2010. Pristina, Kosovo. [http://www.demokracianeveprim.org/publikime/Media\\_ALB\\_vf.pdf](http://www.demokracianeveprim.org/publikime/Media_ALB_vf.pdf)

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.

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## 11. Are journalists safe when investigating corruption?

67

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

Yes | No

### References:

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

Interview with Fadil Miftari, consultant to the Anti-Corruption Agency. Sept. 12, 2011. Pristina, Kosovo

**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

### Comments:

There was one case reported to the Association of Professional Journalists of Kosovo for an investigative report on corruption. However, there are other cases of intimidation and phone calls that come not only from public officials but from people in the business community, as well.

### References:

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

**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

**Comments:**

No case has been reported.

**References:**

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

**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.

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78  
1.3. Public Requests for Government Information

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12. Do citizens have a legal right to request information?

100

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

Yes | No

**Comments:**

All laws can be found at [www.kuvendikosoves.org](http://www.kuvendikosoves.org) and [gazetazyrtare.rks-gov.net](http://gazetazyrtare.rks-gov.net).

**References:**

Law No.03/L – 215 on Access to Public Documents

**Yes:** A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

**Comments:**

According to the law, refusal of the application as well as failure by the public authority to reply within the prescribed period of time shall be considered as a negative reply and shall entitle the applicant to initiate the procedure before the Ombudsperson Institution, other public institutions or competent court, in accordance with the law in force.

**References:**

Law No.03/L – 215 on Access to Public Documents, Article 10

**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

**Comments:**

1. All public institutions shall be obliged to assign units or officers who will be responsible for receiving and conducting an initial review of applications for access to documents.

2. All applications for access to documents shall be addressed to the public communication units or officers of the authority concerned.

**References:**

Law No.03/L – 215 on Access to Public Documents, Article 5

**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.

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13. Is the right to information requests effective?

42

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

100 | 75 | 50 | 25 | 0

**Comments:**

Journalists almost never receive replies on time, according to Arben Ahmeti.

In several cases, citizens have not received a response to their request at all. The municipalities do not draft a report on the number of requests for access to documents they receive, as is required by law, according to Access to Public Documents in Municipalities.

**References:**

FOL Movement. Access to Public Documents in Municipalities. March 2010. [http://levizjafol.org/images/uploads/files/Qasje\\_n%C3%AB\\_dokumente\\_zyrtare\\_vet%C3%ABm\\_p%C3%ABr\\_zyrtar%C3%ABt\\_-\\_Mars\\_2010.pdf](http://levizjafol.org/images/uploads/files/Qasje_n%C3%AB_dokumente_zyrtare_vet%C3%ABm_p%C3%ABr_zyrtar%C3%ABt_-_Mars_2010.pdf)

**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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

No cost is involved for requesting small documents. Some municipalities charge certain copy fees for more than 50 copies of a document. However, the appeals mechanism does not function at all. There has not been any case resolved in the court related to the right to access public documents.

In May 6, 2010, the GAP Institute filed a request at the Ministry of Trade and Industry (the agency for business registration) asking for the total number of all registered businesses in Kosovo according to municipalities. It was charged 3.5 euros for submitting the request. The invoice stated that the payment was for an "information inquiry." Out of 3.5 euros, 2 euros were charged for submitting the request, 0.5 euros for a single page and 1 euro for a banking fee.

**References:**

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

GAP (Institute for Advanced Studies) Institute Policy Brief. Access to Public Documents. <http://www.gapinstitute.org/repository/docs/AccessDocuments.pdf>

**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 NGOs. 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 NGOs trying to access this information.

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

100 | 75 | 50 | 25 | 0

**Comments:**

In some cases, the responses are OK, but often they are not of good quality and do not contain all information requested.

For example, on March 19, 2010, the GAP Institute submitted a request to the Office of the Prime Minister (OPM) for access to all strategies approved before January 2008 that were still implementable. The institute was obliged to formulate the request in that way, due to the fact that governmental decisions before January 2008 are not published. In the absence of a registry of these decisions, the institute was unable to identify the specific titles of these strategies. On April 23, 2010, after the deadline of 15 working days, the institute received the following response from the agency:

"Dear Sir,

"After reviewing the request submitted on 19.03.2010, nr. 623, by GAP Institute for Advanced Studies, for access to all strategies approved in this period from the OPM, and based on the provisions of the Law No. 2003/12 for Access to Official Documents, Article 5, Paragraph 5.2 and 5.3, as well as the Administrative Directive No. 3/2006 for Implementation of the Law on Access to Official Documents, we inform you as follows: The request submitted by GAP Institute needs to be clarified and name the precise strategies or strategic documents requested, always having in mind the number, volume and the time period of the strategies approved by the Government of Kosovo. Respectfully Yours."

**References:**

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

**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 information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Experience so far has shown that citizens have hesitated to complain to the ombudsman. Likewise, the inefficiency of the courts to solve even greater cases discourages citizens to think that the same courts can solve cases regarding the nonrealization of the right to access official documents, according to a GAP Institute policy brief.

No, appealing for access to certain documents is even more difficult. There is no trust in the ombudsman or courts; they are slow and ineffective, according to Arben Ahmeti.

**References:**

GAP (Institute for Advanced Studies) Institute Policy Brief. Access to Public Documents. <http://www.gapinstitute.org/repository/docs/AccessDocuments.pdf>

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

**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

**Comments:**

No major cost is involved; however, the system does not work and takes too much time, which is costly in a way.

**References:**

GAP (Institute for Advanced Studies) Institute Policy Brief. Access to Public Documents. <http://www.gapinstitute.org/repository/docs/AccessDocuments.pdf>

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

**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

**Comments:**

As stated in the CPA and APJK survey, 8 percent of journalists state that the answers on denial for access to public documents were given verbally, but often they don't get an answer at all. In most cases, the government doesn't give reasons or reply to the request at all.

**References:**

Center for Policies and Advocacy and Association of Professional Journalists of Kosovo. Survey Report. Journalists and Access to Public Documents. May 2010. Pristina, Kosovo. [www.qpa-kosovo.org/publications](http://www.qpa-kosovo.org/publications)

Interview with Arben Ahmeti, board president of the Association of Professional Journalists of Kosovo. Sept. 14, 2011. Pristina, Kosovo

**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.

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Category 2. Elections

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2.1. ~~69~~ Voting and Party Formation

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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

**Comments:**

1. Every citizen of the Republic of Kosovo who has reached the age of 18, even if on the day of elections, has the right to elect and be elected, unless this right is limited by a court decision.

2. The vote is personal, equal, free and secret.

3. State institutions support the possibility of every person to participate in public activities and everyone's right to democratically influence decisions of public bodies.

**References:**

Constitution of Republic of Kosovo, Article 45, Freedom of Election and Participation

**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

**Comments:**

Law No. 03/L-073 on General Elections in the Republic of Kosovo, 4.2, states:

Elections for the Assembly of Kosovo shall take place on a Sunday every four years. Elections may not be held earlier than 60 days or later than 30 days before the end of the mandate.

**References:**

Law No. 03/L-073 on General Elections in the Republic of Kosovo, 4.2

**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.

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## 15. Can all citizens exercise their right to vote?

92

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

100 | 75 | 50 | 25 | 0

**Comments:**

Based on the most relevant reports on elections (the European Parliament, European Commission and the network of international observers), none of these reports has mentioned anything about the right to vote being denied to any person or community.

The Central Election Commission has 10 members; four of them are non-Albanian (they are Serbian, Roma, Turkish and Bosnian). All information materials, including TV advertisements, are produced in four languages. This helps enable citizens from all ethnic minorities to be able to vote.

**References:**

European Network of Election Monitoring Organizations. Election Observation Mission, Kosovo Assembly Elections. Statement of Preliminary Findings and Conclusions. Dec. 12, 2010. [http://www.ndi.org/files/ENEMO\\_Kosovo\\_Prelim\\_Statement\\_ENG.pdf](http://www.ndi.org/files/ENEMO_Kosovo_Prelim_Statement_ENG.pdf)

**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

**Comments:**

In principle, ballots are secret. In the last election, though, there was election fraud when some polling station commissioners cast several votes on behalf of dead people who still appeared on the voters list or people who lived abroad. There also were cases of family voting, in particular old couples who were permitted to vote together.

**References:**

European Network of Election Monitoring Organizations. Election Observation Mission, Kosovo Assembly Elections. Statement of Preliminary Findings and Conclusions. Dec. 12, 2010. [http://www.ndi.org/files/ENEMO\\_Kosovo\\_Prelim\\_Statement\\_ENG.pdf](http://www.ndi.org/files/ENEMO_Kosovo_Prelim_Statement_ENG.pdf)

Leon Malazogu, election expert and founder of Democracy in Action; founder and executive director of Democracy for Development. Sept. 15, 2011. Pristina, Kosovo

**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

**Comments:**

Yes, elections are held according to a regular schedule, including the last national election of December 2010, when early elections were held due to the call of no confidence vote for government.

As stated in the Democracy in Action report: After a no-confidence vote by the assembly, the acting president of Kosovo, Jakup Krasniqi, in full compliance with the Constitution of Kosovo, issued a decree dissolving the Assembly of Kosovo and rescheduled the date of elections from the scheduled Feb. 13, 2011, to Dec. 12, 2010, in accordance with constitutional and legal time lines in Kosovo.

**References:**

Leon Malazogu, election expert and founder of Democracy in Action; founder and executive director of Democracy for Development. Sept. 15, 2011. Pristina, Kosovo

Democracy in Action. 2010 Parliamentary Election Monitoring Report. Page 7. 2011. Pristina, Kosovo. [http://www.demokracianeveprim.org/publikime/Report%20of%20Parliamentary%20Elections%202010\\_ENG.pdf](http://www.demokracianeveprim.org/publikime/Report%20of%20Parliamentary%20Elections%202010_ENG.pdf)

**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.

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## 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

**Comments:**

Central Election Commission Rule No. 01/2008 on Registration and Operation of Political Parties, Section 3, states:

Registration of political parties requires at least 500 signatures of registered voters in Kosovo who support of the applicant political party on the appropriate form, along with the name, date and place of birth of each signatory, with the necessary attached documents.

**References:**

Central Election Commission Rule No. 01/2008 on Registration and Operation of Political Parties, Section 3. [http://www.kqz-ks.org/SKQZ-WEB/en/legjislacioni/materiale/rregullatqkz/01-2008\\_en.pdf](http://www.kqz-ks.org/SKQZ-WEB/en/legjislacioni/materiale/rregullatqkz/01-2008_en.pdf) Section 3

**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:**

The Constitution of the Republic of Kosovo. Article 45, Freedom of Election and Participation, 1, states: Every citizen of the Republic of Kosovo who has reached the age of 18, even if on the day of elections, has the right to elect and be elected, unless this right is limited by a court decision.

Law No. 03/L-073 on General Elections in the Republic of Kosovo, Article 2, Fundamental Principles, says: 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.

**References:**

Constitution of Republic of Kosovo. Article 45, Freedom of Election and Participation, 1.

Law No. 03/L-073 on General Elections in the Republic of Kosovo, Article 2, Fundamental Principles

**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

**Comments:**

There are no barriers to or problems in establishing a political party. Anybody who can collect the number of required signatures to register a political party can do so without any barrier or restrictions.

**References:**

Leon Malazogu, election expert and founder of Democracy in Action; founder and executive director of Democracy for Development. Sept. 15, 2011. Pristina, Kosovo

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

**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

**Comments:**

Yes.

**References:**

Leon Malazogu, election expert and founder of Democracy in Action; founder and executive director of Democracy for Development. Sept. 15, 2011. Pristina, Kosovo

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

Political entities that pass the threshold of 5 percent are represented in parliament. Political entities that represent minority communities do not need to pass the 5 percent threshold (see composition of the parliament at [www.kuvendikosoves.org](http://www.kuvendikosoves.org)).

**References:**

Leon Malazogu, election expert and founder of Democracy in Action; founder and executive director of Democracy for Development. Sept. 15, 2011. Pristina, Kosovo

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

**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.

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## 2.2. Election Integrity

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

100

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

Yes | No

**Comments:**

The Constitution of the Republic of Kosovo, Article 139, Central Election Commission, sets forth the Central Election Commission as a permanent body, which prepares, supervises, directs and verifies all activities related to the process of elections and referendums and announces their results.

**References:**

Constitution of Republic of Kosovo, Article 139, Central Election Commission

**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.

## 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

### Comments:

The Central Election Commission is composed of 11 members.

The chair of the Central Election Commission is appointed by the president of the Republic of Kosovo from among the judges of the Supreme Court and courts exercising appellate jurisdiction.

Six members shall be appointed by the six largest parliamentary groups represented in the assembly, which are not entitled to reserved seats. If fewer groups are represented in the assembly, the largest group or groups may appoint additional members. One member shall be appointed by the assembly deputies holding seats reserved or guaranteed for the Kosovo Serb community, and three members shall be appointed by the assembly deputies holding seats reserved or guaranteed for other communities that are not in majority in Kosovo.

### References:

Constitution of Republic of Kosovo, Article 139, Central Election Commission

**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:

According to the European Union Election Expert Mission to Kosovo Final Report:

It would appear that CEC (Central Election Commission) members who are party representatives often perceive themselves as members of a "political board" overseeing the election, rather than professional election administrators. One is left with an impression that they are not always on "top of the election issues," which are mostly left in the hands of the CEC Secretariat, a body stipulated in the Law on General Election to assist the CEC discharge its responsibilities and functions, and whose chief executive the CEC appoints. This attitude has the potential to make the CEC membership "hostage" to the CEC staff members, who could have their own agendas, despite formally being civil servants.

### References:

Democracy in Action. 2010 Parliamentary Election Monitoring Report. Page 7. 2011. Prishtina, Kosovo. [http://www.demokracianeveprim.org/publikime/Report%20of%20Parliamentary%20Elections%202010\\_ENG.pdf](http://www.demokracianeveprim.org/publikime/Report%20of%20Parliamentary%20Elections%202010_ENG.pdf)

European Union Election Expert Mission to Kosovo: Final Report. Jan. 25, 2011. [http://eeas.europa.eu/delegations/kosovo/documents/page\\_content/110125\\_report\\_eu\\_eem\\_kosovo\\_2010\\_en.pdf](http://eeas.europa.eu/delegations/kosovo/documents/page_content/110125_report_eu_eem_kosovo_2010_en.pdf)

European Network of Election Monitoring Organizations. Election Observation Mission, Kosovo Assembly Elections, Dec. 12, 2010. <http://www.enemo.eu>

**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

**Comments:**

It was apparent that the Central Election Commission was still dependent on external assistance in certain parts of the election process, as some important activities were organized by the International Foundation for Electoral Systems, such as the setup of the mobile polling stations in the northern Kosovo Serb municipalities and the Count and Results Center (CRC).

**References:**

European Union Election Expert Mission to Kosovo: Final Report. Jan. 25, 2011. [http://eeas.europa.eu/delegations/kosovo/documents/page\\_content/110125\\_report\\_eu\\_eem\\_kosovo\\_2010\\_en.pdf](http://eeas.europa.eu/delegations/kosovo/documents/page_content/110125_report_eu_eem_kosovo_2010_en.pdf)

European Network of Election Monitoring Organizations. Election Observation Mission, Kosovo Assembly Elections, Dec. 12, 2010. <http://www.enemo.eu>

**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

**Comments:**

The final results of the Dec. 12, 2010, election weren't announced until Feb. 7, 2011. The delays were due to many irregularities and election fraud, which was repeated in five municipalities. In addition, several other ballot boxes were opened and recounted after complaints were filed to the Election Complaints and Appeals Commission. Also, some cases were appealed to the Supreme Court, and the Central Election Commission had to wait for the court's decision. The elections were only certified and released after all complaints were resolved. Finally, the staff of the Secretariat of the Central Election Commission is new and not well-trained. All of this delayed the process of compiling the results and, consequently, certifying them.

**References:**

European Union Election Expert Mission to Kosovo: Final Report. Jan. 25, 2011. [http://eeas.europa.eu/delegations/kosovo/documents/page\\_content/110125\\_report\\_eu\\_eem\\_kosovo\\_2010\\_en.pdf](http://eeas.europa.eu/delegations/kosovo/documents/page_content/110125_report_eu_eem_kosovo_2010_en.pdf)

Results of Dec. 12, 2010, election announced on Feb. 7, 2011. [http://www.kqz-ks.org/SKQZ-WEB/al/legjislacioni/materiale/vendimetkqz/07\\_02.2011.pdf](http://www.kqz-ks.org/SKQZ-WEB/al/legjislacioni/materiale/vendimetkqz/07_02.2011.pdf)

**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

**Comments:**

The Central Election Commission has issued penalties to political parties that did not submit their financial reports. Political entities can be certified to run for election only after paying all debts to the CEC. Usually, political parties pay their fines only when they have to be certified for the upcoming election. However, this year, the CEC assessed penalties from the funds that had been allocated to the political parties in the national budget.

**References:**

Central Election Commission collect debts of political parties. Aug. 29, 2011. [www.koha.net](http://www.koha.net)

Central Election Commission collect debts from accounts of political parties. Kosova Sot. July 28, 2011. <http://www.kosova-sot.info/politike>

**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.

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## 19. Are elections systems transparent and effective?

83

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

100 | 75 | 50 | 25 | 0

**Comments:**

There has been no major drive to improve the voter lists since the 2009 elections. These lists are compiled on the basis of the Central Civil Registry data maintained by the Ministry of Interior and provided to the Central Election Commission. The CEC is tasked to maintain the lists and administer, through rules, this aspect of the process in the run-up to Election Day.

The European Union Election Expert Mission of 2009 recommended that it could be useful to conduct a thorough audit, possibly with international involvement, of the CCR maintained by the Ministry of Interior to refute allegations of inaccurate records or, in case that such allegations are grounded, to take appropriate steps and improve the quality of the voter lists for future elections.

**References:**

European Union Election Expert Mission to Kosovo: Final Report. Jan. 25, 2011. [http://eeas.europa.eu/delegations/kosovo/documents/page\\_content/110125\\_report\\_eu\\_eem\\_kosovo\\_2010\\_en.pdf](http://eeas.europa.eu/delegations/kosovo/documents/page_content/110125_report_eu_eem_kosovo_2010_en.pdf)

Democracy in Action. 2010 Parliamentary Election Monitoring Report. Pristina. 2011. [http://www.demokracianeveprim.org/publikime/Report%20of%20Parliamentary%20Elections%202010\\_ENG.pdf](http://www.demokracianeveprim.org/publikime/Report%20of%20Parliamentary%20Elections%202010_ENG.pdf)

**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

**Comments:**

Law No. 03/L-073 on General Elections in the Republic of Kosovo, Article 115, Appointment of Election Complaints and Appeals Commission, 115, states:

The Election Complaints and Appeals Commission 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.

**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

**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

**Comments:**

In the 2010 national election, after the Central Election Commission announced the preliminary results, several political entities and candidates filed complaints with the Election Appeals and Complaints Panel (ECAP), which is the body that deals with all election-related complaints. ECAP ordered the CEC to repeat the election in four municipalities after finding fraud and manipulation. The Supreme Court confirmed ECAP's decision on appeal.

Similarly, in the local election for the mayor of Rahovec, in the preliminary election, the CEC declared that the two candidates who won the most votes and would go to the second round were from the PDK and LDK parties. However, these results were appealed by the AAK candidate. The Election Complaint and Appeals Commission claimed that results reported to the CEC where not correct and the AAK candidate had the second-most votes. After investigation and a recount of votes, it appeared that the AAK candidate did come in second and, in the second round, he managed to win the majority of votes and was elected mayor of Rahovec.

**References:**

Democracy in Action. Report on Parliamentary Election Monitoring, Pristina, Kosovo. 2011. [http://www.demokracianeveprim.org/publikime/Report%20of%20Parliamentary%20Elections%202010\\_ENG.pdf](http://www.demokracianeveprim.org/publikime/Report%20of%20Parliamentary%20Elections%202010_ENG.pdf)

European Union Election Expert Mission to Kosovo: Final Report. Jan. 25, 2011. [http://eeas.europa.eu/delegations/kosovo/documents/page\\_content/110125\\_report\\_eu\\_eem\\_kosovo\\_2010\\_en.pdf](http://eeas.europa.eu/delegations/kosovo/documents/page_content/110125_report_eu_eem_kosovo_2010_en.pdf)

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

**Comments:**

Police only become involved to provide security and order, while the military is totally neutral during the election process.

**References:**

Leon Malazogu, election expert and founder of Democracy in Action; founder and executive director of Democracy for Development. Sept. 15, 2011. Pristina, Kosovo

Democracy in Action: 2010 Parliamentary Election Monitoring Report. Pristina.

2011. [http://www.demokracianeveprim.org/publikime/Report%20of%20Parliamentary%20Elections%202010\\_ENG.pdf](http://www.demokracianeveprim.org/publikime/Report%20of%20Parliamentary%20Elections%202010_ENG.pdf)

**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

**Comments:**

Article 54 states that certified political entities, NGOs and governmental and intergovernmental organizations, as well as international organizations that specialize and engage in elections or the protection of human rights and representatives of foreign countries, have the right to request the accreditation of observers to elections.

**References:**

Law No. 03/L-073 on General Elections in the Republic of Kosovo, Article 54

**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.

**Comments:**

There have been a few cases when all of the observers have not been allowed to stay in the room, but mainly due to the lack of space and the big number of observers. Each political entity running for election has the right to assign two observers for each polling station. In addition, local NGOs also have the right to certify election observers.

**References:**

Democracy in Action: 2010 Parliamentary Election Monitoring Report. Pristina. 2011.

[http://www.demokracianeveprim.org/publikime/Report%20of%20Parliamentary%20Elections%202010\\_ENG.pdf](http://www.demokracianeveprim.org/publikime/Report%20of%20Parliamentary%20Elections%202010_ENG.pdf)

Leon Malazogu, election expert and founder of Democracy in Action; founder and executive director of Democracy for Development. Sept. 15, 2011. Pristina, Kosovo

**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.

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## 83 2.3. Political Financing Transparency

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

100

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

**Yes** | No

**Comments:**

Article 5 states that political subjects are allowed to receive contributions from natural citizens in an amount not exceeding 2,000 euros per calendar year.

**References:**

Law No. 03/L-174 on Financing Political Parties, Article 5

**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

**Comments:**

Article 5 states that legal entities can make political contributions in an amount not exceeding 10,000 euros per calendar year.

**References:**

Law No. 03/L-174 on Financing Political Parties, Article 5

**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

**Comments:**

Section 2 states:

The campaign spending limit for both municipal assembly and mayoral elections in a municipality shall be 500 euros for every 1,000 registered voters in that municipality. The campaign spending limit for the Kosovo Assembly Election shall be 500 euros per every 1,000 registered voters. The Central Election Commission shall assign the maximum campaign expenditure based on the total number of registered voters from the last updated final voters list the CEC has.

**References:**

Election Rule Nr. 12/2009 Campaign Spending Limit and Financial Disclosure, Section 2, Campaign Spending Limit

**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:**

Election Rule Nr. 12/2009 Campaign Spending Limit and Financial Disclosure

**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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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:**

Article 19 states:

The Central Election Commission performs audits of compliance of each financial report.

The CEC performs control in compliance with standards of applicable accounting in Kosovo.

A registered political subject cooperates closely with CEC auditors and offers them full and open access to a party's financial notes by including all unlimited notes.

The CEC shall present preliminary results of the annual financial report's audit to the highest executive body of the political subject, by including the list of mistakes or laxness, within 60 days from the beginning of the audit.

**References:**

Law No. 03/L-174 on Financing Political Parties, Article 19, Financial Control

**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

**Comments:**

Article 19 states that the Central Election Commission performs a compliance audit of each financial report.

**References:**

Law No. 03/L-174 on Financing Political Parties, Article 19

**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 non-governmental organizations.

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

0

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

Yes | No

**Comments:**

This issue is not regulated by law.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

**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**

**Comments:**

This issue is not regulated by law.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

**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**

**Comments:**

This issue is not regulated by law.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

**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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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

Yes | **No**

**Comments:**

The financing of campaigns of individual candidates is not regulated.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

**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**

**Comments:**

The financing of individual candidates' political campaigns is not regulated.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

**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 non-governmental organizations.

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

25

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**

**Comments:**

As stated in the European Union Election Expert Mission to Kosovo Benf 2009 report:

Oversight of the Laws on General Elections' provisions on campaign spending limits has been weak. While it is premature to judge implementation of the Law on Financing Political Parties, oversight is conducted by the same body, the Central Elections Commission Office for Political Party Registration and Certification. Political parties are becoming accustomed to a lack of effective control in this area. The CEC OPPRC was late in processing the campaign audit for the November 2009 local elections. It relies only on a paper trail and could not tell the EU Election Expert Mission how it would detect undeclared expenditure or goods and services provided in kind. Neither has the CEC OPPRC made copies of the parties' expenditure reports available for public inspection, as required by the Laws on General Elections, while the originals have been sent to the external auditor it appointed.

**References:**

European Union Election Expert Mission to Kosovo, Benf 2009 – Lot NR 7: Governance and Home Affairs, Final Report. [http://www.google.com/url?sa=t&rct=j&q=eas.europa.eu%2F...%2Fkosovo%2F...%2F110125\\_report\\_eu\\_eem\\_kosovo\\_2010\\_en.pdf&source=web&cd=1&ved=0CCwQFjAA&url=http%3A%2F%2Fees.europa.eu%2Fdelegations%2Fkos%2FiEXxA](http://www.google.com/url?sa=t&rct=j&q=eas.europa.eu%2F...%2Fkosovo%2F...%2F110125_report_eu_eem_kosovo_2010_en.pdf&source=web&cd=1&ved=0CCwQFjAA&url=http%3A%2F%2Fees.europa.eu%2Fdelegations%2Fkos%2FiEXxA)

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

**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

**Comments:**

Political parties do not disclose information on donations they receive or how they spend them during the campaign.

Almost all of the political subjects have avoided declaration or have underestimated the expenses for various activities such as rental cars, fuel, television spots, radio ads, billboards, office rent, financial reimbursement for various services and observers. A significant component that might be helpful or revealing of the political subject's financial sources is the disclosure of bank statements.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

**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

**Comments:**

To some extent, the limits are respected.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

**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

**Comments:**

This issue is the most problematic. To date, there have been no investigations by any agency. This is also problematic as the law does not specify any institution that should investigate.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

**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

**Comments:**

The Central Election Commission has deducted the money from the fund for political parties. Since the war ended, penalties usually have been imposed by the Organization for Security and Co-operation in Europe and now the CEC. This mostly happened because the parties did not send their financial report in time, and the reports were not complete.

**References:**

Kosova Sot. July 21, 2011. <http://www.kosova-sot.info/politike/kosove/kqzja-vjel-gjobat-nga-kontot-e-partive>

Koha.net. July 21, 2011. <http://www.koha.net/index.php?page=1,13,63409>

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

**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

**Comments:**

By law, the auditing company audits the entire report, which also includes contributions. To date, there are no reports published on the Central Election Commission website that show the regular financial reports of political parties have not been audited.

All Kosovo Democratic Institute requests addressed to the CEC to access parties' financial disclosures of 2010 were denied or disregarded by the CEC up to the end of the deadline, March 22, 2011. After analyzing this situation and facts, KDI concludes that the existing legal loopholes presumably make it possible for the CEC to prolong the deadline for publishing these financial disclosures. As it is, the legal framework does not specify the time line when the CEC should publish these financial disclosures or if the disclosures should be published on the CEC's official website before or after the audit.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

**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?

15

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.

**Comments:**

Oversight of the Laws on General Elections' provisions on campaign spending limits has been weak. While it is premature to judge implementation of the Law on Financing Political Parties, oversight is conducted by the same body, the Central Election Commission Office for Political Party Registration and Certification. Political parties are becoming accustomed to a lack of effective control in this area. The CEC OPPRC was late in processing the campaign audit for the November 2009 local elections. It relies only on a paper trail and could not tell the EU Election Expert Mission how it would detect undeclared expenditures or goods and services provided in kind. Nor has the CEC OPPRC made copies of the parties' expenditure reports available for public inspection, as required by the LGE, while the originals have been sent to the external auditor it appointed.

**References:**

European Union Election Expert Mission to Kosovo. [http://www.europarl.europa.eu/intcoop/election\\_observation/missions/2009-2014/kosovo\\_gene\\_2010.pdf](http://www.europarl.europa.eu/intcoop/election_observation/missions/2009-2014/kosovo_gene_2010.pdf)

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Prishtina, Kosovo

**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.

**Comments:**

Donations for individual candidates are not regulated by the law; therefore, they also are not reported to the Central Election Commission. Only donations to political entities are reported.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Prishtina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

**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

**Comments:**

There are still some loopholes that allow the law to be less than effective. Some factors are not specified, such as the date when the CEC needs to publish the financial report of political parties, the format of the report and if the report needs to be published before or after it is audited. Poor enforcement shows why the law is not effective.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

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, thought 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

**Comments:**

The Central Election Commission regulations do not regulate financing of individual candidates, only parties; therefore, the Central Election Commission does not monitor the financing of individual candidates or penalize individual candidates who run on behalf of a political party.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

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

**Comments:**

To some extent, individual finances are audited. With current legislation in place, only political parties or those registered as political entities are obliged to submit financial reports to the Central Election Commission, and their financial reports are audited. Individual candidates who run within political party lists are not obliged to submit financial reports.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

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?

25

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

100 | 75 | 50 | 25 | 0

**Comments:**

Political parties usually submit partial information to the Central Election Commission, but the information is not disclosed. The auditing reports are the only reports related to financing of political parties that can be found in the CEC website.

Since January 2011, continuous requests have been made to the CEC for access to the financial disclosures of political subjects. Although laws on general elections and the financing of political subjects require the CEC to create records of the financial disclosures submitted by political subjects that are accessible by the public, the CEC has failed to follow the laws. In addition, the legal obligation of the CEC to publish those disclosures on its official Web page has not been fulfilled.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

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

**Comments:**

No, and this is a result of the gaps in the law for financing of political parties, as well as lack of implementation of the law for access to official document, according to Merita Mustafa.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

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

**Comments:**

Access is impossible, whereas if the law on access to official documents would be implemented, costs would be reasonable, according to Merita Mustafa.

No cost is involved to obtain public documents, However, since the documents are not made public on time on the Central Election Commission Web page and, if access is denied and citizens want to file a complaint in court, then costs are involved.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

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 NGOs. 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 NGOs 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

**Comments:**

The information that parties submit usually is not true. The KDI and Democracy in Action report stated:

Although the majority of political subjects have submitted their financial disclosures to the CEC, this information was either incomplete or incorrect. For several expenditures, political subjects were not able to provide the necessary documentation to demonstrate if expenditures were real in comparison to what was declared.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

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?

0

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

100 | 75 | 50 | 25 | 0

**Comments:**

Candidates who run on the list of a political entity are not obliged to individually submit financial reports. Only political entities certified by the Central Election Commission are obliged to submit a financial report.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

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

**Comments:**

Individual candidates are not obliged to submit financial reports to the Central Election Commission.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

**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

**Comments:**

No cost is involved to access public documents; however, the individual candidates are not obliged by law to submit financial reports.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

**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 NGOs. 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 NGOs 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

**Comments:**

Individual candidates are not obliged by law to submit financial reports for expenses of election campaigns.

**References:**

Interview with Merita Mustafa, program manager, Kosova Democratic Institute (KDI) and Transparency International Kosova (TIK). Oct. 7, 2011. Pristina, Kosovo

Kosovo Democratic Institute and Democracy in Action. Monitoring the Cost of Election Campaign. National Election 2010. March 2011. <http://www.kdi-kosova.org/publications/mfz.pdf>

**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.

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Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

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73  
3.1. Conflicts of Interest Safeguards & Checks and Balances:  
Executive Branch

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

100

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

Yes | No

**Comments:**

This law states that it aims to establish a legal mechanism for protection, supervision and promotion of fundamental rights and freedoms of natural and legal people from illegal actions or failures to act and improper actions of public authorities, other bodies and organizations exercising public authorizations for their account.

**References:**

Law No.03/L-195 on Ombudsperson, Article 1

**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.

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## 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

**Comments:**

No, there is no proper reasoning and justification of a government decision. The ombudsperson has been very passive on this issue, as well.

The chief executive very rarely addresses the media, even more seldom does he take questions from the media and almost never answers or takes any critical questions. The government does not have a spokesman, though it is thought that, for regulation of communication with the public and the prime minister's office, one of the advisers should be spokesman.

**References:**

Interview with Hilmi Jashari, former acting ombudsperson and deputy ombudsperson, currently legal expert and civil society activist. Sept. 28, 2011. Pristina, Kosovo.

Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

**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:**

Law No. 02/L-28 on the Administrative Procedure

**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

**Comments:**

No such cases are evident. It hasn't happened so far. For example, the decision to establish the Consultative Council for Justice, under which the Procedural Council would answer to the Ministry of Justice, is a total interference of government with regard to the Judiciary.

There are cases when decisions are kept secret. For example, government decision No. 97 (December 2009) for retroactive payment of salaries for ministers who were also members of parliament. This decision only stayed public (on the government Web page) for three hours and, after that, was taken down and never made public again.

**References:**

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

Interview with Bardhyl Hasanpapaj, assistant professor of law, University of Pristina. Sept. 26, 2011

**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

**Comments:**

The government still acts based on a regulation. The Law on Government is in the drafting process. The number of ministries has been increased without approval of parliament, according to Hilmi Jashari.

Two new ministries have been established recently with only a decision of government. This has budgetary implications after the budget has been approved. Another case was the decision to change the Law on Procurement, which was changed after the adoption of it by parliament. However, there was reaction from the parliament, and the law promulgated was the version adopted in parliament. Also, changes made in the highway project that should have been approved by parliament were made only by a decision of government, according to Agron Demi.

**References:**

Interview with Hilmi Jashari, former acting ombudsperson and deputy ombudsperson, currently legal expert and civil society activist. Sept. 28, 2011. Pristina, Kosovo.

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

**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.

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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**

**Comments:**

Constitution of Republic of Kosovo, Chapter 1, Article 89, Immunity, states that the president of the Republic of Kosovo shall be immune from prosecution, civil lawsuit and dismissal for actions or decisions that are within the scope of responsibilities of the president of the Republic of Kosovo.

**References:**

Constitution of Republic of Kosovo, Chapter 1, Article 89, Immunity

The Constitutional Court of the Republic of Kosovo, Ref. No. AGJ138/11, Judgment in Case No. KO-98/11. [http://www.gjiks.org/repository/docs/KO98-11\\_ANG\\_AKTGJYKIM.pdf](http://www.gjiks.org/repository/docs/KO98-11_ANG_AKTGJYKIM.pdf)

**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**

**Comments:**

Constitution of Republic of Kosovo, Chapter 1, Article 89, Immunity, states that the president of the Republic of Kosovo shall be immune from prosecution, civil lawsuit and dismissal for actions or decisions that are within the scope of responsibilities of the president of the Republic of Kosovo.

**References:**

Constitution of Republic of Kosovo, Chapter 1, Article 89, Immunity

The Constitutional Court of the Republic of Kosovo, Ref. No. AGJ138/11, Judgment in Case No. KO-98/11. [http://www.gjiks.org/repository/docs/KO98-11\\_ANG\\_AKTGJYKIM.pdf](http://www.gjiks.org/repository/docs/KO98-11_ANG_AKTGJYKIM.pdf)

**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.

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

75

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

Yes | No

**Comments:**

Article 39 states that the Kosovo Anti-Corruption Agency shall supervise a senior official's assets on the basis of information submitted by the senior official on a special form, which shall be determined by the agency.

Article 41, 41.1., states that information regarding the status of the assets of the senior official or a person living with the senior official in his or her domestic relationship shall comprise information about all their assets and income, as follows: real estate, movable property of greater value, holding of shares in commercial companies, securities, cash held in banks, savings banks and other savings and loans institutions, debts, undertaken sureties and other obligations and annual income (serving as a tax base).

41.2. states that movable property of greater value, as referred to in the preceding paragraph, shall be considered to be movable property whose value exceeds 5,000 euros (\$7,421).

41.3. states that the agency may demand appropriate proof from the senior official for the information referred to in Paragraph 1 of this article.

**References:**

Law No. 2004/34 Suppression of Corruption Law, Supervision of Assets, Articles 39 and 41

**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

**Comments:**

42.1 states that any changes to the assets status referred to in Indents 1 to 6 of Paragraph 1 of the preceding article shall be reported by the senior official to the Kosovo Anti-Corruption Agency annually by the last day of March.

42.2 states that the agency may at any time request that the senior official submit the information referred to in Indents 1 to 6 of Paragraph 1 of the preceding article. The senior official shall comply with the agency's requests within 15 days of receiving the request.

**References:**

Law No. 2004/34 Suppression of Corruption Law, Supervision of Assets, Articles 42

**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

**Comments:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials, Article 11, Registration of Gifts, states:

All received gifts and their respective value, as well as the names of people receiving the gift, should be registered by the official in the register of gifts determined by the Kosovo Anti-Corruption Agency and kept by the institution, in which the official exercises the duty.

**References:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials, Article 11, Registration of Gifts

**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

**Comments:**

Law No. 2004/34 Suppression of Corruption Law, Supervision of Assets, Checking the Declared Information, Article 14, states:

The Kosovo Anti-Corruption Agency conducts the preliminary check and thorough check of the forms of declaration of the property status.

Preliminary checks are conducted for each verified form, looking for mistakes and verification.

When mistakes are found in the preliminary check or there are wrong filings, the agency notifies the party that has submitted the declaration; the person has 15 days from the service of notification to correct the problems.

A full check is conducted to verify the truthfulness and exactness of information declared in the form.

**References:**

Law No. 2004/34 Suppression of Corruption Law, Supervision of Assets, Checking the Declared Information, Article 14

**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

**Comments:**

Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, Article 12, states:

Upon termination of exercising of the public function, a person does not have the right to be employed or nominated for leading positions or in auditing of the public and private enterprises within the period of one year, provided that, during the two-year period immediately before the end of exercising of public function, his or her duties were directly related to monitoring or auditing the businesses of above mentioned enterprises.

**References:**

Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, Article 12

**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

**Comments:**

No, in practice the laws have not worked. There are several cases in which high public officials have contracted with companies and, a few months later, joined those companies. Due to confidentiality, the names and cases cannot be revealed.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fadil Miftari, expert/consultant at the Anti-Corruption Agency. Sept. 24, 2011

**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

**Comments:**

By March 31 each year, institutions must submit to the Anti-Corruption Agency the list of gifts received during the previous calendar year. However the list is not comprehensive, and there is no mechanism to control if all the gifts received have been added to the list, according to Hasan Preteni.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

**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

**Comments:**

Asset disclosure forms are audited by the Anti-Corruption Agency. When there is a discrepancy between what is declared and what in reality exists, the case is forwarded to prosecutors, and the Anti-Corruption Agency no longer has the authority or capacity to follow up on the case.

**References:**

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

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.

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### 30. Can citizens access the asset disclosure records of the heads of state and government?

94

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

Yes | No

**Comments:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials, Section 3, states:

Access to the register of declaration of the property of senior public officials shall be done according to the procedures defined with the law on access to official documents:

3.1. Access to the register of declaration of the property of senior public officials shall be done through the Internet Web page of the Anti-Corruption Agency, where the register of declaration of the property of senior public officials is published.

3.2. The agency, within 60 days of the last day of the term for submission of declaration, is obliged to publish on its Web page the names of the senior public officials who have not declared their property.

**References:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials, Section 3

**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

**Comments:**

All reports are published on the Web page of the Anti-Corruption Agency.

**References:**

Kosovo Anti-Corruption Agency – Declaration of Assets (Albanian version). <http://www.akk-ks.org/?cid=1,13,29>

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, 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

**Comments:**

All reports are published on the Web page of the Anti-Corruption Agency. There is no cost; they can be downloaded for free from the Web page.

**References:**

Kosovo Anti-Corruption Agency – Declaration of Assets (Albanian version). <http://www.akk-ks.org/?cid=1,13,29>

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, 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 NGOs. 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 NGOs 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

**Comments:**

In most cases, the quality is OK.

**References:**

Kosovo Anti-Corruption Agency – Declaration of Assets (Albanian version). <http://www.akk-ks.org/?cid=1,13,29>

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

**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.

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

25

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

100 | 75 | 50 | 25 | 0

**Comments:**

No, most of the ministers have senior party positions, as well. In September 2010, the Constitutional Court of Kosovo issued a decision finding that Fatmir Sejdiu committed a serious violation of the Constitution of Kosovo, specifically Article 88.2, by holding simultaneously the post of the president of the Republic and president of the political party Democratic League of Kosovo (LDK).

**References:**

Interview with Agron Demi, executive director of Gap Institute, Sept. 29, 2011. Pristina, Kosovo

Constitutional Court of the Republic of Kosovo. [http://www.gjk-ks.org/repository/docs/aktgjkim\\_rasti%20nr\\_80\\_10\\_eng.pdf](http://www.gjk-ks.org/repository/docs/aktgjkim_rasti%20nr_80_10_eng.pdf)

**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.

## 3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

92

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

Yes | No

#### Comments:

Constitution of the Republic of Kosovo, Chapter VIII, Constitutional Court, Article 113, Jurisdiction and Authorized Parties, states:

The Assembly of Kosovo, president of the Republic of Kosovo, government and ombudsman are authorized to refer the following matters to the Constitutional Court: the question of the compatibility with the constitution of laws, decrees of the president or prime minister and regulations of the government.

#### References:

Constitution of the Republic of Kosovo, Chapter VIII, Constitutional Court, Article 113, Jurisdiction and Authorized Parties

**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

#### Comments:

The Constitutional Court is the body that can review laws passed by parliament that may be in violation of the constitution. For example, the law on rights and privileges of members of parliament is currently being reviewed by the Constitutional Court.

#### References:

Constitutional Court. Decisions. [http://www.gjk-ks.org/?cid=2\\_4](http://www.gjk-ks.org/?cid=2_4)

Bardhyl Hasanpapaj, assistant professor of law at the University of Pristina. Sept. 26, 2011

**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

**Comments:**

The law states that 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 that openly encourage violence among communities.

**References:**

Rules of Procedure of the Assembly of Kosovo, Rule 13, Immunities of Members of the Assembly

**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.

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

75

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

Yes | No

**Comments:**

The law states:

The Anti-Corruption Agency shall supervise the assets of senior officials.

37.2 states that, should the agency, in the course of its supervision as provided for by this law, find that there is apparent nonconformity between the submitted information on the assets of the senior official or a person living with the official in his or her domestic relationship and the actual status of the assets, the agency shall notify the body of which the senior official person holds office and, if necessary, other competent bodies as well.

37.3 states that the bodies referred to in the preceding paragraph shall inform the agency of their measures and decisions.

**References:**

Law No. 2004/34 Suppression of Corruption Law, Supervision of Assets, Article 37

**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

**Comments:**

The law states:

Upon termination of exercising of the public function, a person does not have the right to be employed or nominated for leading positions or in auditing of public and private enterprises within the period of one year, provided that, during the two-year period immediately before the end of exercising of public function, his or her duties were directly related to monitoring or auditing the businesses of above-mentioned enterprises.

**References:**

Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, Article 12

**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

**Comments:**

Registration of members' interests cover 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 the assembly.

**References:**

Rules of Procedure of the Assembly of Kosovo, Annex No. 1, Code of Conduct for Members of the Assembly

**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

**Comments:**

The auditor general shall annually conduct an audit of the Kosovo Consolidated Budget and budget organizations, including but not limited to the Assembly of the Republic of Kosovo.

**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

**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

**Comments:**

No, in practice this has not functioned. Due to confidentiality, cases cannot be revealed; however, there are cases in which high officials have joined private companies with which they have had a contractual relationship, according to Hasan Preteni.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

**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

**Comments:**

The list is submitted to the Anti-Corruption Agency each year before March 31; however, there is no way to control if all gifts received have been recorded in the books, according to Hasan Preteni.

**References:**

FOL Movement. Enforcement of Legal Provisions on Declaration of Assets on Directly Elected Central Level Senior Officials. July 2011.

[http://levizjafol.org/images/uploads/files/Policy\\_Brief-Enforcement\\_of\\_Legal\\_Provisions\\_on\\_Declaration\\_of\\_Assets\\_of\\_Directly-Elected\\_Central-Level\\_Senior\\_Officials.pdf](http://levizjafol.org/images/uploads/files/Policy_Brief-Enforcement_of_Legal_Provisions_on_Declaration_of_Assets_of_Directly-Elected_Central-Level_Senior_Officials.pdf)

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

**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

**Comments:**

National legislature financial asset disclosures are audited by the Anti-Corruption Agency. When a discrepancy is found, the case is forwarded to prosecutors.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

**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.

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

94

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

Yes | No

**Comments:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials, Section 3, states:

Access to the register of declaration of the property of senior public officials shall be done according to the procedures defined with the law on access to official documents:

3.1. Access to the register of declaration of the property of senior public officials shall be done through the Internet Web page of the Anti-Corruption Agency, where the register of declaration of the property of senior public officials is published.

3.2. The agency within 60 days of the last day of the term for submission of declaration, is obliged to publish on its Web page the names of the senior public officials who have not declared their property.

**References:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials, Section 3

**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, non-governmental 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

**Comments:**

Yes, they are all uploaded to the Web page of the Anti-Corruption Agency, and they can be downloaded from there.

**References:**

Kosovo Anti-Corruption Agency. [http://www.akk-ks.org/?cid=1,1178&path=Kuvendi\\_i\\_Republikes\\_se\\_Kosoves](http://www.akk-ks.org/?cid=1,1178&path=Kuvendi_i_Republikes_se_Kosoves)

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, 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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

All asset disclosure forms can be found at the Anti-Corruption Agency's website: [http://www.akk-ks.org/?cid=1,1178&path=Kuvendi\\_i\\_Republikes\\_se\\_Kosoves](http://www.akk-ks.org/?cid=1,1178&path=Kuvendi_i_Republikes_se_Kosoves).

**References:**

Interview with Fadim Miftari, expert/consultant at the Anti-Corruption Agency. Sept. 24, 2011

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, 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 NGOs. 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 NGOs 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

**Comments:**

In principle, they are okay; however, there are cases when they are handwritten and difficult to be read, or sometimes all the information is not provided (see [http://www.akk-ks.org/?cid=1,1178&path=Kuvendi\\_i\\_Republikes\\_se\\_Kosoves](http://www.akk-ks.org/?cid=1,1178&path=Kuvendi_i_Republikes_se_Kosoves)).

**References:**

Kosovo Anti-Corruption Agency

[http://www.akk-ks.org/?cid=1,1178&path=Kuvendi\\_i\\_Republikes\\_se\\_Kosoves](http://www.akk-ks.org/?cid=1,1178&path=Kuvendi_i_Republikes_se_Kosoves)

Interview with Fadim Miftari, expert/consultant at the Anti-Corruption Agency. Sept. 24, 2011

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

**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.

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### 35. Can citizens access legislative processes and documents?

100

35a. In law, citizens can access records of legislative processes and documents.

Yes

No

**Comments:**

Rules of Procedure of the Assembly of Kosovo, Rule 24, states:

Sessions of the assembly are public, unless otherwise decided by the assembly. They may be broadcast in accordance with such arrangements as the presidency shall decide. A record shall be made of all plenary sessions of the assembly with each contribution being recorded in the language in which it was made. Minutes shall contain a resume of discussions and decisions taken by the assembly.

**References:**

Rules of Procedure of the Assembly of Kosovo, Rule 24

**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

**Comments:**

The parliament sessions are broadcast live on Public Television. All documents are published on the parliament Web page: [www.kuvendikosoves.org](http://www.kuvendikosoves.org).

**References:**

Interview with Bardhyl Hasanpapaj, assistant professor of law at the University of Pristina. Sept. 26, 2011

Public Television. [www.rtklive.com](http://www.rtklive.com).

Parliament Web page. [www.kuvendikosoves.org](http://www.kuvendikosoves.org)

**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

**Comments:**

The parliament sessions are broadcast live on Public Television. All documents are published on the parliament Web page.

**References:**

Interview with Bardhyl Hasanpapaj, assistant professor of law at the University of Pristina. Sept. 26, 2011

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

Parliament website. [www.kuvendikosoves.org](http://www.kuvendikosoves.org)

**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 NGOs. 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 NGOs trying to access this information.

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90  
3.3. Conflicts of Interest Safeguards & Checks and Balances:  
Judicial Branch

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36. Are judges appointed fairly?

83

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

**Comments:**

According to Article 108, the Kosovo Judicial Council is responsible for recruiting and proposing candidates for appointment and reappointment to judicial office. The Kosovo Judicial Council is also responsible for the transfer and disciplinary proceedings of judges.

Proposals for appointments of judges must be made on the basis of an open appointment process and the merit of the candidates, and the proposals shall reflect principles of gender equality and the ethnic composition of the territorial jurisdiction of the respective court. All candidates must fulfill the selection criteria provided by law.

**References:**

Constitution of Republic of Kosovo, Article 108, Kosovo Judicial Council

**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

**Comments:**

Political interference in the reappointment process and proposals made by the Kosovo Judicial Council is an issue of serious concern. The number of applications for reappointment from members of minorities has been lower than needed to fill all the positions. Cases of intimidation of members of the Serb community have been reported. Serbia has not been constructive in creating the right political climate in this process. As a result, the inter-ethnic balance of the judiciary is not ensured, according to the Kosovo 2010 Progress Report.

**References:**

Kosovo 2010 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf)

Balkan Investigative Reporting Network. The Process of Appointment and Reappointment of Judges. September 2011. <http://kosovo.birn.eu.com/en/1/>

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of judiciary monitoring at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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

**Comments:**

Constitution of Republic of Kosovo, Article 84, Competencies of the President, appoints and dismisses judges of the Republic of Kosovo upon the proposal of the Kosovo Judicial Council.

**References:**

Constitution of the Republic of Kosovo, Article 84, Competencies of the President

**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).

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### 37. Can members of the judiciary be held accountable for their actions?

79

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

**Comments:**

United Nations Interim Administration Mission in Kosovo, Regulation 2003/26, Provisional Criminal Procedure Code of Kosovo, Article 391, states:

In a judgment pronouncing the accused guilty, the court shall state:

The act of which he or she has been found guilty, together with facts and circumstances indicating the criminal nature of the act committed and facts and circumstances on which the application of pertinent provisions of criminal law depends.

**References:**

United Nations Interim Administration Mission in Kosovo, Regulation 2003/26, Provisional Criminal Procedure Code of Kosovo, Article 391

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

Judges give reasons, but, as stated in KDI and Transparency International's report, "Reasoning provided by judges in relation to their decisions is not specific enough. The quality of reasoning is poor."

Judicial decisions are provided with a written justification. However, the quality of that justification is often questioned by many people and institutions. In a few cases, the media has reported court decisions that have basic spelling mistakes as well as nonsensical justification. Mostly, this is the case in municipal courts and for petty crime decisions. An example that was reported in the media was a decision of a municipal court judge on a rape case. The judge ordered a medical examination for a raped woman. However, the Supreme Court and Constitutional Court provided professional written justification on their decision. The Decision of the Constitutional Court can be found at <http://www.gjk-ks.org/?cid=2,4>.

**References:**

Kosovo Democratic Institute and Transparency International: Problems with Judiciary. 2011. <http://www.kdi-kosova.org/publications/cimap/pjij.pdf>

Balkan Investigative Reporting Network, Monitoring the Courts, Republished. September 2011. Pristina. <http://kosovo.birn.eu.com/en/170/30768/>

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of judiciary monitoring, at BIRN. Oct.14, 2011. Pristina, Kosovo

**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

**Comments:**

The Office of Disciplinary Counsel is the responsible service for inspection, audit and disciplinary investigations within the Kosovo Justice System. It is a part of the Kosovo Judicial Council, which is responsible for recruiting and proposing candidates for appointment and reappointment to judicial office.

**References:**

The Kosovo Judicial Council, Office of the Disciplinary Counsel. <http://www.kgjk-ks.org/?cid=2%2C152>

**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:**

The Kosovo Judicial Council's Office of the Disciplinary Counsel (ODC) is a fully independent institution in the performance of its functions. The Disciplinary Committee, based on the ODC report, is authorized to impose the following disciplinary sanctions: reprimand; warning; unpaid suspension for a period up to six months; and recommendation for dismissal from the office. The ODC respects the independence of the judiciary. The ODC does not review complaints that have to deal with complaints against court decisions. It is not an appellate court. But, independence does not mean freedom from neglecting duties or freedom to be partial for one or the other party.

**References:**

The Kosovo Judicial Council's Office of the Disciplinary Counsel. <http://kgjk-ks.org/?cid=2,2>

**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

**Comments:**

The Office of Disciplinary Committee has submitted many cases against judges to the Kosovo Judiciary Council. However, the KJC was unable to absorb all of them. During 2010, the disciplinary office submitted 77 cases for review to the Kosovo Judicial Council and, according to the last European Commission Progress Report, none of them resulted in dismissal.

**References:**

Kosovo Democratic Institute and Transparency International. Problems with Judiciary. 2011. <http://www.kdi-kosova.org/publications/cimap/pjij.pdf>

Balkan Investigative Reporting Network. Court Monitoring Annual Report. April 2010 to February 2011. <http://kosovo.birn.eu.com/en/1/>

**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

**Comments:**

Since 2001, the Office of the Disciplinary Prosecutor has issued complaints to the Kosovo Judicial Council. For example, 293 complaints were issued in 2009. There are 118 cases pending investigations, mainly due to the incompetence of the council to absorb them. Due to non-efficiency of the KJC, only 10 judges have been suspended.

**References:**

Kosovo Democratic Institute and Transparency International. Problems with Judiciary. 2011. <http://www.kdi-kosova.org/publications/cimap/pjij.pdf>

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of judiciary monitoring, at BIRN. Oct.14, 2011. Pristina, Kosovo

**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?

71

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

**Comments:**

Law No. 2004/34 Suppression of Corruption Law, Chapter 5, Supervision of Assets, Article 37, states:

The Anti-Corruption Agency shall supervise the assets of senior officials.

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

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

**References:**

Law No. 2004/34 Suppression of Corruption Law, Chapter 5, Supervision of Assets, Article 37

**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

**Comments:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials states:

3. Access to the register of declaration of the property of senior public officials shall be done according to the procedures defined with the law on access to official documents:

3.1. Access to the register of declaration of the property of senior public officials shall be done through the Internet Web page of the Anti-Corruption Agency, where the register of declaration of the property of senior public officials is published.

3.2. The agency, within 60 days from the last day of the term for submission of declaration, is obliged to publish on its Web page the names of the senior public officials who have not declared their property.

Senior public officials include judges and prosecutors.

**References:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials

**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

**Comments:**

The law states:

The auditor-general shall annually conduct a regularity audit of the Kosovo Consolidated Budget and budget organizations, including but not limited to the Assembly of the Republic of Kosovo.

**References:**

Law No. 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

**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

**Comments:**

The law sets forth limitations for the official upon termination of exercising the public function:

Upon termination of exercising of the public function, a person does not have the right to be employed or nominated for leading positions or in auditing of public and private enterprises within the period of one year, provided that, during the two-year period immediately before the end of exercising of public function, his or her duties were directly related to monitoring or auditing of the businesses of the above mentioned enterprises.

**References:**

Law No. 02/L-133 on Preventing Conflict of Interest in Public Function, Article 12

**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

**Comments:**

There is no specific legislation that prohibits or restricts employment of judges in private sector upon termination of their position. There are several cases when judges upon termination of their term as judges have opened their own private legal firms. Such is the case with Judge Tahir Rreci, who was a Supreme Court judge and, after he was not reappointed as a Supreme Court judge, opened his own advocacy firm.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

**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

**Comments:**

Similar to other institutions, the list is submitted to the Anti-Corruption Agency, but not everything is recorded, and the agency does not have a mechanism to track that, according to Hasan Preteni.

Institutions are supposed to have such a list, but is not very transparent, and not everything is registered there, according to Fidan Kalaja and Armend Mazreku.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

**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

**Comments:**

The Anti-Corruption Agency audits all property disclosure forms for all high public officials. In the case of discrepancy or suspicion, the agency conducts administrative, independent investigations. If evidence is found, the agency forwards cases to the prosecutor's office for further investigation. Due to the nature of investigation, the Anti-Corruption Agency does not reveal cases; however, it claims to have forwarded tens of cases to the prosecutor's office.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

**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.

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**39. Can citizens access the asset disclosure records of members of the national-level judiciary?**

88

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

**Comments:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials states:

3. Access to the register of declaration of the property of senior public officials shall be done according to the procedures defined with the law on access to official documents:

3.1. Access to the register of declaration of the property of senior public officials shall be done through the Internet Web page of the Anti-Corruption Agency, where the register of declaration of the property of senior public officials is published.

3.2. The agency, within 60 days from the last day of the term for submission of declaration, is obliged to publish on its Web page the names of the senior public officials who have not declared their property.

**References:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials, Article 3

**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

**Comments:**

All forms can be downloaded from the Anti-Corruption Agency's Web page: <http://www.akk-ks.org/?cid=2,1038>.

**References:**

Interview with Fadil Miftari, consultant to Anti-Corruption Agency. Sept. 12, 2011. Pristina, Kosovo

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, 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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

No cost is involved; they can be downloaded for free from the Anti-Corruption Agency.

**References:**

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept.12, 2011. Pristina, Kosovo

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, 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 NGOs. 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 NGOs 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

**Comments:**

To some degree, they are okay. Asset disclosure forms are filled in by the public officials themselves. Some of them are good quality, but some of them are not properly filled in. They all can be found in their original form at <http://www.akk-ks.org/?cid=2,1038>.

**References:**

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept.12, 2011. Pristina, Kosovo

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, 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.

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### 3.4. Budget Process Oversight & Transparency

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#### 40. Can the legislature provide input to the national budget?

58

40a. In law, the legislature can amend the budget.

Yes | No

**Comments:**

Article 22 states:

Once the government has approved a proposed Kosovo Consolidated Budget and Appropriations Law, the government shall submit such documents to the assembly no later than Oct. 31 of the then-current fiscal year.

The minister shall have the right to receive adequate notice of, and to participate in, any hearing held by an assembly committee with respect to any aspect of a proposed Kosovo Consolidated Budget or a proposed Appropriations Law.

**References:**

Law No. 03/L-048 on Public Financial Management and Accountability, Article 22, Submission to the Assembly of the Proposed Kosovo Consolidated Budget and Proposed Appropriations

**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

**Comments:**

The legislator has the power to approve or disapprove major projects of high cost. However, sometimes there is lack of transparency, and information is not provided to the legislature. For example, more than a year after the approval of a project for the construction of a highway, one of the biggest government investments, the contract has not been disclosed to the public or members of the parliament.

**References:**

Interview with Artan Venhari, expert/consultant to the Parliamentary Committee for Oversight of Public Finances. Sept. 16, 2011, Pristina, Kosovo

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

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**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

**Comments:**

The legislature does not have sufficient capacity. The local staff that works with the committee does not have the mandate to research, and the external support is limited. There is no clear process for using committee funds to hire experts. Civil society has only recently started to provide input to the legislative committees.

**References:**

Interview with Artan Venhari, expert/consultant to the Parliamentary Committee for Oversight of Public Finances. Sept. 16, 2011. Pristina, Kosovo.

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

**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.

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#### 41. Can citizens access the national budgetary process?

50

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

**Comments:**

While there are debates at the local level, the central budget that allocates funds has no access for citizen input. The only debates and negotiations are between the Ministry of Finance and budget organizations. The process is centralized.

**References:**

Interview with Artan Venhari, expert/consultant to the Parliamentary Committee for Oversight of Public Finances. Sept. 16, 2011. Pristina, Kosovo.

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

**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

**Comments:**

There are budgetary hearings; however, citizen input or involvement is minimal. At the municipal level, there are a few NGOs that organize budgetary hearings, such as the Advocacy Training and Resource Center as part of its project participatory budgeting, but at the national level, there is no involvement or participation of citizens. The process of drafting is mainly done by the Ministry of Finance. Each state institution or budgetary unit prepares draft budgets and sends them to the Ministry of Finance, which then compiles and sends them to parliament for approval.

**References:**

Interview with Artan Venhari, expert/consultant to the Parliamentary Committee for Oversight of Public Finances. Sept. 16, 2011. Pristina, Kosovo.

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

**100:** Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

**25:**

**0:** Citizens or NGOs 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

**Comments:**

Citizens can access itemized budgets from the Web page of the Ministry of Finance after the budget has been approved by the parliament.

**References:**

Interview with Artan Venhari, expert/consultant to the Parliamentary Committee for Oversight of Public Finances. Sept. 16, 2011. Pristina, Kosovo.

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

Ministry of Finance. <http://mef-rks.org/download/buxheti-i-konsoliduar-i-kosoves/3672-2011?lang=sq>

**100:** Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs 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.

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42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

**Comments:**

Rules of Procedure of the Assembly of Kosovo, Rule 51, the Budget and Finance Committee, states:

The Budget and Finance Committee shall also be responsible for examining the annual reports and the audited financial statements of the Kosovo Consolidated Budget relevant to the budget of the Provisional Institutions of Self-Government and other audit reports relating to the operations of the assembly, president, government, ministries or other activities of the Provisional Institutions of Self-Government supported directly or indirectly by the Kosovo Consolidated Budget. The Budget and Finance Committee shall submit reports to the assembly on its findings.

**References:**

Rules of Procedure of the Assembly of Kosovo, Rule 51, the Budget and Finance Committee

**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).

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43. Is the legislative committee overseeing the expenditure of public funds effective?

50

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

**Comments:**

Some of the agencies are part of the ministries; therefore, they report to their respective ministry, which then compiles the report. The agencies that are established by parliament such as the Public Television of Kosovo, report to the parliament committee on budget and finance. Often, the parliament has sent back a financial report due to it being unclear or incorrect. Also the Office of General Audit sends auditing reports to the parliament. In almost all institutions, the Office of General Audit has found irregularities and provided recommendations how to improve public spending.

**References:**

Interview with Artan Venhari, expert/consultant to the Parliamentary Committee for Oversight of Public Finances. Sept. 16, 2011. Pristina, Kosovo.

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

**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

**Comments:**

The committee is chaired as a rule by an opposition member, but the committee reflects the composition of the parliament. Thus, the majority of members of the committee are from the ruling coalition and can block motions they do not like.

**References:**

Interview with Artan Venhari, expert/consultant to the Parliamentary Committee for Oversight of Public Finances. Sept. 16, 2011. Pristina, Kosovo.

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

**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

**Comments:**

Monitoring by the Committee on Public Finance is relatively new. It was established a couple of years ago. It has started a monitoring process on public expenditure, but no report has been produced yet. The committee lacks resources and the capacity to conduct proper monitoring. It currently is receiving assistance from local and international organizations. So far, the committee has recommend to the auditor general to look into alleged cases of corruption.

**References:**

Scorecard for National Assembly of Kosovo. Kosovo Democratic Institute. May 2010. <http://www.kdi-kosova.org/publications/FletnotimiCL012011.pdf>

Interview with Artan Venhari, expert/consultant to the Parliamentary Committee for Oversight of Public Finances. Sept. 16, 2011. Pristina, Kosovo.

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

**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.

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## Category 4. Public Administration and Professionalism

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### 4.1. Civil Service: Conflicts of Interest Safeguards and Political Independence

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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

**Comments:**

According to the law:

The Civil Service is composed of impartial, professional, accountable civil servants and reflects multi-ethnicity and gender equality.

Civil servants are employed on the basis of merit upon passing the selection procedures as established by this law and specific sub-legal acts.

**References:**

Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, Article 3

**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

**Comments:**

The board is an independent institution for supervising the legality of management in the Civil Service and is regulated with special law.

**References:**

Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, Article 3, Independent Oversight Board for Civil Service

**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

**Comments:**

The board is an independent institution for supervising the legality of management in the Civil Service and is regulated with special law.

**References:**

Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, Article 3, Independent Oversight Board for Civil Service

**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

**Comments:**

No law exists.

**References:**

Interview with Mehdi Geci, head of the Independent Oversight Board of Civil Servants

**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.

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45. Is the law governing the administration and civil service effective?

44

45a. In practice, civil servants are protected from political interference.

**Comments:**

Politics highly interfere with management positions in civil service. The last European Commission progress report emphasized that public administration is still politicized. Most ministry secretary permanents have been appointed based on political affiliation rather than professional criteria. In several cases, politically appointed advisers to ministers, such as the Ministry of Trade and Industry, have been appointed as acting secretary permanent, which is a civil servant position. This is also the case with heads of independent agencies and public companies. Their heads are mainly appointed based on their political affiliation.

**References:**

Youth Initiative for Human Rights. State of Constriction? Governance and Free Expression in Kosovo. May 24, 2010. [http://issuu.com/yjhr/docs/state\\_of\\_constriction](http://issuu.com/yjhr/docs/state_of_constriction)

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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.

**Comments:**

Though, formally, there is a process of staff evaluation among civil servants, in practice such evaluation is not based on professional criteria. Political affiliation and nepotism remain high in the public sector.

Professionalism is unable to thrive in the civil service. Instead of standing for something and understanding that they are the highest civil servants, ministry permanent secretaries have "no common professional base" and often are "used as a tool for other interests," the Youth Initiative for Human Rights Report states.

There is even "adverse selection" of officials. Competence is not the highest priority, especially in medium to high positions. On the contrary, officials who have competence come under attack from political circles, the report says.

**References:**

Youth Initiative for Human Rights. State of Constriction? Governance and Free Expression in Kosovo. May 24, 2010. [http://issuu.com/yjhr/docs/state\\_of\\_constriction](http://issuu.com/yjhr/docs/state_of_constriction)

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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

**Comments:**

There is a high level of nepotism and political affiliation involved in the recruiting process. The new Law on Civil Service tries to create some order by setting clear recruitment procedures; however, the system is not functional yet.

For example, the minister of trade and industry appointed her political adviser as acting secretary permanent. However, the position of secretary permanent is a civil servant position that requires a formal recruitment process. In cases when the position is vacant and the recruitment process is still going on, such a position temporarily should be filled by a civil servant member, such as the head of administration, and not by a politically appointed post, such as the political adviser. There have been similar cases in which people affiliated with a political party have been appointed to managerial positions that should have had open hiring processes.

**References:**

Youth Initiative for Human Rights. State of Constriction? Governance and Free Expression in Kosovo. May 24, 2010. [http://issuu.com/yjhr/docs/state\\_of\\_constriction](http://issuu.com/yjhr/docs/state_of_constriction)

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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

**Comments:**

Job descriptions are drafted based on Regulation 3/2010 on job descriptions for civil servants. In the entire public service sector, job descriptions and codes of conduct are attached to contracts and are provided to the employee alone. Job descriptions are clear and provide the grade and level of the position, salary amount and under whose supervision that position falls (such as the head of the unit). This information also is made public on open vacancy notifications.

**References:**

Interview with Mehdi Geci, head of the Independent Oversight Board for Civil Service in Kosovo. Sept. 26, 2011. Pristina, Kosovo

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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.

100 | 75 | 50 | 25 | 0

**Comments:**

The government established a special fund to provide additional payment to professionals who, due to low salaries, would leave their position to work for international organizations or the private sector. The fund was created to retain 120 professionals, mainly mid-management and similar positions and people who had studied at well-known international universities or were highly qualified. They were provided 50 percent on top of their current salary. However, there has been misuse of this fund. For example, sometimes it has been used to pay political staff.

There also have been several instances in which civil servants have been paid to participate in different working groups or boards of other institutions. Often government institutions organize working group meetings and training in neighboring countries. For each day spent out of the country, public sector employees are paid an additional per diem. The total salary of a civil servant officer is around \$400, and he is paid about a \$40 per diem for participation in a working group in a neighborhood country (on top of being provided accommodations and food). Most of the working groups meet for no less than three working days.

**References:**

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

Interview with Mehdi Geci, head of the Independent Oversight Board for Civil Service in Kosovo. Sept. 26, 2011. Pristina, 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.

100 | 75 | 50 | 25 | 0

**Comments:**

The government only publishes vacancies, not a full list of civil servants. Moreover, most government agencies have not published their organization charts yet.

**References:**

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

Interview with Mehdi Geci, head of the Independent Oversight Board for Civil Service in Kosovo. Sept. 26, 2011. Pristina, 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

**Comments:**

The Independent Oversight Board does not have enough capacity to review all the complaints it receives. After the last municipal election, there were changes, and many mayors fired civil servants, who then complained to the board. The case of one civil servant from Kamenica was decided 187 months after the complaint was filed.

**References:**

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

Interview with Mehdi Geci, head of the Independent Oversight Board for Civil Service in Kosovo. Sept. 26, 2011. Pristina, 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

**Comments:**

Payments are made regularly and on time. There have been no delays in salary payment.

**References:**

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

Interview with Mehdi Geci, head of the Independent Oversight Board for Civil Service in Kosovo. Sept. 26, 2011. Pristina, 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.

**Comments:**

There is no rule that prohibits civil servants for future employment in the public sector if they have been convicted of corruption. However, if they are found guilty for any kind of crime and serve more than six months of imprisonment, they will lose their current job.

**References:**

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

Interview with Mehdi Geci, head of the Independent Oversight Board for Civil Service in Kosovo. Sept. 26, 2011. Pristina, 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.

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#### 46. Are there regulations addressing conflicts of interest for civil servants?

72

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

**Comments:**

The law states:

Access to the register of declaration of the property of senior public officials shall be done according to the procedures defined with the law on access to official documents:

3.1. Access to the register of declaration of the property of senior public officials shall be done through the Internet Web page of the Anti-Corruption Agency, where the register of declaration of the property of senior public officials is published.

3.2. The agency, within 60 days of the last day of the term for submission of declaration, is obliged to publish on its Web page the names of the senior public officials who have not declared their property.

**References:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials

**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

**Comments:**

Article 16 states:

If, during the public function, a direct or indirect influence is exercised against an official, openly or anonymous influencing voting or undertaking certain decisions, he or she shall inform in writing the manager or managing body to avoid the influence over his or her volition.

Attempting to influence an official's volition under Paragraph 1 of the present article shall be reported to the institution that selected or appointed him or her and to the Anti-Corruption Agency, which after reviewing shall decide if there is a need to report the case to the investigation body.

Voting and decisions taken under this type of influence are not valid.

**References:**

Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, Article 16

**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

**Comments:**

Article 12 states:

Upon termination of exercising of public function, a person does not have the right to be employed or nominated for leading positions or auditing of public and private enterprises within a period of one year, provided that, during the two-year period immediately before the end of exercising of public function, his or her duties were directly related to monitoring or auditing businesses of the above-mentioned enterprises.

**References:**

Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, Article 12

**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

**Comments:**

Article 33 states:

An official person shall not accept gifts or other benefits in connection with the execution of office, except for formal gifts and occasional gifts of small value.

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.

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 in value, or their total value shall not exceed 100 euros in a single year if they are

presented by the same person.

Officials may not accept more than 10 occasional gifts within a year.

The prohibitions and restrictions arising from this article are also applicable to people living in a domestic relationship with an official person.

**References:**

Law No. 2004/34, Suppression of Corruption Law, Chapter 4, Acceptance of Gifts, Article 33

**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

**Comments:**

Article 14 states:

The Anti-Corruption Agency conducts a preliminary and thorough check of the forms of declaration of property status.

Preliminary checks are conducted for each verified form, looking for mistakes.

When mistakes are found from the preliminary check or there are wrong entries, the agency notifies the party that has submitted such declarations, and the errors must be corrected within 15 days of notification.

A full check is conducted to verify the truthfulness and exactness of information declared in the form.

**References:**

Law No. 2004/34 Suppression of Corruption Law, Supervision of Assets, Checking the Declared Information, Article 14

**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

**Comments:**

Post-government employment of former civil servants in the private sector is not regulated by law. There are many cases in which civil servants leave their job to join the private sector, especially because the private sector pays better than the public sector. For example, one of the high officials of the Ministry of Agriculture left his job to work for a private Slovenian company.

**References:**

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, Kosovo

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, 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

**Comments:**

Each institution submits a report with gifts received to the Anti-Corruption Agency each year by March 31. But, there is no mechanism to control the quality of the record. Because it is self-reported, there is no way to know if all gifts received were recorded. There is no mechanism to prove that.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

**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

**Comments:**

No clear legislation covers this conflict of interest yet. A new law was approved recently, but other sub-legal acts need to be adopted to ensure implementation of the law. In practice, this principle has not been applied. On the contrary, there have been cases reported in the media that policies and decisions are made in a manner to suit private interest. One of the cases most mentioned in the media is the project of the Ibrahim Rugova Highway. The full project has never been disclosed to the public, but its direction has changed from the initial project to go through the municipality of Malisheva, native home of the minister of transport.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

**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

**Comments:**

The Anti-Corruption Agency claims that it audits each property disclosure form. In cases where there is a big discrepancy between the current form and the one submitted the year before, it initiates an investigation and forwards the case to the prosecutor's office. The Anti-Corruption Agency, in its annual report for 2010, states that it has investigated 85 cases from 1,493 forms submitted to the agency.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, 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.

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47. Can citizens access the asset disclosure records of senior civil servants?

94

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

**Comments:**

Section 3, states:

Access to the register of declaration of the property of senior public officials shall be done according to the procedures defined with the law on access to official documents:

3.1. Access to the register of declaration of the property of senior public officials shall be done through the Internet Web page of the Anti-Corruption Agency, where the register of declaration of the property of senior public officials is published.

3.2. The agency, within 60 days of the last day of the term for submission of declaration, is obliged to publish on its Web page the names of the senior public officials who have not declared their property.

**References:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials, Section 3

**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

**Comments:**

All asset disclosure forms can be downloaded from the the Web page of the Anti-Corruption Agency.

**References:**

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept.12, 2011. Pristina, Kosovo

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

Anti-Corruption Agency. <http://www.akk-ks.org/?cid=2.944>

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

All forms can be downloaded for free on the Anti-Corruption Agency website.

**References:**

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 12, 2011. Pristina, Kosovo

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

Anti-Corruption Agency. <http://www.akk-ks.org/?cid=2.944>

**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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

In general, the reports are of good quality (see them at: <http://www.akk-ks.org/?cid=2,944>). In some cases, civil servants filing reports do not fill them in correctly.

**References:**

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 12, 2011. Pristina, Kosovo

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

Anti-Corruption Agency. <http://www.akk-ks.org/?cid=2,944>

**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.

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## 4.2. Whistle-blowing Protections

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48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

69

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

**Comments:**

Article 16 states:

Officials shall report cases of corruption that come to their knowledge to the Anti-Corruption Agency. The agency shall forward all such cases to the Office of the Public Prosecutor of Kosovo (OPPK) for consideration.

Any person who had discovered information that indicates existence of corruption in a good faith will not suffer any harmful consequences.

A person who has given a statement or acted as a witness in a process on a corruption offense is given protection provided for in the Criminal Procedure Code of Kosovo and is entitled to damage compensation for damage that he or she or a member of his or her family may suffer due to the given statement or testimony.

**References:**

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

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

The number of civil servants who report is increasing; however, civil servants are reluctant to report corruption cases. The issue is that there is no legal protection provided by law.

None of the people who reported to the agency has been expelled from a job or suffered other consequences. Data for these individuals are kept strictly confidential.

**References:**

Interview with Fidan Kalaja, program manager at FOL Movement. Sept. 16, 2011, Pristina, Kosovo

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, 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

**Comments:**

Article 16 states:

Officials shall report cases of corruption that come to their knowledge to the Anti-Corruption Agency. The agency shall forward all such cases to the Office of the Public Prosecutor of Kosovo (OPPK) for consideration.

Any person who had discovered information that indicates existence of corruption in a good faith will not suffer any harmful consequences.

A person who has given a statement or acted as a witness in a process on a corruption offense is given protection provided for in the Criminal Procedure Code of Kosovo and is entitled to damage compensation for damage that he or she or a member of his or her family may suffer due to the given statement or testimony.

**References:**

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

**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

**Comments:**

In the private sector, there is a general reluctance to talk about corruption in companies and even less to report a corruption case; there is no known cases of the reporting of corruption and what consequences it might have had in any private company. This is also due to the fact that unemployment in Kosovo is very high, and courts have not been very effective.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager at FOL Movement. Sept. 16, 2011. Pristina, 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.

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49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. 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

**References:**

Law No. 03/L-159 on Anti-Corruption Agency

**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.

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.

100 | 75 | 50 | 25 | 0

**Comments:**

The Anti-Corruption Agency is fully staffed. All of the staff members have university degrees or higher and have received training from international and local organizations. They also continuously receive training and technical assistance, including from experts at the United Nations Development Programme and Soros Foundation. Further training is still needed.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 12, 2011. Pristina, Kosovo

Interview with Fidan Kalaja Program Manager and Armend Mazreku Policy Analyst at Fol (speak up) Movement. 17 September 2011. Prishtine

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

The Anti-Corruption Agency has its own regular budget and is financed through the consolidated budget. It has not faced any budgetary issues.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 12, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, 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

**Comments:**

There is no specific legal requirement that defines how long an investigation might take. In practice, though, it usually takes 60 to 90 days, depending on the sensitivity and complexity of the case.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 12, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, 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.

100 | 75 | 50 | 25 | 0

**Comments:**

The Anti-Corruption Agency conducts investigations, but it does not have any executive power. It has to send those investigation results to prosecutors, who are overloaded with many other cases and do not act in a timely manner. During 2010, the agency reviewed 403 reported or ex-officio cases of corruption. Some 130 cases were investigated further and forwarded to respective courts.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 12, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

**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.

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77  
4.3. Government Procurement: Transparency, Fairness, and  
Conflicts of Interest Safeguards

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51. Is the public procurement process effective?

88

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

**Comments:**

Article 1 states:

This law aims to ensure the integrity and accountability of public officials, civil servants and other people 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 nondiscrimination and a high degree of transparency, and are in compliance with the procedural and substantive requirements of this law.

**References:**

Law No. 04/L-042 on Public Procurement in Republic of Kosovo, Article 1

**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

**Comments:**

Article 23 governs contracting authorities to establish procurement departments. It states:

A person may only serve as a procurement officer if such person holds a university degree from a properly accredited university in Kosovo or another country. In addition, a person may only serve as a procurement officer if such person holds:

An internationally recognized advanced or master's certificate or diploma in procurement;

A current and valid basic or advanced procurement professional certificate issued in accordance with Article 25 of this law;

Or a valid procurement professional certificate that was properly issued by KIPA under the authority of the prior legislation on procurement; however, a procurement professional certificate issued by KIPA under prior legislation shall not be valid if more than 12 months have passed since the date it was issued.

**References:**

Law No. 04/L-042 on Public Procurement in Republic of Kosovo, Article 23

**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

**Comments:**

Public procurement is perceived to be the most corrupt section of the whole public sector. The process seems to be transparent, such as publicly open bidding, but the process of evaluating the bids is not transparent. Often, public procurement officials disqualify companies for seemingly unjustified reasons, such as failure to attach a receipt for the payment of electricity or a VAT certificate, even when a company might not be subject to VAT, etc.

Moreover, key laws still have not been passed by the assembly, including the Law on Conflict of Interests and the Law on Courts. The Law on Courts has been blocked since 2004 due to disagreements between the EU, local stakeholders and USAID.

**References:**

Kosovar Stability Initiative Policy Analysis. Untying the Knot. The Political Economy of Corruption and Accountability in Kosovo. Page 7, 8. June 29, 2010. [http://www.iksweb.org/Photos/Publikimet/Images/Zgjidhja\\_e\\_Nyj%C3%ABs/enuntying\\_the\\_knot.pdf](http://www.iksweb.org/Photos/Publikimet/Images/Zgjidhja_e_Nyj%C3%ABs/enuntying_the_knot.pdf)

FOL Movement. Monitoring Procurement. Page 6. Quarterly Report, April to June 2011. [http://levizjafol.org/images/uploads/files/Monitoruesi\\_i\\_Prokurimit.pdf](http://levizjafol.org/images/uploads/files/Monitoruesi_i_Prokurimit.pdf)

**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

**Comments:**

The issue is not specifically regulated by law; however provisions of Article 3 also apply to procurement officers.

**References:**

Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials, Article 3

**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

**Comments:**

Article 7 requires equality of treatment, nondiscrimination and transparency.

When conducting any procurement activity, all contracting authorities shall ensure the widest possible participation, in light of the value and object of the procurement, of potentially interested economic operators.

**References:**

Law No. 04/L-042 on Public Procurement in Republic of Kosovo, Chapter 2, Types and Applicability of Procurement Procedures, Article 7

**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

**Comments:**

Article 32 states:

If, during the conduct of a procurement activity, less than two responsive tenders or, where applicable, requests to participate are received, the contracting authority shall cancel the procurement activity.

The Public Procurement Regulatory Commission shall have the authority to establish in the public procurement rules a special procedure to govern the award of minimal value contracts. The PPRC shall ensure that such procedure fulfills the conditions in Article 6 and 7 of this law.

**References:**

Law No. 04/L-042 on Public Procurement in Republic of Kosovo, Chapter 2, Types and Applicability of Procurement Procedures, Article 32

**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

**Comments:**

Article 99 states:

The Procurement Review Body shall be responsible for implementing the procurement review procedures established in Title IX of the present law and shall have the authorities and responsibilities specified in that title.

Upon a written request of a contracting authority regarding the submission by an economic operator of false information or forged documents, the Procurement Review Body is obliged and authorized to review and disqualify the economic operator from participation in public procurement for up to a period of one year.

**References:**

Law No. 04/L-042 on Public Procurement in Republic of Kosovo, Chapter 2, Types and Applicability of Procurement Procedures, Article 99

**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

**Comments:**

Article 99 states:

All decisions issued by the Procurement Review Body may be reviewed by the competent court in accordance with the law on the judicial review of administrative matters.

If a complainant believes that a final decision or determination of the Procurement Review Body is contrary to the facts or the present law, the complainant may request the Supreme Court to review the decision. The request to the Supreme Court must be filed within a time limit of 30 days from publication of the decision, in accordance with Paragraph 2, Article 117 of this law.

If, after conducting such a review, the court finds that an allegation made by the complainant in its earlier complaint before the Procurement Review Body was not frivolously made, the court shall issue an order requiring the Procurement Review Body to return to the complainant any penalty assessed pursuant to Article 118 of this law.

**References:**

Law No. 04/L-042 on Public Procurement in Republic of Kosovo, Chapter 2, Types and Applicability of Procurement Procedures, Article 99

**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

**Comments:**

An economic operator shall not be eligible to participate in a procurement activity or the performance of any public contract if such economic operator, or any executive, manager or director thereof, has, in the past 10 years been determined by a court of competent jurisdiction to have committed a criminal or civil offense involving corrupt practices, money laundering, bribery, kickbacks or activities described, or similar to those described, in Article 129.1 of this law under the laws or regulations applicable in Kosovo or any country or under international treaties or conventions.

**References:**

Law No.03/L-241 on Public Procurement, Article 65

**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.

**Comments:**

The companies that wish to apply to a public bid have to provide a document from the court that says that the owners or shareholders of the company are not under investigation or have not been convicted for any crime. Failing to provide such document disqualifies the bidder.

Apart from that, the Public Procurement Regulatory Commission has a link on its website to a list of all the companies that have violated any law, but the list is empty. This indicates that no company has been listed as violating the procurement regulations. In addition, the Ministry of Infrastructure initiated such a list but never followed up. FOL has requested publishing such a list; however, nothing has happened yet.

**References:**

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

Kosovar Stability Initiative. Untying the Knot. Pristina, Kosovo. June 2010. [http://iksweb.org/Photos/Publikimet/Images/Zgjidhja\\_e\\_Nyj%C3%ABs/enuntying\\_the\\_knot.pdf](http://iksweb.org/Photos/Publikimet/Images/Zgjidhja_e_Nyj%C3%ABs/enuntying_the_knot.pdf)

**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.

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## 52. Can citizens access the public procurement process?

96

52a. In law, citizens can access public procurement regulations.

Yes | No

**Comments:**

Article 87 states that principal functions of the Public Procurement Regulatory Commission include establishing and maintaining an information website that provides the public with unrestricted access to this law and all secondary legislation issued under the authority of this law, any interpretive rulings and other documents referred to in this article, and all information contained in the Public Procurement Register.

**References:**

Law No.03/L-241 on Public Procurement in Republic of Kosovo, Article 87

**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

**Comments:**

Article 7 states:

When conducting any procurement activity, all contracting authorities shall ensure the widest possible participation, in light of the value and object of the procurement, of potentially interested economic operators; the proper publication, dispatch and availability, as required by this law, of all notices, invitations, information and documents relating to a procurement activity; the elimination of practices, criteria, requirements and technical specifications that discriminate in favor or against one or more economic operators; that all technical specifications and all selection and award requirements and criteria, including the relative importance of each such requirement and criterion, and the methodologies for selection and award, are specified in the concerned contract or design contest notice, the invitation to tender or participate, and/or the tender dossier; that no requirement, criterion or specification that has not been so specified is used in the selection and award process; and that the selected tender conforms, in all material respects, to the requirements, criteria and specifications that have been so specified.

**References:**

Law No.03/L-241 on Public Procurement in Republic of Kosovo, Article 7

**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

**Comments:**

All regulations can be downloaded from the Public Procurement Regulatory Commission Web page.

**References:**

Kosovar Stability Initiative. Untying the Knot. Pristina, Kosovo. June 2010. [http://iksweb.org/Photos/Publikimet/Images/Zgjidhja\\_e\\_Nyj%C3%ABs/enuntying\\_the\\_knot.pdf](http://iksweb.org/Photos/Publikimet/Images/Zgjidhja_e_Nyj%C3%ABs/enuntying_the_knot.pdf)

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

Public Procurement Regulatory Commission. [http://krpp.rks-gov.net/Default.aspx?PID=Legislation&LID=2&PPRCMenu\\_OpenNode=61](http://krpp.rks-gov.net/Default.aspx?PID=Legislation&LID=2&PPRCMenu_OpenNode=61)

**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

**Comments:**

All regulations can be downloaded from the PPRC Web page.

**References:**

Interview with Ylli Kaloshi, head of press and public relations, Privatization Agency of Kosova. Oct. 29, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

Public Procurement Regulatory Commission. [http://krpp.rks-gov.net/Default.aspx?PID=Legislation&LID=2&PPRCMenu\\_OpenNode=61](http://krpp.rks-gov.net/Default.aspx?PID=Legislation&LID=2&PPRCMenu_OpenNode=61)

**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 NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

**Comments:**

Results are published on the website of Public Procurement Regulatory Commission, and some of the institutions also publish results in newspapers. Some institutions publish results on their own Web pages, but these are not regularly updated.

**References:**

Kosovar Stability Initiative. Untying the Knot. Pristina, Kosovo. June 2010. [http://iksweb.org/Photos/Publikimet/Images/Zgjidhja\\_e\\_Nyj%C3%ABs/enuntying\\_the\\_knot.pdf](http://iksweb.org/Photos/Publikimet/Images/Zgjidhja_e_Nyj%C3%ABs/enuntying_the_knot.pdf)

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, 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

**Comments:**

Results of major public procurement bids are published in daily newspapers and on the Public Procurement Regulatory Commission website.

**References:**

Kosovar Stability Initiative. Untying the Knot. Pristina, Kosovo. June 2010. [http://iksweb.org/Photos/Publikimet/Images/Zgjidhja\\_e\\_Nyj%C3%ABs/enuntying\\_the\\_knot.pdf](http://iksweb.org/Photos/Publikimet/Images/Zgjidhja_e_Nyj%C3%ABs/enuntying_the_knot.pdf)

**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.

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#### 4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

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##### 53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

**Yes** | No

**Comments:**

Article 10 states:

With respect to the exercise of the Privatization Agency's powers under Article 6, Paragraph 2, the operational policies shall generally:

Set out rules and procedures that ensure that actions taken by the agency are in conformity with the requirement of Article 2, Paragraph 3, of the present law;

For an action taken pursuant to Article 6, Paragraph 2.1, set out transparent and uniformly applied rules governing the bidding procedures as required by Article 8, Paragraph 5, that ensure fair competition of bidders and are reasonably aimed at obtaining a fair market value for the shares;

Ensure that such rules and procedures are made available to the public.

**References:**

Law No.04/L-034 on the Privatization Agency of Kosovo, Article 10

**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

**Comments:**

Article 15 states:

A person may not be appointed as a member of a liquidation authority or engaged as a professional service provider if such person possesses any other attribute that presents a conflict of interest or impedes the ability of the professional service provider to perform his duties in accordance with this law.

**References:**

Law No.04/L-034 on the Privatization Agency of Kosovo, Article 15

**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:**

The public perception in Kosovo is that there are many cases of conflicts of interest in the process of privatization; however, those allegation are denied by the Privatization Agency. Civil society organizations have stated that the process is closed and nontransparent. Privatization officers who have been involved in the privatization process have ended up as managers of those companies after their privatization.

**References:**

Interview with Ylli Kaloshi, head of press and public relations, Privatization Agency of Kosova. Oct. 29, 2011. Pristina, Kosovo

COHU. Privatization. [http://www.cohu.org/index.php?option=com\\_content&view=article&id=158:privatizimi-dhe-koncesionimi-i-ndermarrjeve-publike&catid=2:raporte&Itemid=4](http://www.cohu.org/index.php?option=com_content&view=article&id=158:privatizimi-dhe-koncesionimi-i-ndermarrjeve-publike&catid=2:raporte&Itemid=4)

**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?

100

54a. In law, citizens can access privatization regulations.

Yes | No

**Comments:**

Article 10 ensures that such rules and procedures are made available to the public.

**References:**

Law No. 04/L-034 on the Privatization Agency of Kosovo, Article 10, Operational Policies

**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

**Comments:**

Yes, they are published in daily newspapers and through broadcast media.

**References:**

Interview with Ylli Kaloshi, head of press and public relations, Privatization Agency of Kosova. Oct. 29, 2011. Pristina, 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

**Comments:**

Article 7 states:

Within 10 business days of the liquidation decision date, the Privatization Agency shall publish, or shall cause the liquidation authority to publish, a notice containing the information specified in Paragraph 2 of this article (the liquidation notice). The publication of the liquidation notice shall be done in accordance with the advertisement.

**References:**

Annex of Law No.04/L-03 on the Privatization Agency of Kosovo, Article 7, Notice of Liquidation

**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

**Comments:**

All regulations can be downloaded from the Privatization Agency Web page.

**References:**

Interview with Ylli Kaloshi, head of press and public relations, Privatization Agency of Kosova. Oct. 29, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

Privatization Agency. <http://www.pak-ks.org/?page=2,33>

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

No cost is involved as the regulations can be downloaded from the agency Web page.

**References:**

Interview with Ylli Kaloshi, head of press and public relations, Privatization Agency of Kosova. Oct. 29, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

Privatization Agency. <http://www.pak-ks.org/?page=2,33>

**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 NGOs. 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 NGOs trying to access this information.

76  
5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

**Comments:**

Constitution of Republic of Kosovo, Article 132, states the role of the ombudsperson is to monitor, defend and protect the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.

The ombudsperson independently exercises her or 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. 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.

**References:**

Constitution of Republic of Kosovo, Article 132, Role and Competencies of the Ombudsperson, 1-3. Law No. 03/L-195 on Ombudsperson

**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.

56. Is the national ombudsman effective?

57

56a. In law, the ombudsman is protected from political interference.

Yes | No

**Comments:**

Constitution of the Republic of Kosovo, Article 134, sets forth the qualification, election and dismissal of the ombudsperson:

The ombudsperson is elected by the Assembly of Kosovo by a majority of all its deputies for a nonrenewable five-year term.

The ombudsperson and deputies 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.

Law No.03/L-195, Article 3, sets forth the basic principles of the activity of the Office of the Ombudsperson as an independent institution that is governed by the principles of impartiality.

**References:**

Constitution of the Republic of Kosovo, Article 134, Law No. 03/L-195.

**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

**Comments:**

The process of electing the ombudsperson by the assembly has been marked by a high level of political interference. The process was canceled several times, as none of the candidates received the required number of votes. The whole process had to be repeated, and new competition was allowed. Candidates had to be interviewed and evaluated by a parliamentary commission that recommended a short list to go to a parliamentary session for voting. The current ombudsperson received the lowest number of points in the interview by the parliamentary commission, although, in the parliament session, he was elected with a bigger number of votes. Since his election, there has not been any evidence of open interference with his work; however, most of his recommendations have not been taken into consideration. The ombudsperson himself has been criticized not only by government but also from civil society and the media for being incompetent and not cooperative enough. His role recently has been ignored.

**References:**

Interview with Hilmi Jashari, former acting ombudsperson and former deputy ombudsperson. Currently legal expert with NGOs and civil society activists. Sept. 28, 2011, Pristina, Kosovo

Interview with Armend Pajaziti, coordinator of project on monitoring of ombudsperson at FOL Movement. Sept. 17, 2011. Pristina, 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

**Comments:**

No ombudsperson has been removed from office so far. Further, the procedure for electing the ombudsperson makes it difficult to remove him from office; the decision to remove the ombudsperson needs to be voted on by the parliament.

**References:**

Interview with Armend Pajaziti, coordinator of project on monitoring of ombudsperson at FOL Movement. Sept. 17, 2011. Pristina, Kosovo

Interview with Hilmi Jashari, former acting ombudsperson and former deputy ombudsperson. Currently legal expert with NGOs and civil society activists. Sept. 28, 2011. Pristina, 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

**Comments:**

The Office of the Ombudsperson has full-time staff; however, several professional staff members have resigned over the last year. The deputy ombudsperson, Hilmi Jasharu, who has been working since the ombudsperson institution was established, and a few other staff members resigned over principles. Thus, some of the staff members recently started working there and need training. Most of them are hired without proper recruitment procedures, and their hiring is not fully based on professional criteria. More than 10 newly hired staff members come from a town linked to the head of the office; this is perceived as nepotism by the rest of the staff.

**References:**

Interview with Armend Pajaziti, coordinator of project on monitoring of ombudsperson at FOL Movement. Sept. 17, 2011. Pristina, Kosovo

Interview with Hilmi Jashari, former acting ombudsperson and former deputy ombudsperson. Currently legal expert with NGOs and civil society activists. Sept. 28, 2011. Pristina, 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

**Comments:**

There is high level of nepotism in the staffing of the Office of the Ombudsperson. For example, suspicion was raised when approximately 12 new members of the Office of the Ombudsperson came from the same region as the head of the office. Often, recruitment procedures are not followed.

**References:**

Interview with Armend Pajaziti, coordinator of project on monitoring of ombudsperson at FOL Movement. Sept. 17, 2011. Pristina, Kosovo

Interview with Hilmi Jashari, former acting ombudsperson and former deputy ombudsperson. Currently legal expert with NGOs and civil society activists. Sept. 28, 2011. Pristina, 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

**Comments:**

The Office of the Ombudsperson receives a regular budget. Although the office claims the budget is not enough, there are no real problems with the budget. In addition, the Office of the Ombudsperson can profit from projects and outside donors.

**References:**

Interview with Armend Pajaziti, coordinator of project on monitoring of ombudsperson at FOL Movement. Sept. 17, 2011. Pristina, Kosovo

Interview with Hilmi Jashari, former acting ombudsperson and former deputy ombudsperson. Currently legal expert with NGOs and civil society activists. Sept. 28, 2011. Pristina, Kosovo

**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

**Comments:**

Reports are public on the Office of the Ombudsperson's website; however, the website is not updated regularly. For example, the last annual report that went to parliament and the public was posted more than four months late.

**References:**

Interview with Armend Pajaziti, coordinator of project on monitoring of ombudsperson at FOL Movement. Sept. 17, 2011. Pristina, Kosovo

Interview with Hilmi Jashari, former acting ombudsperson and former deputy ombudsperson. Currently legal expert with NGOs and civil society activists. Sept. 28, 2011. Pristina, 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.

**Comments:**

The Office of the Ombudsman does initiate investigations, but it does not have executive power to enforce findings. The number of such investigation has tremendously decreased over the last few years. While there are tens of reports for individual cases published from 2000 to 2006, no report on specific cases has been published since (see <http://www.ombudspersonkosovo.org/new/?id=2,0,151,157,a>). The annual report provides only opinions of the Office of Ombudsperson on certain issues of human rights without mentioning the number of cases it has considered.

**References:**

Interview with Armend Pajaziti, coordinator of project on monitoring of ombudsperson at FOL Movement. Sept. 17, 2011. Pristina, Kosovo

Interview with Hilmi Jashari, former acting ombudsperson and former deputy ombudsperson. Currently legal expert with NGOs and civil society activists. Sept. 28, 2011. Pristina, Kosovo

**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.

**Comments:**

The Office of the Ombudsperson cannot impose penalties. It has no executive power. It can only initiate cases and refer them to the Constitutional Court.

**References:**

Interview with Armend Pajaziti, coordinator of project on monitoring of ombudsperson at FOL Movement. Sept. 17, 2011. Pristina, Kosovo

Interview with Hilmi Jashari, former acting ombudsperson and former deputy ombudsperson. Currently legal expert with NGOs and civil society activists. Sept. 28, 2011. Pristina, Kosovo

**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

**Comments:**

It is very rare that government acts on the recommendation of the Office of the Ombudsperson. The ombudsperson has been unsatisfied and has stated often in the media that his recommendations have not been taken into serious consideration by the government. Nevertheless, there are a few cases when the ombudsperson's recommendations have been considered, such as on the Law on Access to Public Documents, the Law on Domestic Violence, etc.

**References:**

Interview with Armend Pajaziti, coordinator of project on monitoring of ombudsperson at FOL Movement. Sept. 17, 2011. Pristina, Kosovo

Interview with Hilmi Jashari, former acting ombudsperson and former deputy ombudsperson. Currently legal expert with NGOs and civil society activists. Sept. 28, 2011. Pristina, 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

**Comments:**

In principle, within its capacities, it acts. The new law gives a month's time to act on a request, but, in practice, this has not been respected.

**References:**

Interview with Armend Pajaziti, coordinator of project on monitoring of ombudsperson at FOL Movement. Sept. 17, 2011. Pristina, Kosovo

Interview with Hilmi Jashari, former acting ombudsperson and former deputy ombudsperson. Currently legal expert with NGOs and civil society activists. Sept. 28, 2011. Pristina, 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.

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## 57. Can citizens access the reports of the ombudsman?

92

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

**Comments:**

Article 27 states:

The ombudsperson presents the annual report to the Assembly of the Republic of Kosovo.

The ombudsperson presents the report in the plenary session in which it is discussed.

**References:**

Law No. 03/L-195 on Ombudsperson, Article 27

**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

**Comments:**

Yes, reports of the Office of the Ombudsperson can be found on its Web page at <http://www.ombudspersonkosovo.org/new/?id=2,0,151,156,e>.

**References:**

Interview with Armend Pajaziti, coordinator of project on monitoring of ombudsperson at FOL Movement. Sept. 17, 2011. Pristina, Kosovo

Interview with Hilmi Jashari, former acting ombudsperson and former deputy ombudsperson. Currently legal expert with NGOs and civil society activists. Sept. 28, 2011. Pristina, 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

**Comments:**

No cost is involved as reports can be downloaded from the Web page.

**References:**

Interview with Armend Pajaziti, coordinator of project on monitoring of ombudsperson at FOL Movement. Sept. 17, 2011. Pristina, Kosovo

Interview with Hilmi Jashari, former acting ombudsperson and former deputy ombudsperson. Currently legal expert with NGOs and civil society activists. Sept. 28, 2011. Pristina, Kosovo

Office of the Ombudsperson. <http://www.ombudspersonkosovo.org/new/?id=2,0,151,156,e>

**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 NGOs. 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 NGOs trying to access this information.

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## 5.2. Supreme Audit Institution

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58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

**Comments:**

The Auditor-General of the Republic of Kosovo is the highest institution of economic and financial control.

**References:**

Constitution of Republic of Kosovo, Article 136, Auditor-General of Kosovo

**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.

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59. Is the supreme audit institution effective?

88

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

**Comments:**

Article 2 states:

The auditor-general shall carry out his or her functions independently and not be subject to the direction or control of any other person or institution.

**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 2

**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

**Comments:**

This is basically protected by Article 2.10 of Law No. 03/L 075. According to the constitution, the auditor-general is appointed by the International Civilian Representative during the first five years of the implementation of the constitution.

In practice, this has not been tested. The auditor-general, Lars Lage Olofsson, was appointed by the International Civilian Representative (ICR) in 2009, based on the ICR's Ahtisaari Plan.

**References:**

Kosovar Stability Initiative. Untying the Knot. Pristina, Kosovo. June 2010. [http://iksweb.org/Photos/Publikimet/Images/Zgjidhja\\_e\\_Nyj%C3%ABs/enuntying\\_the\\_knot.pdf](http://iksweb.org/Photos/Publikimet/Images/Zgjidhja_e_Nyj%C3%ABs/enuntying_the_knot.pdf)

Interview with Lars Lage Olofsson, auditor-general. Oct. 11, 2011. Pristina, Kosovo

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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

**Comments:**

The Office of Auditor-General is fully staffed, and the reports it produces are professional. Further, the office's capacities are increasing. Three years ago, there were around 65 auditors. Today, the staff is up to 100 members. An internationally recognized, external certification scheme is used. Currently, around 25 auditors are licensed. Thirty-five are on the second level, and 35 on the first level.

**References:**

Kosovar Stability Initiative. Untying the Knot. Pristina, Kosovo. June 2010. [http://iksweb.org/Photos/Publikimet/Images/Zgjidhja\\_e\\_Nyj%C3%ABs/enuntying\\_the\\_knot.pdf](http://iksweb.org/Photos/Publikimet/Images/Zgjidhja_e_Nyj%C3%ABs/enuntying_the_knot.pdf)

Interview with Lars Lage Olofsson, auditor-general. Oct. 11, 2011. Pristina, 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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

There has not been political interference in the appointment of the auditor-general. This is in part due to the fact that the head of this institution is still an international one and one of the few reserved powers of the International Civilian Officer.

However, like all the other government agencies, the office is scheduled to be "Kosovarised" (handed over to local institutions) in the near future; but, considering the importance of this office remaining free of political interference, finding a credible candidate immune to political influence may prove difficult in the extreme.

**References:**

Kosovar Stability Initiative. Untying the Knot. Pristina, Kosovo. June 2010. [http://iksweb.org/Photos/Publikimet/Images/Zgjidhja\\_e\\_Nyj%C3%ABs/enuntying\\_the\\_knot.pdf](http://iksweb.org/Photos/Publikimet/Images/Zgjidhja_e_Nyj%C3%ABs/enuntying_the_knot.pdf)

Interview with Lars Lage Olofsson, auditor-general. Oct. 11, 2011. Pristina, Kosovo

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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

**Comments:**

The Office of the Auditor-General receives regular funding from the state budget.

**References:**

Interview with Lars Lage Olofsson, auditor-general. Oct. 11, 2011. Pristina, Kosovo

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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

**Comments:**

In general, the audit reports are published regularly. The auditor-general is required by law to publish three reports to the parliament: the annual financial statements and annual performance report related to his accountability before the parliament and the annual audit report on the government's budget execution. In all cases, these reports are made public on time.

**References:**

Interview with Lars Lage Olofsson, auditor-general. Oct. 11, 2011. Pristina, Kosovo

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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

**Comments:**

Most of the recommendations are taken into consideration, but not to the desired level. Often, the same recommendations are repeated from the previous year. One issue often identified by the auditor-general is the fact that most of the agencies spend their budget in the last quarter of the year, and such practice has been repeated over and over. The trend, though, is that this is getting better. Moreover, the government (and sometimes the parliament) addresses recommendations given in the annual audit report. The extent to which this happens also is getting better following the establishment of the Committee for Oversight of Public Finances.

**References:**

Kosovar Stability Initiative. Untying the Knot. Pristina, Kosovo. June 2010. [http://iksweb.org/Photos/Publikimet/Images/Zgjidhja\\_e\\_Nyj%C3%ABs/enuntying\\_the\\_knot.pdf](http://iksweb.org/Photos/Publikimet/Images/Zgjidhja_e_Nyj%C3%ABs/enuntying_the_knot.pdf)

Interview with Lars Lage Olofsson, auditor-general. Oct. 11, 2011. Pristina, Kosovo

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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

**Comments:**

The Office of the Auditor-General produces its report based on audits and investigation. The reports point out irregularities in public funds management and provide recommendations to the audited institution as well as parliament.

Its reports are appreciated and often used as an instrument to require accountability, in particular by civil society organizations. Due to the nature of confidentiality, the office does not make public its cases of investigation; it forwards them to the prosecutor's office.

**References:**

Interview with Lars Lage Olofsson, auditor-general. Oct. 11, 2011. Pristina, Kosovo

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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.

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## 60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

Yes | No

**Comments:**

Article 3 states that the auditor-general is responsible for making copies of the report available to the public.

**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

**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

**Comments:**

As soon as the reports are submitted to relevant stakeholders, they are published on the Office of Auditor-General's website. All reports are produced in three languages: Albanian, Serbian and English.

**References:**

Interview with Lars Lage Olofsson, auditor-general. Oct. 11, 2011. Pristina, Kosovo

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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

**Comments:**

There is no cost involved because the report can be downloaded for free from the Office of Auditor-General's website.

**References:**

Interview with Lars Lage Olofsson, auditor-general. Oct. 11, 2011. Pristina, Kosovo

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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 NGOs. 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 NGOs trying to access this information.

61a. In law, is there a national tax collection agency?

Yes | No

**Comments:**

The law says:

The Tax Administration of Kosovo shall have the status of an executive authority, which shall function with full operational autonomy within the Ministry of Economy and Finance.

The agency shall be responsible for applying the provisions of this law, the Law on Personal Income Tax, the Law on Corporate Income Tax, the Law on Value-Added Tax and any other legislation applicable in Kosovo that requires it to administer.

In meeting its responsibility under this article, it shall collect revenue that is practicable within the law having regard to the resources available to the office; the importance of promoting compliance, especially voluntary compliance, by all taxpayers with Kosovo's tax legislation; and the compliance costs incurred by taxpayers.

**References:**

Law No. 03/L-222 on Tax Administration and Procedures, Article 2

**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.

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62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The Tax Administration has full-time staff, but staff members still have limited capacities. They have received technical support and training from different international organizations and donors.

**References:**

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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

**Comments:**

The Tax Administration has a regular budget and is financed through the state budget.

**References:**

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

Interview with Agron Demi, executive director of GAP Institute. Sept. 28, 2011. Pristina, 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.

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63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

The Tax Administration has not been able to collect taxes in the northern part of the Mitrovica region. There is no control of Kosovo state in this part of the country yet. The northern part of the Mitrovica region (including Leposavic, Zubin Potok and Zvecan) is controlled by self-appointed parallel structures that are supported by the Serbian government.

**References:**

Kosovo 2010 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf)

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, 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.

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64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

**Comments:**

Article 9 states:

Kosovo Customs shall be the sole institution in Kosovo that shall have the authority to perform customs functions and any other matter assigned to customs by the government of Kosovo.

**References:**

Code No. 03/L-109: Customs and Excise Code of Kosovo, Article 9

**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.

---

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

**Comments:**

Kosovo Customs has a full, professional staff, and most of the staff members have 12 years of experience. Until about three years ago, the agency was under the United Nations Interim Administration Mission in Kosovo, so staff members were trained and mentored by international experts.

**References:**

Interview with Agim Nikaj, head of the Central Department at Kosovo Customs. Sept. 26, 2011, Pristina, Kosovo

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, 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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

They agency receives regular funding according to the budget from the government.

**References:**

Interview with Agim Nikaj, head of the Central Department at Kosovo Customs. Sept. 26, 2011. Pristina, Kosovo

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, 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.

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66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

The excise laws are applied uniformly throughout Kosovo. However, there have been issues in the northern part of Mitrovica. Since Sept. 16, 2010, Customs Gates 1 and 31 have been taken under control by the Customs Authority. Still, Kosovo Customs has limited control over two gates in the northern part of Mitrovica on the border with Serbia. Thus, excise laws and customs are not fully operational yet.

The northern part of the Mitrovica region (including Leposavic, Zubin Potok and Zvecan) is controlled by self-appointed parallel structures that are supported by the Serbian government.

**References:**

Interview with Agim Nikaj, head of the Central Department at Kosovo Customs. Sept. 26, 2011, Pristina, Kosovo

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, 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.

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## 5.4. Oversight of State-Owned Enterprises

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67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

**Comments:**

Article 5 of Law No. 03/L-067 is on the Privatization Agency of Kosovo:

The agency shall have the authority to administer socially owned enterprises, regardless of whether they underwent a transformation; and any assets located in the territory of Kosovo, whether organized into an entity or not, which comprised socially owned property on or after March 22, 1989, regardless of whether they underwent a transformation subject to Article 5.1(b) below; and minority stakes, regardless of whether the relevant legal entity underwent a transformation.

**References:**

Law No. 03/L-067 on the Privatization Agency of Kosovo, Article 5

**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.

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

**Comments:**

Article 7 states:

The shareholders of publicly owned enterprises shall exercise continuous and rigorous oversight over the conduct of the boards of directors and audit committees of such enterprises.

**References:**

Article 7, Oversight by Shareholders and the POE Policy and Monitoring Unit

**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.

**Comments:**

Public companies are overseen by the Unit of Policies and Monitoring of Public Enterprises, which is within the Ministry of Economic Development and fully staffed. All employees are properly qualified with university degrees.

Though the majority of state-owned enterprises have already been privatized, those that still have the status of public-owned companies are overseen by their boards. Board members are appointed by the government. They are not considered to be full-time employees of that company. The board elects the general managing director, while the rest of the staff should be recruited based on laws in place. Many employees in public companies are people who were hired more than 10 years ago; however, there are people who have been hired over the last few years. Often, those companies are overstaffed, and vacancies have been filled by militants of the party in position. In particular, this practice has been widely applied at the Post Telecommunication Company.

**References:**

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, 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.

**Comments:**

The Unit for Policies and Monitoring of Public Companies is part of the Ministry of Economic Development and is funded from the state budget. The budget of this unit for 2011 was 49 million euros.

**References:**

Ministry of Finance. Law on Budget 2011. <http://www.mef-rks.org/download/buxheti-i-konsoliduar-i-kosoves/3672-2011?lang=sq>

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, 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

**Comments:**

The majority of public companies have been privatized or are in the process of privatization. There are only a few companies that have the status of public companies, and some of them, such as the Post Telecommunication Company, are in the process of privatization. There aren't any cases in which the Ministry of Economic Development initiated an investigation, despite the fact that there have been media reports on mismanagement and corruption. For example, this was the case with Post Telecommunication Companies and Kosovo Energetic Cooperation. To the contrary, those companies have been used for the employment and benefit of party militants.

**References:**

Members of families of politicians employed at Post Telecommunication Company. Koha Ditore. <http://www.koha.net/index.php?page=1,3,69279>

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, 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

**Comments:**

The Competitive Agency may impose penalties for companies that make agreements to create a monopoly. Also, the Ministry of Economic Development can propose to change board members if they do not fulfill their task. But, there is still a lot of political interference, and any changes in boards at those companies is done based on political affiliation or loyalty rather than mismanagement or any other breach of regulations.

**References:**

Board of AKP Again Political. Zeri. October 2010. <http://www.zeri.info/artikulli/2/8/35864/bordi-i-akp-se-serish-politik/>

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, 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?

85

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

**Comments:**

Article 14 states:

The financial accounts of every publicly owned enterprise shall separately identify, in accordance with the accounting principles referred to in Section 14.1, all expenditures and revenues incurred or received in connection with fulfilling its public service obligations, if any. Upon the approval of its annual financial statements, an enterprise shall prepare and publish on its publicly accessible website a comprehensive statement on its realized performance in relation to the targets set in its business plan.

**References:**

Law No. 03/L-087 on Publicly Owned Enterprises, Article 14

**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

**Comments:**

State-owned companies should produce their annual reports and make them public on their Web pages as well as at the website of the Ministry for Economic Development.

**References:**

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, Kosovo

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

Ministry for Economic Development. <http://mzhe.rks-gov.net/npmnp/?page=2,14>

**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.

**Comments:**

The statutory audit of publicly owned enterprises is performed by certified private auditing companies. However, the auditor general also has the right to audit publicly owned companies. The audit reports for each public company are published on the Web page of the Ministry of Economic Development.

**References:**

Interview with Lars Lage Olofsson, auditor-general. Oct. 11, 2011. Pristina, Kosovo

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, Kosovo

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

Ministry of Economic Development. <http://mzhe.rks-gov.net/npmnp/?page=2,14>

**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.

**Comments:**

The audit reports can be found on each state-owned enterprise's Web page or the website of the Ministry for Economic Development at [http://mzhe.rks-gov.net/npmnp/repository/docs/Raporti\\_i\\_NP-ve\\_2010\\_FINAL\\_ENG2.pdf](http://mzhe.rks-gov.net/npmnp/repository/docs/Raporti_i_NP-ve_2010_FINAL_ENG2.pdf)

**References:**

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, Kosovo

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, 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.

**Comments:**

No cost is involved because records are available free on the websites at [http://mzhe.rks-gov.net/npmnp/repository/docs/Raporti\\_i\\_NP-ve\\_2010\\_FINAL\\_ENG2.pdf](http://mzhe.rks-gov.net/npmnp/repository/docs/Raporti_i_NP-ve_2010_FINAL_ENG2.pdf)

**References:**

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, Kosovo

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

Government of Kosovo, Repository of Documents. [http://mzhe.rks-gov.net/npmnp/repository/docs/Raporti\\_i\\_NP-ve\\_2010\\_FINAL\\_ENG2.pdf](http://mzhe.rks-gov.net/npmnp/repository/docs/Raporti_i_NP-ve_2010_FINAL_ENG2.pdf)

**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 NGOs. 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 NGOs trying to access this information.

## 83 5.5. Business Licensing and Regulation

### 70. Are business licenses available to all citizens?

81

70a. In law, anyone may apply for a business license.

**Yes** | No

**Comments:**

Article 5.2 states:

Any person, organization or group composed of one or more individuals and/or one or more organizations may establish and register a business organization.

**References:**

Law No. 02/L-123 on Business Organizations, Article 5.2

**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

**Comments:**

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 may submit a written request to the head of the Registry requesting him to review the matter.

Within 20 calendar days of receiving such a request, the head of the Registry shall review the concerned matter, take all necessary measures required to correct the matter and provide a written decision to the concerned person or organization.

After receiving the head of the Registry's decision, or after 20 days, whichever occurs first, 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 a complaint within 20 calendar days of receiving the complaint.

After receiving the decision of the Ministry's office of administrative complaints, or after the expiration of the 20 days, whichever occurs first, 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. 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 may issue, and shall have the authority to issue, an order removing the head of the Registry from that position and it may impose other penalties provided for under any other primary normative act for failure to comply with a court order.

**References:**

Law No. 02/L-123 on Business Organizations, Article 17

**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

**Comments:**

As reflected in the World Bank report, there are still delays on getting licenses, and sometimes it takes from three weeks to two months to get all necessary documents and licenses. This is due to the fact that applicants have to go to several offices and the officers working there are inefficient. The government made several legal and structural reforms in business licensing by the end of June 2011, and the timing has been shortened by 50 percent.

**References:**

World Bank Doing Business in Kosovo Report. <http://www.doingbusiness.org/data/exploreeconomies/kosovo/>

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, 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

**Comments:**

Registration of a business is around \$20, while there is no charge for getting a municipal license.

The cost increases due to the fact that there is a delay in getting the license. There are several kinds of consultants and intermediaries who offer to help companies get the license faster for a certain fee. These practices raise suspicion of bribery.

**References:**

World Bank Doing Business in Kosovo Report. <http://www.doingbusiness.org/data/exploreeconomies/kosovo/>

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, Kosovo

**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.

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71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

0

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

**Comments:**

This issue has not been addressed properly yet. However, the government has undertaken comprehensive legal and regulatory reform that will also address public health.

**References:**

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

**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**

**Comments:**

This is still in the drafting process.

**References:**

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

**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**

**Comments:**

This is still in the drafting process.

**References:**

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

**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.

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## 72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

33

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

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

**Comments:**

The Food and Veterinary Agency is the institution that enforces and conducts inspections for food safety. The agency has 175 staff members, but it still does not have enough capacity to cover all businesses. There also has been dissatisfaction and allegations of corruption from businesses. For example, the meat producers association protested for around two weeks in July 2009 because it was not satisfied with new policies on meat imports.

**References:**

Food and Veterinary Agency. [http://www.auv-ks.net/index.php?option=com\\_docman&task=cat\\_view&gid=60&Itemid=83](http://www.auv-ks.net/index.php?option=com_docman&task=cat_view&gid=60&Itemid=83) <=en  
Economic Chamber of Kosovo Newsletter Eco Biznesi. <http://www.oek-kcc.org/modules/news/files/Eko%20nr%2007.pdf>

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, 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.

100 | 75 | 50 | 25 | 0

**Comments:**

The Ministry of Environment and Special Planning and the Agency for Protection of Environment issue environmental permission/consent and also can issue fines or remove the environmental permission/consent. However, the ministry and the agency in their own report conclude that the environment in Kosovo is not properly protected. The agency sued the company Ferronikeli for pollution of the environment and, in October 2011, the Municipal Court in Drenas fined the company 40,000 euros.

**References:**

Situation of Environment 2008-2010. Agency for Protection of Environment. Pristina, Kosovo. 2010. [http://www.ammk-rks.net/repository/docs/Gjendja\\_e\\_Mjedisit\\_ne\\_Kosove\\_2008-2010.pdf](http://www.ammk-rks.net/repository/docs/Gjendja_e_Mjedisit_ne_Kosove_2008-2010.pdf)

Interview with Emrush Ujkani, local expert at the EU SME Project. Sept. 27, 2011. Pristina, Kosovo

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, Kosovo

Ministry of Environment and Special Planning, Agency for Protection of Environment. <http://mmph.rks-gov.net/?cid=1,6.176>

**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

**Comments:**

The Labor Inspectorate is the institution that should enforce the public safety. However, the capacities of the inspectorate are very limited; there are only 51 inspectors to cover 37 municipalities. Several NGOs, as well as trade unions, have stated that safety measures are not applied to the majority of companies.

**References:**

Gap Institute. Labor Law Six Months After Entering into Force. June 2011. <http://www.gapinstitute.org/repository/docs/GAPLigjiPunes.pdf>

Interview with Ilir Rexhepi, managing director of the Kosovo Management Institute and managing partner at the Leadership and Development Consultancy. Oct. 13, 2011. Pristina, 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.

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Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

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## 6.1. ~~78~~ Anti-Corruption Law

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73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

**Yes** | No

**Comments:**

Article 344 states:

Whoever confers or promises to confer a gift or other benefit on an official person, so that such person performs within the scope of his or her official authority an official or other act which he or she should not have performed or fails 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.

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 fails 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.

When the perpetrator of the offense provided for in Paragraph 1 or 2 of the present article gave the bribe on the request of an official person and reported the offense before it was discovered or before knowing that the offense was discovered, the court may waive the punishment.

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.

**References:**

UNMIK/REG/2003/25 Provisional Criminal Code of Kosovo

Law No. 03/L-002 on Supplementation and Amendment of the Provisional Code of Kosovo, Giving Bribes, Article 344

**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

**Comments:**

Law NO. 03/L-002, Article 267 on Extortion states:

(1) Whoever, with the intent to obtain an unlawful material benefit for himself, herself or another person, uses force or serious threat to compel another person to do or abstain from doing an act to the detriment of his or her property or another person's property shall be punished by imprisonment of three months to five years.

(2) When the offence provided for in paragraph 1 of the present article is committed by a perpetrator acting as a member of a group, is committed using a weapon or a dangerous instrument or results in a great material benefit, the perpetrator shall be punished by imprisonment of one to ten years.

**References:**

UNMIK/REG/2003/25 Provisional Criminal Code of Kosovo, Article 267

Law No. 03/L-002 on Supplementation and Amendment of the Provisional Code of Kosovo, Unlawful Collection and Disbursement, Article 349

**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

**Comments:**

Article 344 states:

Whoever confers or promises to confer a gift or other benefit on an official person, so that such person performs within the scope of his or her official authority an official or other act which he or she should not have performed or fails 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.

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 fails 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.

When the perpetrator of the offense provided for in Paragraph 1 or 2 of the present article gave the bribe on the request of an official person and reported the offense before it was discovered or before knowing that the offense was discovered, the court may waive the punishment.

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.

**References:**

UNMIK/REG/2003/25 Provisional Criminal Code of Kosovo

Law No. 03/L-002 on Supplementation and Amendment of the Provisional Code of Kosovo, Giving Bribes, Article 344

**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

**Comments:**

Article 9 states:

For the work performed in exercising his or her function, the official has no right to accept or ask for any other reward apart from the compensation or the salary from the institution.

**References:**

Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, Article 9

**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

**Comments:**

According to Article 5, the term "official" applies to foreign people exercising a public function in Kosovo, according to the requirements and for Kosovo interest.

**References:**

Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, Article 5

**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

**Comments:**

Article 343 states:

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.

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.

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.

The gift or other benefit received shall be confiscated.

**References:**

Provisional Criminal Code of Kosovo, Accepting Bribes, Article 343

**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

**Comments:**

Article 11 states that, while exercising his or her function, the official is forbidden to use for personal profit confidential information at the person's disposal or confidentially obtained in exercising the function.

**References:**

Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, Article 11

**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:**

Law No. 03/L-196 on the Prevention of Money Laundering and Terrorist Financing

**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

**Comments:**

Organized Crime Article 274 states:

"(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."

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

PROVISIONAL CRIMINAL CODE OF KOSOVO, Article 274

**Yes:** A YES score is earned if organized crime is illegal.

**No:** A NO score is earned if this is not illegal.

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## 6.2. Anti-Corruption Agency or Equivalent Mechanisms

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74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

**References:**

Law No. 03/L-159 on Anti-Corruption Agency

**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.

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75. Is the anti-corruption agency effective?

75

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

**Comments:**

Article 3 states:

The agency is an independent and specialized body responsible for implementation of state policies for combating and preventing corruption in Kosovo.

**References:**

Law No. 03/L-159 on Anti-Corruption Agency, Article 3

**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

**Comments:**

There has not been any noted major political interference in the work of the Anti-Corruption Agency, but this might be due to the fact that agency does not have any executive power. However, the director of the agency is elected by the assembly, which is a political body. The same director has been re-elected for his second mandate, though he has been quiet. Often, media outlets criticize the institution for lack of effort on combating corruption.

**References:**

Kosovar Stability Initiative Policy Analysis. Untying the Knot. The Political Economy of Corruption and Accountability in Kosovo. June 29, 2010. [http://www.iksweb.org/Photos/Publikimet/Images/Zgjidhja\\_e\\_Nyj%C3%ABs/enuntying\\_the\\_knot.pdf](http://www.iksweb.org/Photos/Publikimet/Images/Zgjidhja_e_Nyj%C3%ABs/enuntying_the_knot.pdf)

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 28, 2011. Pristina, Kosovo

Anti-Corruption Agency. <http://www.akk-ks.org/?cid=1.4.290>

**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

**Comments:**

The executive director of the Anti-Corruption Agency is elected by parliament. The current executive director served a full first term and was elected to serve a second term through a competitive process.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 28, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

**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

**Comments:**

The head of the Anti-Corruption Agency is elected by parliament, a political body. Although there have been attempts to abandon this criteria, the parliament elected the most recent head of the agency based on professional criteria. The three short-listed candidates had similar education backgrounds, but the current director had more experience on fighting corruption, as he had served as director of the agency in his previous mandate, and this gave him an edge over the other candidates.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 28, 2011. Pristina, Kosovo

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

**Comments:**

The Anti-Corruption Agency has 35 full-time staff members, and most of them are qualified with university and master's degrees. Though some of them do not have the sufficient experience, they have been provided training by local and international organizations. They have also been sent to study with similar organizations in Europe. In addition, the agency receives technical support, consultancy and advice from international organizations such as the United Nations Development Programme and the Soros Foundation.

**References:**

Interview with Fidan Kalaja, program manager at FOL Movement.

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 28, 2011. Pristina, Kosovo

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

**Comments:**

The Anti-Corruption Agency receives regular funds from the state budget. The annual budget of the agency is around 600,000 euros, and it is sufficient to cover the operation of the agency and salaries of the staff. In addition, the agency may receive support from donors that may include training, study visits or direct consultancy and advice.

**References:**

Interview with Fidan Kalaja, program manager at FOL Movement. Pristina, Kosovo

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 28, 2011. Pristina, Kosovo

**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

**Comments:**

The Anti-Corruption Agency provides an annual report, which is submitted to the Parliament of Republic of Kosovo. The report is also published on the Web page of the agency.

**References:**

Interview with Fidan Kalaja, program manager at FOL Movement. Pristina, Kosovo

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Anti-Corruption Agency. <http://www.akk-ks.org/?cid=2,16>

**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

**Comments:**

The Anti-Corruption Agency has no executive power. There are two elements: fighting and preventing corruption. In the fight against corruption, the agency can collect evidence and send cases to the prosecutor, who can start an investigation and make allegations. In preventing corruption, the agency has conducted several information campaigns.

**References:**

Kosovar Stability Initiative Policy Analysis. Untying the Knot. The Political Economy of Corruption and Accountability in Kosovo. June 29, 2010. [http://www.iksweb.org/Photos/Publikimet/Images/Zgjidhja\\_e\\_Nyj%C3%ABs/enuntying\\_the\\_knot.pdf](http://www.iksweb.org/Photos/Publikimet/Images/Zgjidhja_e_Nyj%C3%ABs/enuntying_the_knot.pdf)

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

**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

**Comments:**

The Anti-Corruption Agency conducts investigations based on information it receives from citizens, but also for cases that might be raised by the media or other sources. When evidence is found, the agency forwards cases to the prosecutor's office. Over the last year, the agency has forwarded more than 100 cases to the prosecutor's office.

**References:**

Interview with Fidan Kalaja, program manager at FOL Movement. Pristina, Kosovo

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

**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.

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## 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

**Comments:**

The agency starts investigation within 60 days; however, sometimes it may take longer based on the nature of the case. When the situation is complicated, it might take around three months before the case is filed with prosecutors.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 28, 2011. Pristina, 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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

**Comments:**

In general, citizens report cases of corruption at the agency with no fear of any negative consequences. Citizens file complaints a lot, and they have never had any negative consequences. All information is kept confidential. Cases can be reported by phone, and the identity of the reporter is withheld and all information kept confidential. During 2010, 250 cases were reported by citizens via phone calls. However, because the agency has no executive power, people hesitate to report cases due to lack of confidence.

**References:**

Interview with Hasan Preteni, executive director of the Anti-Corruption Agency. Oct. 10, 2011. Pristina, Kosovo

Interview with Fadil Miftari, expert and consultant to the Anti-Corruption Agency. Sept. 28, 2011. Pristina, Kosovo

Annual Report of Anti-Corruption Agency. January to December 2010. [http://www.akk-ks.org/repository/docs/Raporti\\_Vjetor\\_2010\\_janar\\_dhjetor.pdf](http://www.akk-ks.org/repository/docs/Raporti_Vjetor_2010_janar_dhjetor.pdf)

**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.

### 6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

75

77a. In law, there is a general right of appeal.

Yes | No

**Comments:**

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.

**References:**

Constitution of Republic of Kosovo, Article 102, General Principles of the Judicial System

**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

**Comments:**

The law does not set any deadline for appeals; however, estimates are around two months. But due to the small number of judges and high number of cases, it takes much longer. The process of appointment and reapportionment of judges and prosecutors is still going on, and this is delaying cases even more, according to Faik Spahiu and Genc Nimoni.

The massive number of pending issues, particularly of a civil nature, indicates that local judges and prosecutors are unable to progress in tackling this urgent problem, according to the EULEX Program Report 2010.

**References:**

EULEX Program Report 2010. [www.eulex-kosovo.eu](http://www.eulex-kosovo.eu)

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of monitoring, at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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

**Comments:**

There are no specific costs to appeal, apart from paying a private attorney. However, the court decides who will take over the expenses of the trial in both civil and criminal cases. Usually, the losing party pays expenses for both parties; sometimes expenses are split between parties.

**References:**

Organization for Security and Co-operation in Europe Mission in Kosovo. Ineffective Legal Representation. Issue 7. September 2010

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of monitoring, at BIRN. Oct. 14, 2011. Pristina, Kosovo

BIRN. Court Monitoring Annual Report April 2010 to February 2011. <http://kosovo.birn.eu.com/en/1/70/30569/>

**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.

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78. In practice, do judgments in the criminal system follow written law?

50

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

**Comments:**

The decisions always are according to written laws. Nevertheless, there is a perception in Kosovo that the judicial system is corrupted, there is political interference and court decisions are not just. For example, in 2010, the municipal court in Istog issued 72 sentences for criminal forestry theft, 70 of which were fines, one of which was a reprimand and just one calling for imprisonment.

**References:**

BIRN. Court Monitoring Annual Report April 2010 to February 2011. <http://kosovo.birn.eu.com/en/1/70/30569/>

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of monitoring, at BIRN. Oct. 14, 2011. Pristina, Kosovo

Interview with Fidan Kalaja, program manager, and Armend Mazreku, policy analyst, at FOL (Speak Up) Movement. Sept. 17, 2011. Pristina, Kosovo

**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.

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## 79. In practice, are judicial decisions enforced by the state?

25

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

### Comments:

Out of about 235,000 cases in the courts of Kosovo, around 50 percent of them or 102,000 cases, remain unenforced. They are still waiting for enforcement from the judiciary. This includes the decision of courts in the cases of KEK, PTK, etc. This is still the biggest challenge and a problem of the judiciary in Kosovo.

### References:

Kosovar Institute for Policy Research and Development. The Inseparable Power: An Analysis of the Independence of the Judiciary in Kosovo. September 2011

BIRN. Court Monitoring Annual Report April 2010 to February 2011. <http://kosovo.birn.eu.com/en/1/70/30569/>

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of monitoring, at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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.

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## 80. Is the judiciary able to act independently?

88

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

### Comments:

Article 2 of Chapter VII states:

The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.

### References:

Constitution of the Republic of Kosovo, Chapter VII, Justice System, 2

**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

**Comments:**

As stated in the Balkan Investigative Reporting Network's report:

"The appointment process also suffered deficiencies of a different nature. There were numerous cases of powerful people trying to use their influence to obstruct the process. For example, according to the criminal judge of Prishtina District Court, Hamdi Ibrahim, the former president of the court, Anton Nokaj, had attempted to exert influence in the KJC so that Ibrahim was not reappointed ... The most blatant case was that of Driton Muharremi, a candidate for president of the Municipal Court in Prishtina, who was removed from the list just 18 hours before the decree, despite being the only candidate for that position, after successfully passing all procedures with good results."

**References:**

Balkan Investigative Reporting Network. The Process of Appointment/Reappointment of Judges and Prosecutors. May 2011. Pristina, Kosovo. <http://kosovo.birn.eu.com/en/170/>

Kosovar Institute for Policy Research and Development. The Inseparable Power: An Analysis of the Independence of the Judiciary in Kosovo. September 2011. [http://www.kipred.net/web/upload/Inseparable\\_power\\_ENG\\_final.pdf](http://www.kipred.net/web/upload/Inseparable_power_ENG_final.pdf)

European Union Rule of Law Mission. EULEX Programme Report 2010. Building Sustainable Change Together. 2010. <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf>

**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

**Comments:**

The law states:

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 used.

**References:**

Code of Ethics and Professional Conduct for Judges — Part 3, Specific Rules of Professional Conduct, Administrative responsibilities, Nr5

**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

**Comments:**

Article 104 states:

Judges may be removed from office upon conviction of a serious criminal offense or for serious neglect of duties.

A judge has the right to directly appeal a decision of dismissal to the Kosovo Supreme Court.

Judges may not be transferred against their will unless otherwise provided by law for the efficient operation of the judiciary or disciplinary measures.

**References:**

Constitution of Republic of Kosovo, Article 104, on Appointment and Removal of Judges

**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.

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## 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

**Comments:**

The performance of the Kosovo justice system is still showing signs of weakness. Interference at different levels and in a variety of forms has been observed. This interference with the work of the justice system, both in criminal and civil proceedings, has often resulted in practical problems (such as the preemptive abstention of local judges and prosecutors to deal with sensitive cases), according to the EULEX Program Report 2010.

No such cases has been seen. However, there are still cases of intimidation either directly or through members of their family that have resulted for a "disciplined core of judges that know what is expected from them from certain circles of powerful people and daily politics." Often, sensitive cases of corruption and organized crime are rejected by local judges, who think that only EULEX judges should deal with such cases. This goes both for judges, prosecutors and police, according to Faik Spahiu.

**References:**

European Union Rule of Law Mission. EULEX Programme Report 2010. Building Sustainable Change Together. 2010. <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf>

Interview with Faik Spahiu, managing director of project monitoring at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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

**Comments:**

No such cases has been seen.

**References:**

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of monitoring, at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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.

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## 82. Do citizens have equal access to the justice system?

71

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

**Comments:**

During the monitoring process, no cases of ethnic or racial bias were observed.

**References:**

European Union Rule of Law Mission. EULEX Programme Report 2010. Building Sustainable Change Together. 2010. <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf>

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of monitoring, at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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

**Comments:**

In principle, men and women have equal access to justice, but, in practice, it is has been observed in gender-related cases, such as sexual abuse and rape, that local judges tend to expedite the proceedings whenever the defendant pleads guilty. This practice

does not allow for a thorough investigation and establishment of the facts. Also, judges have wrongly assigned the criminal offense (such as sexual abuse instead of rape) on a few occasions. Finally, in divorce proceedings, local judges have denied the victim — usually a woman who was the victim of domestic violence — the right to have a lawyer attend the hearing.

**References:**

European Union Rule of Law Mission. EULEX Programme Report 2010. Building Sustainable Change Together. 2010. <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf>

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of monitoring, at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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

**Comments:**

Article 54 of the Constitution of Republic of Kosovo states:

Everyone enjoys the right of judicial protection if any right guaranteed by this constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.

Article 12 states:

Under the conditions provided by the present code, if the interests of justice so require and if the defendant has insufficient means to pay for legal assistance and for this reason cannot engage a defense counsel, an independent defense counsel having the experience and competence commensurate with the nature of the offense shall be appointed for the defendant on his or her request and paid from budgetary resources.

**References:**

Constitution of Republic of Kosovo, Article 54, Judicial Protection of Rights

UNMIK/REG/2003/26 Amended by Law No. 03/L-003 on Amendment and Supplementation of the Kosovo Provisional Code of Criminal Procedure No. 2003/26, Article 12

**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

**Comments:**

The state provides legal defense counsel for free for criminal matters. However, legal representation (defense counsel for criminal matters and some civil matters) is often substandard and ineffective.

This may violate the legal framework in Kosovo, the Code of Professional Ethics of Advocates and international law. It also has serious repercussions on a defendant's right to a fair trial.

**References:**

Department of Human Rights and Communities. Legal System Monitoring Section. Ineffective Legal Representation. Issue 7. September 2010. <http://www.osce.org/kosovo/71431>

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of judiciary monitoring at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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

**Comments:**

The price depends on the kind of claim and ranges from 15 euros for personal issues such as submission of a claim related to personal status issues, including declarations that a person has passed away or is missing, to 40 euros for claims related to marriage or child protection. For a frame of reference, the average monthly salary in Kosovo is about 350 euros.

**References:**

Administrative Direction No. 2008/02 on Unification of the Court Fees. <http://kgjk-ks.org/>

European Union Rule of Law Mission. EULEX Programme Report 2010. Building Sustainable Change Together. 2010. <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf>

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of monitoring, at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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

**Comments:**

The cost of suits against an administrative act for which the dispute's value is measurable varies from 20 euros to 800 euros. The cost of suits against an administrative act for which the dispute's value is not measurable is 40 euros. For reference, the average annual earning for a small retail store varies from about 15,000 euros to 50,000 euros.

However, slow procedures in the court and the price to hire a lawyer make it more expensive to bring a case in the court.

**References:**

Kosovo Judicial Council. Administrative Direction No. 2008/02 on Unification of the Court Fees. <http://kgjk-ks.org/>

European Union Rule of Law Mission. EULEX Programme Report 2010. Building Sustainable Change Together. 2010. <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf>

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of monitoring, at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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

**Comments:**

Each municipality has a municipal court, and there is also the District Court. It takes around two hours from any place in Kosovo to reach Pristina, where the Supreme Court and Constitutional Court are based.

**References:**

Organization for Security and Co-operation in Europe Mission in Kosovo. Ineffective Legal Representation. Issue 7. September 2010

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of monitoring, at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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.

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## 6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

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83. Is the law enforcement agency (i.e. the police) effective?

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

In general, the Kosovo police department is professional and not corrupted, In the "Early Warning Reports of UNDO," the police department is ranked as one of the trusted institutions. However, many international reports, including the EC Progress Report, have criticized the police department for nepotism and corruption in recruitment of new officers and political interference in ranking and appointment of management positions.

**References:**

European Union Rule of Law Mission. EULEX Programme Report 2010. Building Sustainable Change Together. 2010. <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf>

Kosovo 2010 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf)

**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

**Comments:**

The police department receives regular funding from the national Kosovo budget.

**References:**

Organization for Security and Co-operation in Europe Mission in Kosovo. Ineffective Legal Representation. Issue 7. September 2010

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of monitoring, at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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

**Comments:**

Kosovo Police was established with the support of the Organization for Security and Cooperation in Europe (OSCE), which has provided continued training and capacity-building. Also, the mandate of EULEX is to build the capacities of the police department and monitor its work. Nevertheless, Kosovo Police has not remained immune from political interference. As was highlighted in the last progress report, there was undue political interference in senior police appointments and the conduct of sensitive police operations.

**References:**

Kosovo 2011 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2011-2012. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/ks\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf)

Interview with Faik Spahiu, managing director, and Genc Nimoni, project coordinator of monitoring, at BIRN. Oct. 14, 2011. Pristina, Kosovo

**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.

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#### 84. Can law enforcement officials be held accountable for their actions?

75

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

**References:**

Law Nr. 03/L-036 on Kosovo Police Inspectorate

**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

**Comments:**

As stated in the Kosovo Police Inspectorate Annual Report 2010:

The Police Inspectorate is a relatively new institution; it was established in 2006 with the support of OSCE Mission in Kosovo. There is not enough knowledge and information among citizens about the work of the inspectorate. The inspectorate monitors the work of the police and, when necessary, conducts an investigation. During 2010, the inspectorate received 1,185 complaints; 577 were from citizens. Only 16 cases are still in the process, while the rest of the cases have been resolved. Some 541 of those cases have been investigated further by the Department of Investigation.

**References:**

Kosovo Police Inspectorate Annual Report 2010. <http://pk.rks-gov.net/Reports/1.%20Raporti%20Vjetor%202010%20ne%20PDF%20%28shqip%29.pdf>

Interview with Faik Spahiu, managing director of judiciary monitoring project at Balkan Investigative Reporting Network. Oct. 14, 2011.

Alessandro Tedesco and Ardian Latifaj, EULEX Kosovo. Oct. 19, 2011. Pristina, Kosovo

**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

**Comments:**

Article 28 states:

The Police Inspectorate starts disciplinary investigations based on authorization by the chief executive of the Inspectorate, if there is a reasonable suspicion that that person has committed a disciplinary violation according to the applicable law.

**References:**

Law Nr. 03/L-036 on Kosovo Police Inspectorate, Article 28

**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

**Comments:**

In all of the reports that measure perception of corruption, Kosovo Police has been ranked among the least-corrupted institutions, in particular when it comes to bribes. This is due in part to the fact that the department has been closely monitored by OSCE and EULEX. However, Kosovo Police has not remained entirely immune to corruption, in particular in procurement. The Inspectorate also has received complaints and conducted investigations for corruption cases, though the number of cases has not been high. In 2010, out of 585 cases that the Inspectorate investigated for heavy disciplinary violations, only 17 were corruption cases.

**References:**

Kosovo Police Inspectorate Annual Report 2010. <http://ipk.rks-gov.net/Reports/1.%20Raporti%20Vjetor%202010%20ne%20PDF%20%28shqip%29.pdf>

Interview with Faik Spahiu, managing director of judiciary monitoring project at Balkan Investigative Reporting Network. Oct. 14, 2011.

Alessandro Tedesco and Ardian Latifaj, EULEX Kosovo. Oct. 19, 2011. Pristina, Kosovo

**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

**Comments:**

Article 29 of Law No. 03/L-036 discusses Kosovo Police Inspectorate investigations of appeals for grave disciplinary violations:

In cases of appeals, if the Kosovo Republic Police Inspectorate determines that the committed act contains elements of criminal offense, the public prosecutor will be informed.

In relation to immunity, the Constitutional Court issued a judgment stating that high level officials, including ministers, have no immunity for issues that are not directly related to their jobs as high state officials.

**References:**

Law Nr. 03/L-036 on Kosovo Police Inspectorate, Article 29, Investigation of Appeals for Grave Disciplinary Violations

Judgment in Case No. KO-98/11 Concerning the Immunities of Deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo and Members of the Government of the Republic of Kosovo. [http://www.gjks.org/repository/docs/KO98-11\\_ANG\\_AKTGJYKIM.pdf](http://www.gjks.org/repository/docs/KO98-11_ANG_AKTGJYKIM.pdf)

**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

**Comments:**

Law enforcement officials are not considered immune from criminal proceedings. For example, in spring 2011, the police station commander at Prizren was arrested over allegations of war crimes committed during 1999 in one of the KLA bases in the village of Klecka. The subject is currently being held in custody as the criminal proceeding continues.

**References:**

Interview with Faik Spahiu, managing director of judiciary monitoring project at Balkan Investigative Reporting Network. Oct. 14,

2011.

Alessandro Tedesco and Ardian Latifaj, EULEX Kosovo. Oct. 19, 2011. Pristina, Kosovo

**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.

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