

A Diagnosis of Corruption in Kosovo

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Country

How corrupt is this country? What type of corruption? How did it evolve during the years? Was it a period when it was more corrupted and what happened to change that?

The corruption patterns found today in Kosovo are a strongly related to its recent history. Following the conflict in 1999, Kosovo was administered by the United Nations until it declared independence in 2008. The United Nations Mission in Kosovo was responsible for Rule of Law until 2004, when the Ministry of Justice in the Provisional Institutions of Self-Government was formed. The post-conflict Kosovo was marked by two trends which would bear considerable influence in later stages. Firstly, the war created new interest groups which entered the political and business scene; and secondly, the immediate period after the conflict was a legal and rule of law vacuum while the UN administration sought to establish itself on the ground. These two sets of events have left heavy traces on Kosovo's rule of law infrastructure.

Kosovo's novelty as a state and the focus of international organizations on its political stability, have contributed to a situation where data on Kosovo is often lacking or unreliable. To illustrate, insofar Transparency has yet to conduct a corruption perception survey, Freedom House has been writing separate Nations in Transit reports for Kosovo only since 2004 and the World Bank governance indicators are available since 2002 (as opposed to 1996 for other countries). Corruption initially came up in Kosovo's first elections in 2002; however, it was not until 2004 that corruption gained momentum. In 2004 it entered the agenda as a part of the Standards for Kosovo, objectives that were set by the international community for the PISG before final status resolution. The KSIP outlined the specific actions which the PISG was expected to undertake in the fight against corruption, including adopting and implementing an Anti-Corruption Strategy and Action Plan, promulgation and implementation of an Anti-Corruption Law and establishing a central Anti-Corruption body.¹ Yet, despite indications that corruption was a major concern for citizens, in light of political, social and economic issues, the fight against corruption was not a top priority neither on the part of international institutions nor local politicians. In fact, only since Kosovo's independence in 2008 and especially by the end of 2009, has there been systemic pressure on Kosovan politicians to clean up their acts.

In available international rankings Kosovo comes out as highly corrupt. According to the World Bank Governance Indicator, Control of Corruption, Kosovo is well below the regional average of Eastern Europe, at 26 percent out of 100 percent (the regional average being at 55%).² Corruption in

¹ UNMIK Kosovo Standards Implementation Plan 2004 pages 17 and 18.

² http://info.worldbank.org/governance/wgi/sc_chart.asp

Kosovo is endemic and it spreads across all sectors of public life and all public institutions. In the lowest levels it is often encountered in the form of favoritism and small bribery. Similar to other places in the region, the situation in the health sector is especially alarming, but it extends to education, rule of law institutions and public administration. A positive assessment was given to the Kosovo police by the EULEX mission which found it comparably less corrupt than the judiciary and the customs.³

Public institutions continue to be the main demand side force, while the private sector is weak. This situation has created rent-seeking possibilities for policymakers and politicians. Recent media reports have pointed to a number of possible abuses, especially in the Ministry of Transport and Post-Telecommunication which has embarked on a series of ambitious infrastructure projects.⁴ Allegations of fraud procedures and public office abuses are neither limited to this ministry nor to the current administration. Nonetheless, civil society reports indicate that the situation has been worsening.⁵ Some analysts in Kosovo argue that current administration has taken a more centralized and systematic approach, one of the results of which is higher bribes paid by companies.⁶ The high corruption levels have created serious economic distortions, which can especially be felt in a small and poor economy like Kosovo. Furthermore, recent reports indicate that there is a correlation between high levels of corruption and lack of foreign direct investment.⁷

Corruption remains at large: it cross-cuts through all sectors and levels of public life, affecting the lives of Kosovo citizens, whether through sub-standard roads with double the price of that found in the region,⁸ or (lack of) equality and equity in the distribution of public goods and access to public services. The European Commission Progress Report for 2009 has identified corruption as the major challenge for Kosovo- other reports have followed in similar pattern.⁹ In 2009, the Kosovo Agency for Anticorruption has documented 175 allegations of corruption in public institutions, as compared to 113 in 2008.¹⁰ Such increases in numbers may come as a result of a number of factors, like a more enlightened public, and do not necessarily reflect an increase in corruption.

³ EULEX programme strategy

⁴ BIRN REPORTS

⁵ State of Constriction?, YIHR May 2010

⁶ Krenar Gashi, interview January 14

⁷ Corruption and FDI, Club for Foreign Policy

⁸ Interview with Krenar Gashi, January 2010

⁹ European Commission Report for Kosovo 2009

¹⁰ Annual Report of the Anti-Corruption Agency 2009 and 2008

Civil Society

How strong is civil society in this country? What is its reputation? Are notable anticorruption projects known without research? Are there any anticorruption heroes? What are they? Who are they?

Civil society in Kosovo was born in the 1980s when Kosovo's autonomy was revoked. According to Freedom House's Nations in Transit, the development of Kosovo's civil society had five stages. The first phase began in 1989 as a response to the constitutional contest over autonomy, when first organizations focused on human rights and charity.¹¹ The second phase came about in 1995 with the setting up of several think-tanks and an expanding work of women's humanitarian organizations.¹² The third phase is the period immediately after 1999, when due to immense resources from international donors, the NGO sector mushroomed. As donor money began to phase out and was redirected towards new crisis situations, Kosovo's NGO sector faced one of its major challenges. This period marks the fourth phase in the development of civil society, when NGO-s had to professionalize and struggled for financial sustainability.¹³ Nowadays, Kosovo's civil society has entered its maturity stage, where civil society organizations are becoming more established and are specializing in thematic areas, reflecting maturity and professionalism.¹⁴

In the field of anti-corruption, the sector is marked by a few organizations which are very present in the public. These organizations tend to specialize in different tools rather than different aspects of corruption. So, one will find the same organization dealing with everything from budget transparency to high level corruption, which puts an extra strain on these rather small organizations. Nonetheless, some analysts argue that civil society organizations can be separated into two major groups: organizations that deal with institutional transparency, such as the Kosovo Democratic Institute (the Transparency International chapter in Kosovo) and the Youth Initiative for Human Rights which monitors enforcement of legislation, mainly the law on access to official documents. The second group deals with high level corruption, where two organizations have made considerable contribution: COHU and the Balkan Investigative Reporting Network Kosovo (BIRN). COHU relies more on advocacy and whistle-blowing; meanwhile, BIRN uses mainly naming and shaming. It combines investigative reporting with public service monitoring, and, through its show Jeta n'Kosove (Life in Kosovo) mobilizes public opinion by broadcasting abuses found through its

¹¹ Nations in Transit 2009 page 10 of 18

¹² Ibid page 11

¹³ Ibid page 11

¹⁴ Ibid

monitoring project (among other topics).¹⁵ Being the second most viewed show in Kosovo, Jeta n’Kosove gives BIRN a comparative advantage in raising public awareness. Among other affairs, Cohu! has played a crucial role in increasing transparency and initiating public debate on the multi-billion power-plant project. It has initiated an intense media campaign –public appearances and editorials, distributed informational leaflets to the affected areas, and established close cooperation with other civil society organizations. Other organizations whose work requires special attention are Initiative for Progress (INPO) and Fol038. INPO is a grassroots organization which was established in southern Kosovo, acting as an intermediary between the public and the state. Fold038 grew out of INPO and focuses more on the national level. Both these organizations are known for their innovative use of traditional tools (for example, protests with performance elements), educating the public and increasing citizen involvement in policymaking processes.

Public officials, donors and civil society activists praise BIRN’s work. The unique combination of quality research and access to public media has led to investigations against a number of mid-level officials. The most notable contribution in the field of anti-corruption has been in judiciary, where the monitors from BIRN have helped in uncovering a number of corrupt cases. Certainly, a part of its success lies in the driven, charismatic and fierce presenter of Jeta n’Kosove, Jeta Xharra. Xharra, educated in England, is widely known for asking tough questions and stimulating hot debates with high level officials on hot topics in Kosovo. Furthermore, she has contributed to educating a new generation of local investigative journalists. Within this platform, BIRN has organized a series of public debates in 23 Kosovo municipalities before local elections. The show, at that time, reached its peak viewership of 300,000 viewers. A part of the debate involved asking mayor candidates whether they had paid their utility bills and presenting evidence from utility companies. Many candidates, especially in the beginning, lied and were thus humiliated in front of a wide audience of viewers/voters. It is beyond reach to argue that such methods have had an impact on election outcomes; however, the show has invoked a sense of accountability and responsibility among candidates running for public office. A follow up project has been implemented in cooperation with Institute for Advanced Studies GAP, reviewing the extent to which elected mayors have kept their promises.

Another project which has received much media attention is Civil Society for Clean Parliament. The project was modeled on a similar project in Romania. As opposed to Albania, in Kosovo this project was more relevant since elections are done with open lists. The main goal of the project was to create parliament free of individuals involved in organized crime or other illicit activities, by researching all candidates for members of parliament coming from the six biggest political parties. Project implementation was done by a coalition of civil society organizations, led by Cohu!, in

¹⁵ Krenare Maloku, BIRN Interview January 25

cooperation with investigative journalists. In its evaluation report, INPO, one of the participating organizations, has noted that 13 of the candidates which were blacklisted did not enter the parliament. Arguing that this is a direct impact of the project is farfetched since there is no evidence suggesting that these candidates would have entered the parliament. Nevertheless, the project has played a crucial role in educating the public and establishing mechanisms similar to those found in functional democracies.

To conclude, the number of organizations working in the anti-corruption sector is rather small and their restraints many. The overall contribution of civil society organizations has been rather modest; but, well targeted projects, led by enthusiastic leaders (and often in coalitions) have had positive impact. The success of BIRN and Jeta n'Kosove, under the leadership of Jeta Xharra, illustrates this point. Similarly, INPO-s growth demonstrates there is a gap to be filled with civic activism. Kosovo's civil society does not have anti-corruption heroes among its ranks, Xharra's contribution is often noted, however that spans beyond anti-corruption per se. Following the beginning of investigations and announcements for arrests in the Ministry of Transport and other ministries in May, many media and civil society organizations have called the deputy chief prosecutor of EULEX an anti-corruption hero. The hype has gone so far as to have fake street nameplates in streets of Prishtina with his name. However, as no arrests have been made yet, it remains to be seen whether he will live up to the expectations.

Government and Political Society

Was the government anti-corruption plan carried out in good will and effective? Make a stakeholder analysis of anticorruption; who, from government agencies, are the promoters, who the neutral and who the resistant. How did this come about historically (through electoral cycles)? What about political parties? Are politicians elected on anti-corruption tickets? Are corrupt politicians elected? Are some parties associated with more or less corruption?

The law on the Agency for Anti-corruption was passed by the Kosovo Assembly and promulgated by the Special Representative of the Secretary General in 2005, whereas the Agency was established in 2006. The law foresees that the agency is independent, thus giving the agency space to operate without much interference from the government. However, as the budget is controlled by the government, it exercises undue influence on the agency through indirect means.¹⁶ Despite

¹⁶ Interview with Hasan Preteni, January 2010

financial hardships and political pressure, the agency has managed to identify and report to the General Prosecutors office 175 cases of abuse of public office in 2009. Nonetheless, only 22 cases have followed with investigations by the prosecutor's office.¹⁷ The Agency has effectively voiced concerns about the scope of corruption, issues in the system and legislative means to improve the situation. Since its inception, the agency has also been one of the main beneficiaries of multilateral donor funds. Both UNDP and the European Commission programs have had components focusing on the Agency.

The first Anti-corruption strategy was approved by the Kosovo government in March 2004; the strategy was a result of concerted effort of the Office of the Good Governance, UNMIK, international organizations and civil society organizations. With the Agency in place, a new strategy was to be prepared in 2008; however, the drafting of the strategy was postponed and was only initiated in 2009. The Agency is the lead organization in writing the strategy and in that role it has also invited civil society organizations to participate.¹⁸ Despite generally good relations between the agency and civil society organizations, the collaboration on the strategy drafting was not very successful. The agency, on one side, felt that CSOs were not very cooperative by raising concerns and participating only once the process was halfway through.¹⁹ The CSOs, on the other hand, felt that the process was only seemed open and their recommendations were disregarded.²⁰ However, apart from this incident, both civil society organizations and the agency claim to have a good collaborative relationship. In fact, representatives of civil society organizations mainly express empathy for the difficult position that the Agency is in.

Local politicians regularly refer to corruption in their public address. In the last 10 years, parties in power and opposition have tossed the ball of accusations at each other.

Political power has been shifting between three main political parties: the Democratic League of Kosovo (LDK), the Democratic Party of Kosovo (PDK) and the Alliance for the Future of Kosovo (AAK). Prior to the elections of 2007, a fraction of LDK separated into a separate party called the Democratic League of Dardania (LDD). Other parties that have marked the political scene are ORA, which failed to pass the threshold in 2007, and the New Kosovo Alliance, a party that was established by a wealthy Kosovar businessman in 2006 and came in as the fourth biggest party in elections in 2007. These elections marked the end of an almost two-decades-long era of LDK dominance of the political sphere. LDK's coming up second was a result of a change in structural factors, not least the death of the late president Ibrahim Rugova. The outcome of these elections

¹⁷ Interview with Hasan Preteni, January 2010

¹⁸ Interview with Preteni, January 2010

¹⁹ Preteni interview

²⁰ Zogiani and Ramadani interview January 2010

was a broad coalition between PDK and LDK, the creation of several smaller parties and ORA's loss. ORA's defeat came despite being the most active political party in the assembly and having initiated investigations on abuse in the National Assembly, thus actively participating in creating clean institutions. The case which ORA had prepared went to court, but was never completed.²¹ In this respect, the elections of 2007 showed that Kosovo had yet to reach democratic maturity where citizens would use their vote to punish or reward political parties. Political elites constantly pay lip service to corruption. The current government came to power on a promise of change and changing business as usual. But, the EC progress report and other international organizations report that businesses continue to pay bribes to win tenders; some analysts argue that the difference between the different administrations is that the system has now become more centralized. Meanwhile, "Kosovo's political class seems too well adapted to the new state's condition of semi-isolation, and to making a living from appropriation of a share of that captive citizenry's limited wealth."²²

The government in office has adopted a set of laws which come in the anti-corruption package; however, the complete anti-corruption legislation package has not been adopted yet. Two years after declaring independence, Kosovo still does not have a law on political party financing but operates with an UNMIK Regulation. Yet, political parties fail to respect it.

Rule of law institutions are weak. The judiciary has a backlog of about 200,000 cases, a situation that has been partly inherited by the previous international administration. An independent calculation shows that an UNMIK judge dealt with 1.5 cases a year. On the other hand, the independence of the judiciary has been questioned by local and international organizations. "The judiciary, required to be independent and assertive, is mostly subservient and passive, either frightened or "protected by criminal groups," its reputation poor, salaries low, and seen by many as "a profession for losers."²³ Moreover, young candidates are systematically excluded from the profession, as the responsible institutions have failed to organize the jurisprudence exam.

International oversight organizations and diplomatic circles play the role of civil society and public opinion. Yet, the situation has led to a weakening civil society and pursuing interests and priorities which are not necessarily Kosovo's. Corruption has been overlooked with the aim of maintaining political stability.²⁴ Independent media and civil society organizations have criticized the international community for choosing to not disturb fractions of the society which might become violent as a result of political arrests, while neglecting the concerns of a dissatisfied predominant

²¹ Interview with Ylli Hoxha, January 2010

²² State of Constriction, YIHR, May 2010

²³ State of Constriction, YIHR, May 2010

²⁴ Interview Avni Zogiani, January 2010

majority.²⁵ EULEX raids in the Ministry of Transport and announced arrests in other ministries have sparked enthusiasm and hope in the public, however the real extent of EULEX actions remains to be seen in the months to come.

Voters

Is participation to corruption broad? Is the public losing because of corruption? How upset are they?

Corruption is found at all levels in Kosovo. At the lowest level one finds the participation of the largest group, even though the gains are the smallest. Nonetheless, the effects of corruption are felt most directly at this level where citizens face difficulties in gaining access to basic public services such as health, education and public administration, without using connections or paying bribes. Paying bribes or giving gifts to doctors for treatments is a common practice. Much of the justification for this situation is found in the low salaries that doctors, judges and teachers have. However, more extreme stories feature doctors who refused to help patients unless they were paid by the family

When it comes to large scale corruption, a citizens poll has indicated that the institutions which they find as most corrupt are the energy corporation (Kosovo Energy Corporation), Kosovo Trust Agency (the agency for privatization), customs, the Post Telekom Company, central administration, courts and healthcare.²⁶

Despite being the youngest state in the world, thus having been given a unique chance to start anew, Kosovo has a major problem of corruption. Similarly to other countries in the Balkans, corruption touches the daily lives of citizens in Kosovo and is ranked as one of the top five issues by citizens.²⁷ Regardless of ethnic affiliation, citizens report a high perception of corruption in different sectors of the society.²⁸ Gallup International's survey of perceptions and experiences in the Balkans, shows that while experience with bribe giving is similar to that in other countries in the region at 20 percent, people's perception of corruption in the government is among the highest in the region at 84 percent- with a 1% increase from 2006.²⁹ The gap between experience and

²⁵ Editorial, Flaka Surroi, Koha Ditore, June 2010

²⁶ Fast Facts Early Warning Report April 2009 UNDP

²⁷ Fast Facts Early Warning Report April 2009

²⁸ Ibid.

²⁹ Gallup International Monitor, 2009 page 27. http://www.balkan-monitor.eu/files/BalkanMonitor-2009_Summary_of_Findings.pdf

perception can be interpreted as a signal that corruption in Kosovo is mostly prevalent in high levels.

Notwithstanding Gallup International Monitor, whose research claims that Kosovo has some of the highest trust in government in the region, UNDP found that the support for the current government is the lowest it has ever been.

Interviewees

Hasan Preteni, Director, Kosovo Anti-corruption Agency

Aiko Watanabe, Programme Analyst, Democratic Governance, UNDP

Delphine Freymann, Task Manager, Anti-corruption project, European Commission

George Mills, Anti-corruption expert, EULEX

Avni Zogiani, Director, Cohu

Ramadan Ilazi, Director, Fol08

Merita Mustafa, Programme Manager- Anticorruption and Transparency, Kosovo Democratic Institute (Transparency Chapter in Kosovo)

Krenar Gashi, Research Director, KIPRED (also former journalist with BIRN)

Krenare Maloku, Programme Manager, Balkan Investigative Reporting Network

Ylli Hoxha, Director, Club for Foreign Policy