



EULEX PROGRAMME REPORT 2011

BOLSTERING THE
RULE OF LAW IN KOSOVO:
A STOCK TAKE



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LIST OF ABBREVIATIONS

BCP	Border/Boundary Crossing Point
BIRN	Balkan Investigative Reporting Network
BBP	Border and Boundary Police
CARDS	Community Assistance for Reconstruction, Development and Stabilisation
CAS	Case Allocation System
CMIS	Case Management Information System
CoE	Council of Europe
DECAM	Department of Citizenship, Asylum and Migration
DFM	Department of Forensic Medicine
DMF	Department for Migration and Foreigners
DIA	Directorate of Intelligence and Analyses
DFID	UK Dept. for International Development
DOC	Department/Directorate of Organized Crime
DPPO	District Public Prosecution Office
EC	European Commission
ECLO	European Commission Liaison Office
EPAP	European Partnership Action Plan
EU	European Union
EU-CTA	Support to Customs and Taxation Administration Programme
EUROJUST	European Union Judicial Cooperation Unit
FAST	Flexible Anti-Smuggling Teams
FIQ	Forum for Civic Initiative
FRY	Former Republic of Yugoslavia
FYROM	Former Yugoslav Republic of Macedonia
GoK	Government of Kosovo
I/EOD	Improvised/Explosives Ordinance Disposal
IBM	Integrated Border Management
ICG	International Crisis Group
ICITAP	International Criminal Investigative Training Assistance Program
IJPC	Independent Judicial and Prosecutorial Commission
ILA	International Legal Assistance
ILC	International Legal Cooperation
ILP	Intelligence Led Policing
ILCU	International Legal Cooperation Unit
IPA	Instrument for Pre Accession
ISDN	Integrated Service Digital Network
JAU	Judicial Audit Unit
JPAVO	Judicial and Prosecutorial Verification and Assessment Office
KC	Kosovo Customs

KCS	Kosovo Customs Service
KIPRED	Kosovar Institute for Policy Research and Development
KJC	Kosovo Judicial Council
KP	Kosovo Police
KPC	Kosovo Prosecutorial Council
KPIS	Kosovo Police Information System
KCSS	Kosova Center for Security Studies
KSF	Kosovo Security Force
KVFA	Kosovo Veterinary and Food Agency
MCSC	Municipal Community Safety Councils
MoFE	Ministry of Finance and Economics
MMA	Monitoring, Mentoring and Advising
MoFA	Ministry of Foreign Affairs
MoiA	Ministry of Internal Affairs
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
NGO/CSO	Non Governmental Organization / Civil Society organization
ODC	Office of Disciplinary Council
OMIK	OSCE Mission in Kosovo
OMPF	Office of Missing Persons and Forensic
OSCE	Organization for Security and Cooperation in Europe
OSU	Operational Support Unit
PAM	Prosecution Administration Manual
PMIS	Prosecution Management Information System
PPL	Public Procurement Law
PPO	Public Prosecutors Office
RNIS	Regional Narcotic Investigation Sections
SOF	Strategic Operational Framework
SIU	Special Intervention Unit
SOP	Standard Operational Procedure
SPRK	Special Prosecution Office of Kosovo
TAIEX	Technical Assistance and Information Exchange
TIMS	Trade Information Management System
UCS	UNMIK Customs Service
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
UNMIK	United Nation Interim Administration in Kosovo
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development

TABLE OF CONTENTS

FOREWORD BY EULEX HEAD OF MISSION	04
INTRODUCTION.....	05
PART 1:	
July 2010/June 2011 update on developments.....	07
PART 2:	
Tacking stock of progress – December 2008/June 2011	13
POLICE	
Tackling Crime effectively.....	16
Providing Secure Borders.....	20
Tackling Patrol issues and ensuring public order.....	22
Providing a sustainable organisation	26
JUSTICE	
Kosovo Judicial Council and Judges	32
Kosovo Prosecutorial Council and Prosecutors	38
Criminal and Civil Cases	42
Ministry of Justice and Department for Forensic Medicine	45
Kosovo Correctional Service.....	47
CUSTOMS	52
Endnotes.....	55
Bibliography.....	58
Acknowledgments	61

Foreword by EULEX Head of Mission

Xavier Bout de Marnhac



EULEX is a CSDP mission characterized by a unique combination of executive and non-executive mandate. The Mission uses its executive mandate in order to make arrests, investigate, prosecute, sentence suspects and conduct operations in

the area of forensic medicine and witness protection.

In addition to the executive mandate the Mission is also tasked to foster and assist the Kosovo justice system as it strives to an end-state of being sustainable, transparent, accountable, multiethnic and free from any political interference, all in accordance with European best practices and standards. This is probably the most important part of the mandate and it is performed through Monitoring, Mentoring and Advising (MMA) where EULEX staff act alongside their Kosovo counterparts in their daily routines and duties. This Kosovo-wide European engagement highlights the extent to which sustainable progress in these areas is considered essential not only for Kosovo but the region and all of the EU.

In order to reach this end-state the Mission has set short-term and mid-to-long term targets. The short term targets have all been agreed with both the local Kosovo institutions as well as the European Commission. These targets refer to, inter alia: the drafting and implementation of specific legislation; the implementation of standardized procedures within all sectors of the Kosovo justice system; the appointment of officials; and support to technical assistance provided through various EU instruments.

It will be important for EULEX to continue the MMA of the build-up and organisational change of the rule of law sector, including the evolving justice system “infrastructure”. Let us not forget that the justice system was run by internationals until 2008, whereas both police and customs benefitted from massive assistance and a high degree of operational autonomy throughout the last decade. In this context, our MMA-related efforts will also insist on tailored actions to support the fight against corruption and organised crime, while bearing in mind the necessity to oppose political interference over independent institutions. Such interference was recorded and is still being recorded by the Mission.

I would like to conclude by taking the opportunity to thank our Kosovo partners working within the area of rule of law for their commitment and engagement. I would at the same time like to take the opportunity to thank the EULEX staff whose hard work and commitment to the Mission's MMA mandate is reflected in the following report. I am confident that by continuing working together and increasing our partnership we will score more positive results for the benefit of the people and the rule of law.

Introduction

When EULEX was launched in December 2008, one of the main objectives was to build a map of the strengths and weaknesses in the rule of law area, in each and every part of the various institutions. The map, consisting of a thorough performance assessment of the rule of law system, was finalized in June 2009 leading the mission to the publishing of a baseline. Based on the identified weaknesses in the baseline, small and medium scale projects were designed by EULEX advisors, in close partnership with their local counterparts. The primacy for the implementation of these remedial actions always stayed with the local rule of law institutions so as to ensure their ownership over the MMA process outputs.

The report's ambition is to provide a benchmarking against the baseline produced in 2009. Beyond a mere overview of developments of the past 12 months, this report is to provide an analytical overview of progress achieved since the very beginning of the mission. The analysis is based on developments observed by hundreds of mission members and catalogued by the mission throughout the last 30 months.

The study is divided in two main parts. Part One offers an update of major changing dynamics recorded in the last 12 months, a snapshot of all areas in which EULEX MMA advisors are working. Part Two is more process-oriented and provides a benchmarking against the original weaknesses – framed in text-boxes for ease of reference - that were reported in the 2009 baseline. This benchmarking exercise concludes that that Kosovo's rule of law institutions have indeed moved forward and identifies areas of continued weak spots.

The Kosovo Police is assuming more tasks and is undergoing a well-thought organizational restructuring. The

strategic management is showing a tangible capacity to lead change with quality. The perception by the public is attested at a good level of confidence. The conditions to successfully continue the modernization of the service and the approximation to EU standards of policing are also well identified. The challenges ahead are clear. It will be important to keep a good pace of implementation in strategic areas such as resource management, models for community policing, intelligence-led orientation of the service, capacity to disrupt organised crime activities, building a witness protection capacity.

The justice system is continuing its build up and showing signs of progress. The set of laws to complete the justice "infrastructure" were adopted. The implementation of their provisions will have a macroscopic impact on the system, this is also why a consolidation of the capacities and competences of the Kosovo Judicial Council and Kosovo Prosecutorial Council is in focus. Judges and Prosecutors have been vetted and re-appointed. The age for a magistrate is now at an average of 50 years, it was around 60 back in 2009. Salaries got increased and courts have been renovated. Recruitment and discipline systems are independent. The perception of the public is still that of a weak system, polluted by cases of corruption and subjected to political or otherwise external pressures. The challenges ahead are many and of very complex nature, like the adoption of the law on witness protection and the law on missing persons. The improvement of the level of enforcement of judicial decisions, the reduction of the backlog, more confidentiality, and a tangible impartiality are still targets to be achieved. A positive remark goes to the Ministry of Justice which is increasingly assuming responsibility for the coordination of the many efforts and activities in its sphere of competence.

The Kosovo Customs have kept a good level of performance. The modernization of the agency is ongoing. The capacity to collect revenue is stable. Sharing with the police of tools/equipment and integration of services in the area of integrated border management need to be pursued more vigorously.

At the strategic level, the Joint Rule of Law Coordination Board¹ is coordinating all matters pertaining to Kosovo's Rule of Law sector. The effective running of its Secretariat and a better sharing of information are providing success stories in terms of prioritization of activities and synchronization of tasks. The Legislation and implementation of activities required in order to score a better European Commission Progress Report for this year are known. Rule of law institutions and agencies should intensify action in these directions. The cut-off date for this year is close but achievements are still possible.

Progress of rule of law institutions and agencies will also mean progress toward a gradual phasing out of the mission. If today this scenario can just be seen "at the horizon" is simply because we are not there yet. The rule of law system is still in the making. Not all the pieces of the map are in their place.



The Joint Rule of Law Coordination Board



PART 1

JULY 2010/JUNE 2011
UPDATE ON DEVELOPMENTS

The table below gives an overview of the progress of Kosovo's rule of law institutions in the areas where EULEX is fostering organizational change.

RULE OF LAW AREA	SECTORS	2011vs2010	2010vs2009
POLICE	Tackling Crime effectively	A	B
	Tackling Patrol issues and ensuring public order	A	B
	Providing Secure Borders	A	A
	Providing a sustainable organisation	A	B
JUSTICE	Kosovo Judicial Council	A	B
	Judges	B	B/C
	Kosovo Prosecutorial Council	B	B/C
	Prosecutors	B	B
	Ministry of Justice	B	B/C
	Department for Forensic Medicine	C	B/C
	Correctional Service	A	A/C
CUSTOMS	Integrating Government Strategies into operational plans	B	B
	Improving Internal Communication	B	B/C
	Co-operation with other law enforcement agencies	B	B
	Integrated Border Management Strategy	B	B/C

A = Progress
 B = Slow progress/Need more impetus
 C = Problematic/Very limited or no progress
 D = Serious concern/regression

In the field of **police** the KP has managed to move forward organisational change by achieving a number of positive reforms. It is worth highlighting that the middle and senior management of the KP, particularly since mid 2010, have demonstrated a growing ability to bring about large-scale organisational change.

With regards to the reform process of KP's legal framework, progress has been made with the revision of the Law on Police completed in the beginning of April 2011. The revision was also foreseen by the European Partnership Action Plan 2010 (EPAP).

Another positive note was the finalization of the KP restructuring. Specific attention was paid to the Department against Organized Crime and the Directorate for Intelligence and Analysis as their role will be crucial for implementing the intelligence led policing (ILP) strategy. EULEX, in synergy with European Commission for upgrading of the IT infrastructure and establishment of secure databases (under IPA 2010, approved in December 2010), will support the development and implementation of the intelligence-led policing concept throughout Kosovo.

In the context of KP organizational restructuring EULEX formally advised the Minister of Internal Affairs and the KP DG to consider a number of essential requirements. These requirements range from the need to further consolidate the new KP structure by developing relevant SOPs, (particularly with regard to procedures on work flow, cooperation and responsibilities) to an improved cooperation and working relations with Kosovo Customs on Integrated Border Management.

A continuous commitment by KP on establishing a viable **Witness Protection Unit** remains a strategic priority to further contribute to the fight against organised crime.

In addition, a profound **Resource Allocation Study**, to examine the functionality of organizational boxes, especially regarding the ratio of workload and personnel allocation, was supported by EULEX and ECLO. In July 2011 the full KP structure, from Director-General till Sub-Station levels, was declared ready.

In respect of **community policing**, annual patrol plans and the use of patrol reporting forms have been successfully introduced in police stations. Other achievements recorded in the last year are the development and introduction of a strategy to reduce the overall level of crime and certain key crimes, as well as standing operational procedures to define categories and record victim ethnicity in KP crime reports, which will allow to correctly retrieve statistics regarding crimes against non-majority groups.

Progress was recorded on **enhanced patrol management**, in particular through the inclusion of local communities' consultation fora (Municipal Councils for Safety in Communities).

KP also contributes to the Special Anti-Corruption Department (SPRK-ACTF) in close cooperation with the Special Prosecution Office of Kosovo (SPRK). SPRK-ACTF capacities were increased by meeting staff needs with 100% of police officers needed; the efficiency in **investigating corruption cases** has been enhanced with five investigation teams and one intelligence team established within the unit, which investigate independently the assigned cases; capacities were increased through advance trainings in specific fields.

The **Directorate of Economic Crime and Corruption** (DECCI) in the Kosovo Police still lacks proper equipment and needs strengthening but its establishment can be considered as a step forward. Progress is slow but includes: enhanced infrastructure (new offices, 40 computers and other equipment); increased potential to investigate corruption cases. Six Regional Anti-Corruption Task Forces have been established, composed by 13 prosecutors and 20 police officials of the DECCI, which initially will investigate a huge number of old cases that are in regional prosecutions and then will continue to investigate new cases; enhances skills through advanced trainings in specific fields (public procurement, financial investigation techniques, investigating criminal assets, money laundering).

Border and Boundary management cooperation with neighboring countries is mostly conducted in an ad hoc manner while lacking clear structures and dele-

gated powers for cooperation at regional and local levels, especially with regards to handling border/boundary incidents.

The European Commission is equipping the Kosovo Border and Boundary Police with IT equipment for assuring the effective and efficient flow of persons in and out of Kosovo and to enable the Kosovo BBP to control the green and blue borders/boundaries. Since the beginning of the year 2011 there are improvements as listed below:

- 1) BMS hardware systems have been deployed to all BCPs and Regional Command Centres;
- 2) Installation and configuration of Central Site servers and backup system for KBBP (Central Command);
- 3) BMS software systems have been deployed and configured to all BCPs and Central/regional Command Centres;
- 4) KP network connection with the reference databases (Passports, ID cards and vehicle registration) from Central Registry Agency(CRA) has been established and the transfer of the data from CRA to the KP has been successfully tested and implemented.

The Minister of Internal Affairs, together with the Acting Head of ECLO and the Assistant Director of KBBP, have inaugurated the BMS on the 5th of August.

In the field of **justice** progress was recorded in a number of areas.

Four new laws have been passed by the Kosovo Assembly, namely 1) Law on Courts 2) Law on State Prosecutor 3) Law on Kosovo Judicial Council (KJC) and 4) Law on Kosovo Prosecutorial Council (KPC).

The establishment and consolidation of the **KJC, KPC and the new courts structure** includes a planning phase (from Jan 2011 till Dec 2011) and an implementation phase (from Jan 2012 till Dec 2012). KJC (for courts) and KPC (for prosecution offices) have the responsibility to facilitate and implement the transition from the current structure to the structure as established by new laws (action plans and working groups to drive the implementation of the Law on Courts have been established). The Mission is closely mentoring and advising both Councils in this challenging building process.

In terms of deliverables at KJC level a draft regulation on the **election of KJC members** was adopted and a process to review and update regulations and procedures for the Council sessions was initiated.

A regulation on **selection and appointment of judges** has been adopted in February 2011 and the Council is conducting the recruitment of 112 judges' vacant posts for the first time, after completion of the internationally-led vetting and reappointment process. The salaries of the judges were increased thus creating conditions for supporting judicial independence.

A new KJC web-site was officially launched on February 2011 and is being regularly up-dated in two official languages contributing to enhance **transparency** and providing timely information for the public.

Presentation of the Report on work of State Prosecutor



A three-year **backlog reduction strategy** was adopted and a consultative committee to accompany and oversee the implementation of the strategy was established.

The oversight and control bodies for judges and prosecutors are of equal importance when it comes to the objective of strengthening accountability of the Kosovo justice system. Thus an EULEX Advisor has been co-located in the Kosovo Prosecutorial Council and MMA activities are being designed in accordance with identified priorities, while providing advice on the **set-up of key internal investigatory units** (such as the Prosecution Performance Unit and the Office of Disciplinary Prosecutor).

The **KJC and KPC still lack resources and budget** to properly accompany the judicial reform and donor community's assistance will continue to be a crucial factor.

EULEX Judges are reporting tangible progress in adopting a transparent **case allocation system** in all five District Courts and eighteen Municipal Courts. A positive trend was recorded in establishing public information offices in municipal courts. Currently, four courts have adopted this model and an expansion to other courts will be closely monitored.

When it comes to the strengthening of the local judiciary and its independence, reports indicate that the **threats against local judges** and the attempts to interfere rulings are still hampering the system.

A variety of shortcomings were also identified in the way **criminal and civil cases** are handled.

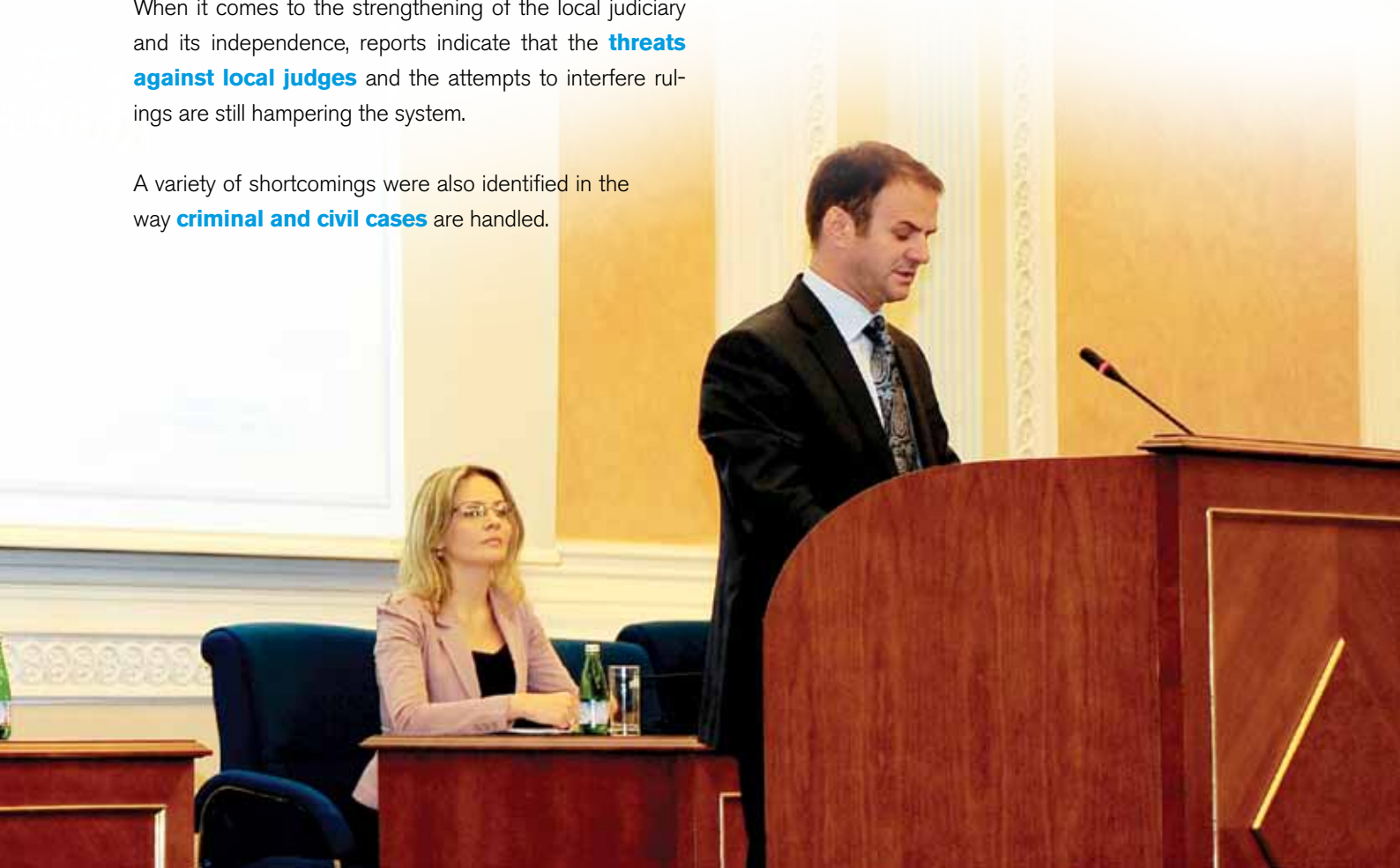
For criminal cases, shortcomings were recorded in courts processing (parties not properly summoned, stamps missing) and detention on remand (violation of the "48 hours" rule, not sufficient use of alternative measures, weak legal reasoning in relation to the grounded suspicion).

When it comes to civil cases, an encouraging **decrease in stayed cases** was recorded in eight municipal courts out of eighteen. Despite this progress, shortcomings of various nature were recorded in court processing (missing stamps or wrong use of stamps in judgments, failure to summon the parties, signatures missing, judgments missing in the files, delays in sending notifications).

The **catalogue of existing corruption cases** within the prosecutorial teams around Kosovo was completed. The guidelines on how to prioritize these cases were issued.

All in all, the development of the national prosecution service in 2010 and so far in 2011 has been steady and substantial, thanks to efforts of the Chief State Prosecutor and the Minister of Justice.

At **Ministry of Justice** level, progress was recorded in various areas.



On 5 May 2011, the Minister of the Justice upgraded the Division for international Legal Cooperation to Department. The new structure of the Department foresees special positions for data protection and international child abduction cases. All vacancies in the Department have been filled.

The **Department for International Legal Cooperation** during 2010 processed around 8700 requests for mutual legal assistance in accordance with deadlines and procedures. **12 extraditions** were successfully finalized in the last months.

Agreements on Extradition, Transfer of Sentenced Persons and Mutual Legal assistance were signed with FYROM and Turkey. Negotiations to conclude such agreements are also ongoing with Croatia, Italy, Bulgaria, Germany, Slovenia, Albania and Montenegro.

An agreement on transfer of sentenced persons was signed with Belgium.

The law on **mutual legal assistance on criminal matters** has been finalized. The Ministry of Justice submitted this Law to the Government for its approval on 1 June 2011.

In the field of **forensic services and forensic medicine** EULEX recorded an urgent need for an intense capacity building programme. EULEX experts in this field will focus on mentoring activities but additional donor support for capacity building initiatives is strongly recommended.

MMA activities in the **Kosovo Correctional Service** indicates that searching and disruption of contraband in Dubrava prison improved tangibly. A strategic plan (2011-2015) was approved and launched. At the time of reporting no tangible output was recorded but signs of progress are expected to surface during the next reporting period.

Issues of concern remain concentrated in the field of procurement of services.

In the field of **customs** progress was recorded thanks to an **enhanced internal communication**

tion between the Directorates for Law Enforcement and Revenue Operations. The adoption of a more oriented intelligence-led modus operandi resulted in the conduct of several joint operations targeting illicit alcohol production and distribution as well as smuggling of cigarettes.

Intensified cooperation with other law enforcement agencies and the Public Prosecutors was recorded. A dedicated unit for cooperation with public prosecutors was established and a MoU between the State Prosecutor Office and the Kosovo Customs was signed in January 2011. Another tangible sign of progress in the framework of Integrated Border Management activities was the embedding of Kosovo Police Officers into the Customs Operation Room.

Preparatory work on the **EU-compliant ASYCUDA World integrated customs data processing system** with Kosovo Customs has been finalized, with the signing of an agreement between GoK and UNCTAD.

The first phase of the EC funded System for the Exchange of Electronic Data (SEED) in partnership with FYROM, Albania and Montenegro is in place and the second phase about to start. This should support **IBM implementation**. Further efforts are needed to make the Joint Operational Centre fully functional.

Progress is being made in launching KC's drive against violations of **Intellectual Property Rights (IPR)**. Eight important international companies have now registered with the Trade Ministry, formally requesting KC action when counterfeit goods are discovered. Responses are expected from other companies impacted by this phenomenon. Several cases, including one major case concerning 3,000 pairs of counterfeit sport shoes, are currently under investigation.

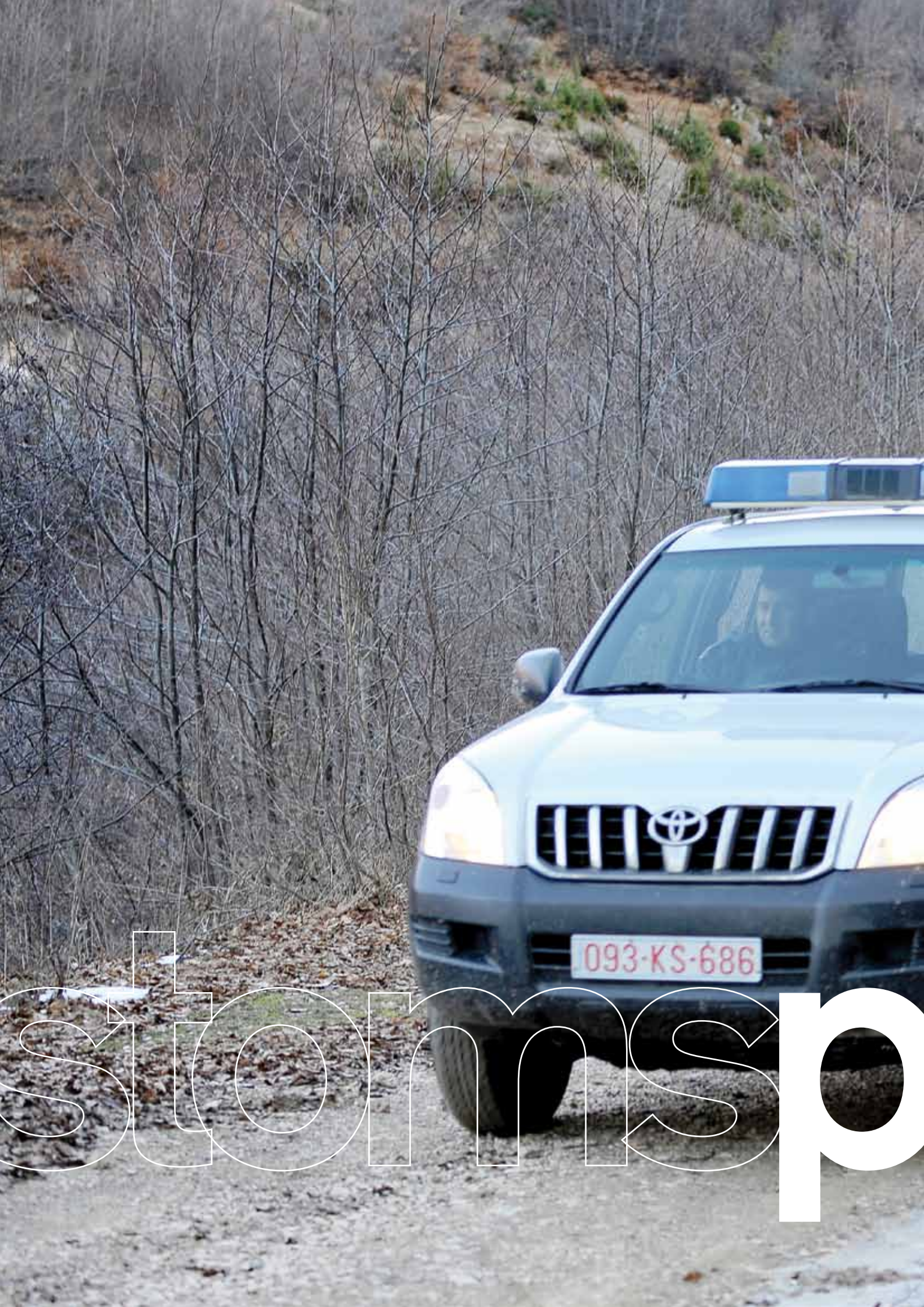
KC has adopted amendments to the Administrative Instruction on **disciplinary procedures** which should enhance the process of handling cases of alleged unprofessional conduct and prohibited actions of KC. The Professional Standards Unit is working on a backlog of seven cases carried over from 2010 and in March 2011 had not yet begun working on new cases.



PART 2

DECEMBER 2008-JULY 2011

TACKLING STOCK OF PROGRESS



storiesp



policejuss

TACKLING CRIME EFFECTIVELY

BASELINE BOX

Since 2009, EULEX has strongly recommended the set up of a unified database and statistical platform for the Criminal Justice System (CJS). It was recommended that Kosovo adopt a single format for Crime Statistics agreed by all relevant stakeholders of the CJS (MoJ, MoIA, KP and PPO),

Published figures were not readily comprehensible by the general public and private industry, and did not match with commonly used EU categories². Furthermore, those KP crime statistics that were available were not always effectively used for guiding targeted police operations³.

In order to establish an effective and standard policy for collecting, recording and collating crime related information KP is partnering in a project⁴ implemented by the United Nations Office on Drugs and Crime within the CARDS framework, aiming at developing monitoring instruments for regional law enforcement agencies. The objective of the project is to strengthen responses to crime and corruption in Western Balkans countries by introducing national statistics mechanisms in justice and home affairs institutions in line with international standards and EU acquis and best practises.

Within the framework of the project a regional conference on crime statistics was held between 25th and 27th May 2011 in Montenegro. Representatives of KP, MoIA and PPO attended the conference. The draft policy document on crime statistics was discussed at the end of the conference.

Upon approval of the Policy, a staged process of consultations with internal/external stakeholders is to lead to agreement on the modalities of implementation, which will be subject to monitoring by EULEX

BASELINE BOX

The 2009 EULEX assessment revealed shortcomings in KP procedures for recording the ethnicity of victims of crimes or categorizing crimes as likely to be ethnically motivated⁵. Such deficiencies have an impact on KP capacities to deal with crimes which might be ethnically motivated.

KP Crime has advanced towards the desired state of accountability and multi-ethnicity, by drafting and implementing an SOP for recording, collecting and collating data on the ethnicity of victims of crime and instances of crime that are likely to be ethnically motivated.

The detailed SOP defines the categories of victim ethnicity in all forms of recorded crime across Kosovo. In addition, a training programme for all relevant KP staff involved in the collection, collation, retrieval and analysis of police incident data was completed (under the leadership of the KP Training Department).

BASELINE BOX

EULEX has always stressed the importance of increasing cooperation between KP Crime and Public Prosecutors' Office (PPO) in order to operate as a single Criminal Justice System (CJS). Weak interaction between the two institutions during the investigation phase and in follow-up of cases has been the object of reports issued by several stakeholders.

Although the revised Criminal Procedural Code outlines a close working relationship between public prosecutors and KP investigators⁶, practices do not yet mirror legal provisions. Available evidence shows that contacts between public prosecutors and KP investigators are mini-

mal and much less than required to generate the desired results in crime investigation.

Inadequate channels of communication and the lack of joint databases were indicated by EULEX⁷, NGOs⁸ and OSCE⁹, as the causes of the weak level of cooperation. KP investigators mention difficulties in contacting prosecutors and obtaining information about cases. The lack of feedback on cases referred to the prosecution was also confirmed by the 2009 BIRN's monitoring the courts project¹⁰.

In order to tackle the issue, EULEX put forward a number of cross-cutting objectives intending to enhance the organizational capability of the CJS. The bottom-line was to instil a sense of common belonging to Kosovo's CJS in police investigators and prosecutors, who both share responsibility for its successes and its failures.

In spite of the efforts over the last two years not much progress was achieved. Virtually all of these objectives are currently marked as "pending policy decisions"¹¹.

BASELINE BOX

One of the flaws detected by EULEX in 2009 was the lack of a single (administrative and operational) hub for KP criminal intelligence system¹². Constraints in intelligence exchange between different KP structures were also ascertained by other international and local organizations¹³. This deficit was directly linked to KP poor performance in its investigations and its ability to target organised crime groups.

In order to address the deficiency, KP senior crime sector staff devised a plan with the main objective to develop the Directorate of Intelligence and Analyses (DIA) as the hub of the KP Criminal Intelligence System.

EULEX acknowledged progress in the creation of an 'open sources analysis' cell; the establishment of the Intelligence Liaison Office and the integration of the Regional



KP and EULEX joint patrols

Intelligence Units in the overall DIA structure¹⁴. OSCE was key in providing a "Training of Trainers on Criminal Intelligence and Analysis" for the DIA/RIU intelligence staff.

The spread of criminal intelligence throughout KP remains a critical prerequisite to perform effective proactive investigations and combat organized crime and corruption¹⁵.

BASELINE BOX

Since 2009 EULEX has strongly advocated for intelligence-led policing to become a top priority for KP senior commanders over the next three years¹⁶. EULEX has thus been mentoring and advising the relevant KP staff in the full implementation of the programme to introduce intelligence-led policing throughout the organization. This system is at the basis of a proactive strategy in tackling organised and serious crime, corruption and cross-border crime.

The lack of KP strategic planning and use of intelligence for police purposes were observed in 2008 and 2009 by various local¹⁷ and international reports¹⁸.

KP Border and Boundary sector shall also be an active part of the unified KP intelligence system, feeding it with data and receiving information from it. KP Border and Boundary has the potential to become a very



EULEX integrated police unit members

important component of the intelligence system, as data on movement of individuals and vehicles across Kosovo's borders/boundaries is essential for tackling serious and organised crime¹⁹.

Whilst full implementation of the intelligence-led policing project is not yet completed, EULEX has noted a new commitment by the KP senior management in rapidly implementing the concept. As compared with weak progress in 2010, the KP organization is now providing evidence and signs that it is developing the sort of intelligence gathering culture that EULEX recommended in 2009.

EULEX monthly progress reports in early 2011 indicate that KP is fully engaged in the project and the following objectives are now being pursued:

- 1 Introduction of ILP throughout the KP organization (with support of OSCE).
- 2 Improved intelligence gathering culture among within the KP.
- 3 Establishment of a single intelligence cycle within the KP.

Work continues on a number of tasks in pursuit of the first two objectives, including: (a) ensuring that KP has adequate SOPs in regard to the gathering of informa-

tion as well as handling and use of intelligence for all KP Sectors, departments, regions, and units; (b) arranging ILP awareness sessions in all pillars, departments, directorates, regions and units; (c) preparation of training package for senior officers according to European best practices, including but not limited to ILP decision making process; and (d) establishing standards for data collection, storage, evaluation, classification, collation, analysis and dissemination according to the European standards.

The European Commission Liaison Office, under the IPA 2010, launched a supply contract for the upgrading of the KP IT infrastructure, in particular through:

a) upgrading of the Kosovo Police Information System, which contains modules of incidents, traffic citations, lost documents, traffic accidents, wanted persons, weapons, property and module of advanced searching and digital mapping. The functionalities of these modules need to be adapted to applicable legislation and to support the structural changes of the Kosovo Police;

b) upgrading of the Criminal Intelligence System which is the intelligence repository for the use of all criminal intelligence related data. It is used to support the inter-sector cooperation in the collection, collation, evaluation, analysis and dissemination of criminal intelligence data.

c) training of KP staff to use the upgraded systems.

This project, expected to be incepted by the end of 2011, will address the IT angle of the ILP challenge while providing a component of capacity building through training. Its implementation will undoubtedly contribute to rationalize and modernize policing activities of the KP.

BASELINE BOX

EULEX noticed in early 2009 that the KP maintained high standards in ensuring compliance with the law and its Policy and Procedure Manual (PPM). Nonetheless, KP senior command staff was found to miss a clear strategy or written policy documents in order to drive a more proactive approach to crime investigation, particularly in the field of combating organized crime²⁰.

In July 2009, the Kosovo Government drafted a series of strategic documents and relevant action plans to prevent and combat organized crime²¹: for instance, the Kosovo Government's Strategy and Action Plan against Organized Crime (2009-2012)²² gave ground to the draft Strategy for Enhancement of the Directorate against Organized Crime (DOC), which has been finalized by KP senior crime sector staff together with its implementation plan. This achievement was positively evaluated by the EC Kosovo Progress Report of 2009²³. The strategy needs to guide the DOC towards a more proactive approach in investigating organized crime. Further progress was also made by revising the organizational structure of KP DOC.

Success in countering the growth of criminal groups, and dismantling their structures depends on a number of critical factors, from improving coordination across KP sectors to sharing and use of criminal intelligence, and having adequate resources to fight the phenomena systematically. A viable system of witness protection shall also be in place, as well as legal and institutional infrastructure²⁴.

BASELINE BOX

The KP capacity of tackling illicit drugs-related crime was also subject to EULEX scrutiny in 2009²⁵. This resulted in detecting the absence of a comprehensive strategy to deal with illicit drugs-related crime: KP needed to develop a more integrated approach to the issue, improve case handling, and the coordination of the flow of information within the KP Directorate against Organized Crime and with the KP Regional Narcotic Investigation Sections (RNIS). Weak coordination with actors such as the KP Border and Kosovo Customs (KC) was also evidenced: KP and KC are the front-line institutions for combating illegal activities, due to their role in controlling the Kosovo border and boundaries and in preventing illicit trade. Hence, their cooperation and coordination is crucial for strengthening the control over illegal activities affecting public health and safety in Kosovo.

KP DOC staff devised an implementation plan seeking to introduce a common strategy for investigation of drug crime. The strategy includes a more effective handling of investigation, information gathering, coordination and cooperation with regional and international contacts.

The KP strategy was successfully developed in August 2010. It outlines a proactive approach to investigate drug crime in accordance with the National Anti-Drug Strategy²⁶ and Action Plan 2009 - 2012²⁷. Its implementation is ongoing across the organization. The plan foresees the monitoring of the implemented strategy and its use throughout KP primary narcotics authority.

Kosovo Police recent statistics on narcotics seizures indicate a growing KP capability to gather and act on intelligence. However, as the Minister of Internal Affairs pointed out in May 2011, during the inter-institutional working group meeting for the implementation of the Anti-drug Strategy, much remains to be done in this course²⁸.

PROVIDING SECURE BORDERS

Within the Kosovo Police framework, the Kosovo Border and Boundary Police is responsible for the management and control of Border Crossing Points (BCPs) as well as for the management, control and supervision of Blue and Green borders/boundaries²⁹.

The Kosovo Border and Boundary Police (KBBP) is one of KP five sectors and it is organized in Central, Regional and Local levels. The KP restructuring process, completed in March 2011, included relevant border departments. Important progress has been achieved at the central level with the merging of the Border Surveillance and Border Control departments into a single department as well as with the establishment of a Department for Integrated Border Management (IBM).

The establishment of the IBM Department provides a strategic direction for the KBBP in achieving the objectives defined in the Kosovo IBM Strategy and Action Plan³⁰.

four phases of transfer, based on the decisions of the demarcation Committee, and encompasses objectives and activities foreseen by the Kosovo IBM Strategy³² and Action Plan 2009-2012; It further contains a basic assessment of needed technical and human resources.

As of today, progress has been recorded in the full transfer of responsibility for surveillance of the Green Border with the Republic of Albania³³ as well as FYROM.

The process shall be concluded with the transfer of responsibility for surveillance of the green borders/boundaries³⁴ with Montenegro³⁵ and Serbia³⁶. The former, will be tentatively transferred over in September-October 2011³⁷. However the exact details of the manner in which the process should be finalized is possibly linked to an unresolved issue of border demarcation with the state of Montenegro³⁸. As for the border/boundary line with Serbia, any development depends on political circumstances and therefore no handover date has been determined.

BASELINE BOX

In 2009, KP was imminently faced with the handover of responsibility for securing Kosovo's Green Border³¹. The need arose as a result of NATO's announcement for a gradual downsizing of KFOR troops in Kosovo. The decision thus gave way to a phased "unfixing" exercise of KFOR presence from Kosovo's border and boundary lines in the beginning of 2010.

The announcement allowed KP senior management, in cooperation with EULEX staff and stakeholders from MoIA and KFOR to plan for a gradual hand over of green border/boundary surveillance of responsibilities from KFOR to KBBP.

KBBP and EULEX agreed on a short term plan, known as the 'Roadmap' in March 2010. The roadmap outlines

BASELINE BOX

EULEX has underlined since 2009 the importance of enhancing KP planning skills³⁹. The KP Border and Boundary managers and supervisors were found not to have a standard approach in planning and evaluation. This had a negative effect on Border and Boundary Police proactive ability to tackle 'cross-border crime'.



Head of Mission visiting a Border/Boundary Crossing Point



Passport control at the Pristina Airport

KP devised a plan to increase planning capacity, including the development of detailed Standard Operating Procedures (SOP) for planning documents and evaluation reports. The SOP was finalized in May 2010⁴⁰.

The new SOP⁴¹ will help to organize and structure the work of KP and fight different forms of crime⁴². Further, it is an instrument which enables KBBP to plan, execute and debrief operations in a unified and professional manner.

To ensure the implementation and functionality of the SOP at stake, a joined field monitoring exercise was conducted by KP and EULEX staff from October to De-

ember 2010. The monitoring revealed the need for continuous training.

Border and Boundary Police facilities and infrastructure were assessed to be inadequate in 2008⁴³, with particular attention to premises made available for interviewing and detaining immigrants. KBBP adopted a medium-term plan to improve the situation. The plan aimed at the definition of the minimum standards required in all immigrant detention areas. The standards were distributed to all border/boundary crossing points (BCPs). Refurbishment of holding cells is ongoing. While a degree of progress has been noticed not all facilities match standards. Progress was achieved in designing and roll-out of specific training for detention staff, as foreseen in the plan.

TACKLING PATROL EFFECTIVELY AND ENSURING PUBLIC ORDER

Even though KP was assessed to perform its public order functions at a satisfactory level during 2008 and 2009⁴⁴, EULEX noted a need to enhance the management of KP uniform patrol activities and to streamline uniformed patrols work with concerns of local communities. KP accountability at local level required deepened KP leadership capacity, further training and improved motivation among first line supervisors and patrol officers.

KP operations command staff recognized the need to improve competences of the first line supervision and made it a priority for the next three years, developing a plan to increase the range of basic patrol management skills. The overall aim of the plan was to increase the discipline among patrol officers, improving their motivation by raising awareness of the importance of structured patrol work, and make all forms of routine patrol more effective in meeting community expectations.

BASELINE BOX

EULEX 2009 assessment signalled a lack of patrol planning in response to detected policing problems. In general, EULEX found that patrol officers had little or no direction from supervisors and tended to be left to their own discretion in organizing patrols⁴⁵.

The plan foresaw the drafting of a detailed SOP on Patrol Management including shift briefings, proactive use of local and Kosovo-wide intelligence, targeting policing issues of local concern, directed patrols, monitoring patrols; a training course programme based on the above noted SOP to increase knowledge and skills of patrol supervisors; the SOP implementation throughout Kosovo and a KP-led system for monitoring supervisors outputs, to be outlined in a final report.



Results have been so far in line with expected objectives. The detailed SOP on Patrol Management has been drafted and approved by the chain of command.

The training course programme has been designed. KP delivered a Training of Trainers course to representatives from all regions, who will deliver the training to all supervisors within their Regions including KP Border and Boundary Police North, West and East⁴⁶. The implementation and monitoring of the SOP started in May 2011.

BASELINE BOX

EULEX comparative analyses on the period from 2006 to 2009 suggested that the level of recorded crime in Kosovo, including serious crimes such as homicide, appeared to be higher than in the rest of the region⁴⁷. EULEX also assessed that KP lacked a common system of key indicators for crime detection. In addition, there was no evidence of strategic guidance by the MoIA during 2008 and 2009 for implementing a crime prevention strategy⁴⁸.

In July 2009, the Kosovo Government issued a series of strategic documents and relevant action plans (2009-2012) to prevent and combat crime⁴⁹.

Accordingly, reducing crime in Kosovo, particularly in the categories of organized crime and corruption, became the overarching objective of the KP commanding staff since September 2009⁵⁰.

The objective was to integrate the Government's Crime Prevention Strategy⁵¹ into the daily tasks of KP senior staff at Directorate, Region and Station level.

To accomplish the plan, a written Policy⁵² was approved by KP in September 2010, and a directive to follow established tenets was issued to all KP senior staff. Between October 2010 and February 2011, a survey in all regions and stations was carried out by a joint KP/EULEX team to verify whether the policy was being implemented. The

monitoring activity revealed that all KP levels were adhering to the written policy.

KP has been successful in embedding the Crime Reduction Strategy throughout the organization. Tools for tracking index crimes are in place as well as directives for involving both Municipal⁵³ and Local⁵⁴ Safety Committees.

BASELINE BOX

EULEX assessed in 2009 that many Station Commanders were not acting in compliance with law requirements⁵⁵ on community consultation and planning. Several Commanders were not producing annual plans targeting community priorities and concerns, detected through continuous consultation.



EULEX Police HQ

In order to tackle this issue, the KP operations staff adopted a plan in response to community policing needs. The plans aim at guiding stations commanders and line managers on directing police activities towards community problems, preventing crimes and solving problems, implying the use of daily plans given by line managers and reporting forms to be completed by patrolling officers.

With regards to Strategic Community Safety initiatives at the Ministry level⁵⁶, a recent initiative by the Department of Public Safety's – currently under development and supported by OSCE and ICITAP, - will guide and oversee the empowerment of Municipal Community Safety Councils (MCSCs) and other local community consultation groups, as part of a broader programme of developing community policing across Kosovo. This entails the adoption of a five-year Community Safety Strategy (2011 – 2015).

When it comes to public order EULEX has noted good progress by KP which have completed the drafting and approval of the new Crowd and Riot Control Concept in October 2010. The unified Concept, elaborated in a 'CRC Tactical Handbook', is a local model and in compliance with internationally recognized standards.

Further progress has also been made with the drafting of procedures which provides for authorizations, organization, duties and responsibilities of OSU during its engagement in specific operations, such as crowd and riot control, security of public meetings, arrest and apprehension of persons wanted by court, and other related policing support activities.

BASELINE BOX

In 2009, KP managers had limited information about the operational use and deployment of Special Intervention Unit (SIU) and Improvised/Explosive Ordinance Disposal (I/EOD) units. The units were unable to provide detailed statistical data regarding the number and type of incidents attended, thus suggesting a lack of accountability.

In order to remedy the issue, KP operations staff planned a system of recording and categorizing all incidents requiring interventions by SIU and I/EOD⁵⁷. The data were to be used to improve the planning of resources and evaluate performances. A Manual (paper based) System for registering incidents involving SIU and I/EOD intervention and a Procedure to evaluate SIU and I/EOD per-

formance in line with collected data were developed. A monitoring exercise was conducted to check the use of the system confirming full compliance.

The only gap left was the build up of a fully operational Improvised Explosive Device Disposal (IEDD) Unit.

KP devised a plan that sought to (a) transform the I/EOD Unit into an operational IEDD Unit that would operate throughout Kosovo; (b) establish an intuitive Bomb Data Center and (c) establish an administrative IT system to manage the resources of the IEDD Unit.

The KP IEDD Unit is capable of conducting IEDD operations all over Kosovo. It is worth highlighting a few recommendations provided by EULEX as a result of the final monitoring report of the joint plan. They include, among others: (a) the need to define clearly the responsibilities between KP and Kosovo Security Force (KSF) as they relate to explosive related incidents, and (b) the need to improve the training facilities of the KP IEDD in camp 'Vrello'. This would enable the KP IEDD operators not to have any recertification problem in the future.

BASELINE BOX

In 2009, EULEX noted that KP Commanders had limited information on immediate availability/deployment of operational staff. Commanders were unable to track trends of staff abstractions and their impact on operational capability, perhaps underestimating the benefits of an accurate tracking mechanism of available resources. A system for tracking all interventions of patrol officers was therefore developed out of an EULEX recommendation, enabling KP to use acquired information to plan resources and evaluate efficiency.

The joined plan set an ambitious agenda focusing on four main goals a) establishing a functioning incident recording system, regulated through an SOP and applied throughout the organization⁵⁸; b) establishing a specific



Kosovo Police

training programme for all relevant KP staff involved in the collection, collation, retrieval and analysis of police incident data; c) developing of an SOP, a handbook and a training programme for the senior level of the KP, (regional and station commanders) in order to use the data collected through the System to plan resources and evaluate performance, and d) 18 months monitoring of compliance with the SOP⁵⁹. Progress against these goals has hitherto proved slow. KP is still working on the development of a daily duty roster and on the SOP at station, regional and General Directorate levels.

BASELINE BOX

Another area under EULEX scrutiny back in 2009 has been the KP Traffic. It was found that many proposals, directives and requests for organizational change of KP Traffic failed to achieve the desired effects, as a result of an loosened chain of command and a lack of implementation skills among supervisors and managers. It was also found that many traffic officers needed essential training and failed to act in pursuit of a common KP road traffic strategy.

KP traffic command staff is working to reach desirable changes in the organizational structure of the Traffic Directorate, pursuing enhanced communications, strategic leadership and operational command. Work is focused on implementing a new Standard Operating Procedure on Training⁶⁰, capacity building for traffic officers in the revised operative structures as well as procedures and adoption of European best practice and internationally recognized standards in traffic policing.

Progress has been slow. Once operations will be at a more advanced stage, an evaluation of the new KP Traffic organizational structure, of the SOP on Traffic and of the Training SOP will be conducted.



KP in Prizren

PROVIDING A SUSTAINABLE ORGANIZATION

KP Resource Management comprises the Personnel and Training Department and the Support Services Department. As for other sectors, resource management functions are managed and directed from KP Headquarters- A range of personnel, administrative and support services are clustered under the two Departments.

The Support Services Department heads many technical support functions that are critical to KP sustainability. It includes five Directorates dealing with core administration functions, notably: budget and finance, procurement, logistics, facilities, and Information Technology and Communications (ITC).

BASELINE BOX

In 2009, EULEX monitored the KP 2010 budget planning and execution process. Whilst the financial planning was found to be conducted in full adherence with the law (Law on Public Financial Management and Accountability⁶¹) and the directives of the Ministry of Finance and Economy (MFE), limited capacities for multi-year budget planning emerged. Key staff lacked sufficient competencies in budget submission and expenditure management. The trend of expenditures during the fiscal year evidenced an amassing of expenditures in the last quarter, an indicator of mismanagement of funds/or poor planning⁶². EULEX data revealed that budget allocations were at times driven by managers' priorities rather than by KP strategic goals.

These deficiencies convinced KP managers within the Department of Public Services to set a plan aiming at enhancing KP budget administration. The objective of the plan was to design a programme aiming at improving the administration of budget and finance in the organization. This would also include the development of a long-term

strategy, multi-year projects, taking into account relevant advantages deriving from decentralization and training needs for KP managers in charge of budget submission and expenditure.

Three years later, the programme was designed, long term strategy and multi-year projects developed, and a



review of the benefits of decentralization completed; the training curriculum for KP financial managers was also arranged. In order to improve the administration of budget and finance, the KP Director of Budget and Finance prepared and disseminated to regions new standardized forms to be used for managing cash flow, capital projects, and other goods and services expenditure, as well as formats for monthly, quarterly, six-month and annual reporting of expenditures.



BASELINE BOX

If transparency is one of the most important requirements in the Public Procurement Law (PPL), there is room for improvement in KP management, as assessed by EULEX in 2009.⁶³ Even if legislation was found to be consistent with the basic EU principles in the field of procurement, its implementation was considered below EU best practices. Evidence suggested a weak internal structure in procurement, with only one lawyer and some assistants to deal with specific or tenders. KP performance in procurement actions was inadequate, this affecting capital investment programmes for facilities and infrastructure.

Limited progress has been registered by EULEX in this area. Work still continues in the effort to attain defined objectives: (a) set up of an institutional procurement management, consistent with the principles of European best practice, public accountability, transparency, organizational sustainability, the applicable law, KP strategic plan and the Kosovo Budget⁶⁴; (b) introduction of short term planning procedures in accordance with the applicable law and KP budget plan and (c) drafting of a monitoring report on developments in the two areas.

The first two objectives shall be accomplished during 2011. EULEX considers that developing KP procurement capacities is of utmost importance, and will continue to assess progress in this area.

BASELINE BOX

EULEX 2009 review underlined the need for better standards in KP fleet management⁶⁵. The management system had to be rationalized, and strategies to improve efficiency in procurement and maintenance introduced. It was observed that the Directorate of Logistics, in charge of KP fleet management, encountered difficulties in maintaining the KP fleet of 1,521 vehicles (including 63 different models).

The countermeasures adopted in September 2009 aimed at developing a vehicle fleet management system encompassing budget management, procurement, life-cycle management, maintenance and repair. The system has been engineered, and KP is currently analyzing relevant procedures.

BASELINE BOX

EULEX assessed in 2009 that KP had consistently failed in realizing major capital investment projects as a result of poor budget planning. The most consistent budget line, 'Capital Investments', had the lowest percentage of utilization at just 8% of the quarterly allocation, this proving a very poor KP capital investment plan for 2009⁶⁶. Consequences on standards of KP assets and, ultimately, on KP performance were easily imaginable.

In order to boost capital expenditure performance, the KP initiated a review of capital investment expenditure. The study sought to identify the causes of poor performance and bring forward potential remedies. At the time of writing, the study is almost complete.

BASELINE BOX

The KP promotion system has been subject to reform measures since 2009. Changes were needed to increase transparency in the system and to better ensure meritocratic criteria⁶⁷.

A new promotion system has been introduced. In cooperation with ICITAP, a Standard Operational Procedure has been drafted and approved by the KP Director General. The SOP has become effective since April 2011 and will be accessible on the KP website. It is worth noting that the new promotion system is being presented in all regions.

Monitoring of the newly revised promotion procedures is required. The decision to recommence promotions sus-



pending for over two years is now with the DG who should first close the revisions to the KP rank structure. In June 2011, the KP indicated that this process would be completed before October.

The information technology and communications (ITC) represents a critical function for a modern and efficient police organization. IT sustainable development and effective use of databases and information technology has proven difficult for KP in the past, particularly in terms of human capacity. By now, KP has finally achieved a sustainable IT component.



BASELINE BOX

As noted by EULEX in 2009, the KP was unable to retain its own IT and database staff largely because of more competitive salaries in the private sector. Out of the 63 IT/Comms positions allocated in the budget, 23 (36%) as trained and experienced staff was leaving the organization⁶⁸. Accordingly, the organization had to rely on foreign technical support⁶⁹.

KP senior staff successfully developed a strategy for recruiting, training and, most importantly, retaining a team of local IT/Comms specialists in order to end the dependency on foreign specialists⁷⁰. KP has even moved beyond the original recommendation and is developing

the overall competencies of KP IT staff, as well as extending the range of IT services provided.

An European Commission TAIEX Expert was deployed to Kosovo at the request of KP management, to assist the KP in advancing its Information and Communication Technology (ICT). The TAIEX IT Expert, in collaboration with the KP IT Director, drafted a five-year Strategic Plan for an Information and Communication Technologies System (2011 – 2015), tackling various issues related to sustainable IT/Databases and KPIS (the KP police database). The Strategy is aligned with the KP Strategic Development Plan 2011-2015⁷¹.

This area is considered as a priority in the framework of the intelligence led-policing work.



office



Justice **quick**

KOSOVO JUDICIAL COUNCIL AND JUDGES

The Kosovo Judicial Council (KJC) is responsible to ensure the independence and impartiality of the judicial system. It also pursues the set up of a judiciary fully reflecting the multi ethnic nature of Kosovo and abiding to the principles of gender equality. The KJC is vested with exclusive authority on transfer, disciplinary measures and dismissal of judges.

The administration of courts fall as well under KJC authority, which is in charge of promulgating regulations, drafting of internal rules, organizational restructuring, and oversight⁷².

The KJC has an ambitious agenda, as evidenced in its 2007-2012 strategic plan. EULEX encouraged to speed up the pace of implementation of this plan, starting by prioritizing objectives.⁷³ This has been the aim of KJC and EULEX cooperation, which focused on independence and accountability, management and service delivery approach, including support to the implementation of the Case Management System (CMIS) sponsored by the European Commission⁷⁴.

BASELINE BOX

Since 2009, EULEX stressed the importance to set formal conditions for the independence of the judiciary and the autonomy of the prosecution. De jure independence anchored in Kosovo-s legislation was to be translated in the day-to-day operations of the judiciary and prosecution.

The de facto independence implies that judges are professional civil servant. The highest standard of integrity, qualification and training are essential requirements for an independent and accountable judicial system. The level of accountability should be ensured by accepted legal and professional standards⁷⁵.



The Council Body of the KJC became operational in a temporary set up in mid-August 2009; it initially comprised of Kosovo lawyers (3 members) and international magistrates (2 members), but no Kosovo Judge or Prosecutor. This impacted on the Council's operational capability, waiting for the new Supreme Court members to be appointed.

The Council's authority to recruit judges and prosecutors was temporarily conferred to an Independent Judicial and Prosecutorial Council (IJPC)⁷⁶.

This IJPC⁷⁷ was established for "the purpose of conducting a one-time, comprehensive, Kosovo wide review of the suitability of all applicants for permanent appointments (...) as judges and Prosecutors in Kosovo." The IJPC was funded by the European Union and the Government of USA. The IJPC establishment envisioned a truly independent Commission, free from political or other external interferences. Rules of procedure and operational methodologies adopted by the Commission enabled the objectives to be accomplished.⁷⁸

The Appointment Process was organized in three consecutive phases: phase I - selection of judges for the Supreme Court, and prosecutors for the Offices of the State Prosecutor and Special Prosecutor; phase II - the selection of judges for the District Courts, the Commercial Court, the High Court for Minor Offences, and District Prosecutors; and, phase III - selection of municipal judges and prosecutors.

The 334 appointed judges and prosecutors were carefully scrutinized and rated, allowing the selection of the most qualified applicant for every position. Sixty percent (60%) of the positions were filled by new occupants⁷⁹. The IJPC organized another ethic exam upon completion of the third phase, in order to identify additional suitable candidates for remaining positions.

KJC assumed the responsibility for the recruitment, vetting and selection of judiciary staff once the vetting and appointment process was concluded. While the Council is shaping the system based on the IJPC guidelines and procedures,⁸⁰ EULEX continues to monitor the compliance of KJC outputs with European best practices.

By February 2010, two newly appointed Supreme Court judges and one SPRK prosecutor joined the Council Body. The Council voted a Supreme Court judges for President. When the Council was finally joined by three new members from the Judiciary, its first step was made with the approval of a Manual for Court Management.

In February 2011, the KJC adopted a regulation on the appointment of judges and published vacancy announcements for 112 positions. Being the first time for the KJC to select candidates for judicial positions, the Council shall guarantee that the process is based on relevant legal provision and abides to principles of transparency and fairness.

In April 2011 the KJC adopted a regulation for selecting judges by their peers. Five judges are to be elected to KJC membership by their peers, two from the Supreme Court, one from second instance courts and two from first instance courts. The regulation guarantees a fair

nomination process and elections of KJC members by secret ballot. Further, it intends to steer KJC towards a service oriented and integrated approach in relation to courts, and to involve judges in decision making process of KJC council body⁸¹.

In July 2011, following the adoption of the regulation, the KJC organised the first Kosovo-wide elections, in which the judges from the first instance courts elected directly and by secret ballot two members to become their representatives to the KJC. The judges of the first instance courts – Municipal Courts, Municipal Minor Offence Courts and the Commercial Court in Pristina – were eligible voters. The candidates were nominated by Collegiums of the same courts held between 23 and 27 May 2011. EULEX judges monitored the elections and reported that the process was generally followed correctly at the five sites (the District Courts).

The Assembly has still to appoint KJC judicial and law members as stated in the law. KJC agreed to approach the relevant Committee of the Kosovo Assembly before the process starts, and to put forward a list of possible candidates for KJC membership. The issue is of utmost importance for judiciary independence, as in transition countries Judicial Councils are very often the entry door for political influence in the judiciary. A Council stake in the Assembly appointment of KJC judges would be a sign of political maturity for Kosovo and, should an agreement be reached, EULEX will verify whether selection procedures will take into account inputs from the judiciary. EULEX will continue to closely monitor these dynamics which shall lead to a comprehensive regulation disciplining about the functioning of the Council.

Political interference in the reappointment of judges and prosecutors is still considered a tangible risk. Inter-ethnic balance in the judiciary remains unachieved and the KJC will have to take appropriate measures for ensuring a fair representation of minorities, in accordance with the law. Regrettably, no changes can be reported as to the composition of the judiciary deployed in the North of Kosovo.

The backlog of court cases is one of the main challenges for Kosovo Judiciary⁸². KJC established a Working Group in charge of elaborating a strategy for backlog reduction (National Backlog Reduction Strategy), adopted in November 2010 together with the appointment of a national coordinator. The strategy envisages a list of actions of different nature at legislative, regulatory and operational level. In March 2011 the KJC established a Consultative Committee to assist in the implementation of the backlog strategy, also expected to ensure proper flow of information from courts to the National Backlog Reduction Board.

Tangible progress was registered⁸³ in the legal framework, with the adoption of a set of new laws further defining Kosovo judicial "infrastructure" (Law on Courts⁸⁴, Law Kosovo Judicial Council⁸⁵, Law on State Prosecutor⁸⁶, and Law on Kosovo Prosecutorial Council⁸⁷)

The Action Plan for implementing the Law on Courts, considered a cornerstone of the judicial reform, foresees a 2011-2013 timeframe⁸⁸. KJC and its Chair are in charge of the overall coordination and a working group will accompany the process. The working group is meeting regularly and comprises a EULEX judge. Courts Presidents are still responsible for ensuring a transparent and objective case allocation system until the Law on Courts enters in force.

BASELINE BOX

In 2009 EULEX recommended to make the Office of Disciplinary Council within the KJC operational.

Today most of the Office of Disciplinary Council (ODC) vacancies are being filled⁸⁹. The ODC transfer from the Ministry of Justice to KJC in the second half of 2009 marked a positive step towards ensuring independence and confidentiality during adjudication of disciplinary cases. The increased accountability of KJC and its Council was also acknowledged by the EC 2010 Kosovo Progress report⁹⁰ and by the EULEX MMA Tracking Mechanism⁹¹. The conclusion of the vetting and appointment process in

2010 contributed to a reduction in the backlog of disciplinary cases, a better functioning of the Council and generated higher self-confidence among the local judiciary.

BASELINE BOX

Since 2009 EULEX highlighted the lack of a performance evaluation system within the Kosovo judiciary. Assessments revealed that recruitment and promotion procedures were not objective and transparent, and urged KJC to develop detail provisions for recruitment and promotion⁹².

KJC' established working groups which have produced the draft Regulation on Orientation Norms and draft Regulation on Incentives. These tools are part of the efforts to set up a performance based evaluation system for judges.

BASELINE BOX

The EULEX 2009 Programme Report reported that the number of judges per 100,000 inhabitants in Kosovo is lower than in any of the neighboring and European countries⁹³, which led to the recommendation for KJC to monitor working conditions of Kosovo Judges and Prosecutors and closely follow their recruitment process⁹⁴.

269 judges were employed in the Kosovo Judiciary in 2009 according to the statistical office, an average of 14.19 judges per 100.000 inhabitants, while 89 Prosecutors were serving in the Prosecutorial Service in Kosovo, resulting in 3.7 prosecutors per 100.000 inhabitants.

Even after the completion of vetting and re-appointment process from IJPC, the number of judges and prosecutors in Kosovo is still insufficient. 334 out of the 461 advertised judicial positions have been filled, while 127 positions remain vacant⁹⁵. Some NGOs compared the figures with other countries in the region⁹⁶, and signalled

a decline in the number of prosecutors (from 88 to 78) after the 2010 vetting and reappointment process, as well as the lowest record of 12.41 judges per 100,000 inhabitants⁹⁷. Decreasing trends are also explained by the demographic situation in 2009, with 54 years on average for the 269 Kosovo judges and over 60 for Prosecutors⁹⁸.

The KJC advertisement of 112 judicial positions is expected to increase the number of judges and prosecutors ranks, and move Kosovo closer to regional standards. Moreover, the vetting and reappointment process, as a side effect, reduced the appointees average age to 50 years.⁹⁹

EULEX also assessed an insufficient integration of minority communities and female staff in the Kosovo judiciary and recommended to KJC, KPC, and Presidents of the Courts to enhance a better standing of minority communities into the Kosovo Justice system as well as strong gender balanced policies. Currently, only one third of the judicial positions for non-majority communities have been filled, while 28% of appointed staff are women, some in managerial positions.

Considerable improvements have been made by the Kosovo Judicial Institute (KJI) since 2008¹⁰⁰, particularly

with the launch of the 'Continuous Programme'¹⁰¹ and 'Initial Programme'¹⁰². The latest vetting process and the announcement of 112 judicial positions implies additional training for the new judges and prosecutors and require KJC to develop a continuous training strategy¹⁰³.

BASELINE BOX

EULEX noted that Judicial Audit Unit¹⁰⁴ reports have neither been reviewed nor approved by the KJC until 2009, thus failing to include recommendations from audit reports in the daily management of the judiciary¹⁰⁵.

The JAU 2009 report and the JAU work plan for 2010 were reviewed and approved by the KJC in June 2010, following the appointment of the Director of the Secretariat in April 2010¹⁰⁶.

The process of reviewing KJC internal organization, the management of Council sessions and the follow-up of decisions has also started. The KJC Chair appointed a technical working group tasked with preparing draft regulations on these matters.



An outline of the new Justice Building project funded by the European Commission

JUDGES

EULEX civil and criminal judges at District Court level reported a high level of cooperation with their Kosovo counterparts¹⁰⁷ since the launch of operations. EULEX monitored, mentored and advised local judges in court organization, strengthening of the Kosovo Judiciary, and criminal and civil cases.

Court organization monitoring activities have highlighted several weaknesses in daily operations of Kosovo Courts, such as the lack of a rotation system ensuring continuous availability at the court reception desk; the Official Gazette being largely missing in courts, thus hampering the work of Judges¹⁰⁸; difficulties in accessing the Official Gazette online, due to internet connection issues; practices of asking public interested in attending a trial to submit a so called 'Request for main trial attendance' several days before the hearing and subjected to approval by

the court president¹⁰⁹ (this is not in compliance with Kosovo legislation¹¹⁰ nor EU best practices and international human rights¹¹¹); missing or wrong stamps being used in judgments; name of the judge in charge missing in the main registry book; systematic non-summoning of the parties. Further, EULEX assessed that the habit of the members of the public to discuss ongoing cases with the President of the Court or other Judges clearly conflicts with the notion of independent and impartial proceedings. EULEX supported the courts in the opening of court information points where local citizens can address their requests without discussing ongoing cases directly with Kosovo Judges. Public Information Offices have been established in the municipal courts of Gjakovë/Dakovica, Viti/Vitina, Ferizaj/Urosevac and Lipjan/Liplja, Rahovec/Orahovac, Malishevë/Malisevo and Skenderaj/Srbica

A panel of EULEX and local Judges



BASELINE BOX

In 2009 the Case Management Information System was not integrated into the daily operations of Kosovo Courts and Prosecution Offices¹¹². CMIS was not in use either because computers were incompatible with the software.

Connectivity issues and the need for further training continue to hamper the full implementation of the system. As a result, the introduction of the Case Management Information System in courts progresses at unequal pace. The KJC needs to set a dead-line for courts to have the CMIS effectively in place throughout Kosovo.

BASELINE BOX

In 2009 EULEX noted serious weaknesses by District Courts and District Prosecution Offices in applying an objective and transparent case allocation system¹¹³.

EULEX indicated to the KJC, KPC, Kosovo Judges and Prosecutors the need for an objective and transparent case allocation system, including mechanisms precluding misdemeanors in case allocation. A common plan was adopted to realize a CAS in avoiding malfeasances in the assignment of cases¹¹⁴.

EULEX considers the case allocation system a largely achieved output, the principles of the CAS have been made public in several courts. The case allocation will continuously be monitored in all courts.

BASELINE BOX

EULEX assessed the infrastructure available for judges at district court level as insufficient and raised concerns with respect to access to justice, with reference to trials conducted in offices, making the participation of the public impossible¹¹⁵.

Some of the outlined deficiencies included inadequate working space for Kosovo Judges and Prosecutors, District Courts lack of available court room, lack of safe storage facilities for case files and lack of safe deposit room, Consequently, EULEX exhorted KJC to develop policies to improve Kosovo Judiciary working conditions and infrastructure¹¹⁶.

KJC showed readiness in tackling the matter. A number of projects for building/renovate courts have been included in the budget projections 2012-2014, also taking into account the implementation of the Law on Courts. Due to budget constraints, KJC is also relying on international donors for funding capital investments, such as court renovations supported by USAID, and key supplies (i.e. computers, generators and the like) supported by The Royal Norwegian Embassy.

KJC recently set up an Audit Committee to oversee and provide strategic guidance to the finance, budget and procurement offices, with the overall objective to ensure compliance with the law, enhance transparency and accountability. This is expected to improve the service to the courts.

Measures to provide security for Kosovo Judges and Prosecutors remain poor. Widespread practices of directly approaching Kosovo Judges and Prosecutors without any discretion continue to be a concern. Judges and Prosecutors work under constant pressure and are subject to threats in and out of court buildings.¹¹⁷ EULEX judges reported incidents in Peja/Pec region where people were entering judges' office uninvited without being prevented by security. This situation generates reluctance to deal with sensitive cases, particularly those related to war crimes¹¹⁸. KIPRED considers that the lack of institutionalized protective measures prevents Judges or Prosecutors to apply provisions on seizure of assets¹¹⁹. BIRN revealed that no progress has been registered on cases of assault against judges and prosecutors, whose perpetrators remain unidentified; moreover, adequate safety provisions for officials are not provided even after they are assaulted or threatened, while competent authorities do not react at all.¹²⁰

As noted in OSCE monitoring reports, police officers provided security to judges and prosecutors only in cases involving defendants held in detention, or in trials held in courtrooms at the presence of public audience¹²¹. This is not only a matter of defending individuals engaged in judicial activities; there is also an institutional context to this issue. It is expected that “[a] judge shall act at all times in a manner that promotes public confidence in the dignity, integrity and independence of the judiciary”, as required by the Code of Ethics¹²²; judges should be entitled to all facilities enabling them to properly fulfill their tasks.

Therefore, in order to strengthen Kosovo judiciary EULEX stresses the importance of a more effective cooperation with Kosovo Police and joint planning of more adherent protective measures, applied even beyond working hours and outside of courts¹²³.

Notwithstanding KJC willingness to upgrade security standards, budget constraints are being reported. However, this should not prevent KJC to fully apply all available protection measures for staff and premises.

KOSOVO PROSECUTORIAL COUNCIL AND PROSECUTORS

The Kosovo Prosecutorial Council (KPC) is an independent institution exercising duties and responsibilities provided in the Constitution¹²⁴ and in the Law on Kosovo Prosecutorial Council¹²⁵.

The KPC is tasked to provide equal access to justice for every citizen of Kosovo and that prosecutors exercise their function in an independent, professional and impartial manner. The KPC shall also ensure that State Prosecutors reflect the multi-ethnic nature of Kosovo and that principles of gender equality are met. Further, the KPC is in charge of recruitment, training, disciplinary measures, and internal financial management.

As stipulated by the Law on KPC¹²⁶ the initial composition of the Council shall be as follows:

- The Chief State Prosecutor;
- One Prosecutor (previously member of KJC)
- One Special Prosecutor serving on the Kosovo Judicial Council;

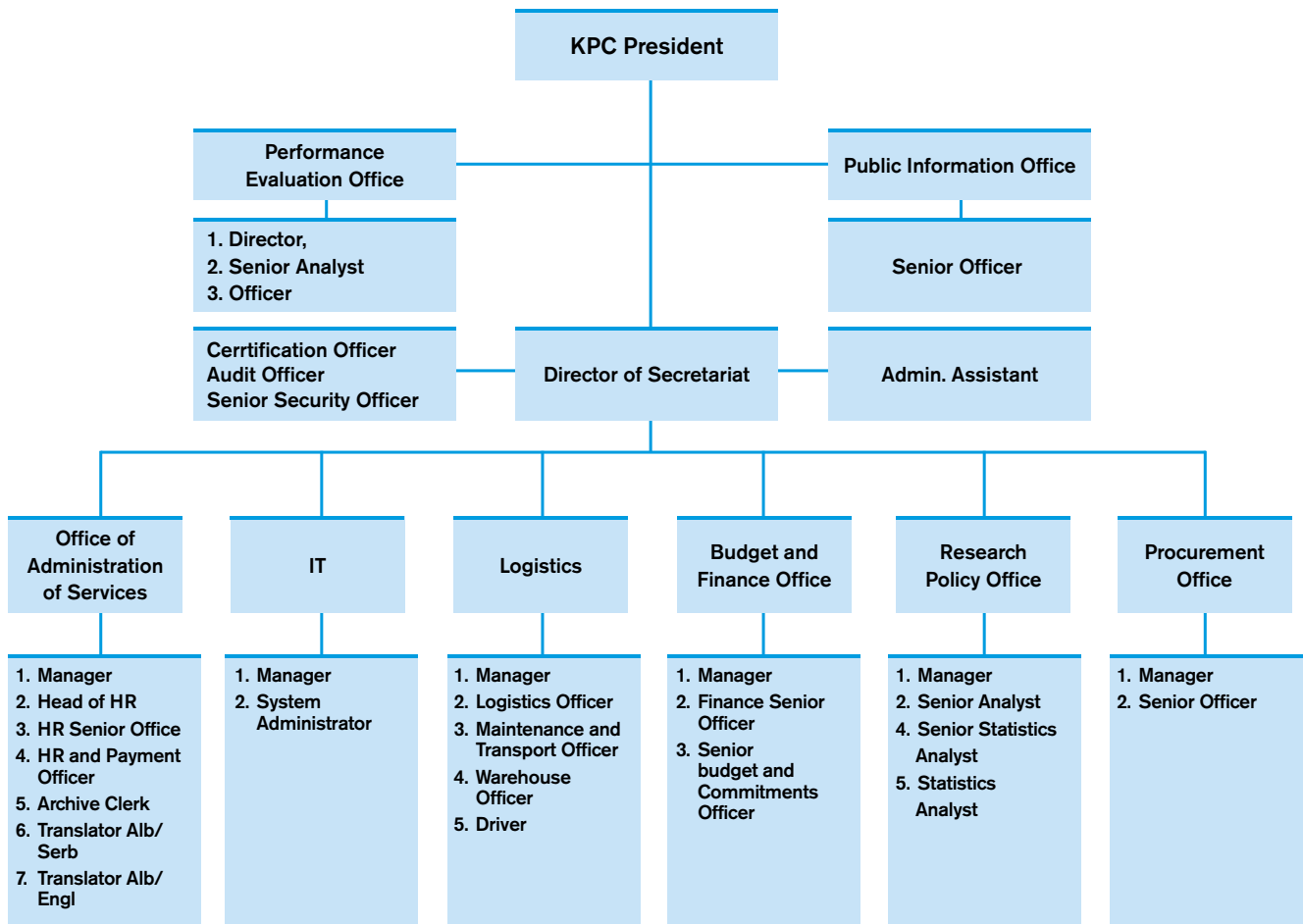
- The Minister of Justice;

- One District Prosecutor and one Municipal Prosecutor selected by the members above,

- The three (3) other members selected by the Council as provided in paragraph 3 Article 5 of the Law.

As of April 2011, the Council of KPC has been established and all members elected. The Council members have elected the Deputy Head of the SPRK as Deputy President of the KPC.

Relevant duties and competencies hitherto exercised by the Kosovo Judicial Council and Ministry of Justice were transferred to the KPC, Memoranda of Understanding between the KPC and MOJ and between KPC and KJC have been signed. KPC has approved rules for its Disciplinary Committee, and its members have been elected. KPC has approved its organizational chart (as below) and the KPC logo.



Organizational chart of KPC

The KPC, in accordance with the duties and competences vested by the Law on Kosovo Prosecutorial Council¹²⁷, released the 2010 Report on the Performance of the Public Prosecutor Offices of Kosovo¹²⁸.

EULEX has appointed a permanent advisor to the KPC and will continue to support accountability mechanisms in Kosovo Prosecutorial Services.

A MMA action was designed to achieve an efficient, effective and sustainable prosecution system for the whole of Kosovo¹²⁹. Methods included mixed team cases, one-to-one coaching, focus group discussion, knowledge sharing, workshops, topical meeting and data collection.

EULEX worked with KPC in fostering specialization and multi-disciplinary approach of the prosecutorial service.

As a result, in each region there is now one prosecutor following exclusively corruption cases, and an inventory of all corruption cases has been completed together with the drafting of an operational plan for dealing with it.

Prizren stands as a best practice for team approach: the local Chief District Prosecutor took over 17 cases from the understaffed Municipal Prosecution Office in order to enhance the fight against corruption.

BASELINE BOX

The main issues addressed by EULEX since 2009 in regards to the Kosovo Prosecution service were the strengthening of Kosovo Prosecutors autonomy, an effective case management, enhanced investigation and prosecution of serious crimes, and alternative measures to detention on remand.



HoM and Programme Office meeting local NGOs Representatives

Detentions on remand were requested without an in-depth evaluation of prevailing circumstances, i.e. the seriousness of the crime, the risk of flight, of reiteration of the crime, or of possible intimidation of witnesses. The OSCE also highlighted poor reasoning in requests for detention, pointing out that courts seem to often simply rubberstamp prosecutors' requests. In many cases courts used standardized and stereotypical formulations and did not refer to specific occurrences, thus failing to explain the grounds for suspects' deprivation of liberty. Concerns were also raised related to the length of the detention on remand: the European Commission assessed in 2008 that detainees have to wait on average 1-1.5 years before their trial starts.

While some less intrusive measures such as house arrest or seizure of passport are increasingly applied, yet many weaknesses continue to be reported in relation to the case handling process. Widespread delays in the handling of cases result in potentially longer unwarranted detentions. Furthermore, most of the rulings show an insufficient reasoning on facts leading to grounded suspicion, and detention on remand appears to be applied by default, without properly considering all relevant factors including the likely final sentence.

EULEX will continue to monitor, mentor and advise on alternatives to detention on remand as provided for in the

applicable legislation and in adherence to international standards and European best practices.

A Prosecution Administration Manual (PAM) was launched in May 2010 to improve the management of the prosecution casework. The PAM foresees the strengthening of a transparent and non-biased case allocation system in all District and Municipal Prosecution Offices.

A Prosecution Management Information System (PMIS, along the lines of the Case Management Information System in use by judges) is being installed in Prosecutors Offices, with IT infrastructure in place in most district offices. Its full implementation is hampered by the lack of capacity to maintain the system. New prosecutors require training in the use of PMIS.

According to the local prosecutors insufficient working space, lack of vehicles and support staff are also limiting efficiency in investigations and prosecution of serious crime cases .

BASELINE BOX

In 2009 EULEX assessed a lack of common rules for the evidential test procedures, which guide Kosovo Prosecutors in evaluating evidence. EULEX also noticed the need for KP and KPC to adopt and implement pre-trial evidential test procedures. Progress was noted in 2010 with the evidential test procedure adopted throughout Kosovo.

EULEX Prosecutors continue to mentor their local counterparts on the use of file review forms, based on an evidential test encompassing a summary of the reasons for prosecution, the evidence available, issues that could undermine the prosecution and actions to resolve these issues. A final review upon completion of the investigation and before the confirmation hearing shall include a prosecutor's assessment of real prospects of conviction.

BASELINE BOX

Since 2009 Kosovo Prosecutors and Kosovo Police teamed on ad hoc basis and the level of cooperation was not institutionalized.¹³⁰

The overall poor communication between Kosovo Police, Municipal and District Prosecutors and Courts was also addressed by KIPRED, which concluded that weak coordination of work is often at the root of unsatisfactory results in Kosovo criminal investigations. As a consequence, many cases remain open or files move back and forth between prosecutors and police investigators to no substantial avail¹³¹. Monthly case conferences between EULEX and Kosovo Prosecutors prior to hearings have shown better cooperation between Kosovo Police and Kosovo Prosecutors in some regions. ¹³²Autonomy of the prosecutors seems to have improved due to the recently initiated judicial reform. The new structure of the prosecutorial system outlined in the new Law on State Prosecution Office¹³³ - particularly the merging of municipal and district prosecutor offices - is expected to progressively increase synergies between Kosovo Prosecutors and Police.

CRIMINAL AND CIVIL CASES

Seizure of assets, although foreseen by Kosovo legislation¹³⁴, this measure has so far not been applied in serious criminal cases or in any other case in general, as its application encounters many obstacles. Failures to properly apply confiscation measures has a negative impact on crime prevention¹³⁵; seizure of assets will be the object of further monitoring, mentoring and advising efforts.

Measures for issuing of national and international arrest warrants in serious crime cases are in place. EULEX evaluates current practice of executing arrest warrants in line with required standard.

Good standards were observed with regards to juvenile case proceedings, while improvement are needed in treating victims of domestic violence, as well as in proceedings related to trafficking of human being cases.

A plan for introducing plea bargaining has been launched: EULEX Judges and Prosecutors conducted a training in District Court Pristina on the enforcement of provisions related to plea bargaining.

BASELINE BOX

EULEX Programme report 2009 assessed few requests of trial witness protection measures by Kosovo Judges and Prosecutors in serious crime cases¹³⁶. Witness protection measures were not considered as effective in Kosovo's close-knit society¹³⁷, and limited technical knowledge by local judiciary was another obstacle to the exercising of protective measures and conditions for anonymity.¹³⁸

EULEX encourages KJC, KPC, Kosovo Judges and Kosovo Prosecutors to pursue the effective application of witness protection measures in crimes involving vulnerable witnesses and serious crimes. Further, it continues

to support the proper allocation of serious crime cases, through monitoring, mentoring and advising on serious crime case proceedings.¹³⁹ Some progress has been achieved: EULEX noted efforts to guarantee witness protection in some high profile cases. The EPAP confirm that the legal framework is being set, to begin with the drafting of the Law on Witnesses Protection and the conception of a Programme for witness protection.

EULEX Judges are reporting a decrease in the use of detention on remand cases, with less intrusive measures being applied. Nonetheless, works remains to be done in ruling on detention on remand, particularly on prosecutorial decisions to initiate investigations (supported by sufficient evidence). Decisions not in compliance with legal requirement have been registered with reference to the length of detention on remand (extension and maximum period). Violations of the legally prescribed period of 48 hours¹⁴⁰ occurred between the filing of the appeals and the sending of the case file to the Supreme Court at the registries of the District Courts.

It is estimated that repeated re-trials of civil cases has engulfed civil courts since 2009, fundamentally contributing to the increase of the civil cases backlog.

Concerns were also raised as regards to the substance reasoning of second instance judges to the first instance judges on issues that have led to the remittance. Consequently, EULEX stressed the need to abolish the legal basis for retrials and the KJC to issue a guideline that Second Instance Judges remit civil cases presenting a substantial reasoning. KJC data show that in 2010 the number of remitted cases from District to Municipal Courts amounts to 65.90 % of completed cases (respectively 24.7% criminal cases, 21.5% civil cases, 18.9% commercial cases).

Data of the KJC Statistical Department show that the case backlog increased by 10.17% between 2009 and 2010¹⁴¹. 213967 cases were inherited from 2009, while

COURT	COURT CASES IN		OUT OF IT								INCREASE IN % COMPARING WITH PENDING CASES IN THE END OF 2009
			INHERITED CASES FROM THE PREVIOUS YEAR IN		ADMITTED IN		TOTAL NO. OF THE COMPLETED CASES IN		NUMBER OF PENDING CASES IN THE END OF THE YEAR		
	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	2010
SUPREME COURT	5693	6017	2399	2491	3294	3526	3202	3079	2491	2938	17.94%
DISTRICT COURTS	19643	19644	8754	9187	10889	10457	10456	8890	9187	10754	17.06%
COMMER-CIAL COURT	2392	2795	1329	1541	1063	1254	851	848	1541	1947	26.35%
MUNICIPAL COURTS	565561	507835	173280	200748	392281	307087	364813	287743	200748	220092	9.64%
TOTAL	593289	536291	185762	213967	407527	322324	379322	300560	213967	235731	10.17%

of the 322324 newcases admitted in 2010, 300560 were completed, this resulting in a total of 235731 unfinished cases by the end of 2010 (+10.17 % on 2009 records). In this context it is worth mentioning that the number of judges decreased from 176 in 2009 to 158 in 2010.

An overall number of 104777 civil cases and 13429 criminal cases were still unfinished pending execution by the end of 2010, with an increase of 17.5 % and 4.4 % respectively on 2009 figures (95306 civil cases and 6753 criminal cases), An ICG report considers that effectiveness of the judiciary is being hampered by the lack of enforcement of court decisions.¹⁴²

EULEX recommended a higher number of clerks in the courts to process the execution of cases.¹⁴³ BIRN highlighted the lack of execution judges in municipal courts

as a reason for failure to execute judgements within a reasonable timeframe, and reported that the number of officers assigned to this function is insufficient for the amount of unexecuted judgements. Furthermore, courts signalled that the lack of vehicles for field work was one of the causes for the low rate of execution¹⁴⁴.

EULEX judges monitoring civil cases observed the practice of postponing execution by first instance courts until appeals were concluded. This practice was not in compliance with the law and contributed to the length of executions and to the increase of the backlog. The Assembly of EULEX judges advised to send the original case file to the second instance court in case of appeal, while keeping a copy of the case file at the first instance court for the execution procedure. The advice is being properly implemented in most of the courts and the execution of civil cases under appeal continues.



When comparing completed cases with received cases, in 2010 the efficiency of judges¹⁴⁵ increased by 41.37% in civil cases and by 90.82 % in criminal cases.¹⁴⁶ Indeed the KJC National Backlog Reduction Strategy seems to be having positive effects. The team in charge of implementing the strategy is progressing in other areas as well (e.g. drafting regulations for norms on the workload and incentives to the judges/offices). The strategy plan also provides for a review of the current legislation in order to propose relevant amendments, also covering the issue of retrials.

The practice of the of second instance level to systematically send cases back for re-trial to the first instance results in a burden to all parties, and threatens the functionality of the justice system itself. Therefore, this practice must be corrected. Sending the case back for re-trials should never be the rule but the exception. It is a decision that must be carefully considered at the second instance level and adopted only exceptional circumstances. EULEX judges discussed the issue with Kosovo Supreme Courts Judges and agreed on a principal to be followed in all appeals against judgments of first instance that, according to the second instance court, has not established the facts in a clear and correct manner. In this case the court shall have the following procedural options:

- Make a new assessment of the evidence available in the case- file and establish the facts in a clear and correct manner in the judgment of second instance (Articles 424.4, 426.1 KPCC/Article 381.1 in fine CCPFSRY).
- Schedule a hearing at the second instance level in order to establish the facts (Articles 441 and 413.4 KPCC/ Articles 372 and 373.1 CCPFSRY)
- Send the case for re-trials to the first instance court, taking into consideration that this option must only be exercised in exceptional circumstances when is not possible to establish the facts at the second instance level according to paragraph one and two above (Article 424.1 in fine / Article 385.1 CCPFSRY)
- Acquit the defendant on the basis that there is no sufficient evidence to support the charges, taking into consideration that this option must only be exercised when it is not possible to establish the facts according to paragraphs one, two and three above (Article 420.4 read in conjunction with Articles 390.3 KPCC / Article 381.1 in fine, read in conjunction with 350.3 CCPFSRY).

MINISTRY OF JUSTICE AND DEPARTMENT FOR FORENSIC MEDICINE

BASELINE BOX

The 2009 EULEX assessment identified a number of deficiencies within the Ministry of Justice (MOJ) and the Office of Missing Persons and Forensics (OMPF). These included poor policy formulation and lack of legal drafting skills, weak capacities in the area of international legal cooperation within the MOJ, and gaps in the work of OMPF, particularly in the Department of Forensic Medicine.

A legal framework for the development of legal policy and legislation remains among the outstanding challenges for the MOJ¹⁴⁷.

The Minister of Justice (MoJ) assumed responsibilities in the field of International Legal Assistance (ILA) based on Administrative Direction dated 20 March 2009 initially only towards countries recognizing the independence of Kosovo, which was complemented later with administrative decision dated 30 September 2009 – expanding the competence also for requests to and from the so-called “non-recognizing countries”.¹⁴⁸

This was followed by an Administrative Instruction for Kosovo courts, outlining the procedures for requests of and responses to international legal assistance.

The transfer of ILA responsibilities from UNMIK Justice Department to local institutions disrupted all communications with Serbia - which accounts for 30% of all requests¹⁴⁹. Serb authorities continue to reject requests from Kosovo, not acknowledging documents carrying stamps or symbols referring to the Kosovo institutions.

As of May 2011 the MOJ Division for International Legal Cooperation became a Department with two divisions: the Division for International Judicial Cooperation in

Criminal and Civil Matters and the Division for International Cooperation. The office is now subordinated directly to the Minister and its new set up is expected to boost its efficiency. All available positions had been filled by early 2011.

BASELINE BOX

Deficiencies in the pool of translators and lack of alternative options were among one of the main concerns highlighted by EULEX in 2010, posing a real obstacle for Kosovo to comply with international standards and send requests in the official language of the receiving country.¹⁵¹

The Law on International Child Abduction passed its first reading in the Kosovo Assembly in September 2010. The Ministry of Justice informed the Hague Conference on Private International Law about the adoption of the new Law on Civil Aspects of International Child Abduction by the Assembly, seeking assistance and training support for Kosovo officers.

The law on international legal assistance in criminal matters has been drafted, and submitted to the Assembly for the first reading in July 2011.

There has been renewed focus by EULEX on the MoJ legal capacity with regard to international conventions and the EU acquis, building upon existing and potential agreements, as well as dwelling on European best practices through active MMA support.

MoJ has proposed 30 draft-agreements with various EU and regional countries on transfer of sentenced persons. The first of the 30 proposed agreements was the bilateral agreement between Belgium and Kosovo on the



Forensic Medicine

transfer of sentenced persons, concluded in June 2010 and ratified on 21st September.

In April 2011, three agreements on international cooperation (namely on extradition, mutual legal assistance and transfer of sentenced persons) have been signed between FYROM and Kosovo. The agreements will enter into force as soon as ratified.

In May 2011 three agreements on ILC have been signed between Turkey and Kosovo, i.e. on Extradition, Transfer of Sentenced Persons and Mutual Legal Assistance¹⁵².

Negotiations between Kosovo and Switzerland on the Agreement on Transfer of Sentenced Persons have been finalized.

Discussion to conclude international legal agreements are ongoing with Slovenia, Italy, Bulgaria, Albania, Germany. EULEX is providing support in the negotiation pro-

cess. An MOJ delegation was also assisted in their visit to Germany to negotiate a comprehensive agreement in the field of Mutual Legal Assistance. Cooperation with the European Union Judicial Cooperation Unit (EUROJUST) has been initiated. An EUROJUST delegation met with representatives of the Ministry of Justice, in view of increasing the fight against transnational crime. Regarding Kosovo's accession to bilateral international agreements, the presidential degree on the accession to the Austria - FRY agreements on ILA has been ratified on 09 June 2011

A specific goal has been to create a Kosovo escort unit for extradition. In the absence of a functioning escort unit in MoJ, EULEX facilitated escorts of extradited persons to Kosovo. The Kosovo Escort unit became operational and has successfully completed several extraditions.

The Department for Forensic Medicine (DFM) has absorbed all responsibilities previously vested with the Of-

office of Missing Persons and Forensic, and its new director will have to make the new Department operational and work on strategies, as well as to cope with logistical and managerial problems. The difficulties accumulated have contributed to a backlog of pending cases hampering the work of prosecutors. DFM work was disrupted by strikes of staff demanding higher salaries, further worsening service delivery. Notwithstanding the challenges few positives can be add:



Forensic work in the field

The Law on the Establishment of the Department of Forensic Medicine (DFM) entered into force in August 2009. The Secondary legislation for the Law on the Establishment of the Department of Forensic Medicine is being drafted. The Law on Forensic Medicine Procedures has entered into force in June 2010. The law was considered a significant success and a very important step to create a legal framework for legal medicine and associated disciplines. The Kosovo forensic resources are now

centralized under the Department of Forensic Medicine (with the exception of KP forensic police unit), enabling a more coherent management and eventual growth.

Signs of political interference and poor management were reported in 2010.¹⁵³ DFM early technical constraints resulted in a lack of quality service delivery, while staff capacity building continues to be neglected.

KOSOVO CORRECTIONAL SERVICE (KCS)

The EULEX Correctional Unit (CU) provides technical assistance and key support to the Kosovo Correctional Service (KCS). A joint MMA Programme has been developed covering key areas such as Security and Operations, Prison Population Management, Strategic Management and Administration.

The areas of physical and “dynamic” security still remain the toughest challenge for the KCS, when considering all the capacity building aspects involved in it. Recent secu-

urity upgrading of facilities included a new CCTV system in all Detention Centres, together with the upgrading of the CCTV system in Dubravë/Dubrava Prison and procurement of additional security equipment to improve security in prisons.

EULEX assisted the KCS in improving security by loaning three X-ray machines. Two machines were installed at Dubravë/Dubrava entry points and one at the main gate of the Mitrovicë/Mitrovica Detention Centre. EULEX CU

and the KCS developed a training workshop based on best practices to familiarize staff with the new equipment and searching procedures. A total of 36 KCS staff, including 5 from the Mitrovicë/Mitrovica Detention Centre, completed the workshop, and 7 staff attended a train-the-trainer workshop: KCS is now autonomous in training of staff in this area. As a result, increasing quantities of smuggled goods have been detected and confiscated, and where appropriate the Kosovo Police has assisted. X-ray machines modernized KCS searching practice and additionally act as a visual deterrent against contraband. The KCS Commissioner also issued a new directive on the management of confiscated assets.

A formal EULEX mentoring programme helped KCS to improve the management of human resources and the administration of detention centres and prisons. Pressure to traffic illegal items into prison facilities is a direct consequence of prisoner intimidation. This problem is most acute in Dubravë/Dubrava. The KCS management of the prison and EULEX CU have made progress in combating the phenomenon.

Following a Training Needs Assessment carried out in April 2010, EULEX Correctional Monitors worked closely and supported the Dubravë/Dubrava Training manager to provide essential training during this past year, including:

Security Information Reporting: Training was carried out through workshops addressed to all ranks of KCS staff members, and proved to be beneficial as the flow of information reports has increased. Figures indicate that 450 staff members have received training, including civilian staff.

Formal mentoring programme: The Formal Mentoring Programme was developed and conducted by EULEX CU block supervisors for KCS staff working in the high security block in Dubrava: a total of 52 KCS staff of all ranks were mentored. It is planned to extend the programme to new staff in the high risk block; the programme will be administered by the KCS supervisor grade and supervised by the KCS Training Manager. EULEX CU will mon-

itor the implementation of the programme. The Prison Director intends to introduce this programme to all other areas of the prison

Programmes concerning prisoner population management have seen an overall improvement within the KCS, also thanks to the specific focus contained in the KCS 2011 Strategic Plan.

The KCS currently uses a sentence planning document mirroring the recommendations set out in Council of Europe Appendix Rec (2003)23-Sentence Planning 9-10. A unified inmate Regime policy is currently being formulated and expected to be authorized by the Commissioner. Inmate visits continues to be operated well in all Kosovo prisons, and their length has increased as recommended by EULEX.

Remaining challenges include a) an insufficient number of KCS Social Workers in the Dubravë/Dubrava prison to efficiently conduct Sentence Planning for all inmates; b) the lack of modern rehabilitation programs available to inmates, i.e. drug rehab; c) the housing of different categories of inmates in the same block.

The MoJ planned to hand over Human Resources issues to the KCS during 2011. The KCS needs adequate time and continuing support to be able to independently manage all HR issues, such as recruitment, personnel files, disciplinary issues, staffing analyses, payments of salaries.

The HR transfer shall be followed by the handover of budget and procurement.

KCS direct control over funds and procurement will enhance their capacities in long term planning and cost effectiveness. This will be a challenging opportunity for the KCS and a necessary step for becoming an independent and accountable agency. This should help in areas of weaknesses such as supplies for prisons (lack of food and medical items for example has led to recent hunger strikes and other forms of protest amongst inmates) and recruitment and development of staff members. The KCS



has limited experience in budget, finance and procurement management and therefore assistance and advice on these matters will continue to be offered by the mission.

Since October 2010 a KCS/EULEX working group has been reviewing existing administrative instructions to ensure consistence with the new Law on Execution of Penal Sanctions (LEPS), the working group has prepared additional instructions to fulfil all requirements set by the new Law.

The KCS acknowledged that improvements need to be made in regards to human resources strategy. A staffing needs analysis has been carried out to address the current organizational weaknesses: the organizational structure at HQ level; the overall rank structure; the lack

of experts in specific fields are all issues that deserve a careful handling. The KCS recognizes that staff - inmates ratio should be improved, and that existing staff can be re-deployed to other facilities as they come into use, consenting the reallocation of financial resources to other needs.

The development of a centralized KCS database/information system requires expertise and consistent financial resources. International donor assistance for the central database is required. The lack of a national database and recording system impacts on all areas of KCS prison management, administration and operations. As of July 2011 KCS cannot gather information on recidivism rates and therefore planning of effective rehabilitation, and social reintegration remains difficult.



Justice

cu



stoms

In its 2009 report, EULEX appreciated the approval of primary legislation for KC occurred at the end of 2008. The Customs code was in compliance with EU standards and inspired by the European 'Community Customs Code'. Likewise, the European Commission (EC) reported some progress in the area of customs: the service received the new EU blueprints on customs, laying down clear EU best practices-based criteria to measure its operational capacity and establish plans for future customs reform, as well as for compliance with international rules and standards¹⁵⁴.

The EC 2008 progress report for Kosovo found legislation on KC in line with European standards, and detected relative improvements in Kosovo Customs service operations. In order to assist and improve outstanding gaps and concerns, EULEX formulated a number of recommendations to further improve the service in question¹⁵⁵. Recommendations were then structured in four monitoring, mentoring and advising actions, which will be hereinafter outlined in terms of goals and results.

One of the fields of interest for EULEX was to mentor and advise the Kosovo Customs Director-General (DG) and Directors on updating operational plans, including integration of Integrated Border Management (IBM) strategy, and government strategy against organized crime.

BASELINE BOX

An initial assessment of the draft directorates' operational plans for 2009 revealed unequal standards of quality, ranging from quite detailed to rather broadly defined activities without setting clear outcomes. In general terms, there seemed to be no integration or consolidation of operational plans into a single plan, with clear set objectives for the whole of KC.

Therefore, EULEX focused on mentoring and advising on how to include the different Directorates plans into a consolidated plan, clearly defining objectives and responsibilities. Specific attention was given to the integration of



all elements of the recently approved national IBM Strategy and the future government strategy to combat and prevent organised crime.

In early 2010 KC drafted a new Strategic Operational Framework (SOF) for the period 2010-2012. This SOF was evaluated by EULEX advisors in March 2010 and comments were shared with KC. The resulting document was largely focused on the current year hence lacked a specific vision and key areas for performance review in the intended period. Recommendations included the requirement to structure SOF contents in terms of "Vision, Mission, Values and Strategic Goals" while developing three main strategies: business/client, law enforcement (including customs control), and resource strategy. Action plans or operational plans would then ideally match with the SOF timelines.

The final version of the SOF was issued and based on this Framework the KC drafted an Action Plan for 2010; the integrated nature of this new corporate plan was beneficial.

Both IBM and Organized Crime national strategies are mentioned in KC's SOF 2010-2012 as part of one objective; these strategies are described more in details in the KC Action Plan 2010, which is an annex to the SOF.

The KC DG changed the previous system, in which every directorate had its own Operational Plan (OP), by creating a unique and common OP, setting clear objectives throughout the Organisation. The new concept contained corporate and individual tasks and responsibilities for the Directorates.

BASELINE BOX

The initial assessment carried out by EULEX concluded that a thorough review was needed to check all existing records and the methods for risk analysis process within KC.

Check of vehicles and commodities was based on TIMS (Trade Information Management System) risk assessment, which used to provide examination tasks to customs officers whilst customs declaration were being processed: the system in question would automatically select vehicles or commodities which were to be checked. However, EULEX field experts came to the conclusion that the use of TIMS itself should have been reviewed, as observations indicated that a large percentage of control measures were not based on selectivity, and it was not clear whether profiles were a result of a risk assessment. A similar situation was also observed at the Prishtina International Airport, identifying the need for more emphasis on training customs staff in profiling and advance risk assessment¹⁵⁷.

Kosovo Customs officers have already been included in training modules being delivered by the EC "Strengthening the Rule of Law" Twinning Project to the Kosovo Border and Boundary Police. These training encompassed intelligence-led policing principles, which, according to initial feedbacks, have been well received by customs officers¹⁵⁸.

Assessments confirmed a weak use of intelligence data in Kosovo Customs. Technical issues such as the lack of a well established IT system, and a database compatible with intelligence needs are still unsolved. In March 2011 the intelligence database planning was completed by KC, with the assistance from EU-CTA. Funding for this new database is to be secured from international donors.

BASELINE BOX

The EC reported in 2008 that, in despite of improved cooperation between the different Kosovo agencies involved in IBM, there were still no formal IBM agreements with neighbouring countries, nor any formal agreements on operational cooperation between the various actors¹⁵⁹.

EULEX equally assessed a poor coordination between KC and other law enforcement agencies, in particular with KP and the Public Prosecutors Office (PPO). The latter showed a lack of confidence in KC capacity of dealing with serious crime issues, thus providing little or no support at all to KC to investigate and prosecute such cases¹⁶⁰. There were no regular meetings between authorities, the number of joint and synchronized operations was low, and inter-agency communication was very limited. Likewise, the EC reported a similar situation between law enforcement agencies in Kosovo¹⁶¹.

Considering the importance of interagency and international cooperation to combat cross-border crime, EULEX issued a recommendation targeting KC Law Enforcement and Legal Directorates and foreseeing mentoring and advising to intensify cooperation with other law enforcement agencies, and especially with the PPO¹⁶².

As of June 2010 progress was noticed in respect to partnering with other law enforcement agencies. KC drafted a joint operation plan with KP to detect the illegal import and export of money by travellers flying in and out the Prishtina International Airport. An important milestone in this field for KC was also the establishment of a new unit

for liaison and cooperation with the Public Prosecutors Office. KC and PPO have both appointed liaison officers to increase cooperation and provide legal assistance with regard to pre-investigation procedures. The KC liaison officer will have to ensure that information flows are established and maintained, to undertake research and to report on topics related to customs offence criminal proceedings. The creation of this unit also foresees to improve KC skills in investigating serious crimes in accordance with existing legal provisions. A Memorandum of Understanding (MoU) regulating respective tasks and responsibilities has been signed between the two bodies in January 2011.

Further progress has been made related to the establishment of the unit for cooperation with PPO where guidelines for Liaison Officers with Public Prosecutors were drafted with the support of the UK Department for International Development (DFID).

Three new agreements have been signed in 2010 with Turkey, Montenegro and Finland (January, March, and June 2010), and one in January 2011 with FYROM, whereas additional agreements are under negotiation with another 17 countries. However, current Kosovo data protection legislation is not considered robust enough for its purpose by other countries, hence not deemed reliable enough to allow linking it with law enforcement databases in other countries, which in turn is hampering the signing of new agreements.

Work on the drafting of supplements and amendments to the Customs and Excise code was completed in July 2010, but the draft law has not yet been sent to the Ministry of Finance for further consideration and subsequent adoption. This is due to the fact that KC is still considering the chance of drafting of a completely new law, although previous reports (i.e. EC, EULEX, and other organizations) state that Kosovo Customs legislation is to a great extent in-line with EU standards. The KC is now supposed to decide a way forward, whether by amending the current code or by drafting a new code.

BASELINE BOX

The National Strategy on IBM – in line with the European Commission Guidelines for Integrated Border Management in the Western Balkans – was approved in April 2009, and covers national and international cooperation in view of tackling cross-border and organized crime. It aims to coordinate the activities of agencies involved in border control and management.

The executive board for integrated border management was set up in May 2009, comprising the integrated border management coordinator and representatives of other relevant bodies¹⁶³.

Kosovo Border and Boundary Police, Kosovo Customs, Kosovo Veterinary and Food Agency (KVFA) were seen as the main actors in this strategy¹⁶⁴. The document foresaw not only to foster cooperation within a respective agency, but at the same time to lay the foundations for inter-agency cooperation, as well as to improve information sharing between the actors involved, therefore allowing more targeted and selective controls.

The KC DG has set up an intra-agency Working Group on IBM in September 2010. Although ad hoc meetings have been held, no formal terms of reference have been drafted yet to specify objectives or roles and responsibilities of each participating unit or department. Customs and Police have nonetheless developed a long-term plan to construct joint control cabins whenever infrastructure at BCPs will be improved or upgraded.

Training on IBM concepts has been included into the basic customs training program for newly recruited staff. In addition the KC, jointly with the Kosovo Border and Boundary Police, has been delivering refreshment trainings on IBM and specific topics (e.g. SOP on border profiling and joint patrolling). EULEX still see the need for improvements through training, with a focus on practical knowledge and IBM.

Endnotes

- ¹ <http://www.eulex-kosovo.eu/en/news/000295.php>
- ² EULEX Programme Report 2009, p. 25
- ³ EC Kosovo Progress Reports of 2008 and 2009, 4.3.4
- ⁴ <http://www.unodc.org/southeasterneurope/en/cards-project.html>
- ⁵ Ethnically motivated crimes can be defined as occurring when a perpetrator targets a victim because of his or her membership in a certain ethnic group. A crime can be categorised as 'likely to be ethnically motivated' if the circumstances are such that the probable motivation was a hatred or dislike for the victim on the grounds of his or her ethnicity.
- ⁶ See Criminal Procedural Code, article 200, para (1;2)
- ⁷ See page 23 of the EULEX Programme Report 2009 highlighting the need to establish a common system of collecting and collating crime statistics, crime investigation and persecution statistics.
- ⁸ See KIPRED's 'Fragile Triangle', pp.11 and 12
- ⁹ OSCE, 'Strengthening cooperation between police, prosecutors and judges', p17
- ¹⁰ See BIRN 2009 'Monitoring the Courts' p 43; See also EULEX Programme Report 2009, p. 29 reporting on the same deficiency.
- ¹¹ See the associated EULEX MMA Tracking Mechanism categorizing the objectives as 'pending' for almost two years. Reference available at the last page of police section in red: <http://www.eulex-kosovo.eu/docs/MMA-TrackingMechanism2011-february.pdf>.
- ¹² EULEX Programme Report 2010, p. 17
- ¹³ EC Kosovo Progress Reports of 2008, 2009, 2010, 4.3.4; KIPRED's 2010 Strengthening the RoL in Kosovo , p 18
- ¹⁴ EULEX Programme Report 2010, p. 17
- ¹⁵ As also noted in the EULEX Programme Report 2009, p. 12
- ¹⁶ The need to develop the strategic planning capability of the KP, through development of the ILP system is also foreseen by EPAP 2010
- ¹⁷ See KIPRED's 2010 Strengthening the RoL in Kosovo , p 18
- ¹⁸ EC Kosovo Progress Report 2008, 2009, 4.3.4
- ¹⁹ EULEX Programme Report 2009, p. 63
- ²⁰ EULEX Programme Report 2009, p. 38, 40
- ²¹ Available at: <http://www.mpb-ks.org/?page=2,114&date=2009-00-00>
- ²² Available at: http://www.mpb-ks.org/repository/docs/ENG_STRATEGJIA_KKT_30_QERSHOR.pdf
- ²³ See EC Kosovo Progress Report 2009, 4.3.5
- ²⁴ As also assessed by EPAP 2010 for Kosovo, p 51, c
- ²⁵ EULEX Programme Report, p.63
- ²⁶ According to Forum for Civic Initiatives (a Pristina-based NGO), the Kosovo Strategy against Narcotics is not balanced terms of sharing of responsibilities amongst the institutions. The research highlights that only KP is active in investigating the phenomenon. (Forum for Civic Initiatives, released in May 2011, 'Policy Implementation against illicit narcotics' page 7).
- ²⁷ http://www.mpb-ks.org/repository/docs/strategjia_16_06_09_finale_kombetare_ENG.pdf; http://www.mpb-ks.org/repository/docs/Final%20Action%20Plan_17%20jun.pdf
- ²⁸ Also reported in Kosovo dailies: <http://www.zeri.info/fotogaleria.php?id=28788&foto=strategjia1.jpg>
- ²⁹ See Article 10.1 (g) and 11.3 of the Law on Police on the duties and powers of the Border and Boundary Police
- ³⁰ EC Kosovo Progress Report 2010 (4.3.1) highlights some progress being made by the KP on implementing the IBM strategy. The Report at the same time calls for further efforts of all respective agencies towards full implementation of the strategy.
- ³¹ EULEX Programme Report 2009, p.64
- ³² Available at: <http://www.mpb-ks.org/repository/docs/Strategjia%20Anglisht.pdf>
- ³³ Border Line with Republic of Albania has a length of 113 km and 551m with 6 BCPs (3 permanent and 3 temporary) while with border line with FYROM has a length of 170 KM and 772m with 2 permanent BCPs.
- ³⁴ Also noted in the EC Kosovo Progress Report of 2010, p. 50
- ³⁵ The border Line with the Republic of Montenegro is 79 km. and 165 m. long and has one permanent BCP.
- ³⁶ The border/boundary line with the Republic of Serbia has a length of 380.068 km
- ³⁷ According to EULEX staff engaged in the plan, KFOR has expressed its readiness to transfer the Montenegro green border responsibilities to KP even before the demarcation is completed.
- ³⁸ The Deputy Prime Minister of Kosovo and Minister of Justice, during his visit to Montenegro agreed that the demarcation of the border between Kosovo and Montenegro will be concluded by the end of 2011. The parties also committed to sign three agreements by the end of this year (2011) – extraditing, the transfer of the sentenced individuals and judicial cooperation. (source: press release issued by the Government of Kosovo and available at: <http://www.md-ks.org/?page=2,8,383>).
- ³⁹ EULEX Programme Report 2010, p.54
- ⁴⁰ The legal basis for the SOP is the Law on Police and the Integrated Border Management Strategy (IBMS) as well as the principles and procedures of the Kosovo Police, internal guidelines for Kosovo Police and management basics for police supervision and management.
- ⁴¹ The implementation team working on the SOP was supported by the EU Commission funded Twinning Project 'Strengthening the Rule of Law – Border and Boundary Police' during some training activities (No. KS 07 IB JLS 01)
- ⁴² Statement by Col. Shaban GUDA, A/Director Assistant of Border and Boundary Police during the presentation of the final evaluation report on 20 December 2010.
- ⁴³ See EC Kosovo Progress Report of 2008, 4.3.4. p.53
- ⁴⁴ EC Kosovo Progress Report of 2008 and 2009, 4.3.4
- ⁴⁵ EULEX Programme Report 2009, p. 46
- ⁴⁶ The one week training is being delivered in all regions including KP BP North. At the time of writing, 571 supervisors have been trained. There are only about 40 supervisors remained to be trained.
- ⁴⁷ EULEX Programme Report 2009, see table 1.1, p 3- on number of recorded crimes – international comparison; table 1.2, p 23- on the specific categories of recorded crimes within the context of Europe.
- ⁴⁸ EC Kosovo Progress Report 2008/2009 4.3.4
- ⁴⁹ Available at: <http://www.mpb-ks.org/?page=2,114&date=2009-00-00>
- ⁵⁰ EULEX Programme Report 2010, p.17
- ⁵¹ Available at: http://www.mpb-ks.org/repository/docs/STRATEGy_eng.pdf
- ⁵² The written policy provides the KP with tools for tracking/measuring the success of their planning (tools for tracing index crime) and gives direction to adapt to change on the ground.
- ⁵³ MCSC established by Administrative Instruction (AI) 08/2009 are advisory bodies to municipal authorities in Kosovo. The Committees comprise municipal authorities, Kosovo police officers and members of civil society, and are meant to discuss security issues and to foster local cooperation with the police. The A.I. is available at: http://www.mpb-ks.org/repository/docs/UA_08_2009.pdf
- ⁵⁴ Local Public safeties Communities (LPSCs) are established in the local communities as mechanisms to improve community safety and security. They are established by the police KP DG at the request of the local community. For more info on MSCs and LPSCs see article 7.7 and 7.8 of the Police Law.

- ⁵⁵ Articles 7 of the Kosovo Police Law (Law Nr. 03/L-035), requires the KP to communicate and cooperate with local government authorities, civic organizations and local communities “for the purpose of preventing and combating crime and enhancing the safety and security of all communities. . . More specific obligations, in relation to local community consultation, are placed on Station Commanders.
- ⁵⁶ This follows the Government’s Security Strategic framework of 2009, which included adoption of a series of strategic documents, as they relate to crime prevention, trafficking in human beings, drugs, terrorism, organized crime, migration etc.
- ⁵⁷ With the continued downsizing of KFOR troops, more tasks for I/EOD unit are foreseen.
- ⁵⁸ The System shall define the categories (and sub-categories) of incidents that regularly require KP intervention; the method whereby the data is collected and logged at station/regional levels; the way the data is collated into a central KP data pool; parameters for statistical data recall from the central pool (i.e. allows KP commanders to retrieve weekly/monthly statistics concerning the levels/locations of incident; and allow the KP to plan resources effectively according to the needs.
- ⁵⁹ Compliance shall be based on a system of monitoring the staged implementation of the SOP, starting with a regional pilot scheme, then Kosovo-wide.
- ⁶⁰ The SOP will have emphasis on improving internal strategic leadership and lines of communication.
- ⁶¹ Available at: http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L048_en.pdf
- ⁶² See Programme Report 2009, p.75 for more details.
- ⁶³ EULEX Programme Report 2009, p 77
- ⁶⁴ These features would include a comprehensive SOP, Job Descriptions and procurement forms.
- ⁶⁵ EULEX Programme Report 2009, p. 79
- ⁶⁶ Ibid , p. 77
- ⁶⁷ Although difficult to fully evaluate, EULEX in 2009 reported a degree of perception among some KP officers that the promotion system could be made more objective and fair.
- ⁶⁸ EULEX Programme Report 2009, p. 79
- ⁶⁹ Two Turkish police officers continued to provide support until the summer of 2009.
- ⁷⁰ The Government Decision (No. 02/39 dated 08.10.2008) introducing salary allowances for specific categories of staff in the public sector, in this case professional staff (experts) of Informatics and communication technology, has contributed in the KP’s objective to create and retain a sustainable team of local IT specialists in the organization.
- ⁷¹ particularly with objective 5, which relates to the technological upgrade of the organization (advancing information technology, information, equipment etc).
- ⁷² See competences, responsibilities and composition of the Council regulated by Chapter II Law no.03L-223 on Kosovo Judicial Council.
- ⁷³ The topics of the strategic plan were: access to justice, integrity of the judicial process and function, resolution of caseloads, reduction of case backlog and accountability to the public- The 2009 EULEX Programme Report, p. 85
- ⁷⁴ <http://www.eulexkosovo.eu/docs/tracking/EULEX%20MMA%20ACTIONS%2020102904.pdf>
- ⁷⁵ All necessary measures should be taken to respect, protect and promote the independence and impartiality of the judges- Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges, independence, efficiency and responsibilities
- ⁷⁶ The Independent Judicial and Prosecutorial Commission, was established in January 2008 with Administrative direction 2008/2, IJPC was mandated to conduct a comprehensive review of all applicants for permanent appointments as judges and prosecutors in Kosovo-wide. The project was funded jointly by the European Commission and the government of the United States and was finalized on October 2010.
- ⁷⁷ According to the UNMIK Administrative Direction 2008/2.
- ⁷⁸ IJPC Final report, published on 29 of October 2010, p. 1.
- ⁷⁹ See also some of the noteworthy projects highlighted in the IJPC final report (page 17)
- ⁸⁰ The need of Judicial Council to build on the guidelines and procedures established by the IJPC was also addresses by EC Kosovo 2010 Progress Report. (Para 2.1)
- ⁸¹ A recommendation put forward to KJC in 2009 EULEX Programme report.
- ⁸² Also stressed in EC 2010 Kosovo Progress report, p.11
- ⁸³ EC Kosovo 2010 Progress report, para 2.1 p. 9
- ⁸⁴ The Law on Courts 03/L-199 entered into force on 1 January 2011 for articles related to transitional provisions, while the structural changes will be in force from January 2013
- ⁸⁵ Law on Kosovo Judicial Council 03/L-223 entered into force in May.
- ⁸⁶ Law on State Prosecutor 03/L-225 entered into force on 1st of January 2011.
- ⁸⁷ Law on Kosovo Prosecutorial Council 03/L-224 entered into force on 1st of January 2011
- ⁸⁸ EULEX Programmatic Action, KJC, <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20MMA%20ACTIONS%2020102904.pdf>
- ⁸⁹ EULEX Programme report 2010, p. 27
- ⁹⁰ Para 2.1, p.10
- ⁹¹ <http://www.eulex-kosovo.eu/docs/MMA%20-%20Tracking%20Mechanism%20NEW%20NEW.pdf>
- ⁹² EULEX Programme report 2009, p.91.
- ⁹³ EULEX Programme Report
- ⁹⁴ <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20MMA%20ACTIONS%2020102904.pdf>
- ⁹⁵ Report on the work of IJPC, published 29 of October 2010.
- ⁹⁶ KIPRED the fragile triangle (01/2010) Kosovo has very low number of judges, overloaded with cases in all levels of the judiciary. The current number leaves some 14 judges per 100,000 citizens, which is very low compared to the countries in the region (. . .) in neighboring Montenegro, the number of judges per capita (100,000) is 51, in Croatia 41, while in Czech Republic and Hungary 27. The number of prosecutors in Kosovo is even lower compared to the number of judges with only 94 prosecutors pressing charges against criminals among a prosecutors, whereas the neighboring Montenegro has 13.4, Bosnia and Herzegovina 7.3, Hungary 17.3, Denmark 10.3 and only France having less, namely 2.9.
- ⁹⁷ KIPRED ‘Strengthening the rule of Law in Kosovo: Fight against corruption and organized crime’, p.15.
- ⁹⁸ EULEX 2009 Programme report, p.84
- ⁹⁹ Report on the work of IJPC, published 29 of October 2010.
- ¹⁰⁰ KJI is an independent public professional body to provide judicial training to Kosovo Judges and Prosecutors.
- ¹⁰¹ A designed training programme for sitting judges and prosecutors.
- ¹⁰² A designed training programme for new candidates- future Kosovo Judges and Prosecutors.
- ¹⁰³ Training is both a duty and a right for all public prosecutors, before their appointment as well as on a permanent basis. States should therefore take effective measures to ensure that public prosecutors have appropriate education and training, both before and after their appointment. *The Committee of Ministers of the Council of Europe, Recommendation Rec (2000)19 ‘The role Public Prosecution in the Criminal Justice System, 6 October 2000*

- ¹⁰⁴ JAU function is to provide the KJC with analysis, assessments, recommendations, advice and information on the reviewed activities with the main objective to improve and reform the judicial and prosecutorial service. Until September 2009 the JAU was a separate unit within the framework of the Department of Justice of UNMIK, when it became part of the organizational structure of the KJC.
- ¹⁰⁵ EULEX Programme report 2010, p.28 and EC Kosovo 2010 Progress report, para.2, p.10
- ¹⁰⁶ Since May 2009 the position remained vacant when the previous director resigned after he was temporarily suspended.
- ¹⁰⁷ EULEX Programme Report 2009 p. 25
- ¹⁰⁸ Implementation of MMA from EULEX judges on the distribution of official gazette to courts was completed in 2010. Than remained a task of KJC to pursue implementation of this activity Kosovo-wide.
- ¹⁰⁹ EULEX Programme report 2010
- ¹¹⁰ The legal framework in Kosovo prescribe that the main trial should be public and the exclusion of the public is permitted only in certain limited circumstances, KCCP Articles 328-331.
- ¹¹¹ The right to fair trial is enshrined in numerous international declaration/conventions. See: Article 6(1) European Convention on Human Rights; Article 14(1) International Covenant on Civil and Political Rights; Article 10 Universal Declaration of Human Rights
- ¹¹² All DC regions reported a lack of application of the CMIS system
- ¹¹³ The EC Kosovo 2008 progress report highlighted that within the court, case assignment does not follow objective and transparent criteria, p.14
- ¹¹⁴ See EULEX MMA Programmatic Action <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20MMA%20ACTIONS%2020102904.pdf>
- ¹¹⁵ See also BIRN publication 'Monitoring the courts' May 2009 'Of the 513 trials monitored, 138 were held in courtrooms, whilst 375 were held in judges' offices' p.26
- ¹¹⁶ <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20MMA%20ACTIONS%2020102904.pdf>
- ¹¹⁷ See also BIRN 'Monitoring courts' 27 May 2010- Besides assaults and threats after working hours, judges and prosecutors are threatened and even assaulted inside their places of work. 27 May 2010, p. 47.
- ¹¹⁸ See also EC Kosovo 2010 Progress report, para. 2.1 p. 11 and KIPRED publication 'Strengthening Rule of Law in Kosovo: Fights against corruption and organized crime' www.kipred.net
- ¹¹⁹ KIPRED publication 'Strengthening Rule of Law in Kosovo: Fights against corruption and organized crime' www.kipred.net
- ¹²⁰ BIRN 'Monitoring courts' 27 May 2010, p. 47.
- ¹²¹ OSCE report "Intimidation of the judiciary: Security of Judges and Prosecutors", April 2010
- ¹²² Code of Ethics and Professional Conduct for Judges, adopted on 25 April 2006.
- ¹²³ EULEX 2009 Programme report
- ¹²⁴ See article 110 of the Kosovo Constitution
- ¹²⁵ The Law came into force on January 1, 2011
- ¹²⁶ Article 42 of Law on KPC
- ¹²⁷ Article 4 (1.13)
- ¹²⁸ The report has been analyzed and some inconsistencies in the presentation of the statistics have been noted. As such they are not considered reliable.
- ¹²⁹ See <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20MMA%20ACTIONS%2020102904.pdf>
- ¹³⁰ States where the police is independent of the public prosecution should take effective measures to guarantee and there is a appropriate and functional cooperation between the Public Prosecution and the Police – The Committee of Ministers of The Council of Europe, Recommendation Rec (2000)19 'The Role of Public Prosecution in the Criminal Justice System', 6 October 2000.
- ¹³¹ *The Fragile Triangle- Police, Judges and Prosecutors coordination during criminal proceedings response in Kosovo*, Kosovar Institute for Policy Research and Development (KIPRED) Policy Research 2010/01.
- ¹³² Need for increase of cooperation is noted in the Annual Report on the Performance of Public Prosecution Office for 2010 p. 73
- ¹³³ Law No.03/L –225 On State Prosecutor, law shall enter into force on January 1, 2013 except provisions 21, 28 and 29 which entered into force since January 2011.
- ¹³⁴ Criminal Procedure Code of Kosovo Chapter XLIV: Proceedings for Confiscation, Article 489: and, Kosovo Criminal Code, Confiscation of Objects Article 60.
- ¹³⁵ See *Strengthening of Rule of Law in Kosovo: Confiscation of Illegally Obtained Property*, KIPRED, Pristina April 2011.
- ¹³⁶ The rule of Law in Independent Kosovo Crisis Group Europe Report No. 204, 19 May 2010 confirm that there are security challenges, especially in serious criminal cases, where witnesses face intimidation or worse and often are unwilling to testify.
- ¹³⁷ Also confirmed by European Commission 2008, p.13
- ¹³⁸ EULEX Programme report 2010
- ¹³⁹ See EULEX MMA Programmatic Action <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20MMA%20ACTIONS%2020102904.pdf>
- ¹⁴⁰ (art. 283 para. 3 KCCP)
- ¹⁴¹ Crisis Group Europe Report 'The Rule of Law in Independent Kosovo' considers that the size of backlog is disputed, (p. 13-14)
- ¹⁴² Crisis Group Europe Report 'The Rule of Law in Independent Kosovo' no.204,19May 2010, consider the law level of enforcement of court decision as a major impediment to creating confidence in judiciary.p.13-14.
- ¹⁴³ See EULEX MMA Programmatic Action <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20MMA%20ACTIONS%2020102904.pdf>
- ¹⁴⁴ BIRN Monitoring the Courts, 27 May 2010, p.44
- ¹⁴⁵ The EC Kosovo 2010 Progress report pointed out the significant backlog of court cases and the weak overall efficiency of the justice system. See para. 2.1 p.11.
- ¹⁴⁶ KJC statistical report published <http://kgjk-ks.org/>
- ¹⁴⁷ EC Kosovo 2010 Progress Report also noted the limited capacity of MOJ to prepare, implement and evaluate policies on Justice. (para. 2.1)
- ¹⁴⁸ The report "Made in Kosova", released in October 2010 by six local NGOS, considers that signing agreement on extradition between Kosovo and other countries represents a special challenge for the country to exert its sovereignty and protect Kosovo citizens accused outside of the country p. 15
- ¹⁴⁹ EC Kosovo 2010 Progress Report assessed that no legal cooperation between Kosovo and Serbia has negative impact on civil, criminal and property related cases.
- ¹⁵⁰ This was also concluded in EC Kosovo 2010 Progress Report, para. 2.1
- ¹⁵¹ Programme Report 2010
- ¹⁵² Three additional agreements were proposed for the next year, i.e. on the transfer of criminal proceedings, the execution of foreign criminal judgments and on mutual legal assistance on civil matters.
- ¹⁵³ EULEX Programme report 2010, p.49
- ¹⁵⁴ EC progress report 2008
- ¹⁵⁵ EULEX Programme report 2009, pp.110-117
- ¹⁵⁶ EULEX Programme report 2009
- ¹⁵⁷ EULEX 2009; pp. 124-125
- ¹⁵⁸ EULEX Programme report 2010
- ¹⁵⁹ EC 2009 Kosovo Progress Report p.51
- ¹⁶⁰ EULEX Programme report 2009
- ¹⁶¹ EC 2009 Kosovo Progress Report p.15
- ¹⁶² EULEX Programme report 2009 p. 128
- ¹⁶³ EC 2009 Kosovo Progress Report
- ¹⁶⁴ EULEX Programme report 2009

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