



EULEX PROGRAMME OFFICE
OFFICE OF THE HEAD OF MISSION EULEX KOSOVO
EUROPEAN UNION RULE OF LAW MISSION

EULEX PROGRAMME REPORT

July 2009

LIST OF ABBREVIATIONS

MMA	Monitoring, mentoring and advising
PIDs	Programme Implementation Documents
ABPs	Activity Briefing Packages
PIs	Performance Indicators
FYROM	Former Yugoslav Republic of Macedonia
PPO	Public Prosecutor's Office
PSD	Police Strengthening Department
INFOSYS	Information System
MPO	Municipal Prosecutors Office
DPO	District Prosecutors Office
CJS	Criminal Justice System
DCA	Directorate of Crime Analyses
IDC	Intelligence Desk Section
SOPs	Standard Operating Procedures
ILP	Intelligence Led Policing
RIU	Regional Intelligence Unit
OSCE	Organization for Security and Cooperation in Europe
KPIS	Kosovo Police Information System
DOC	Director of Organised Crime
MCD	Major Crime Directorate
DV	Domestic Violence
ECCIS	Economic Crime and Corruption Investigation Section
RFU	Regional Forensic Unit
RCS	Regional Crime Squads
ROSU	Regional Operation Support Unit
CPT	Community Policing Teams
DSU	Department of Specialised Units
SIU	Specialised Interventions Unit
I/EOD	Improvised Explosive Ordinance Defence Unit
CPU	Close Protection Unit
DSPD	Directorate for Security and Protection Division
ECLO	European Commission Liaison Office
PDD	Planning and Development Directorate
DPO	Department for Public Order
EMD	Emergency Management Department
CP	Community Policing
IBM	Integrated Border Management
MT	Mobile Teams
RHQ	Regional Headquarters
BBP	Border and Boundary Police
IU	Immigration Unit
SPADC	Senior Police Appointment and Discipline Committee

LD KP	Logistics Directorate of Kosovo Police
ITCD	Information Technology and Communication Directorate
ICITAP	International Criminal Investigative Training Assistance Programme
PISCES	Personal Identification Secure Comparison and Evaluation System
JC	Justice Component
MOC	Minor Offences Court
DCC	District Commercial Court
UNDP	United Nations Development Programme
WG	Working Group
KPC	Kosovo Prosecutorial Council
CU	Correctional Unit
SPRK	Special Prosecution Office of the Republic of Kosovo
KCS	Kosovo Correctional Service
ILA	International Legal Assistance
AEO	Authorized Economic Operator
GAP	Institute for advanced studies
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ICCPR	International Covenant on Civil and Political Rights
BIRN	Balkan Investigative Reporting Network
IDP	Internally Displaced Persons
TAXUD	Taxation and Customs Union Directorate-General of the European Commission
EEC	European Economic Community
KAC	Kosovo Anti Corruption Agency
TARIK	Integrated Tariff for Kosovo
FAST	Flexible Anti-Smuggling Teams
CEFTA	Regional Free Trade Agreement
VCP	Vehicle Check Point

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PREFACE

On 31st January 2008 the Council of the European Union agreed a Concept of Operations (henceforth CONOPS) for the European Union Rule of Law Mission in Kosovo. The Mission would be known as EULEX Kosovo, based on the Latin word for law, 'lex'. EULEX Kosovo (henceforth EULEX) is the largest civilian crisis management operation ever launched under the European Security and Defence Policy (ESDP). In general terms, the aim of EULEX is to assist and support the Kosovo authorities in the Rule of Law area, specifically in the police, judiciary (including correctional service) and customs. It is intended principally as a monitoring, mentoring, and advisory (MMA) mission, whilst retaining a number of limited executive powers. The basic philosophy that drives EULEX MMA activities is known as the *Programmatic Approach* – a structured and systematic method of helping Kosovo's Rule of Law achieve positive change.

I am pleased to present this report which provides a detailed analysis of the findings in the Rule of Law area: It marks an important milestone in the history of EULEX and Kosovo's Rule of Law. As will be seen, the report highlights the important strengths of the police, judiciary and customs, as well as identifying areas for future development. Under the ownership of the Kosovo authorities, and in cooperation with international partners and non-government bodies, EULEX will further move forward on the basis of this report to achieve the six principal aims of the Mission.

I take this opportunity to thank our partners in Kosovo's Rule of Law for their ongoing cooperation, as well as the many EULEX monitors whose hard work and commitment is reflected in these pages.

Yves de Kermabon

Head of Mission

EULEX Kosovo

European Union Rule of Law Mission

How does EULEX MMA work?

The purpose of the EULEX Mission is articulated through a number of aims and strategic objectives. What is envisaged by the Mission Statement is a process of reform: i.e. moving Kosovo's police, justice and customs from their 'current state' to a 'desirable state' of sustainability, accountability, multi-ethnicity, freedom from political interference, and adherence to internationally recognised standards and European best practices.

The wording of the Mission Statement implies that the starting point would not be a 'zero state'. In other words, it was recognized that the 'current state' of Kosovo's institutions is not devoid of these desirable qualities and indeed, the Kosovo police, judiciary and customs have been developing toward these aims since their inception in 1999, and the creation of the Provisional Institutions of Self-Government in 2001. Under the guidance and overall authority of UNMIK, these institutions had evolved and developed according to most if not all the six EULEX principals. However, the EULEX CONOPS equally recognizes that the degree of autonomy and authority these institutions enjoyed was initially very limited, and only increased gradually over the years. The desired end state envisages rule of law institutions that are able to operate "without international intervention or substitution". Without a reasonable degree of local autonomy and authority, a judgement about the extent to which the institutions might demonstrate these attributes would remain uncertain. It was clear that any realistic effort at moving toward the EULEX aims would have to start with a comprehensive assessment of the 'current state', as well as allow the Rule of Law institutions to exercise the maximum degree of authority and responsibility.

Achieving the vision

EULEX has benefited from significant human and financial investment. However, even with such resources, achievement of the aims would require focus and a partnership approach. In addition, the task of achieving the vision defined in the Mission Statement would require a systematic approach. Much like the work of a conductor of a large orchestra, EULEX would have to translate the broad musical theme into a coherent symphony. This would involve a number of tasks.

Firstly, developing the detailed musical scores for the various parts of the EULEX orchestra (experts in policing, judiciary and customs from Member States and Contributing Countries).

Secondly, ensuring that each part of that orchestra was familiar with its musical score and capable of playing its instruments (i.e. each EULEX expert would need to be conversant with the law, relevant policies and procedures and EULEX Programme activities).

Thirdly, it would require a rigorous system of communicating information between the conductor and the parts of the orchestra (i.e. an effective programme management, capable of coordinating programme activities and information). Lastly, each stage of this process would have to be agreed with EULEX's counterparts in Kosovo's Rule of Law and shared with other international actors.

The analogy of preparing and delivering an original symphony through a newly assembled orchestra is a useful way of describing the *Programmatic Approach*. The task of translating the basic musical score – the Mission aims and objectives – into a full symphony began in the EULEX Programme Office in March 2008. In order to assist these complex organisations from their existing state, it was first necessary to measure the current status to answer the question as to where the police, judiciary and customs currently stand vis-à-vis the six Mission aims. This would require a carefully designed process of evaluation and assessment, conducted by hundreds of EULEX monitors dispersed throughout the three components over a period of time.

In-line with the requirements a programme model was designed to assess current capability within the Kosovo Justice, Police and Customs sectors by EULEX Components Monitoring, Mentoring and Advisory personnel. The model was not directed towards current EULEX executive functions and was underpinned by the early design, and approval in May 2008, of Component “logical frameworks” that ensured specific and focused connections between MMA outputs on the ground and the mission strategic aims and objectives.

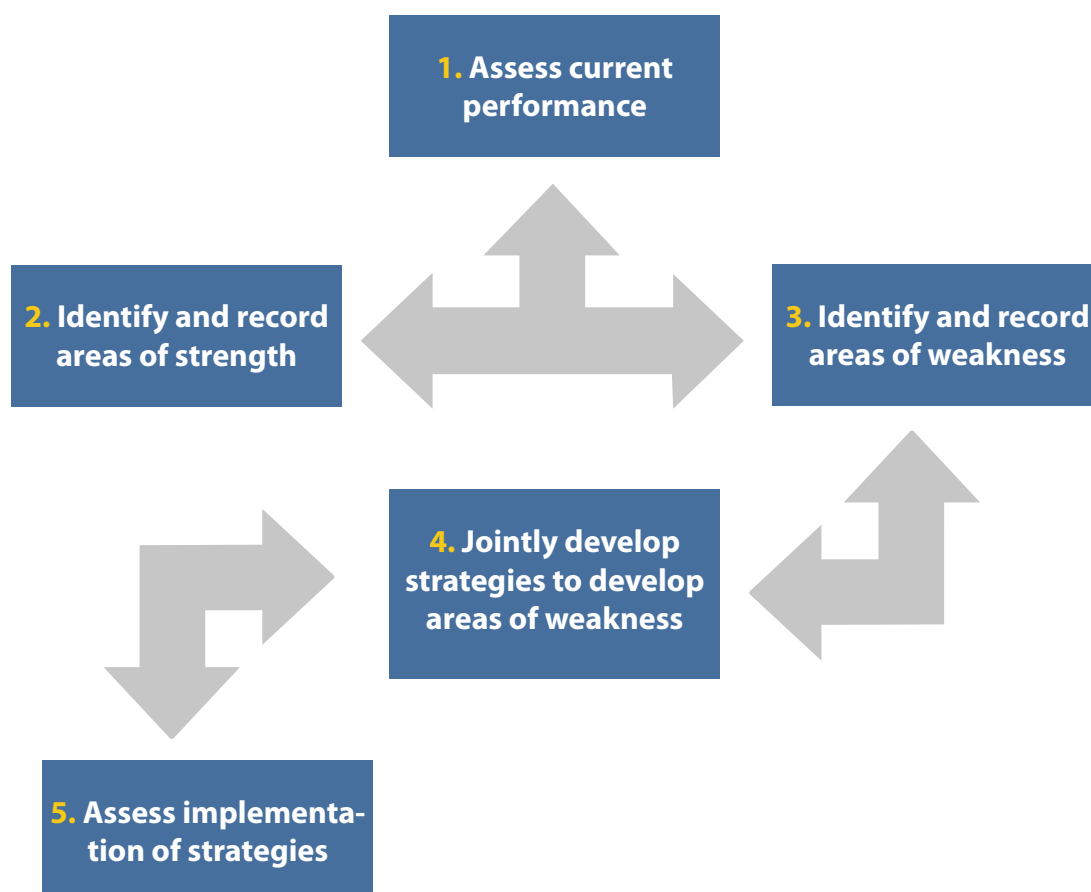


Figure 1 – Basic EULEX Strategy

Figure 1 depicts the basic approach adopted by EULEX. In its initial phase of operations, EULEX deployed its staff to conduct a comprehensive appraisal of the current performance of the judiciary, police and customs in order to identify areas of strength and weakness. Those areas where the components perform at a satisfactory or better level were recorded, as well as the areas where performance was judged to be weak. The latter areas were closely examined, with a view to revealing the underlying causes of poor performance and the recorded data was used in a process of formulating realistic and achievable strategies to improve performance. Three important principles came into play in the process of identifying remedial strategies.

- The strategies intended to improve performance would be jointly agreed by EULEX experts and their counterparts in the rule of law sectors.
- The implementation of the remedial strategies will be driven by the relevant leaders and managers in Kosovo's Rule of Law sector, rather than by EULEX staff. In short, there would be total ownership of the reform process by the relevant Kosovo institutions.
- The process would fully recognise the capacity-building efforts of the European Commission, other international organisations and bilateral donors. Where possible and appropriate, the jointly agreed strategies to improve performance will actively seek the support of such bodies.

In September 2008, the EULEX approach was officially endorsed by the Prime Minister, Ministers and the Head of EULEX Mission in the Joint Rule of Law Coordination Board. Bi-lateral and multilateral donors, most notably the European Commission Liaison Office (ECLO), were also consulted. As a means of fostering public transparency and operational accountability, the outputs and expected achievements were made public by posting all the relevant programme documents and briefing material, on the EULEX web site on launch of operations.

In January 2009, a presentation of the programmatic approach was delivered to EU Member States in Brussels and a further effort to convey the essence of the MMA mandate took place in February when the Programme Office held a workshop for Kosovo Television and media journalists, which was well attended and received positive coverage.

As noted earlier, the exact content of the monitoring and advising should be properly controlled and coordinated. The CONOPS and related documents refer to Programme Implementation Documents (PIDs) as the instruments whereby programme activities, performance indicators and reporting mechanisms are defined. Between June and August 2008, the Programme Office and Component senior representatives, developed a series of PIDs that provided MMA Component personnel with the context in which they work and the means to achieve their responsibilities through a range of specific data gathering tasks. Running concurrently to this effort were a number of consultative meetings with Kosovo stakeholders and sector specific joint working groups were established to ensure the principle of co-ownership. Eleven themed PID's were produced for each sector of operation and in total, the completion of 187 outputs by MMA personnel were agreed with the Components and relevant Kosovo counterparts.

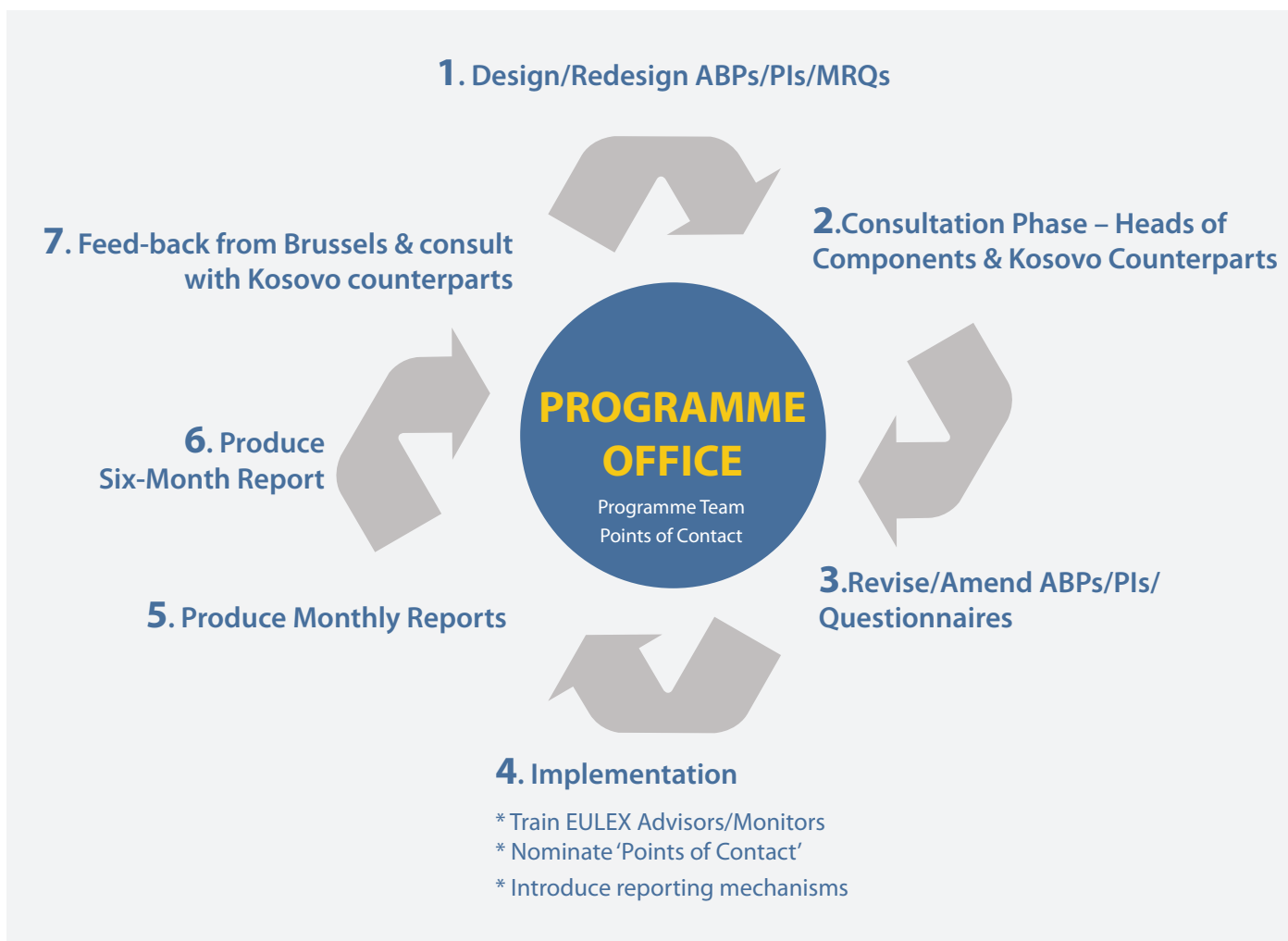


Figure 2 – Programme Cycle

As depicted in Figure 2, each six-month phase of the EULEX Mission is shaped by Performance Indicators (PIs) and Monthly Reporting Questionnaires (MRQs). Returning to the analogy of an orchestra, these core components of the PIDs define the musical score for each part of the EULEX orchestra.

As appropriate, the three Rule of Law components – police, justice and customs – are divided into areas. Each Area has its own defined set of activities and performance indicators.

Achieving results

The effort of approximately 400¹ EULEX Components MMA staff was reinforced by an on-line Information System (INFOSYS) developed by the Programme Office and this was supported by a significant training programme for all MMA personnel (to-date, over 1800 hours).

INFOSYS came on-line as the mission became operational in December 2008 and as the pace of mission MMA activity accelerated during January 2009, this data-gathering mechanism has proved to be particularly successful in capturing responses to specific monthly data-gathering requirements.

¹ 350 PSD personnel, 20 Customs personnel and approximately 40 Justice personnel although the tasks of the latter are divided between executive and MMA functions.

MMA personnel co-located with Kosovo counterparts are well placed to map the Rule of Law system in Kosovo through the lens of the EULEX mandate and a picture has been gradually painted from all regions and sectors.¹ Over 2500 detailed INFOSYS reports have been submitted to the Programme Office and this effort has built an impressive level of detail and achievement in terms of current Kosovo Rule of Law strengths, weaknesses, patterns and trends.

The following pages of the report provide the findings of the Programme Office, following the initial six-month period of performance assessment by EULEX monitors.

Areas of perceived weakness are linked to suggested remedies, in the form of “EULEX Recommendations” highlighted in *blue color*.

Where appropriate, it is foreseen that the support of external donors and agencies will be required for certain actions (i.e. those that will require certain types of technical assistance, infrastructure development and more formal capacity building measures). In many other areas, however, the report identifies areas of development that are best tackled through EULEX MMA action.

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1. MMA activities in the north of Kosovo have been patchy due to political circumstances beyond the scope of this report.

SUMMARY OF FINDINGS

POLICE

The Kosovo Police (KP) was found to have a comprehensive legal structure, properly trained and sufficiently skilled staff, an adequate budget, and sufficient equipment to meet its legal objectives. There is, however, a concern about the quality of its leadership and its capacity for strategic direction, and these features are critical to the KP's success in meeting the challenges posed by organised crime and corruption.

No evidence was found of a comprehensive strategy that is being developed by the senior KP command staff. Such a comprehensive strategy would target specific categories of crime and use a range of proactive operations, including crime prevention efforts in cooperation with municipalities and other agencies, use of intelligence to plan countermeasures addressing particular criminals.

There is recognition throughout the KP of the need to fully develop intelligence-led policing, and EULEX firmly recommends that the programme to introduce intelligence-led policing should be amongst the very top priorities of KP senior commanders over the next three years.

It is recommended that KP Border forms part of a single KP intelligence system, feeding it with data and receiving information from it. KP Border has the potential to become a very important component in a single intelligence system: data regarding the movement of certain persons and vehicles across Kosovo's borders/boundaries is essential in tackling serious and organised crime.

Directorate of Crime Analysis (DCA), in terms of staffing structure and leadership, remains incomplete, depriving the KP of an effective hub of its criminal intelligence system. DCA must be the focus of a concerted effort to fully develop its mandate, structure, and capacity and allowed to take a lead role in the move toward 'intelligence led' policing.

The Directorate of Organised Crime (DOC) lacks a detailed strategy document that defines its aims and objectives and, consequently, there is no written policy or general strategy that shapes the effort to deal with organised crime. There is also a need to greatly enhance the use of crime pattern statistics and intelligence in planning DOC activities.

The current re-structuring programme for the KP organisation must act on the need to maximize the use of limited resources and guard against unnecessary overlapping and duplication of effort. Parts of the organisation should not find themselves 'in competition' with each other.

The KP must evolve a sophisticated and effective illegal migrant strategy, as part of its development of Integrated Border Management (IBM). The strategy ought to address upgraded Standard Operating Procedures, improved detention areas, training needs of KP Border staff, and specialist equipment and vehicles.

In its progress toward IBM, the KP should work with KP Customs, the Public Prosecutors Office and EULEX to generate a cross-border crime strategy. The latter ought to establish certain key objectives over the next three years, based on the best available intelligence and statistical data on cross-border crime trends in Kosovo and the western Balkans.

Communications and the flow of information – both between the various parts of KP Border and between this Pillar and other parts of the KP – remain a fundamental weakness. This weakness has a debilitating effect on KP Border operations and its efficacy in achieving its objectives.

There is a need to improve facilities and equipment at certain Border/Boundaries Crossing Points, including inadequate buildings, poor IT/Communications and an inefficient vehicle maintenance regime.

In spite of low remuneration among its lower ranks, the KP is relatively free from corrupt behaviour. However, KP accountability can be improved, particularly with regard to the organisation's ability to publicly explain its performance and address community expectations at the local level. It is recommended that the KP retains the system of recording certain categories of crime, such as burglary and auto theft, as distinct subsets or agglomerations of categories of crime under the Criminal Code. Such an approach will help in the management of crime prevention and detection.

It is recommended that the task of improving first line supervision is made a top priority by senior KP commanders over the next three years. EULEX will seek to assist in this work. Other donor partners could assist in developing a KP-specific patrol management system, as well as associated training for Sergeants and Lieutenants.

There is a lack of data about incidents that require the presence of KP patrol officers. A system of categorising and recording crime and non-crime incidents would provide KP commanders with a wealth of useful information about how patrol officers use their time, the patterns of policing activity and community expectations, and a solid basis for planning the deployment of resources.

The KP's level of minority representation makes it an exemplary police organisation, in the context of the western Balkans and Europe as a whole. This commendable achievement in mirroring the society it serves has continued as a result of the agreement of several hundred ethnic Serb officers return to work.

There is a disconnect between the central Community Policing Unit (CPU) and Community Policing officers in the regions. There is a need to review the objectives of the CP Unit Main Head Quarters and define its relationship to the regional CP teams.

There is also a need for a more structured and rational approach to policing patrol and senior managers (at Regional and Station levels) should formulate key goals and priorities for police patrols, based on active consultation with community representatives especially in non-majority areas.

The close working relationship between public prosecutors and KP investigators that is implied in the law is often absent in practice. It is recommended that senior KP officers and the Public Prosecutors Office (PPO) initiate a joint effort to explore ways of allowing prosecutors and investigators to work more closely in a team effort.

Public prosecutors and police officers fail to properly inform the public about the effectiveness of the criminal justice system (CJS), particularly by reference to basic indicators of success and failure. The current system makes it difficult to identify the number of murders and other significant crimes in a given year, as well as the number of cases that have resulted in the prosecution of an offender. A key part of the

joint management of the criminal justice system is the existence of a common system of collecting and collating crime. Common crime investigation and prosecution statistics must be jointly developed by the KP and PPO.

KP investigators and public prosecutors must recognise that the efficacy of Kosovo's criminal justice system is the result of a collaborative effort and based on mutual respect and an acknowledgement of the contribution of both groups.

There is a need for a common report on the overall performance of the CJS, published annually by a joint management structure. This report must be in a format and language that allows the public to readily understand the degree of success in combating illegality and particularly serious, organised crime.

Weaknesses in the Kosovo Police Information System (KPIS) have been observed. Data inputs at regional level are often 5-7 days subsequent to the event and not always correctly uploaded on the system; the database design is inadequate and lacks security. The KPIS falls far short of the standard required to support an intelligence-led approach to managing crime in Kosovo.

It is recommended that KP commanders are assisted in the development of a comprehensive Standard Operating Procedure for the Regional Operational Support Units (ROSU) that reflects European best practice in terms of crowd control tactics and dealing with large-scale public disorder incidents.

There is concern about the management of certain support functions within the Operations Pillar. There is a lack of accountability in terms of statistical evaluation of the performance of units (e.g. SIU and I/EOD) that are unable to provide detailed statistical data regarding the number/type of incidents attended.

Budget allocations were, on occasions, based on priorities of KP managers instead of strategic goals of the organisation. Changing of priorities during the preparation of the budget or even after the approval of the budget were noticed. Significant sums remain unspent and are sent back as surplus to the Kosovo Budget.

JUSTICE

Compared with Kosovo Police, the criminal justice system and judiciary as a whole are considerably weaker in their ability to uphold an independent and effective prosecution and adjudication of cases.

The Council Body of the Kosovo Judicial Council (KJC) is currently non-functional and hence the core body for the accountability of the Kosovo Judiciary – the Disciplinary Committee of the KJC. Nonetheless findings display that the accountability mechanism according to the Law on Suppression of Corruption is operational. The mechanism of verifying to which extent Kosovo Judges have submitted their financial asset declarations is active as evidenced by inquiries of the Head of the Anti-Corruption Agency (ACA). The Anti-Corruption Agency has reported on a number of cases. EULEX Prosecutors and the ACA have signed a memorandum of understanding in order to cooperate in this area.

EULEX findings detect weaknesses with respect to *de jure* independence in the Kosovo Judiciary. The appointment and promotion system of Kosovo Judges is not adequate to safeguard their independence. Appointment procedures have not hitherto ensured the highest standards of integrity for Kosovo Judges.

The lack of a performance evaluation system for Kosovo Judges suggests that a proper merit based career system is not in place. The composition of the future Council body of the Kosovo Judicial Council gives reason for concern due to the high number of members to be appointed by the Assembly of Kosovo, which may imply a consistent influence of political authority in the decision making process of the KJC Council Body.

The KJC shows a lack of pro-activity in adopting a Plan on Case Allocation notwithstanding advice by the President of Assembly of EULEX Judges; efforts for improving the Kosovo Judiciary in line with the Strategic Plan are insufficient.

With respect to the *de facto* independence, shortcomings were identified in terms of security of Kosovo Judges. There is hardly any system in place to protect Kosovo Judges in court, outside the court and beyond working hours. The lack of measures to ensure the security of Kosovo Prosecutors was also recorded. Some reported incidents indicate the level of external pressure Kosovo Prosecutors are exposed to; neither ad-hoc solutions nor institutionalized mechanisms are in place for following up on such incidents.

Access to Justice is hampered by the fact that trials are very often conducted in small office rooms of Kosovo Judges without a public trial schedule. The KJC should revise its budget policy in close cooperation with the Ministry of Budget and Finance in order to ensure that courts can autonomously administer their assigned budget in order to enhance the infrastructural support.

The Case Management Information System (CMIS) is not fully integrated into the daily operations of the Courts.

There are serious shortcomings in applying witness protection measures, and courts are generally inadequately secured. Cases of intimidation of judges have come to EULEX's attention, and Prosecutors are also exposed to pressures.

The willingness of Kosovo Prosecutors to request alternative measures to the detention on remand measures is low and common rules for the evidential test procedure are lacking.

Non-majority communities and women are under represented in the Kosovo judiciary. EULEX encourage the Ministry of Justice to adopt a more pro-active approach in order to promote the further inclusion of non-majority communities and women into the justice system.

The assessment of the Kosovo Correctional Service (KCS) revealed challenges in *inter-alia* -enforcing security rules, categorising prisoners, responding to serious incidents, and escorting of high-risk prisoners.

The lack of a Permanent Secretary has an impact on the executive functionality of the Ministry of Justice. EULEX further assessed a need for continuous training of staff members of the Legal Affairs Department; moreover identified capacity building efforts seem to suffer from a continuous turn over of staff within the Ministry.

CUSTOMS

New primary legislation is in place since the Law on Customs and Excise Code of Kosovo entered into force at the end of 2008. This Code is compliant with EU standards as it was inspired by the European 'Community Customs Code'.

Secondary legislation, i.e. the Administrative Instruction with implementing provisions by the Minister of Economy and Finance and subsequent instructions, are still to be issued. While no timeframe has been set for this process, legal gaps are being considerably reduced by the application of former UNMIK rules and regulations. Ensuring the correct interpretation and uniform application of European-compliant customs rules will be a continuing challenge.

Despite considerable efforts to provide the general public and the business community with relevant information, the latter is not always exhaustive nor up to date, and not systematically available in all Kosovo official languages at all border/boundaries stations.

Complaints and appeals procedures are well in place. Complaints seem to be related to a few areas, especially valuation of goods. The Independent Review Board, as the main body for appeal on the Kosovo Customs (KC) decisions, has restarted to organise hearing sessions again after a twelve-month interruption. Internal reporting on breaches of the Code of Conduct seems to be well established within the KC. The KC have an Action Plan to prevent and combat corruption, and have proactive measures in place.

Human resources are well in place. The Kosovo Integrated Border Management strategy however mentions that staff numbers do not meet daily needs and requirements.

The Kosovo Customs training plan is covering introductory, professional and technical training, but more specialized areas of law enforcement and prevention are not extensively covered. Although training is generally perceived as useful and effective, there is little provision for staff to indicate their own training needs.

In general, duties are well understood by all staff; reference material is available and tasks are clearly communicated. A performance assessment system is in place, and appraisals are perceived as fair by customs officials. Nevertheless, training and development are not integrated in the human resources management system.

An initial evaluation of infrastructure and equipment indicates that premises at Customs stations or terminals are not always at a satisfactory level for adequate customs examinations and inspections. The Integrated Border Management Action Plan intends to rectify some of the gaps.

The Strategic Operating Framework 2009-2011 announces no major shifts in overall objectives of Kosovo

Customs. Operational Plans however contain little reference to organised crime.

Although investigative and enforcement functions are present, a review of existing risk profiles might be needed, as well as a risk analysis process. There is no specific information system dedicated to serious crime. Intelligence dissemination and data sharing between Law Enforcement and Revenue Operations Directorates within Kosovo Customs seem to be quite limited.

Cooperation and information sharing with other law enforcement agencies is generally rather limited, although at local level some degree of cooperation has been observed, e.g. between Border Police and Customs.

The Integrated Border Management Strategy shall considerably strengthen the cooperation between Police and Customs at border/boundaries crossing points. It will clarify control mechanisms and responsibilities, and intensify controls at the borders/boundaries in order to prevent and reveal cross-border crime. It also opens possibilities for joint standing operational procedures and emergency plans with other services/law enforcement agencies in the region.

The selection and promotion process of Customs staff appears transparent and fair. Nonetheless, concerns over the vulnerability of Kosovo Customs to possible interference have been raised, for instance with reference to KC officers assigned in the Ministry of Economy and Finance, or the composition of the Independent Review Board.

Kosovo Customs Code of Conduct is based on World Customs Organization recommendations and reflects ethical standards and respect of human rights. Female and non-majority communities candidates are – according to the job announcements - encouraged to apply for Customs positions. About 12% of staff belong to ethnic non-majority communities, although not in management functions. Female staff represents 23,5 % of Customs personnel, but are generally underrepresented in management positions.

CIVIL SOCIETY/NGOs

In January 2009 4952 organizations were enlisted in the registry of the Ministry of Public Services (MPS); authorities reported a steady trend of 20 new applicants per week. Requirements for registering CSOs/NGOs set by the 2009 Law on Freedom of Association in Non Governmental Organisations are relatively easy to fulfil. While most of the registered CSOs/NGOs cease operations shortly after establishment, active organisations are currently estimated in approximately 500. MPS signals 185 CSOs/NGOs with a multiethnic membership and 546 CSOs/NGOs ascribable to the Kosovo Serb community.

Expectations/observations on EULEX gathered through meetings held with local CSOs/NGOs can be summarized as follows:

a) Discontinuity between UNMIK and EULEX: CSOs/NGOs are generally aware about the differences between the UNMIK and the EULEX mandates, and appreciate the desire of the Mission to work closely with them.

b)The priority: fight against corruption and organised crime: almost all interlocutors – particularly in Albanian contexts - have hitherto indicated the fight against corruption as the first priority for EULEX.

A number of CSOs/NGOs began questioning local authorities on high level corruption but the situation is still considered far from acceptable. Contrasting corruption and organized crime appears as more urgent than dealing with war-related crimes or interethnic reconciliation.

A generally positive – though wary - attitude towards EULEX with a few notable exceptions, was recorded.

Three papers on Kosovo correctional services have been recently published by CSOs/NGOs: a 2009 report by the Council for the Defense of Human Rights and Freedoms (CDHRF), and two researches by the Kosovo Rehabilitation Centre for Torture Victims (KRCT), published in 2009. Monitors have focused on hygienic conditions, health services, access to information, education, labour and leisure, external visits, complaint mechanisms. Conditions of juveniles, foreigners, prisoner in solitary confinement and women were screened and recommendations included measures to cope with Kosovo prisons' overpopulation and to improve the working conditions of Kosovo Correctional Services (KCS) officers. Relevant CSOs/NGOs request better access to correctional services in Kosovo: while generally praising the supportive attitude of authorities (even though frictions with KCS have been noticed), monitors have not been able to check on alleged mistreatment of inmates, basing their observations on abuses only on indirect sources.

Few CSOs/NGOs perform trial monitoring, and usually on specific cases of interest. The main effort to provide a comprehensive overview on court functioning relates to reports by the Balkan Investigative Reporting Network (BIRN), including an assessment issued in June 2009 on approximately 600 cases in 6 Kosovo municipal courts. Recommendations include stricter adherence to procedures, higher investments in court infrastructures and more transparency towards civil society in all aspects of justice administration (including judges and prosecutors vetting systems).

Local CSOs/NGOs are keen on fighting corruption, judged as the most serious hurdle to the proper performance of institutions in Kosovo. Organisations like QOHU! (Stand up!), Fol'08 (Speak up '08), and the Kosovo Democratic Institute (KDI) have undertaken various anticorruption campaigns and monitored episodes of misdemeanour.

Institutional efforts against corruption are considered largely insufficient and often driven by the goal of hiding real embezzlement from public opinion.

Transparency in elected officials' incomes, funding of political parties, relations between public and private companies' management and politics attract the interest of many civil society watchdogs, and reports are frequently uploaded on many CSOs/NGOs websites. Some initiatives – for instance KDI Advocacy and Legal Advice Centre – aim at fostering common awareness on corruption.

The gender perspective on access to justice generated a considerable literature by Kosovo CSOs/NGOs, both in terms of female participation in rule of law management and adoption of measures against trafficking and violence against women.

Many associations operating against trafficking and violence on women are gathered under the umbrella of the Kosovo Women Network; these organisations generally share satisfaction with the relevant legislative

framework, and consider the Kosovo Police response to the problem as satisfactory, but report numerous difficulties by local judges and prosecutors in implementing the legislation. The main concerns refer to the social context where gender violence escalates and to the lack of welfare assistance provided by authorities to victims.

Sectors of the local civil society have been trying to guarantee ethnic non-majority communities with an effective access to justice. Examples of bridging gaps include the initiative of the Youth Dialogue Programme, which in the first quarter of 2009 prompted an outreach campaign on EULEX functions and mandate among Kosovo Serb communities. Issues such as missing persons and property rights emerged as the first fields of actions suggested to be tackled by the Mission.



POLICE

TACKLING CRIME EFFECTIVELY

Kosovo crime in context

It is important to see the levels of crime in Kosovo and the crime investigation performance of the Kosovo Police (KP) within the broader context of Europe. Table 1.1 provides a comparative analysis of data from 2006, the most recent year for which reliable data could be found from a number of states. As indicated, Kosovo's recoded crime levels in that year stood at just under 3,000 per 100,000 population, considerably lower than the average across a sample group of eleven EU member states. However, within the context of the former-Yugoslavia the level of recorded crime in Kosovo appears to be comparatively high. It is noteworthy that the incidence of crime in Kosovo is almost three times the level found in the contiguous territory of the Former Yugoslav Republic of Macedonia (FYROM), a country with a similar population and urban/rural mix. Indeed, that Kosovo has 30% more recorded crime than the Croatia – a considerably more developed economy with more opportunities for crime – is a probable cause for concern.

The vagaries of crime reporting are well documented in the literature. The frequency with which victims (or third parties) report offences to the police is strongly related to the type of offence involved. For example, in many EU countries, almost all cars and motorcycles stolen are reported, as well as most burglaries with entry; about two-thirds of thefts from cars are reported, and rather more than half of bicycle thefts and robberies; only about a third of all assaults and threats are reported to the police, although the figure is higher for assaults with force (45%) than for threats (29%); and sexual incidents are the least frequently reported (on average 15%)². EULEX staff could find no evidence that such trends are no less prevalent in Kosovo. Indeed, given the strong socio-economic and demographic parallels with FYROM and its starkly rates of recorded crime, it is arguable that the culture of reporting crime is more advanced in Kosovo than its neighbour.

Table 1.1 – Number of Recorded Crimes – International Comparison² (2006)³

Country	Total Police Officers	Total Recorded Crimes	Total Recorded Crimes per Officer	Number of Crimes per 100,000 Population
Austria	26 623	589 495	34	7102
Belgium	38 963	1 012 004	22	9547
France	241 998	3 725 588	9	5785
Germany	250 284	6 304 223	25	7669
Greece	48 521	463 750	25	4177
Ireland	12 954	103 178	15	2399
Italy	324 339	2 771 490	7	4650

². Source: *The Burden of Crime in the EU*, p. 68.

³. Source of data for EU states, Croatia and FYR Macedonia: Tavares, C. & Thomas, G., (2008), *Statistics in Focus: Crime and Criminal Justice*, EUROSTAT. Retrieved January 29, 2009 from: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-08-019/EN/KS-SF-08-019-EN.PDF

Netherlands	35 324	1 218 447	8	7429
Portugal	48 082	398 959	8	3799
Slovenia	7 857	90 354	11	4517
England & Wales (UK)	141 381	5 428 273	38	10184
EU Sample Average			18	6114
Croatia	19 790	81 049	4	1842
FYROM	9 776	22 024	2.2	1101
Kosovo	7187	64165	8.9	2916

The level of recorded crime in Kosovo provides a significantly greater challenge for KP officers than their colleagues in FYROM and Croatia. Each KP officer on average is responsible for almost 9 crimes per annum, as compared with 4 in Croatia and just 2.2 in FYROM. Whilst the KP workload is only half that of the average found in the sample group of EU member states, it is nevertheless a considerable challenge for the newest police organization in Europe.

Crime patterns

In addition to these general observations about the overall levels of recorded crime in Kosovo, it is helpful if EULEX can contextualize specific categories of recorded crime within the broader context of Europe. Although it is not possible to match all categories of recorded crime for the purpose of recorded crime, Table 2 provides a brief analysis of four important crimes (homicide, robbery, burglary and theft of motor vehicles).

The term homicide, for the purpose of Table 2, is defined as intentional killing of a person, including murder, manslaughter, euthanasia and infanticide⁴. Attempted (uncompleted) homicide is excluded, as are causing death by dangerous driving, abortion and help with suicide are also excluded. It is immediately obvious that the rate of homicide in Kosovo (2.63 per 100,000 population) is an area of concern, since it is more than twice the average found in the sample group of EU member states. Although closer to the rate found in FYROM and Croatia, the higher incidence of homicide in Kosovo suggests that it is a priority area for policing and the criminal justice system.

In contrast, the rate of recorded robberies (20 per 100,000 population) falls far below the average in the EU sample group (107) and significantly lower than FYROM (25.1) and Croatia (32.8). Robbery is defined as stealing from a person with force or threat of force, including muggings (bag-snatching) and theft with violence, and it does not generally include pick-pocketing, extortion and blackmailing⁵.

4. Source of data for EU states, Croatia and FYROM: Tavares, C. & Thomas, G., (2008), *Statistics in Focus: Crime and Criminal Justice*, EURO-STAT. Retrieved January 29, 2009 from: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-08-019/EN/KS-SF-08-019-EN.PDF

5. *Idem*

Table 1.2 – Number of Recorded Crimes – International Comparison2 (2006)⁶

Country	Homicide	Number of homicides per 100,000 population of homicides per 100,000 population	Robbery	Number of robberies per 100,000 population	Domestic burglary	Number of burglaries per 100,000 population	Theft of motor vehicle	Number of motor vehicle thefts per 100,000 population
Austria	60	0.72	5 095	61.38	18 945	228.25	8 959	107.9
Belgium	174	1.64	19 903	187.76	67 550	637.26	24 167	227.9
France	879	1.36	127 190	197.5	177 840	276.14	243 153	377.5
Germany	727	0.88	53 696	65.32	106 107	129.08	90 224	109.7
Greece	109	0.98	2 598	23.40	32 407	291.95	6 799	61.2
Ireland	68	1.58	1 250	29.06	15 513	360.76	12 642	294
Italy	663	1.11	71 762	120.40	143 726	241.15	280 167	470.0
Netherlands	159	0.96	13 716	83.63	91 235	556.31	22 667	1382.1
Portugal	148	1.40	20 870	198.76	23 314	222.03	24 495	233.2
Slovenia	12	0.6	521	26.05	2 220	111.0	1 091	54.5
England & Wales (UK)	755	1.41	101 370	190.18	292 285	548.37	193 410	362.8
EU Sample Average		1.14		107.58		327.48		334.6
Croatia	75	1.70	1 445	32.84	2 981	67.75	2 033	46.2
FYROM	45	2.25	503	25.15	1 367	68.35	365	18.2
Kosovo	58	2.63	441	20.0	4769	216.7	457	20.7

Under the category of burglary the pattern in Kosovo totally defies the local trend and is more akin to the trend in many EU states. The term burglary is defined as gaining access to a dwelling by the use of force to steal goods⁷. With over 216 burglaries per 100,000 population, this crime is 60% more common in Kosovo than in FYROM and Croatia and at similar levels to a number of EU member states in the sample group.

In terms of theft of motor vehicles, the patterns in Kosovo (20.7 per 100,000 population) is broadly similar to that found in FYROM (18.2), and markedly lower than the average found in the sample group of EU member states (334.6). Of course, as indicated in Table 2 the pattern of this particular crime varies greatly across EU states and, in the context of Kosovo and FYROM, is perhaps related to the lower average values of motor vehicles in this part of Europe.

The above observations allow EULEX to draw some initial conclusions about policing in Kosovo. There is a significant volume of serious crime, particularly homicide, in Kosovo. Whether viewed in the narrow context of the former-Yugoslavia or the wider context of Europe the levels of recorded crime present a significant challenge to a young police organization.

⁷ Source of data for EU states, Croatia and FYROM: Tavares, C. & Thomas, G., (2008), *Statistics in Focus: Crime and Criminal Justice*, EUROSTAT. Retrieved January 29, 2009 from: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-08-019/EN/KS-SF-08-019-EN.PDF

⁷ Tavares, C. & Thomas, G., (2008), *Statistics in Focus: Crime and Criminal Justice*, EUROSTAT. Retrieved January 29, 2009 from: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-08-019/EN/KS-SF-08-019-EN.PDF

Quality of statistics

Related question to the general volume of crime in Kosovo (as compared with other parts of the world) is that of the overall trend: in other words, is the crime increasing or decreasing? Table 3 provides a summary of data drawn from statistics compiled by the KP (and UNMIK) over the last three years. Although there are small discrepancies (+/- 3% to 0.4%) between the totals indicated for 2006 and 2007, the overall pattern of recorded crime seems stable at about 64,000 crimes per annum.

Table 1.3 – Overall Crime Level – Yearly Comparison					
Statistics Issued for 2006		Statistics Issued for 2007		Statistics Issued for 2008	
2005	2006	2006	2007	2007	2008
67508	64165	66064	61197	61383	65238

This appraisal of the recorded crime trend as stable within a band of 62 – 67,000 crimes per annum seems to be confirmed by a study of certain key crimes. Chart 1 indicates the recorded crime patterns for four key offences between 2005 and 2008. Murder and rape appear to be at consistent and almost identical levels over the four year period. Although their volumes are markedly different, robbery and attempted murder have followed a broadly consistent pattern. In conclusion, although recorded crime in Kosovo appears to be significantly higher than other countries in the region (as noted earlier), the trend does not appear to be getting worse.

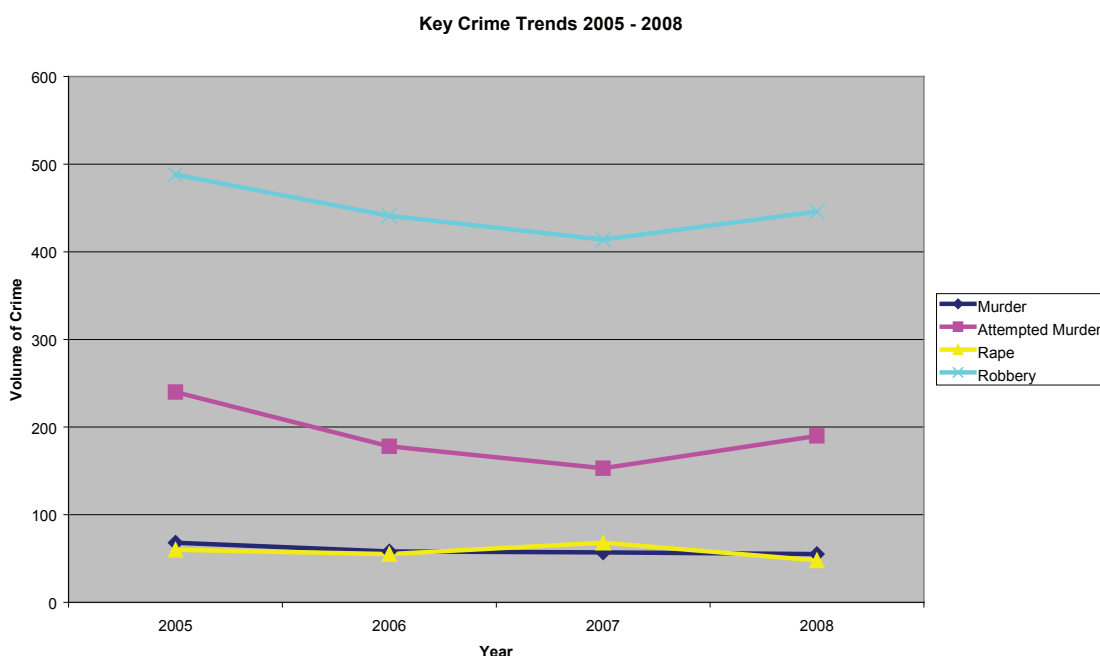


Chart 1.1 – Key Crime Trends in Kosovo

These observations have prompted EULEX advisors to look for an overt KP strategy to reduce the volume of crime in Kosovo, in an effort to bring the overall number of recorded crimes and certain key categories of crime to a level that is more consistent with the FYROM and Croatia. A comprehensive strategy that is being developed by the senior KP command staff. Such a comprehensive strategy would target specific

categories of crime and use a range of proactive measures, including crime prevention efforts in cooperation with municipalities and other agencies, use of intelligence to plan proactive operations that target specific criminals or locations and other measures.

EULEX RECOMMENDATION – PSD/1/2009

Target: KP, Senior Crime Investigation Officers

To mentor and advise the relevant KP senior staff in the design and implementation of an effective strategy to reduce the overall volume of crime and number of certain key crimes, in an effort to reduce crime levels to levels similar to FYROM and Croatia.

In 2008 the KP moved to a new system of recording crime and collating recorded crime data. The new system collates recorded crimes in direct correspondence with the list of offences under the Provisional Criminal Offence Code. This prevents an accurate analysis of certain categories of crime over the last five years, since, prior to 2008, the available crime statistics were based on the UNMIK system. For example, whilst burglary was recorded as a distinct offence in the period up to and including 2007, in 2008 and subsequent years it becomes a subset of Aggravated Theft, Article 253 Criminal Offence Code. Whilst KP statistics provide the total number of offences under Article 253, including those thefts that involved “breaking into locked buildings, rooms, boxes, trunks or other locked premises through the use of force or the removal of obstacles with the intent to appropriate movable property”, it is not possible to identify the number of offences that match the criteria for burglary. Likewise it is not possible to identify the total number of thefts of motor vehicles in the total number of recorded thefts under Article 252 of the Code. In the case of homicide, the 2008 statistics divide the total number of such crimes under several Articles of the Code: namely, murder (Article 146), aggravated murder (Article 147), murder committed in a state of mental distress (Article 148), negligent murder (Article 149) and infanticide (Article 150). However, in the previous (UNMIK) system it is unclear whether any or all of these categories were included under the statistics for ‘murder’.

EULEX strongly recommends that the KP retains the ability to record certain categories of crime, such as burglary and auto theft, as distinct subsets or agglomerations of categories of crime under the Articles of the Criminal Code. This will facilitate a number of benefits in the management of crime prevention and detection. Such benefits include the ability to monitor and publicize trends in crimes that are of great interest to the public and private industry (e.g. burglary and auto theft), inform the process of planning proactive operations to reduce the incidence of certain categories of crime, and to provide data for comparative studies in the Balkan region and Europe as a whole.

EULEX RECOMMENDATION – PSD/2/2009

Target: KP, Senior Crime Pillar Commanders

To mentor and advise the relevant KP senior staff in the design and implementation of an effective policy of recording, collecting and collating crimes under categories that are of concern to the public and private industry, and match the categories used by EU member states.

Ethnicity of crime victims

Policing a multi-ethnic society demands sensitivity to the needs of ethnic non-majority groups, particularly where crime may be motivated by attitudes toward persons because of their ethnicity. A first step involves recognizing that certain crimes might be ethnically-motivated: in other words, recognizing that some offenders commit offences because of an overt hatred or dislike for another person, on the basis of that person's ethnicity. Recognition of this aspect of crime is yet more relevant in a post-conflict society such as Kosovo, where ethnic hatred has resulted in mass murder, destruction of property and other serious crime.

Ethnically-motivated crime and the special security needs of ethnic non-majority communities is recognized by the law. For example, Articles 7, 34 and 41 of the Police Law requires the KP to engage and cooperate with local communities, ensure that the ethnicity of KP officers mirrors that of the community they serve, and actively consult local community representatives regarding the appointment of local station commanders. These principles are also stated under Article 128 of the Constitution. Article 115 of the Criminal Code creates the specific offence of inciting national, racial, religious or ethnic hatred, discord or intolerance. In 2007 the KP recorded 3 crimes under Article 115 (Inciting national, racial, religious or ethnic hatred, discord or intolerance), and 5 cases in 2008.

At the time of assessment 2009 EULEX found that the KP lacked the capacity to collect and collate data relating to the ethnicity of victims of crime, much less ethnically-motivated crime where it did not match the terms of Article 115. Whilst the quality of the KP systems of collecting, collating and distributing crime statistics had markedly improved since the observations of the PIK in 2006⁸, there is no policy of recording the ethnicity of victims or categorizing crimes as 'likely to be ethnically motivated'⁹. Consistent with the Mission aims of accountability and multi-ethnicity, EULEX firmly recommends that the KP develop and implement a policy of recording, collecting and collating the ethnicity of victims of crime and instances of crime that are likely to be ethnically motivated.

EULEX RECOMMENDATION – PSD/3/2009

Target: KP, Senior Crime Pillar Commanders and Support Services' Managers

To mentor and advise the relevant KP senior staff in the design and implementation of an effective policy of recording, collecting and collating the ethnicity of victims of crime and instances of crime that are likely to be ethnically motivated.

Managing investigation and prosecution performance

In terms of the EULEX aims of accountability and compliance with European best practice, it is vital that the criminal justice system of Kosovo is able to present clear and unambiguous information about its

8. *Police Inspectorate of Kosovo (2006). Annual Report 2006, p. 68. Ministry of Internal Affairs.*

9. *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.*

performance in detecting crime. This demand applies to all categories of crime but particularly serious crime. For example, there is a legitimate expectation that the criminal justice system is able to state unequivocally the number of recorded cases of homicide in a given year and, of that number, those cases that have been successfully investigated, and perpetrators identified and prosecuted. This is particularly poignant in Kosovo where (as noted above) the number of homicides in recent years appears to be significantly higher than in a number of EU member states.

Table 1.4 - Disposal of Article 146 Homicide Cases (2007 & 2008)											
Status	Opened cases				Closed Cases						Total
	Total	Inactive	Under Investigation	Total	Declined by Prosecutor	Unfounded	Referred for Prosecution	Closed Exceptionally	Charges Filed	No Action Needed	
2007	45	11	34	165	-	-	114	5	35	-	210
2008	93	10	83	152	-	-	120	1	29	-	245

Table 1.4 reproduces statistical data provided by the KP in response to a EULEX request for information about the detection of homicides in 2007 and 2008. The format employed to present the data is identical in both years and the KP was able to present the status of all recorded crimes in the same manner. The status of cases of recorded crimes is divided into two umbrella headings: 'open cases' and 'closed cases'. An 'open case' is one which either remains subject to active investigation by a Public Prosecutor and KP investigators, or is one which has been designated as 'inactive' because all possible lines of investigation have been exhausted and no suspected perpetrator has been identified. A 'closed case' is one that is no longer subject to active investigation and has moved beyond the scope of KP investigators. Six categories of closure are listed and all refer to decisions made by the Public Prosecutor under the terms of the Provisional Criminal Procedure Code. However, there is no reference to the number of cases in which a person was successfully prosecuted and the process brought to closure.

In terms of the key EULEX aim of accountability certain observations are relevant. Firstly, whilst the KP format indicates the number of recorded crimes of homicide that were in process in each year (210 in 2007 and 245 in 2008¹⁰) and their status, it is not clear how long these crimes have been 'in process'. Separate recorded crime statistics from the KP Crime Pillar indicate that in 2008 there were 55 recorded Article 146 offences of homicide (not including aggravated murder and other types), and in 2007 there were 65 recorded homicides. On this basis we can conclude that, of the 245 open and closed cases in 2008, 190 were offences recorded in previous years; and of 210 open and closed cases in 2007, 145 were crimes recorded in previous years. In order for senior KP officers and Public Prosecutors to track progress and monitor performance it would greatly assist if the format identified the progress of cases for a given year or indicated the age of cases.

Secondly, the format and content of the homicide statistics in Table 1.4 appear to be obscure and con-

10. Although the final column appears to be the sum of column one (total open cases) and column four (total closed cases); however, in neither year is column for the sum of all the columns of closed cases.

fused. If it assumed that each row refers to the status of cases of homicide at the close of each year the conclusions seem to be untenable, particularly when compared with the (separately) recorded cases for each year. They suggest that, at the close of 2007, there were 45 cases that remained 'open' and were carried over into 2008. However, if the number of cases carried over from 2007 is deducted from the total number of cases in process (open and closed) in 2008, it suggests that there were 198 new cases in that year. This conclusion seems quite incredible, particularly if compared with the 55 recorded cases of homicide stated in the Crime Pillar statistics for 2008. It is noteworthy that these observations apply equally to the recorded data for a number of other offences that are of public interest.

Whilst there might be a reasonable explanation behind the apparent confusion, the principle of accountability is not served by performance data that is not readily intelligible to a member of the public. There is a legitimate expectation among the communities of Kosovo that Public Prosecutors and police officers should inform them about the effectiveness of the criminal justice system through reference to basic indicators of success and failure. In relation to homicide – the most serious crime – such indicators should include: (a) an accurate record of the number of murders in a given year; (b) the cumulative number of murder cases (including point a) that have been recorded over the previous five year period; (c) the number (and percentage) of the cumulative five year total that are 'closed'; and the number (and percentage) of the cumulative five year total that are 'open'. The terms 'open' and 'closed' (and any sub-categories) should be clearly defined and the results – in relation to key offences that are of public interest – should be published and released to the media. Such an approach to public accountability would help promote greater effectiveness and properly inform the process of policy development for the criminal justice system.

EULEX RECOMMENDATION – PSD/4/2009

Target: KP, Senior Crime Pillar Commanders and Public Prosecutors' Office

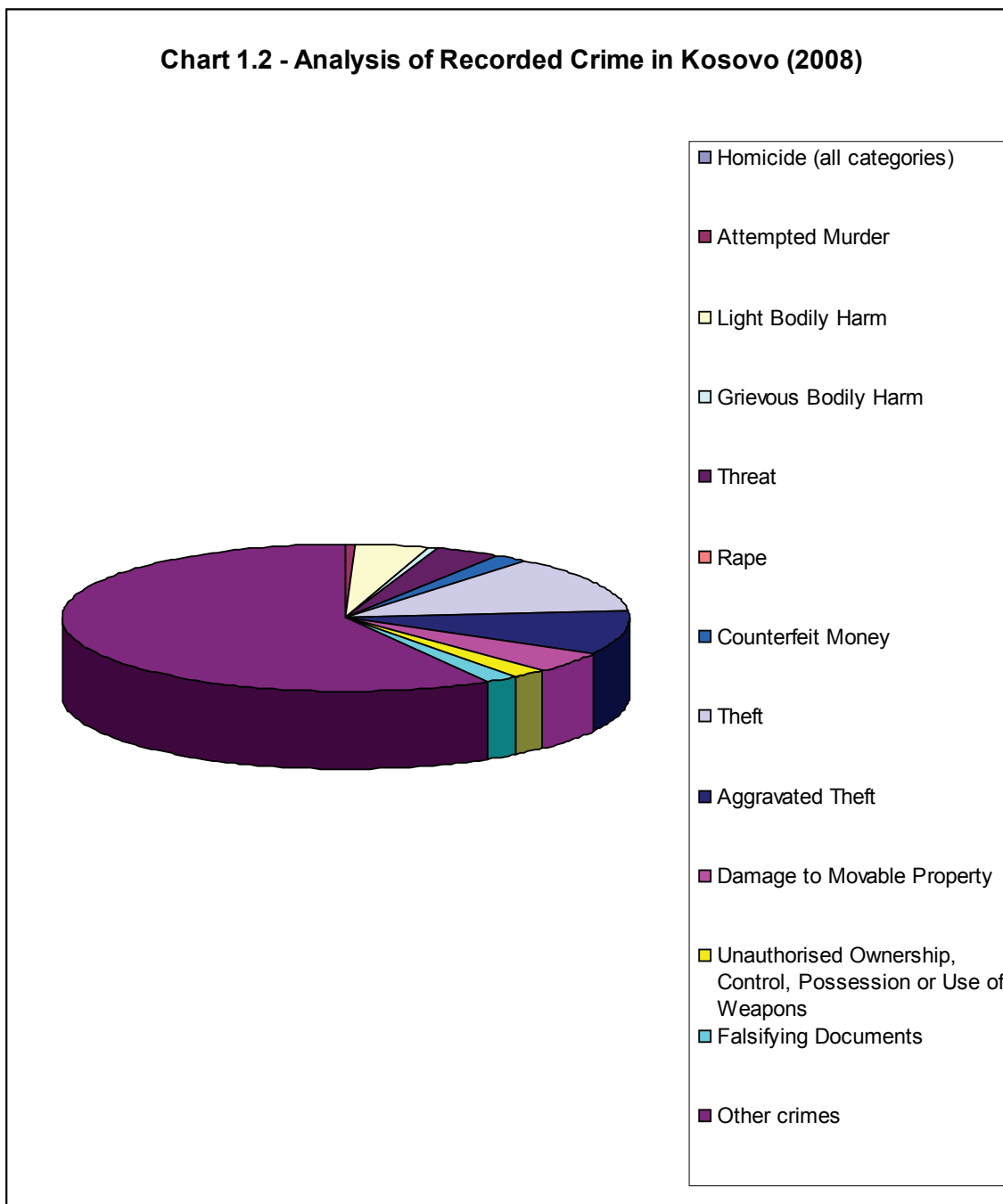
To mentor and advise the relevant KP senior staff and public Prosecutors in the design and implementation of a more transparent and unambiguous system of informing the public about the effectiveness of the criminal justice system.

KP relations with the Public Prosecutors

The terms of the Provisional Criminal Procedure Code clearly indicate that it is the Public Prosecutor who takes the lead role in criminal investigations. In February 2009, there were about 88 Public Prosecutors in Kosovo to deal with a potential workload of 64,000 crimes, representing a ratio of 727 crimes per Prosecutor. In practice, of course, it is only the more serious offences that involve the Public Prosecutors. However, even in this reduced arena the workload is daunting. Chart 1.2 provides a summary analysis of the important categories of crime in Kosovo in 2008 and gives an indication of the challenges that face the finite group of Public Prosecutors.

There were 86 cases of homicide (Article 146, aggravated, negligent, due to mental distress and infanticide); 190 cases of attempted murder; 447 cases of grievous bodily harm; 48 cases of rape; 6282 cases of aggravated theft (mainly equating to burglaries); and 1417 cases of unlawful possession or use of weapons. If one considers these serious categories alone, the potential workload amounts to over 96 cases per

Prosecutor per annum or 8 cases per Prosecutor per month. The real demands placed on individual Prosecutors is likely to be even greater than indicated in this simple analysis and gives greater weight to the argument that the Code implies close cooperation and a team effort on the part of the Prosecutors and KP investigators.



EULEX monitors have reported that the relationship between KP investigators and Public Prosecutors should be significantly improved. KP investigators point to difficulties in contacting Prosecutors and obtaining information about cases, and a lack of feedback about cases after they have moved beyond 'open' status. EULEX monitors have found a very real sense of two entities operating largely in separate orbits: contact between Public Prosecutors and KP investigators is minimal and much less than required to generate a team spirit in criminal investigations.

It should be noted that the KP perception of relations with the PPO varies across the regions: four regions considered relations to be good, whilst two regions judged them to be somewhere between poor and satisfactory. Regional Crime Squad staff in the latter regions – Prishtinë/Priština and Urosevac/Ferizaj - raised the following issues:

1. Public Prosecutors often failed to attend the crime scenes of serious offences;
2. Public Prosecutors rarely take an active role in leading an investigation from the outset, and perform badly in terms of written and verbal guidance to KP investigators;
3. Undue delay of court orders for expert examinations from Public Prosecutors;
4. Inordinate delays in autopsy/medical forensics reports which are often unclear regarding evidential conclusions;
5. Undue delay in decisions to conduct or not conduct an Article 186 (homicide) autopsy, often resulting in conflict with the relatives of the deceased;
6. Undue delay in responses to memoranda and reports (from Public Prosecutors and pre-trial Judges);
7. Frequent technical mistakes, particularly in regard to covert surveillance measures;
8. Poor communications from PPO regarding completed cases and instructions regarding evidence, resulting in inordinate volumes of stored evidence (e.g. evidence from cases that date to 1999 are still in KP storage, pending a decision regarding disposal);
9. PPO staff refuse to accept physical evidence with a crime report (as required by Articles 197 and 207, Procedure Code) because they lack storage capacity;
10. PPO does not clearly classify offences according to the Penal Code.

In regard to some of these KP observations it is readily acknowledged by police officers that the root problem is the insufficient number of Public Prosecutors and their considerable workload.

Many of the investigation powers described in the Provisional Criminal Procedure Code imply a close working relationship between Public Prosecutors and KP investigators; the more proactive surveillance powers described in Article 256 strongly imply close-knit teams of KP investigators, led by Public Prosecutors. EULEX recommends that senior KP officers and the Public Prosecutors Office initiate a joint effort to explore ways of allowing Prosecutors and investigators to work more closely in a team effort.

EULEX RECOMMENDATION – PSD/5/2009

Target: KP, Crime Pillar Commanders and Public Prosecutors' Office

To mentor and advise the relevant KP senior staff and Public Prosecutors Office in the design and implementation of a 'team' approach to investigation and evidence gathering work, based on a real sense that police and Prosecutors serve a single entity – the criminal justice system.

A recent report from the Ministry of Justice on the performance of the Public Prosecutors Office (PPO)¹¹ offers further and telling insights into the relationship between Prosecutors and the KP organisation. The report (henceforth 2008 PPO report) gives rise to a number of observations that are relevant to the EULEX Mission aims of sustainability and accountability in Kosovo's criminal justice system, as well as its compliance with European best practice.

It is immediately apparent that the 2008 PPO report uses categories to appraise performance in investigations and prosecutions that are quite different to those employed by the KP. There are two basic divisions employed. Firstly, the report analyses the number of crime cases (or 'penal charges') in 2007 under the headings of 'known' and 'unknown' offenders¹². The former are further subdivided into cases where the known suspect is a juvenile or adult. Secondly, the 2008 PPO report provides an insight into the division of workload in 2007 between staff deployed with the Municipal Prosecutor Offices and District Prosecutor Offices.

On page 10 the PPO report announces that "all Prosecutor offices have been effective on solving penal charges" and indicates that, on average, each Prosecutor 'solved' 88.6 cases during 2007. However, the way in which the data is presented in the 2008 PPO report makes it difficult to assess the global performance of the criminal justice system in Kosovo. Through a process of extrapolation it is possible to infer from data provided in page 16 of the report that 41.2% of the total cases dealt with by the PPO in 2007 related to 'unknown perpetrators' (i.e. where criminal investigations failed to identify a suspect). If correct, this means that Kosovo's criminal justice system successfully 'solved' 58.8% of reported crimes in 2007 – indicating a level of effectiveness that would be the envy of a number of EU states.

However, there are problems with the 2008 PPO report's findings. Firstly, the baseline figure for the total cases handled by the PPO is 37,300¹³, whereas KP statistics indicate that there were over 61,000 recorded crimes in 2007. Of course, it may be the case that the PPO does not categorize any more than 37,300 of the recorded crimes as 'penal charges'; however, this leads to the conclusion that the status of almost 24,000 recorded crimes in 2007 remains apparently unexplained by Kosovo's criminal justice system.

11. Source: S. Shala (2008). *Report on the Performance of the Public Prosecutor Offices of the Republic of Kosova for the Year 2007*. Ministry of Justice. Kosovo

12. As implied by the term, a 'known perpetrator' case refers to a case in which, at the time the crime is initially recorded, the purported offender was identified by the victim or a third party. Whereas an 'unknown perpetrator' is a case in which, at the time of being reported, the victim or person reporting did not know the identity of the offender. Therefore, the initial investigation effort is potentially much less in the former case

13. Note that although the text on page 16 of the report states that 37,292 cases were dealt with by the PPO, the chart on the same page infers that the total was 37,300.

Table 1.6 – Comparison of Recorded Crime Status – KP & PPO 2007

KP 'Crime Status' 2007			PPO 'Penal Charges Status' 2007		
Open Cases	Inactive	4541	14,480	Municipal PPO	Unknown Perpetrator
	Under Investigation	6331	923	District PPO	
	Total Cases Categorized as 'Open'	10,872	15,403	Total	
Closed Cases	Declined by Prosecutor	585	17,340	Municipal PPO	Adult Perpetrator
	Unfounded	53	2,346	District PPO	
	Referred for Prosecution	37,589	19,686	Total	
	Closed Exceptionally	1,793	2,018	Municipal PPO	Juvenile Perpetrator
	Charges Filed	5,185	193	District PPO	
	No Action Needed	7,329	2,211	Total	
	Total Cases Categorized as 'Closed'	56,298	21,897	Total 'Known' Perpetrator	
Total Cases	67,170	37,300	Total Cases		

Whilst the figure 56,298 is that stated in the KP 2007 'status' statistics as the total for 'closed' cases it is not the sum of the categories of closed cases. No explanation is provided for the discrepancy.

Table 1.6 juxtaposes the categories of 2007 'penal charges' recorded in the 2008 PPO report with the 'crime status' categories provided by the KP in 2007. A cursory examination of the juxtaposed data reveals a profound lack of consensus in regard to the categories used and the number of cases. In terms of the overall numbers, it appears to be impossible to reconcile the findings or extrapolate a clear and unambiguous picture of the performance of Kosovo's criminal justice system. Without wishing to labour the point, the KP indicate that a total of 37,598 cases were 'referred for prosecution' (implying the presence of identified perpetrators), in contrast to the 21,897 cases that the PPO identifies as having a 'known perpetrator'. The enormous difference in statistics tends to cast doubt upon credibility of both sources.

A second problem with the 2008 PPO report lies in its failure to quantify the performance of Public Prosecutors (and, by implication, the criminal justice system) in terms of the gravity of the crimes that were apparently 'solved'. For example, buried in the statistics in page 28 of the report is the conclusion that 67 cases of murder (Article 146 of the Code) had no 'known perpetrator'. Given that, according to page 21 of the report, a total of 137 cases of Article 146 murders were recorded in 2007, the report fails to draw the important conclusion that Kosovo's criminal justice system failed to solve almost 49% of recorded murders. The failure to resolve murders is only addressed as a percentage of the total of number of cases in which no 'known perpetrator' could be ascertained, rather than viewed as a percentage of the total recorded crimes and thereby representing a credible indicator of performance. Similarly, the success or otherwise of the criminal justice system in tackling other serious crimes can only be ascertained through a difficult process of extrapolation from data.

The above observations prompt a number of recommendations in pursuit of the EULEX aims of sustainability, accountability and compliance with European best practice. Firstly, the PPO and KP must recognise that the efficacy of Kosovo's criminal justice system is the result of a collaborative effort – as indicated in the Provisional Criminal Procedure Code - and based on mutual respect and an acknowledgement of the contribution of both groups. Such recognition must be evidenced by more than a mere verbal or written assent to what is implied by the law. It must be demonstrated by a number of joint management structures that require KP and PPO officials to share responsibility for evaluation of performance, planning, policy decisions and public reports on performance. This arrangement must be articulated through a joint agreement that, once implemented, is actively monitored by EULEX.

EULEX RECOMMENDATION – PSD/6/2009

Target: KP, Senior Crime Pillar Commanders and Public Prosecutors' Office

To mentor and advise the relevant senior PPO and KP staff in the design, implementation and evaluation of a joint system of strategic management of crime investigation and prosecution for the entire territory of Kosovo. The system, once established, will allow Public Prosecutors and senior police officers to share responsibility for evaluation of performance, planning, policy decisions and public reports on the performance of the CJS.

Secondly, an appraisal of the efficacy of Kosovo's criminal justice system (CJS) – the actual theme of the PPO report – should be the concern of all the actors in the system, and particularly the police and Public Prosecutors. As part of the joint management of the CJS (discussed above), a common system of collecting and collating crime, crime investigation and prosecution statistics must be developed by the KP and PPO. Such a system should ensure agreement regarding the overall number of recorded crimes, the number of serious crimes (of concern to the public), as well as clear and unambiguous methods of categorising 'solved' and 'unsolved' crimes by category. This joint effort should see the general public as the final adjudicators of success or failure, and present the data in a manner that allows the public to readily make such a judgement. Moreover, such a system should recognise the effort made by all the CJS actors and present failures as jointly shared by all the actors.

EULEX RECOMMENDATION – PSD/7/2009

Target: KP, Senior Crime Pillar Commanders and Public Prosecutors' Office

To mentor and advise the relevant senior PPO and KP staff in the design, implementation and evaluation of a common system of collecting and collating crime, crime investigation and prosecution statistics. The system should ensure agreement regarding the overall number of recorded crimes, the number of serious crimes (of concern to the public), as well as clear and unambiguous methods of categorising 'solved' and 'unsolved' crimes by category.

Thirdly, accountability requires that those responsible for managing Kosovo's criminal justice system give account to the public. A common report on the overall performance of the CJS should be published annually by the joint management structure described above. The report should be in a format and language that allows the public to readily comprehend the degree of success in combating crime and particularly

serious, organised and other categories of crime that are of public concern. Data should be presented in a way that makes clear the volume of crime in each serious category and the percentage that was successfully investigated and was resolved by prosecution or other legal remedy.

EULEX RECOMMENDATION – PSD/8/2009

Target: KP, Senior Crime Pillar Commanders and Public Prosecutors' Office

To mentor and advise the relevant senior PPO and KP staff in the design, preparation and publication of an annual report on the performance of Kosovo's criminal justice system. Data should be presented in a way that makes clear the volume of crime in each serious category and the percentage that was successfully investigated and was resolved by prosecution or other legal remedy. In addition, the report should be in a format and language that allows the public to readily comprehend the degree of success in combating crime and particularly serious, organised and other categories of crime that are of public concern.

Development of a single annual report on criminal justice system would assist in the desirable aims of getting police and Prosecutors to work more closely together, and recognize and respect the important contribution made by staff in both organizations.

CRIMINAL INTELLIGENCE CAPABILITY

The Directorate of Crime Analysis (DCA) consists of three functional units: the Intelligence Desk Section, Crime Analysis and Statistics Section, and Support Section. There is a lack of sufficient detail in the DCA job descriptions to determine the type of core skills required and the training that might provide those skills. A significant number of intelligence officers have not received formal training.

The staffing structure and leadership of DCA remains incomplete. The important management positions of Director and Deputy Director have yet to be appointed and are performed by officers in an 'acting' capacity. Since its inception in 2005 DCA has seen a high turnover of staff and it has yet to settle into the pattern of a sustainable organisation, building on individual and corporate experience and expertise. Given its critical role in leading the effort to develop the capacity of the KP in 'intelligence led' policing, DCA must be the focus of a concerted effort to fully develop its mandate, structure, and capacity.

EULEX RECOMMENDATION – PSD/9/2009

Target: KP, Senior Crime Investigation Officers

To mentor and advise the relevant senior KP staff in the development of organizational structure, human capacity and overall efficacy of DCA as the hub of the KP criminal intelligence system.

Throughout all four KP Pillars (Crime, Border, Operations and Administration) EULEX PSD found a consist-

ent lack of medium- and long-term planning, as well as a poor recognition of the value of such planning among senior staff. The effort to move the KP quickly toward its vision as a proactive organisation, capable of tackling serious and organised crime, will be assisted if KP senior officers are able to carefully plan their activities and resources over the longer term.

EULEX RECOMMENDATION – PSD/10/2009

Target: KP, Senior Commanders of Crime, Ops, Border & Administration

Increase capacity for medium-term and long-term planning

Table 1.7 – Basic organisational appraisal – Dir. Crime Analysis (Crime)

Indicator	Performance	Target	Comment
Staffing structure, role definition and training	Satisfactory	Satisfactory	Role Definition requires development and more training is required to increase core skills. Need to quickly complete the process of building DCA as a sustainable organization.
Ethnic/gender mix	Poor	Satisfactory	37.9% female and 3.4% ethnic minority.
Facilities & equipment	Poor	Satisfactory	Radio and telephone communications, audio-visual and surveillance equipment are inadequate in many areas. In some areas there are insufficient vehicles.
Law/PPM/SOPs	Poor	Satisfactory	No data protection law
Managing abstractions	Good	Satisfactory	
Managing compliance	N/A	Satisfactory	Not applicable – no operational role. No data protection law
Managing performance/work quality	Good	Satisfactory	
Planning activities	Satisfactory	Satisfactory	Need for further development in long-term planning
Use of intelligence/statistics	Good	Satisfactory	
Capacity and willingness to proactively detect crime	Poor	Satisfactory	Whilst there is a desire to increase proactive activities, current capacity is low
Relations with the PPO	N/A	Good	No working contact

As indicated in Table 1.7, the EULEX appraisal of DCA revealed a number of deficiencies in the basic equipment required for intelligence gathering and proactive crime detection. These observations included: (a) in many areas the telephone and radio communications are of a poor or very poor standard; (b) insufficient vehicles, audio-visual and surveillance equipment in many areas; and (c) DCA uses insecure networks and lacks expert software for data analysis. Although EULEX experts note that the lack of more sophisticated equipment and technology is not unusual in the context of the western Balkans, its absence in the KP is a barrier to further development of proactive policing capability. In other words, the Mission aim of achiev-

ing the level of European best practice will require significant capital investment.

As in other specialist crime functions, the lack of ethnic minority staff – particularly ethnic Serbs – continues to present a significant challenge for KP managers. EULEX monitors noted a sincere willingness among KP managers to increase the number of minority officers in specialist areas, such as DCA. However, it must be done within the constraints of the law and the Policy and Procedure Manual and this requires all applicants to meet the minimum qualifying criteria. KP managers pointed to the fact that many ethnic Serbs preferred to work within their own communities and were not attracted to specialist functions in KP MHQ. The lack of ethnic non-majority applicants has meant that large part of specialist functions are now held by ethnic Albanian staff and, given the absence of a tenure policy, future opportunities for minority staff – particularly if there is a thaw in the political dispute - are inevitably reduced.

EULEX monitors noted a growing use of planning by DCA managers and efforts to link their work to the general objectives outlined in the KP Strategic Plan 2008/10 and the DCA Strategic Plan, but observed that there was significant scope for further development. It was observed that DCA managers are more concerned with the process than that which the process is intended to achieve: in other words, managers are more concerned with the paperwork *per se* than with the actual outcomes of the planning process. In pursuit of the EULEX Mission aims, it is suggested that EULEX MMA staff should actively assist the relevant KP managers in further developing their planning skills, with emphasis on managing implementation and evaluating results.

The ability of the KP organization to create plans based on intelligence has been assessed by EULEX experts to be very poor. It was noted that medium and long term planning is a widespread management weakness across the KP Crime Pillar. EULEX monitors found officers in the regions who had limited or no knowledge of the potential benefits of this management skill, and knew even less about how to generate such planning documents.

DCA is apparently used as a 'retroactive resource', rather than as the hub of a proactive approach to tackling crime. Data is used to find information about suspects only after they have been detained and investigated. It was noted that senior KP managers have attempted to introduce an Intelligence Led Policing (ILP) system with DCA at the centre, but with little success thus far. There is a markedly parochial attitude to intelligence and information: each unit, team, and station guards its own corpus of intelligence and views its role as in competition with other parts of the organisation. Indeed, EULEX monitors observed this competitive attitude at the level of individual officers. The net result is that DCA is starved of essential and accurate data and the KP organization cannot reach the considerably greater potential that results from shared information and a common purpose. These problems are compounded by a pervasive misunderstanding of the purpose of DCA among senior KP commanders: according to EULEX monitors many senior managers cannot differentiate between criminal (or crime) intelligence and national security intelligence. When public demonstrations occur, Regional Intelligence Unit (RIU) capacity is used by Regional Commanders to feed a need for information about public order and public security information gathering. Intelligence is fed through the chain of command rather than through intelligence structures, creating the potential for information leaks and the obvious risks associated with compromising intelligence sources.

There is a growing recognition throughout the KP of the need to fully develop intelligence-led policing, after the pattern described in a recent OSCE/OMIK initiative. EULEX firmly recommends that the programme to introduce intelligence-led policing should be amongst the very top priorities of KP senior commanders over the next three years. What is required is both complex and demanding – the creation of an intelligence gathering culture among KP officers, effective systems of collating and analyzing intelligence data, and an ability to plan proactive operations on the basis of the data. EULEX monitors – throughout Crime, Border and Operations – will assist in a large-scale programme to assist the KP introduce intelligence-led policing over the life of the Mission. The aim will be to help KP commanders introduce a single system across all Pillars, feeding into a common network with DCA (or its successor) at the hub and feeding proactive operations throughout the KP.

EULEX RECOMMENDATION – PSD/11/2009

Target: KP, Senior Commanders of Crime, Border, Operations, Support Services' and Personnel and Training

To mentor and advise the relevant senior KP staff in the full implementation of the (OSCE-sponsored) programme to introduce intelligence-led policing throughout the organization. This complex programme will unfold at several levels simultaneously, including: creating an intelligence gathering culture among all KP officers; use of common forms and collection systems; a single network with DCA (or its successor) at the hub; data collation, analysis and distribution capacity; and planning proactive operations on the basis of such intelligence data.

KP Data Management

EULEX experts have made a number of detailed observations about weaknesses in the Kosovo Police Information System (KPIS). The following are among the more important issues: (a) data inputs at regional level are often 5-7 days after the event and incorrectly entered on the system; (b) the database design is inadequate and lacks security (access is via an insecure intranet); (c) there are insufficient Standard Operating Procedures to regulate the quality of inputs and civilian staff lack sufficient training; (d) the system allows access to data by all users without restriction levels (consequently the Directorates of Major Crime and Organised Crime refuse to provide inputs); and (e) the KPIS lacks information on *modus operandi* and cannot carry photographs of convicted criminals. It was noted that KP managers seem unwilling to use statistical data as a tool to objectively analyse performance, preferring to use statistics only to support claims of successful performance. There is insufficient use of comparative analysis to evaluate trends in crime and performance and no documentary guidance on the use of this management tool.

No effort has been made, since the foundation of the KP in 1999, to research the probable level of unreported crime in Kosovo. EULEX noted that the KP system – which now records instances of crime as per the relevant Article in the Criminal Code - provides a distorted picture of crime levels because it fails to identify cases that consist of more than one offence. As noted earlier, probably the most significant observation concerns the lack of symmetry between the KP system and the data system employed by justice sector, particularly the PPO and courts. This makes it very difficult for KP managers to objectively assess performance in tackling crimes and specific categories of crime.

EULEX RECOMMENDATION – PSD/12/2009

Target: KP, Senior Support Services' Managers and Senior Commanders of Crime, Border and Operations.

To mentor and advise the relevant senior KP staff in the design and implementation of a robust and effective information system, in full compliance with European best practice. This should include the task of identifying a donor to assist with the procurement and installation of necessary software systems and related training needs.

Crime Investigation at the Station Level

EULEX monitors conducted a basic performance appraisal in respect of all stations and their criminal investigation staff. Whilst it is difficult to make meaningful generalizations across such a large number of stations with diverse patterns of performance, certain observations can be made on the basis of EULEX reports regarding areas of strength and weakness at this important level of crime investigation.

Crime investigators share office space with their Operations Pillar colleagues in over thirty police stations across Kosovo. The condition of these buildings varies greatly, in terms of capacity and utility. Some stations present particular problems for crime investigators. For example, investigators working in Dragash/ Dragaš Police Station have a very poor building, poor basic equipment and poor communication systems. The lack of ordinary phone connections (and mobile phones) means that it is very difficult to readily obtain access to the PPO regarding cases¹⁴. The problems associated with poor and inadequate telephone communications are found in a number of rural police stations and must continue to be tackled as part of the KP capital investment plan for the next 3 – 5 years. In some areas there were insufficient vehicles available to crime investigators and office and other equipment was judged to be poor or insufficient to support operations.

In spite of often poor working conditions and inadequate equipment, EULEX monitors observed a willingness among investigators and their supervisors to tackle crime proactively, as well as reactively. There is a willingness to target criminal groups. A stable and consistent work regime is operating in most areas and includes a good system of checking the quality of crime reports and associated paperwork.

In many areas there is either a complete absence of medium-term (1 – 3 years) planning or, where it exists, the quality is poor. Managing activities tends to be done on a day-to-day basis through discussion and verbal briefings rather than in a written form. EULEX staff observed an apparent lack of understanding of the benefits of planning among supervisors and managers. Further training in this management skill is clearly desirable.

A closely related area of concern at the Station Level is the lack of understanding and practice of an intelligence-led policing strategy and the concept of the 'intelligence cycle'¹⁵. For example, many of the busy stations in the Prishtinë/Priština region were assessed by EULEX as 'poor' in this critical area. There is clear

¹⁴ Dragash/Dragaš Station has one V-Sat phone, no Fax machine, and VHF radios with limited and incomplete cover.

¹⁵ Whilst there are various approaches adopted in European best practice, the intelligence cycle typically includes the following components: Direction, Collection, Collation, Evaluation, Analysis, Dissemination and back to Direction.

evidence of a lack of understanding of the planning loop: namely, collecting, collating and analyzing intelligence data and crime patterns, then using the findings to inform the process of generating proactive plans that target individual criminals (or groups) or types of crime in certain locations. In many stations the managers and supervisors had never heard of the 5x5x5 reporting system or similar use of a uniform approach to intelligence gathering. The overall pattern is that intelligence tends to be shared verbally and lacks structure and methodology.

KP Crime Headquarters – Central Direction and Support

The Directorate of Organised Crime (DOC) is a project under development that lacks structural clarity and currently consists of the Cross-Border Unit, Financial Investigations Unit and the Intelligence Unit. There appear to be problems in the role definition of staff members, and only 15% have a clearly defined function that they can explain. As with other areas, the DOC needs further investment to improve its facilities and basic equipment, such as vehicles.

Indicator	Performance		Target	Comment
Staffing structure, role definition and training	Satisfactory		Satisfactory	Structure is subject to review
Ethnic/gender mix	Poor		Satisfactory	9% female officers and only one ethnic Serb officer (2%).
Facilities & equipment	Satisfactory		Satisfactory	Facilities and basic equipment needs improvement
Law/PPM/SOPs	Good		Satisfactory	
Managing abstractions	Good		Satisfactory	Some officers view sick leave as an entitlement that must be used
Managing compliance	Very good		Satisfactory	EULEX noted a good standard of ensuring compliance with the law and PPM.
Managing performance/work quality	Satisfactory		Satisfactory	It was noted that not all paperwork is checked by supervisors.
Planning activities	Poor		Satisfactory	Absence of a written strategy to combat organized crime
Use of intelligence/statistics	Satisfactory		Satisfactory	Considerable scope for further development
Capacity and willingness to proactively detect crime	Poor		Satisfactory	Lack of a full intelligence cycle reduces the DOC effectiveness
Relations with the PPO	Satisfactory		Good	Relations are improving but fall short of the good standard that is required

EULEX monitors noted that DOC managers maintain a very good standard of ensuring that their staff comply with the law and Policy and Procedure Manual (PPM).

DOC would benefit from a detailed strategy document that defines its aims and objectives. This perhaps explains that lack of clarity with regard to the Directorate's structure and the role definition of its staff.

EULEX monitors observed that there is an absence of direction at Ministerial and KP Senior Command level and at the lower levels of management within KP Crime – there is no written policy or general strategy that shapes the effort to deal with organised crime. Linked to this issue is the need to greatly enhance the use of crime pattern statistics and intelligence in planning DOC activities. As noted elsewhere, the lack of a fully functional intelligence cycle (across the KP organization) to feed the planning process reduces the effectiveness of DOC. This lack of intelligence has reduced the capacity of DOC to take the lead in proactive operations to target organized crime groups and this must be the focus of future development

EULEX RECOMMENDATION – PSD/13/2009

Target: KP, Senior Crime Investigation Officers

To mentor and advise the relevant senior KP staff in the full development of the Directorate of Organised Crime as a focal point of the KP's proactive strategy and centre of excellence in intelligence-led policing. The work of developing DOC's potential is directly linked to the much larger strategy to introduce intelligence-led policing.

The **Major Crime Directorate** (MCD) consists of five sections: Serious Crime Investigations, Domestic Violence, Economic Crime and Corruption Investigation, War Crimes, and Cooperation and Coordination with the Regional Crime Squads. As with other areas the job descriptions of MCD staff refer to the generic responsibilities of certain KP ranks rather than the specialist functions officers actually perform.

Table 1.10b – Basic organisational appraisal – Dir. Major Crime (Crime)

Indicator	Performance	Target	Comment
Indicator	Performance	Target	Comment
Staffing structure, role definition and training	Satisfactory	Satisfactory	Insufficient staff and poorly defined roles
Ethnic/gender mix	Poor	Satisfactory	27.7% female and 1.7% ethnic non-majority.
Facilities & equipment	Good	Satisfactory	
Law/PPM/SOPs	Satisfactory	Satisfactory	
Managing abstractions	Satisfactory	Satisfactory	
Managing compliance	Satisfactory	Satisfactory	
Managing performance/work quality	Satisfactory	Satisfactory	
Planning activities	Satisfactory	Satisfactory	More MMA required to assess
Use of intelligence/statistics	Satisfactory	Satisfactory	Need for improvement
Capacity and willingness to proactively detect crime	N/A	Satisfactory	
Relations with the PPO	Satisfactory	Good	

In terms of strategic planning, it was observed that the Directorate – in general terms is more reactive than proactive, tackling reported cases rather than targeting criminals. Whilst it encourages the use of the 5x5x5 intelligence reporting system, MCD does not view itself at the cusp of the intelligence system since it does not proactively target crimes or criminals. EULEX monitors observed that the Domestic Violence (DV) manager requires more training in order to prioritise tasks and properly plan activities. This problem may, in part, relate to the lack of a clear mission statement – with defined aims and objectives – for the DV Section.

In terms of the relations of the investigative components of MCD with PPO staff, the overall grading is 'satisfactory'. However, it is noteworthy that MCD staff indicated that, on numerous occasions, the KP investigators tell the Public Prosecutors what to do rather than the opposite regime indicated in the Procedure Code. It was also reported that PPO staff rarely provide MCD staff with information about cases that proceed to prosecution, and that information sharing by the PPO is poor.

The specialist function of investigating **financial crime** is dealt with by the Economic Crime and Corruption Investigation Section (ECCIS) of the Major Crime Directorate. It was intended to consist of four units: Economic Crime, Anti-Corruption, Counterfeiting and Intelligence. In spite of the significant potential of such a specialist approach to what is probably a major threat to the sustainability of the Kosovo society, the Section has not yet been developed to a level that has a realistic chance of making a proactive impact. It has never reached its planned staffing levels; it has suffered from high turnover of staff; and there is a lack of proper role definition (i.e. rank generic rather than role specific job descriptions). Since October 2008 the Section has only consisted of one unit, Economic Crime (5 officers), because the others were transferred to form part of a Special Task Force (under the Commissioner's control) to deal with smuggling and tax evasion.

In addition to the problem of poor role definition, EULEX monitors found that ECCIS staff had engaged in extensive training regardless of work commitments and often having only a tenuous link to the apparent objectives of the Section. There was some evidence of abuse of sick leave privileges (i.e. sick days normally occur on Mondays or at either end of annual leave), compounding the lack of management of training-related abstractions.

Table 1.10c – Basic organisational appraisal – E.C.C.I. Section (Crime)

Indicator	Performance	Target	Comment
Staffing structure, role definition and training	Poor	Satisfactory	Insufficient staff and an incomplete structure
Ethnic/gender mix	Poor	Satisfactory	No non-majority staff and one female officer.
Facilities & equipment	Poor	Satisfactory	Poor facilities and insufficient vehicles, insufficient telephones, poor IT security
Law/PPM/SOPs		Satisfactory	
Managing abstractions	Poor	Satisfactory	Excessive training abstractions and some evidence of abuse of sick leave entitlement

Managing compliance	Satisfactory		Satisfactory	More monitoring required
Managing performance/work quality	Very good		Satisfactory	
Planning activities	Good		Satisfactory	
Use of intelligence/statistics	Good		Satisfactory	
Capacity and willingness to proactively detect crime	N/A		Satisfactory	Low resources limit ECCIS to reactive work
Relations with the PPO	Good		Good	No problems reported

The **Directorate of Forensics** consists of three Sections: Crime Scene, Digital Imaging and Administration. It is a well-structured functional part of the organization, with a good overall gender and ethnic minority balance. However, whilst females comprise 33% of MHQ staff, there are no ethnic non-majority officers at the centre of the organisation.

Although EULEX interviews with Forensics managers indicated a 'satisfactory' working relationship with PPO staff, the Chief of the Prishtinë/Priština Regional Forensic Unit indicated a number of issues that reinforce the perceptions of crime investigators. It was stated that Public Prosecutors were often late in attending crime scenes, that it was difficult to contact Prosecutors during the night, and that the PPO would often refuse to accept physical evidence with a crime report. The latter issue, combined with frequent delays in instructions from the PPO regarding finalized cases, resulted in KP evidence rooms being overloaded with stored materials.

Table 1.10d – Basic organisational appraisal – Forensics Dir. (Crime)				
Indicator	Performance		Target	Comment
Staffing structure, role definition and training	Satisfactory		Satisfactory	Properly structured with trained staff
Ethnic/gender mix	Good		Satisfactory	20.6% female and 11.5% non-majority
Facilities & equipment	Satisfactory		Satisfactory	KP is in the process of improving facilities and equipment across the organization.
Law/PPM/SOPs			Satisfactory	
Managing abstractions	Satisfactory		Satisfactory	More monitoring required
Managing compliance	Good		Satisfactory	
Managing performance/work quality	Good		Satisfactory	
Planning activities	Good		Satisfactory	

Use of intelligence/statistics	N/A		Satisfactory	Crime pattern analysis could be used to determine the appropriate distribution of staff across the regions.
Capacity and willingness to proactively detect crime	N/A		Satisfactory	
Relations with the PPO	Satisfactory		Good	A number of issues suggest a need for improvement

The **Trafficking in Human Beings Section** (THBS) falls under the command of the Directorate of Organised Crime and represents an important specialist function. It consists of a central office in KP MHQ and regional units that fall under the control of the respective Regional Commander.

Table 1.10e – Basic organisational appraisal – Trafficking Humans (Crime)

Indicator	Performance		Target	Comment
Staffing structure, role definition and training	Good		Satisfactory	Good structure and all staff are properly trained and aware of their role. Plans to centralize the regional units.
Ethnic/gender mix	Poor		Satisfactory	20.6% female; one ethnic non-majority
Facilities & equipment	Satisfactory		Satisfactory	Need for covert surveillance equipment to facilitate proactive work
Law/PPM/SOPs			Satisfactory	
Managing abstractions	Good		Satisfactory	
Managing compliance	Good		Satisfactory	
Managing performance/work quality	Good		Satisfactory	An effective regime for checking paperwork
Planning activities	Satisfactory		Satisfactory	Good capacity for short-term planning, but a need to develop medium- and long-term planning capability.
Use of intelligence/statistics	Poor		Satisfactory	No use of intelligence led policing. Insufficient use of crime pattern analysis.
Capacity and willingness to proactively detect crime	Satisfactory		Satisfactory	Growing propensity to proactively target criminal groups
Relations with the PPO	Satisfactory		Good	In most regions the relationship was found to be good; however, in Prishtinë/Priština a number of problems were encountered.

There are 6 female officers (20.6%) and only one ethnic non-majority (Bosniac) officer. There is a plan to centralize the control of the regional units, thereby facilitating a more consistent and uniform strategy toward people trafficking across Kosovo. KP Commanders pointed to the difficulty in operating north of the Ibar River and the deleterious impact on an effective strategy to combat trafficking in northern Kosovo.

As in other specialist crime investigation areas, THBS managers demonstrate a weak or non-existent use of intelligence-led policing and no structured use of crime pattern analysis. This is, in part, due to the absence of a universal system throughout the KP – if no intelligence is being gathered at ground level, it is impossible for THBS to act on it. At the same time, EULEX monitors observed a welcome desire and growing capacity in THBS to become more proactive in its operations. There is a recognition that human trafficking cannot be effectively tackled by simply waiting for incidents to occur before dealing with the trafficked victims and local offenders. More proactive operations are underway and EULEX staff will monitor their effectiveness, as well as provide mentoring and advice to KP investigators.

In regard to the working relationship between THBS staff and PPO staff, EULEX monitors revealed a mixed picture. Whilst in many regions the KP staff indicated a good working relationship, those in Prishtinë/Priština pointed to problems that echoed the comments of other crime investigators in the capital. The problems cited by THBS included *inter alia*: Public Prosecutors were often late in attending crime scenes, that it was difficult to contact Prosecutors during the night, that the PPO would often refuse to accept physical evidence with a crime report, and that there were frequent delays in instructions from the PPO regarding finalized cases. The perception among KP investigators is that there is not enough PPO staff to meet the work demand and this results in inordinate delays and poor performance.

EULEX monitors found that in most respects the **Regional Crime Squads** are well-structured, highly trained groups operating with facilities and equipment that are of a good standard. Although the RCS has a commendable level of female officers (14.6%), the ethnic non-majority representation is poor in many areas. The regional units have a considerable workload and, in the absence of a KP scheme to pay officers for overtime, a considerable amount of compensatory time off builds up over the course of a year. This creates a significant challenge for managers in their task of managing abstractions.

Table 1.10f – Basic organisational appraisal – Regional Crime Squad (Crime)

Indicator	Performance	Target	Comment
Staffing structure, role definition and training	Good	Satisfactory	Well-structured and highly trained groups
Ethnic/gender mix	Poor	Satisfactory	Very poor in many areas, according to the DCA report
Facilities & equipment	Good	Satisfactory	
Law/PPM/SOPs		Satisfactory	
Managing abstractions	Satisfactory	Satisfactory	In the absence of a budget for overtime, officers accumulate compensatory time off.

Managing compliance	Good		Satisfactory	
Managing performance/work quality	Good		Satisfactory	All reports are quality checked at three levels, prior to being forwarded to the PPO.
Planning activities	Good		Satisfactory	
Use of intelligence/statistics	Satisfactory		Satisfactory	A project that is still under development
Relations with the PPO	Poor		Good	A number of substantial problems need to be resolved

In terms of planning short-term and medium-term activities and the use of intelligence to guide proactive operations, the EULEX judged the performance of RCS managers as 'good'. Likewise, the RCS managers displayed a good level of supervision to ensure compliance with the law and KP procedures. EULEX monitors found a good system of quality assurance in the preparation of crime reports. Performance in terms of the use of crime pattern analysis was judged as satisfactory, given the limited tools available.

TACKLING PATROL EFFECTIVELY AND ENSURING PUBLIC ORDER

Operational patrol functions

The overwhelming majority of KP staff are uniformed officers who deal with routine patrol work and are deployed within the KP Operations Pillar. Predictably, the regional level appraisal reveals a mixed picture of the sustainability of KP operational patrol work. Across the regions EULEX monitors noted that the regime for providing routine servicing and repair of vehicles, computers and other equipment is poor and results in insufficient basic equipment to support routine policing operations and tasks.

Table 2.1 – Basic organisational appraisal – Station Level (Operations)

Indicator	Performance		Target	Comment
Staffing structure, role definition and training	Good		Satisfactory	
Ethnic/gender mix	Poor		Satisfactory	
Facilities & equipment	Poor		Satisfactory	Some station facilities are inadequate. The number of vehicles unavailable and awaiting repair is high in some areas.
Law/PPM/SOPs	Satisfactory		Satisfactory	There is a need to clarify the wording of the PPM in regard to paid sick leave.

Managing abstractions		Poor		Satisfactory	
Managing compliance		Poor		Satisfactory	
Managing performance/work quality		Poor		Satisfactory	
Planning activities		Poor		Satisfactory	
Use of intelligence/statistics				Satisfactory	

In terms of both resources and volume of work demand, the **Station Level** of the KP Operations Pillar is perhaps the most important part of the organisation. The EULEX appraisal revealed a number of issues of concern, particularly in regard to first line supervision and management. Whilst the following comments are generalisations drawn from data from over 30 police stations, the noted pockets of good practice among patrol supervisors is outweighed by considerable patterns of weakness. There is an absence of planning patrol activities in response to prioritised policing problems. In general terms EULEX monitors found that patrol officers tend to be left to their own discretion in deciding how to use patrol time, with little or no direction from supervisors. Much of the patrol work is shaped by responses to actual incidents or targeting road traffic offences, according to the individual officer’s discretion. Indeed, individual discretion was also found to shape the policy behind road traffic law enforcement. It was found that many patrol officers imposed their own policy – based on perceptions of the relative wealth of motorists – to guide the imposition of penalty tickets.

The management of abstractions, particularly sickness, was found to be poor in some areas. Procedures in relation to absence through illness were not followed; abstraction statistics were found to be missing or unavailable; and there appeared to be inadequate accountability and control on the part of the relevant KP managers. EULEX monitors observed that the wording of the KP PPM in regard to the paid sick leave entitlement requires clarification¹⁶.

Although some station facilities are of a satisfactory or better standard, others are wholly inadequate in a number of respects. It is clear that the KP is in an ongoing process of refurbishing existing stations and building new stations. In some areas EULEX found that, in some stations, a large number of KP vehicles were unavailable for use over a period of months, as a result of the inadequate performance of the vehicle maintenance system.

EULEX PSD firmly recommends that the task of improving first line supervision is made a top priority task by senior KP commanders over the next three years. EULEX will seek to assist in this work and suggests that other donor partners are sought to assist in developing a KP-specific patrol management system, as well as associated training for Sergeants, Lieutenants and station-level command staff. The overall aim should be to greatly increase discipline among patrol officers, improve 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. Much greater use of foot patrols should also be encouraged.

^{16.} The PPM states that a KP officer is entitled to a maximum of 15 days paid sick leave in any calendar year and EULEX monitors have identified a perception among some officers that the clause creates an entitlement or right that must be used

EULEX RECOMMENDATION – PSD/14/2009

Target: KP, Senior Operations' Pillar Commanders

To mentor and advise first line supervisors in a range of basic patrol management skills and competencies. These should include the conduct of briefings for patrol officers; use of statistical data and intelligence in defining patrol objectives; local community consultation and setting patrol targets; active monitoring of patrol officers; evaluating success and failure in patrol strategies; preparing reports on patrol performance; motivating and disciplining patrol officers.

EULEX recommends that the KP adopts a more structured and rational approach to policing patrol. As required by the law¹⁷, senior managers (at Regional and Station levels) should formulate key goals and priorities for police patrols, based on active consultation with community representatives. These goals should shape the decisions of first line supervisors on a daily basis and guide their instructions to ordinary patrol officers, ROSU, Traffic Units and Community Policing Teams. In short, a structured approach to tackling patrol effectively should involve converting local community concerns into a list of (written) policing priorities, communicating these to supervisors and ensuring that they translate them into policing action. The strategy should aspire to European best practice and the results should be fully evaluated.

EULEX RECOMMENDATION – PSD/15/2009

Target: KP, Senior Operations' Pillar Commanders

To mentor and advise the relevant senior KP staff (Regional Commanders and Station Commanders) in the design, implementation and evaluation of an effective patrol plan for a period of 12 months. Each Station Commander should develop a list of goals to guide the effective use of uniform patrols, based on the concerns of local community representatives. Each Regional Commander should develop a list of goals to guide the effective use of Traffic Units, ROSU officers and Community Policing Teams, consistent with the concerns of local community representatives.

EULEX monitors also noted the absence of data about incidents that require the presence of KP patrol officers. Although many such incidents would not necessarily amount to a recorded crime they form the bulk of the work demand for patrol officers. A system of categorising and recording crime and non-crime incidents would provide KP commanders with a wealth of useful information about how patrol officers use their time, the patterns of policing activity and community expectations, and a solid basis for planning the deployment of KP resources to better effect.

EULEX RECOMMENDATION – PSD/16/2009

Target: KP, Senior Operations' Pillar Commanders

To mentor and advise the relevant senior KP staff regarding the development of a system of categorizing and recording all incidents that require the attendance of patrol officers, and demonstrating how such data can be used to plan resources and evaluate performance. If appropriate, a donor should be located in order provide suitable software and human capacity building in support of a new system of recording and collating incident data.

17. Articles 7, Kosovo Law on Police, 2008, (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

Operational Support Functions

The Department of Specialized Units provides a range of central support functions. These include the K9 ('dog handler' section), Special Intervention Unit (SIU), Improvised Explosive Ordinance Defence Unit (I/EOD), the Close Protection Unit (CPU) and the 'Directorate for Security and Protection Division'. The Department has 679 staff (22 civil servants; 410 security officers; 247 police officers) under the command of KP Colonel. Thus KP officers represent only 36.3% of the Department. There are 32 female officers (12.9%) in the Department.

Table 2.2a – Basic organisational appraisal – Specialised Units Dept. (Operations)

Indicator	Performance		Target	Comment
Staffing structure, role definition and training	Good		Satisfactory	
Ethnic/gender mix	Poor		Satisfactory	No ethnic non-majority officers
Facilities & equipment	Good		Satisfactory	
Law/PPM/SOPs	Good		Satisfactory	
Managing abstractions	Satisfactory		Satisfactory	
Managing compliance	Good		Satisfactory	
Managing performance/work quality	Satisfactory		Satisfactory	
Planning activities	Good		Satisfactory	Purely reactive function. However, the short-term planning was found to be of a good standard.
Use of intelligence/statistics	Satisfactory		Satisfactory	Purely reactive function

Each component of the Specialised Units Department was subject to a basic organisational appraisal by EULEX PSD staff. This appraisal considered KP performance against a number of criteria, designed to gauge the basic sustainability of the organisational unit (subunit). Table 2.2a presents the EULEX findings of the parent Department of the specialised units – in all respects, other than ethnic minority representation, this important management function has been judged to be of a satisfactory or better standard.

The **K9 Unit** is a team of 20 KP officers under the supervision and management of one Sergeant. As indicated in Table 2, the initial EULEX appraisal has found that the majority of basic organisational features are in place. There is a need, however, to improve the minority representation and invest in additional or improved equipment. Management issues in regard to K9 will be dealt with under the parent Department of Specialised Units. Given that the basic organisational concerns identified by EULEX relate to the parent Department, the decision to withdraw EULEX MMA staff from the K9 Unit may be considered after the initial period of assessment.

As the name suggests, the **Special Intervention Unit (SIU)**¹⁸, is intended to provide the KP with a tactical and specialist firearm capability, in reaction to operational incidents involving firearms and as part of planned operations. The SIU is a work in progress. Apart from the inadequate female and ethnic non-majority representation in SIU and the inadequate facilities and equipment, the initial EULEX appraisal revealed that it is developing into a sustainable support function. EULEX is closely monitoring a proposal to place the SIU under the direct control of the Director General of the KP and its political implications.

In terms of size, the **Close Protection Unit (CPU)** is the largest of the specialist operational support units, A and provides personal protection for a number of VIPs and other persons indentified as in need of specialist police protection. It is a stable organisational unit with growing experience and expertise.

With 2% non-majority staffing and 3% female staffing, the CPU falls considerably short of the level of ethnic non-majority and female representation required of such a sensitive support function. EULEX monitors graded as 'good' the determination of CPU managers to increase the extent to which the unit reflects Kosovo's society, it is vital that more minority and female officers are invited to apply and a renewed effort is sought within the Operations Pillar.

The Improvised/Explosive Ordinance and Devices Unit (I/EOD) is another project under development, and performs well in all areas except the level of ethnic non-majority and female officers, and the inadequate condition of its facilities and equipment. The need for significant investment in specialist equipment is an area of concern and links to the long-term sustainability of this unit.

Table 2.2b – Basic organisational appraisal – I/EOD (Operations)

Indicator	Performance	Target	Comment
Staffing structure, role definition and training	Good	Satisfactory	Unit is under development
Ethnic/gender mix	Poor	Satisfactory	No ethnic non-majority or female officers
Facilities & equipment	Poor	Satisfactory	Need for improved buildings and large investment in equipment
Law/PPM/SOPs	Satisfactory	Satisfactory	
Managing abstractions	Satisfactory	Satisfactory	High training abstractions due to the specialist functions of Department's staff
Managing compliance	Satisfactory	Satisfactory	
Managing performance/work quality		Satisfactory	
Planning activities	Good	Satisfactory	
Use of intelligence/statistics	Poor	Satisfactory	No statistics available to track performance of SIU and I/EOD.

18. *SIU was formerly known as SIG/FIT – Special Intervention Group/First Intervention Team.*

In terms of management capability, EULEX PSD staff gave a satisfactory or better grading under the key criteria in Table 2.2b. During the reporting period PSD staff found no significant areas that require changes. The only exception is the dearth of ethnic non-majority staff, particularly in the sensitive areas of CPU and SIU. In terms of management capability there is a distinct lack of accountability in terms of statistical evaluation of the performance of the various units. SIU and I/EOD are unable to provide detailed statistical data regarding the number/type of incidents attended.

EULEX RECOMMENDATION – PSD/17/2009

Target: KP, Senior Operations’ Pillar Commanders

To mentor and advise the relevant senior KP staff regarding the development of a system of categorizing and recording all incidents that require the attendance of SIU and I/EOD resources, and demonstrating how such data can be used to plan resources and evaluate performance.

The Planning and Development Directorate (PDD) was appraised by EULEX PSD monitors as both stable and sustainable. The PDD forms part of the Department for Public Order (DPO), and operates in interaction with operational sectors of regional police directorates and police stations and in cooperation with other units and sectors of KP, as well as with security and emergency agencies such as: KSF, EULEX,, KFOR, Emergency Management Department , and other institutions and organisations in Kosovo. PDD has 20% female staff and 10% ethnic non-majority officers.

The Directorate has three component parts: a Planning Unit, a Development Unit and a Permanent Planning Sector. PDD is responsible for planning, organising, functioning, controlling and assessment of operation sector within the police activities for keeping and maintaining the public safety and order. The Development Unit is involved in inspection, control and assessment of commitments, activities, procedures of operation sector, due to the progress of functioning in various operational fields. Another additional task of this sector is meetings with non-police institutions. The Planning Unit is involved in preparation, organization and execution of police operations, particularly concerning major issues at wider level or when there are two or more DPO involved. Finally, the Permanent Planning Sector operates on daily basis as a liaison of the Operation’s Pillar with other organizational units of the KP and other external organizations and agencies, and is planning police escorts for VIP visitors.

Table 2.2c – Basic organisational appraisal – Community Policing (Operations)

Indicator	Performance	Target	Comment
Staffing structure, role definition and training	Good	Satisfactory	
Ethnic/gender mix	Satisfactory	Satisfactory	
Facilities & equipment	Good	Satisfactory	Equipment and office space is good, but the Unit lacks a dedicated vehicle for field visits.
Law/PPM/SOPs	Good	Satisfactory	

Managing abstractions	Satisfactory		Satisfactory	
Managing compliance	Satisfactory		Satisfactory	
Managing performance/work quality			Satisfactory	
Planning activities	Poor		Satisfactory	Much time used in attending meeting. No real proactive planning role for regional CP
Use of intelligence/statistics	Poor		Satisfactory	

The MHQ **Community Policing** Unit is a small office and in terms basic sustainability the Unit has been judged to be satisfactory or better. Planning is a significant area of weakness in the management of the Unit and, as in other MHQ support functions, there is a need for development in this area.

EULEX monitors observed a disconnection between the central CP Unit and CP officers in the regions. The latter report to their line managers within the regions and the Head of the CP Unit (MHQ) has no real authority to influence their choice of strategy or work regime. There is a need to review the terms of reference for the CP Unit MHQ and properly define its relationship to the regional CP teams. There is also a need to explore the link between the KP community policing strategy with the requirement for local community consultation in the law of Kosovo, and its relevance to non-majority community policing issues.

EULEX RECOMMENDATION – PSD/18/2009

Target: KP, Senior Operations’ Pillar Commanders

To mentor and advise the relevant senior KP staff regarding the terms of reference of the Community Policing Units, at MHQ and regional levels. The review should look at the benefits of developing a single community policing strategy, methodology, evaluation and reporting mechanism. It should also explore the need to link the KP community policing strategy with the requirement for local community consultation in the law of Kosovo.

Table 2.2d – Basic organisational appraisal – Traffic Directorate (Operations)

Indicator	Performance		Target	Comment
Staffing structure, role definition and training	Good		Satisfactory	
Ethnic/gender mix	Good		Satisfactory	The Director is an ethnic Serb
Facilities & equipment			Satisfactory	
Law/PPM/SOPs	Satisfactory		Satisfactory	
Managing abstractions	Poor		Satisfactory	
Managing compliance			Satisfactory	
Managing performance/work quality			Satisfactory	

Planning activities	Satisfactory		Satisfactory	
Use of intelligence/statistics	Poor		Satisfactory	

Road traffic policing is organised through Regional Traffic Units, with management authority shared by the **Directorate of Traffic**, KP MHQ, and the Regional Commanders. Each Regional Traffic Unit is under the operational command of its respective Regional Commander, but the management of traffic vehicles, equipment and maintenance is centralised. In addition, the selection, training and appointment of traffic officers and civilian support staff are also centralised. As shown in Table 3.9, the Directorate of Road Traffic has been evaluated as satisfactory or better according to the majority of the basic performance criteria.

As the name suggests, the **Regional Operational Support Units (ROSU)** provide a range of operational support functions and fall under the operational command of the six Regional Commanders of the KP. Most importantly, these highly trained officers have and continue to provide specialist support in the policing of public order incidents in Kosovo. The units have gained much experience in policing violent demonstrations, such as the *Vetëvendosje* demonstration in February 2007. In addition to customised Mercedes vans, ROSU officers are equipped with protective body armour, ballistic vests, riot shields, long batons and gas masks.

The EULEX basic organizational appraisal reveals a mixed picture across the regions. In some critical areas, such as Prishtinë/Priština and Mitrovicë/Mitrovica the ROSU are undergoing some staff restructuring. In some regions the condition of buildings and facilities for ROSU staff is wholly inadequate. In addition, the riot gear varies in type, standard and quality. There are only three (0.8%) female officers in the ROSUs, all at the rank of Sergeant.

Whilst ROSU commanders are judged to be very good in preparing short-term (monthly) activity plans, there is an almost complete absence medium-term (one to two year) and long-term planning. Likewise there is no culture of using statistics or intelligence in planning ROSU activities.

Table 2.2e – Basic organisational appraisal – ROSU (Operations)

Indicator	Performance		Target	Comment
Staffing structure, role definition and training	Poor		Satisfactory	Incomplete structure and certain key staff are missing. Training appears to be appropriate.
Ethnic/gender mix	Poor		Satisfactory	Only 3 female officers.
Facilities & equipment	Poor		Satisfactory	Inadequate buildings and facilities in some regions.
Law/PPM/SOPs	Satisfactory		Satisfactory	Revised SOP under development

Managing abstractions			Satisfactory	
Managing compliance	Satisfactory		Satisfactory	
Managing performance/work quality			Satisfactory	
Planning activities	Poor		Satisfactory	No evidence of medium- to long-term planning.
Use of intelligence/statistics	Poor		Satisfactory	No use of statistics in planning.

At the time of its evaluation, EULEX found that the ROSU Standard Operating Procedure (SOP) was undergoing development and change. A draft SOP was examined and found to be inadequate in a number of respects. It is recommended that EULEX PSD staff fully engage with the relevant KP commanders in the development of a comprehensive SOP that reflects European best practice in terms of crowd control tactics and dealing with large-scale public disorder incidents. There is also a need to organise annual exercises to test KP capability in response to large-scale disorder, including senior commander competencies.

EULEX RECOMMENDATION – PSD/19/2009

Target: KP, Senior Operations’ Pillar Commanders

To mentor and advise the relevant senior KP staff regarding the development of a sufficiently detailed Standard Operating Procedure for the Regional Operational Support Units, in full compliance with European best practice and internally recognized standards. Once the SOP is finalized EULEX staff should monitor its implementation and provide expert advice on the organisation of at least one annual training exercise, designed to fully test KP capability in dealing with widespread public disorder.

PROVIDING SECURE BORDERS

Basic Performance Evaluation

At the time of the EULEX appraisal, KP Border represented 15.2% of the total KP organisation. The main Border Pillar (HQ) represents 6% of the organisation, Border Police East 32% , Border Police West 25% , Border Police North 24.5% and Border Police Airport 12.4% . In many respects KP Border must tackle the very nexus of much of Kosovo’s serious and organized crime. Kosovo’s long and difficult border/boundaries has and continues to offer lucrative opportunities to those engaged in human trafficking, the movement of contraband cigarettes and fuel, the trade in unlawful narcotics, and efforts to evade customs and excise duties. The exact scale of these problems has been largely a matter for conjecture, based on insufficient and inadequate intelligence and limited seizure data. Although the exact extent levels of such criminal activity can only be guessed at present, there is no doubt about the actual and potential threat that they pose for Kosovo’s fledgling government and weak economy.

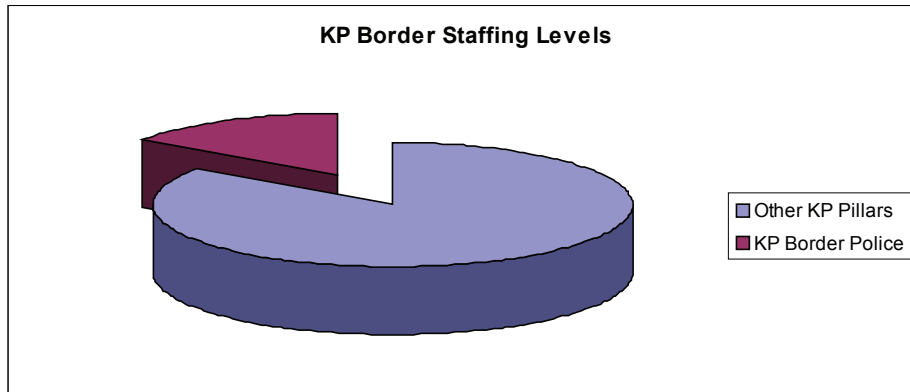


Chart 3.1 – Border Staffing as a Proportion of KP Total Strength

It is vital, therefore, that KP Border makes verifiable progress toward the four aims of IBM: namely, ensuring effective border/boundaries control, detecting and investigating “cross-border crime”, demonstrating inter-agency cooperation in border management, and achieving coordination and coherence at the national and transnational level.

EULEX staff completed an appraisal of the basic organisational performance of **KP Border MHQ** and, as in other KP Pillars, Border policing has encountered a significant problem in maintaining its performance in mirroring the ethnic mix of Kosovo. It is noteworthy that, during the EULEX reporting period (and 12 months prior to EULEX Mission launch) no complaints have been received from female or ethnic non-majority staff regarding their treatment in the workplace.

EULEX staff found a lack of a proactive planning culture among KP Border managers. For example, the Investigations and Intelligence Units could only point to three written operational plans in the 12 month period prior to February 2009: these all related to the execution of court orders to search premises. The planning documents did not follow a uniform pattern and, in certain respects, appeared to be vague and insufficiently detailed. Although EULEX staff observed that KP Border were involved in a large number of operations in the previous 12 months, they could identify little documentary evidence of planning or reporting. There is a need to increase the planning capability of KP Border. The required change strategy must address several issues. Firstly, the use of a single format for operational plans, consistent with European best practice.

EULEX RECOMMENDATION – PSD/20/2009

Target: KP, Senior Border Police Commanders

To mentor and advise the relevant senior KP Border staff regarding the development of a sufficiently detailed Standard Operating Procedure for planning documents and evaluation reports, in accordance with European best practice. Once agreed, EULEX staff will monitor the implementation of the SOP and compliance by Border supervisors and management staff.

Border HQ managers (particularly Investigations and Intelligence) demonstrated a good use of statistics in the evaluation of staff workload and success in investigating and prosecuting border-related crime. The data strongly suggests growing expertise and experience, as well as a move toward proactive policing.

EULEX experts found that **KP Border Regional Headquarters East** is operating with an overall 21% deficit in staffing. Significantly, there are far fewer Sergeants (only 40%) than the required strength. As with KP Border MHQ, RHQ East appears to be well-structured and levels of training in most specialist skills is adequate. This part of the KP Border organisation had had a good level of ethnic non-majority representation, almost 19%. Female representation is currently at 6.8%. In the period of 12 months prior to February 2009 no complaints were recorded of discriminatory behaviour toward female or non-majority officers.

Table 3.1 – Basic organisational appraisal – Regional HQ East (Border)

Indicator	Performance	Target	Comment
Staffing structure, role definition and training	Satisfactory	Satisfactory	There is 21% less staff than the authorized level.
Ethnic/gender mix	Good	Satisfactory	18.4% ethnic non-majority 5.8% female officers.
Facilities & equipment	Satisfactory	Satisfactory	
Law/PPM/SOPs	Good	Satisfactory	
Managing abstractions	Good	Satisfactory	
Managing compliance	Satisfactory	Satisfactory	
Managing performance/work quality	Satisfactory	Satisfactory	
Planning activities	Satisfactory	Satisfactory	Good standard of planning documents. Further work required in improving the effectiveness of planned activities.
Use of intelligence/statistics	Good	Satisfactory	

EULEX staff noted a growing propensity for planning proactive activities among RHQ East staff. During 2008 a total of 48 of 56 planned operational activities were implemented. In a random sample of the planning documents EULEX staff found the average standard to be 'good' and their success in achieving stated objectives was judged as 'satisfactory'.

KP Border staff deployed at the Border/Boundary Crossing Points (BCPs) in the eastern region are, in general terms, well-structured, properly trained and have clearly defined roles and responsibilities. However, it was noted that there are insufficient supervisors at some BCPs and a concomitant inability to ensure compliance with law and procedures. In terms of facilities and equipment, performance varies: however, in certain BCPs the buildings are inadequate, IT/Communications are 'poor' and insufficient vehicles are available due to a wholly inadequate maintenance regime. Of particular concern is the generally poor condition of facilities for interviewing and detaining immigrants.

EULEX RECOMMENDATION – PSD/21/2009

Target: KP, Senior Border Police Commanders

To mentor and advise the relevant senior KP Border staff regarding the development of a medium-term strategy to improve the facilities and equipment available at all BCPs, with particular attention to those facilities made available for interviewing and detaining immigrants. The emphasis should be on assisting the KP officers in their effort to attain compliance with European best practice and internationally recognized standards.

During a survey in April 2009, EULEX monitors noted that the quality of briefing, use of intelligence, quality assurance checks and checks on mobile patrols by supervisors were areas of poor performance. It is recommended that “Recommendation PSD 14/2009” is applied equally to all KP Border operational supervisors and patrol officers. In other words, EULEX monitors should seek to help the relevant KP managers to raise awareness of the importance of structured patrol work, and make all forms of routine patrol more effective in meeting public expectations.

Table 3.2 – Basic organisational appraisal – BCPs & Mobile Teams (MT) - East (Border)

Indicator	Performance	Target	Comment
Staffing structure, role definition and training	Satisfactory	Satisfactory	BCP is well-structured and staff are properly trained and aware of their role. MT: Less than 40% properly trained & less than 20% performing duties as per the SOP.
Ethnic/gender mix	Poor	Satisfactory	
Facilities & equipment	Poor	Satisfactory	MT & some BCPs: Certain buildings, IT/Comms, vehicles and forensic equipment are inadequate. Facilities for dealing with immigrants is generally poor.
Law/PPM/SOPs	Satisfactory	Satisfactory	
Managing abstractions	Satisfactory	Satisfactory	
Managing compliance	Satisfactory	Satisfactory	MT: Insufficient supervisors. Some BCP: insufficient supervisors.
Managing performance/work quality	Good	Satisfactory	
Planning activities	Poor	Satisfactory	MT: No proactive activities
Use of intelligence/statistics	Poor	Satisfactory	

EULEX monitors noted that the system of routine and unannounced inspections by HQ staff was a commendable practice and had a positive effect on improving standards. However, EULEX monitors suggest that this inspection practice could be improved and made more effective if the reports compiled by inspection staff were published and circulated to all the relevant staff, rather than just the most senior KP Border staff.

As indicated in Table 3.3, the KP Border mobile teams (East) have a number of performance weakness areas. These include insufficient supervisors to ensure compliance with law and procedures, insufficient training and inadequate buildings, IT/Communications and forensic equipment. In spite of the lack of supervisors and corresponding lack of proactive planning, the MTs discovered 12 cases of smuggling in the period of 12 months prior to February 2009. In spite of the lack of organisational support (i.e. supervisors, training and equipment) the MTs display real potential and supervision was graded as 'good' where it was present.

EULEX monitors noted an absence of written strategies to inform and direct the proactive aspects of the region. Specifically, there were no strategy documents to deal with illegal migrants. It was also noted that, during the EULEX monitoring period, the regional KP Border staff were not visited by the Head of KP Border or other senior staff in the Border command structure. EULEX monitors noted that such visits can reap a number of benefits. They can have a positive impact on morale; spur greater emphasis on improving performance; and, perhaps most importantly, allow officers on the ground to provide vital information and direct experience data to inform the process of designing and effective Border strategy.

KP Border Regional Headquarters (RHQ) North: The level of cooperation between RHQ North and the Kosovo Serb officers (operating to the north of Mitrovicë/Mitrovica) is described by EULEX monitors as generally poor. Of the total 273 officers operating throughout KP Border (North) 33.6% are ethnic non-majority, including 30% ethnic Serb officers.

Table 3.3 – Basic organisational appraisal – Regional HQ North (Border)					
Indicator		Performance		Target	Comment
Staffing structure, role definition and training		Satisfactory		Satisfactory	Insufficient intelligence training for Intelligence and Investigation Unit officers.
Ethnic/gender mix		Poor		Satisfactory	
Facilities & equipment		Satisfactory		Satisfactory	
Law/PPM/SOPs		Satisfactory		Satisfactory	
Managing abstractions		Satisfactory		Satisfactory	
Managing compliance		Satisfactory		Satisfactory	
Managing performance/work quality		Satisfactory		Satisfactory	
Planning activities		Satisfactory		Satisfactory	
Use of intelligence/statistics		Poor		Satisfactory	

EULEX staff found that no specific training in the use of intelligence had been received by Intelligence and Investigation Unit officers. RHQ Investigations officers work a two-shift system, covering 06.00 - 20.00 daily, and with the main purpose of being a direct responder to any border/boundary incident. However, Border Intelligence officers only work day shifts. Apart from the daily regional morning briefing by the regional commander there is no specific briefing of these units and the flow of information in an unspecified

personal way rather than a structured and controlled manner. EULEX monitors noted that the purpose of intelligence is not well known even by the intelligence unit, and judged the support given by investigations and intelligence to Border staff to be poor.

In terms of the needs of Integrated Border Management (IBM), much remains to be done in the northern region: border control (checks and surveillance) including risk analysis and crime intelligence was found to be weak, with very little collection and analysis of information.. On the green border/boundary, joint patrols (EULEX, KFOR and BBP) improved the surveillance of the difficult border/boundary terrain. As there is limited communication between the BBP Region North and their counterparts in the Republic of Serbia, there is limited communication regarding the investigation of cross-border crime, or exchange of any information.

Table 3.4 – Basic organisational appraisal – BCPs & Mobile Teams (MT) - North (Border)				
Indicator		Performance	Target	Comment
Staffing structure, role definition and training		Satisfactory	Satisfactory	Majority of staff are trained and familiar with their duties. No specific JD for operational supervisors.
Ethnic/gender mix		Poor	Satisfactory	
Facilities & equipment		Poor	Satisfactory	Need for further capital investment in buildings, communications and IT equipment.
Law/PPM/SOPs		Good	Satisfactory	
Managing abstractions		Satisfactory	Satisfactory	
Managing compliance		Satisfactory	Satisfactory	Insufficient supervisors.
Managing performance/work quality		Satisfactory	Satisfactory	
Planning activities		Satisfactory	Satisfactory	Mixed performance. Some planning is of a good standard but in certain areas there is need for development.
Use of intelligence/statistics		Poor	Satisfactory	

The BCPs in the Northern Region appear to have insufficient supervisors. Interestingly, EULEX monitors found that there is no specific job description for the functions of KP Border Unit Supervisor and Patrol Team Supervisor. Monitors found that the briefing/guidance given by team leaders met level (3), satisfactory. There are briefings at the beginning of each shift conducted by the team leaders where new information is given and the shift work is organized. The level of initiative among KP Border police officers was judged to be low and team leaders do not encourage officers to be more active in border/boundary checks. Any information the Sergeants receive that is relevant to BCP functions is passed to Border officers immediately. Much of the information comes from the Regional HQ (North). Border supervisors do not use any specific source of intelligence.

KP Border Regional Headquarters (RHQ) West performed well in the basic evaluation. Although the ethnic non-majority representation is satisfactory (12.7%), as compared with other KP Border areas, the female representation seems rather low (4.3%) and requires improvement. EULEX monitors studied 66 operational plans relating to the 12 months prior to Mission launch and found that 57 had been implemented. The overall quality of the operational plans was judged to be 'satisfactory'.

EULEX monitors observed that the guidance provided by shift Sergeants was judged to be poor. During a survey in April 2009, EULEX monitors noted that the quality of briefing, use of intelligence, quality assurance checks and checks on mobile patrols by supervisors were areas of poor performance. It is recommended that "Recommendation PSD 14/2009" is applied equally to all KP Border operational supervisors and patrol officers.

Table 3.5 – Basic organisational appraisal – Regional HQ West (Border)

Indicator	Performance		Target	Comment
Staffing structure, role definition and training	Satisfactory		Satisfactory	
Ethnic/gender mix	Satisfactory		Satisfactory	12.7% ethnic non-amjority and 4.3% female.
Facilities & equipment	Satisfactory		Satisfactory	
Law/PPM/SOPs	Satisfactory		Satisfactory	
Managing abstractions	Satisfactory		Satisfactory	Statistics do not seem to be reliable.
Managing compliance	Satisfactory		Satisfactory	
Managing performance/work quality	Poor		Satisfactory	
Planning activities	Satisfactory		Satisfactory	
Use of intelligence/statistics	Poor		Satisfactory	

EULEX monitors in the region were able to make some preliminary assessment in terms of Integrated Border Management progress. The intelligence procedures within the BCP's is, at the present time, such that intelligence information from a KP officers is passed to the Intelligence Unit in the region through the BCP Station Commander. However, the Intelligence Unit hopes that an Investigation Officer will be assigned to each BCP in the future. This decision will be contingent upon the outcome of the new KP Border structure.

Whilst the Investigation Unit does have "cross-border crime" cooperation with the Albanian police concerning all forms of criminal activities, it does not have organized or planned common activities with the Customs Department in Kosovo or other law enforcement authorities. The Intelligence Unit of KP Border Region West has occasionally exchanged information with the Intelligence Unit within the Customs Department.

In terms of securing the green border/boundary, KP Border Region West has a good level of cooperation

with the other KP Pillars, KFOR (MNTF-West and MNTF-South), Albanian Border Police and Customs and, to some degree, with the FYROM Border Police. The cooperation with Kosovo Customs (especially regarding Customs Mobile Units) has begun to develop lately, although it is still limited by the logistical constraints of Kosovo Customs and the focus now being placed on the North Region of Kosovo. There is no cooperation with the relevant Serbian authorities.

EULEX monitors found no written strategy for improving the facilities for dealing with illegal immigrants. Cases of illegal immigration (Illegal Border Crossing) result in an initial report by an officer at the BCP, then a flash report is sent to RHQ and the investigation is dealt with at RHQ level. Illegal immigrants are transported immediately to RHQ in Gjakova/Djakovica and the investigation is conducted at RHQ in Gjakova/Djakovica. Transportation of the illegal migrant is done either by BCP officers or RHQ Investigators. Although there are two holding cells at the BCP Morina, they are not in use and have not been in use for a number of years. The KP BBP management at Main HQ level have banned use of these cells, on the grounds of inadequate security, health and human rights. The strategy to develop and improve these facilities rests with KP Administration.

Inspections of the BCP are done mainly on an irregular basis and mainly outside office hours. Inspections have been made by the Police Directorate at the Ministry of Internal Affairs, KP Main HQ, KP BBP Main HQ, KP BBP Region West Regional Commander/ Deputy Regional Commander/ Chief of Operations) as well as the Station Commanders, Chief of Operations and the Team Leaders inspection of their personnel. The documentation of inspections done by team leaders, Station Commander/ Chief of Operations is comprehensive and written in a standardized questionnaire template which includes recommendations for further action. The documents are stored in the Station Commander's safe. The Team Leaders' Inspection Reports have the Station Commanders as 'end users'. Station Commanders Inspection reports are forwarded through the chain of command to RHQ.

Inspection reports from RHQ level are delivered within a couple of days in a written Memo. The Memo is in "free text" and not in a standardized template. The reports are mainly in writing if there is a specific cause for complaint; if there is no specific cause for complaint the normal source of information is a telephone call from RHQ to BCP Station Commander that everything is in order. EULEX monitors noted that the inspection reports that are written on a template are usually comprehensive and well thought through. Reports written in "free hand" are not so comprehensive, but always contain references to failures and recommendations for further action.

EULEX monitors found that the reports from all Inspection Teams from Prishtinë/Priština never find their way back to the relevant BCP. Monitors could find no report at all from these Inspection Teams at the BCP for 2009 or the previous year. It seems that the reports are merely filed at senior command level and rarely channeled back to the actual subjects of the inspection, thereby defeating the objective of staff development and improved performance. EULEX PSD firmly recommends that the inspection system is revised to ensure that reports are fed back to the relevant staff, facilitating improved performance.

There are 129 police staff deployed at **KP Border Airport**, Kosovo's primary gateway to the international routes. EULEX noted that, in terms of structure, training and individual role definition, this area of the organisation performs – in general terms - to a good standard.

EULEX staff noted a need for further information and training in regard to Schengen states and visas. The capability of KP Border Airport managers to plan activities – reactive and proactive – was judged by EULEX monitors to be ‘good’, in terms of design, implementation and effectiveness. Given the importance of the Airport as Kosovo’s primary “window onto the world” it is important that the KP reflects Kosovo’s ethnic and gender mix as perfectly as possible. The level of female officers (9%) should also be improved.

Table 3.6 – Basic organisational appraisal – Airport (Border)

Indicator	Performance	Target	Comment
Staffing structure, role definition and training	Good	Satisfactory	Well-defined structure, with properly trained staff. Some JDs are missing.
Ethnic/gender mix	Poor	Satisfactory	9% female officers, Less than 1% ethnic non-majority.
Facilities & equipment	Satisfactory	Satisfactory	KPIS requires repair and proper maintenance. There is a need for a separate transit area in the airport terminal buildings.
Law/PPM/SOPs	Satisfactory	Satisfactory	
Managing abstractions	Satisfactory	Satisfactory	
Managing compliance	Satisfactory	Satisfactory	Need for further information and training re Schengen states and visas
Managing performance/work quality	Poor	Satisfactory	Insufficient supervisors present
Planning activities	Satisfactory	Satisfactory	Absence of a strategy document to focus KP Border activities at airport
Use of intelligence/statistics	Poor	Satisfactory	Insufficient training and awareness of the importance of intelligence

EULEX staff monitored over 20 separate shifts in the Arrival/Departure Section and found that the supervision operated by the shift team leaders was weak and failed to communicate useful advice or pass useful information to the oncoming shift. It was found that there was no proper handover procedure in operation or passing of information. In the Immigration Unit (Arrivals Terminal), KP officers do not have a team leader on a permanent basis (even if officially the chain of command does exist), and these officers usually follow the Standard Operating Procedures (SOPs) and use their own discretion without any kind of supervisory guidance. EULEX monitors found that the use of intelligence by Sergeants to guide instructions to Airport Border officers was very poor.

Likewise, quality assurance checks by Sergeants (and Lieutenants) of Airport Border security work were found to be very poor. EULEX monitors found little evidence of a planned and systematic process to verify that Border staff were doing their job correctly and effectively. The AVSEC meeting has some influence in quality assurance of certain security matters. The KP, the local KP security and the fire service meet on a monthly basis to discuss airport security issues, including any weaknesses and the scope for improvement. EULEX monitors found that the level of routine checks by Sergeants of the location/work of Airport patrol officers was also very poor. There appears to be no strategy regarding investigation and intelligence mat-

ters and KP staff do not appear to adhere to the terms of current SOPs in regard to these duties. Since April 2008 KP Border staff at the airport have been engaged in operation 'illegal activities', developed and initiated by KP Operations. This plan was approved by the then acting Station Commander and KP Operations Chief. This operation seeks to tackle a range of unlawful activities in the airport facilities, including: theft, illegal trading in tobacco and other goods, providing taxi services without a license, begging and traffic offences. However, apart from this initiative, EULEX monitors found no other evidence of a strategy that specifically relates to the KP Border functions at the airport.

EULEX monitors noted that, during a four-month period of observation, the airport had not been visited by the Head of KP Border Pillar or other senior command staff. However, a number of inspections of KP staff at the airport took place and met with the general approval of EULEX monitors. These included a general inspection conducted by the HQ Police Department, a Border Police Inspection and inspections by the Border Police PIA team leaders. The MHQ inspection results in a report that is delivered to the station commander with recommendations to be implemented to improve the performance. This document was judged to be quite good and provides an assessment of the police action. The Border Police HQ inspections are unannounced and focus on security related issues and border/boundary control. All the findings of these inspections are returned to the Station Commander and were also judged to be of a good quality by EULEX monitors. The Border Police PIA inspections by team leaders are made on a monthly basis and consist of police equipment and uniform inspections. Between the 1st and 5th of each month the team leaders have to make a report of these inspections and an annual assessment of the performance of the police officers in the team leader's team. All the reports concerning the inspections of the team leaders are centralized within the Police Station. The inspection forms and performance evaluation forms were found to provide good and clear information.

Future Development of KP Border

In terms of the EULEX Mission aims of sustainability, accountability and compliance with European best practices, it is appropriate and apposite to evaluate KP Border performance in terms of those principles of Integrated Border Management (IBM), as they apply to the special circumstances of Kosovo. These principles include:

1. Border/Boundary control (checks and surveillance) including risk analysis and crime intelligence;
2. Detecting and investigating "cross-border crime" in cooperation with all the relevant law enforcement authorities;
3. Inter-agency cooperation in border management including border/boundary guards, customs and police, national security and other relevant authorities; and
4. Coordination and coherence at the national and transnational level¹⁹.

Each of these issues must be addressed in turn, highlighting the areas in which future change and development is required.

Much needs to be done in regard to border/boundary control, risk analysis and crime intelligence. As noted in this report, the need for a fully effective **criminal intelligence system** is widely acknowledged as

19. Source: Council of the European Union, Justice and Home Affairs, 2768th Council Meeting, Brussels, 4-5 December 2006, Press Release, 15801/06

a critical priority over the next few years. This need exists throughout the KP. What is required is a change of culture among KP officers, allowing them to adopt an attitude of intelligence gathering as part of their basic duty, regardless of where they work or whether they are 'on' or 'off' duty. KP officers must recognize that intelligence is something they must gather and input into a common system. In addition to this change of culture, the KP must develop a single system of recording, collating, checking and analyzing the intelligence reports that individual officers provide. An organization of 8,000 staff, serving a population of 2.2 million cannot afford to operate more than one intelligence system, and, in any event, a fragmented system will tend to defeat the overall aim of tackling serious and organised crime throughout Kosovo. EULEX monitors recommend that KP Border forms part of a single KP intelligence system, feeding it with data and receiving information from it. It is recognized that KP Border has the potential to become a very important component in a single intelligence system: data regarding the movement of certain persons and vehicles across Kosovo's borders/boundaries is essential in tackling serious and organised crime.

EULEX RECOMMENDATION – PSD/22/2009

Target: KP, Senior Border Police Commanders

To mentor and advise the relevant senior KP Border staff regarding the role of KP Border in a single KP criminal intelligence system, and the importance of the contribution of key data by KP Border staff to the intelligence pool. Such advice should also address the necessity of quickly developing an intelligence gathering culture throughout KP Border.

Closely related to the need for intelligence-led policing, is the issue of enhanced information flow in KP Border. According to EULEX monitors, communications and the flow of information – both between the various parts of KP Border and between this Pillar and other parts of the KP – remain a fundamental weakness. This weakness is pervasive and has a debilitating effect on KP Border operations and its efficacy in achieving its objectives. The problem exists at several levels. Firstly and perhaps most visibly, the communications infrastructure is incomplete or (in certain places) non-existent and inadequate. The PISCES system remains partial and incomplete; there is no universal VHF radio cover; and many BCPs lack hard wire telephone connectivity. Secondly, supervisors appear to lack training in the skills and knowledge required to gather statistical and intelligence data, and provide useful briefings for the officers in their command. Thirdly, KP Border – as with other parts of the KP organization – lacks an intelligence gathering and disseminating culture. There is a limited appreciation of the utility of even basic forms of intelligence information and its relationship to proactive policing. Finally, the KP lacks the means whereby information about the rapidly changing world of forged documents, contraband, drugs and human trafficking can be transferred quickly to where it is required. There is no system of ongoing training or briefing to allow such information to be quickly and accurately disseminate new information and skills.

EULEX RECOMMENDATION – PSD/23/2009

Target: KP, Senior Border Commanders

Overall objective: To mentor and advise the relevant senior KP Border staff regarding the design and implementation of a strategy to improve communications and information flow throughout the Pillar. This should address several aspects of the problem. In cooperation with donor agencies, it should seek to improve communications' infrastructure; ongoing training in forged documents, intelligence gathering and analysis, contraband, drugs and related matters; and briefing skills for supervisors..

As per the current 'National Strategy', KFOR continues still to be responsible for the **green** borders/boundaries and Kosovo Customs has legal authority for exercising customs border control along the green borders/boundaries. KFOR routinely reports violations to the competent border/boundary authorities: i.e. Kosovo Police and Kosovo Customs. The plan is to gradually hand over green border/boundary surveillance responsibilities to Kosovo Police. The Ministry of Internal Affairs, in cooperation with KFOR, will create joint working groups in order to develop a detailed handover plan, including the definition of the following points:

- Joint patrols with KFOR, Kosovo Police and Kosovo Customs at the border/boundary line area, prior to handing over and receiving responsibilities.
- Handover (transition) of the responsibilities for enabling control, coordination and joint surveillance of the green border/boundary line.

In cooperation with the Ministry, KFOR and senior KP commanders, EULEX monitors will assist in the process of transfer of responsibility for 'green border' control to KP Border staff. Specific expert advice on EU compliance and best practice will be offered to Ministry staff and KP officers in order to facilitate the ongoing process of transfer.

EULEX monitors noted that KP Border had insufficient access to trained police dogs and the canine unit. Properly trained dogs can greatly enhance the KP Border ability to detect concealed drugs, unlawful currency shipments, contraband and trafficked human beings. As part of its restructuring programme, the KP is urged to consider a significant increase in the specialist canine resources available to KP Border.

As part of its move toward full IBM, the KP must evolve a sophisticated and effective illegal migrant strategy, based upon and fully implementing the new laws on immigrants. EULEX experts have observed a number of structural, legal and procedural deficiencies in terms of migration control, including: the lack of a functioning Visa regime; carefully defined responsibilities for Foreigners and Migration Directorate and Department of the Border, Asylum and Migration; the lack of holding detention centres for foreign migrants; insufficient laws that regulate entry, stay and exit procedures for foreigners migrants; and the claim that KP Border lacks sufficient staff that are properly trained. A strategy should address all aspects of this critical issue in border/boundary control, including: upgraded SOPs, improved detention areas, training needs of KP Border staff, specialist equipment and vehicles. EULEX monitors will seek to assist KP Border in these areas for development.

EULEX RECOMMENDATION – PSD/24/2009

Target: KP, Senior Border Police Commanders

To mentor and advise the relevant senior KP Border staff regarding the design and implementation of an illegal migrant strategy, that is based upon and fully implements the laws on illegal immigrants.

The second principle, that of detecting and investigating "cross-border crime" in cooperation with all the relevant law enforcement authorities, raises the issues of relations with the PPO and the need to rationalize

the deployment of KP investigation specialists.

EULEX staff reported a dire lack of feedback from the **Public Prosecutors' Office** (PPO) regarding cases initiated by KP Border, particularly the Investigations and Intelligence Units. The latter, in the absence of information from the PPO, would often have to look to media reports for information about the result of cases that they had initiated. EULEX noted a negative impact upon perceptions of the PPO among Border staff and a harmful effect on the morale and motivation of Border investigators. These observations tend to confirm those made by EULEX Crime Sector monitors and reinforce the need for structural changes in the relationship between the KP and the PPO. Such changes must be driven by a sincere desire to create a vision of a single Criminal Justice System, supported by a number of actors of equal importance and properly informed by a common information system (see Recommendation PSD5/2009).

In terms of the general strategy that drives the KP response to serious and organized crime, EULEX has observed a need to move away from a purely 'reactive' response to crimes that are discovered or reported, and toward a more 'proactive' approach. The latter requires the presence of an effective intelligence system, creating a potential for 'intelligence-led' policing. As observed earlier, such a system must be common to all parts of the KP organization: there cannot be separate intelligence systems for KP Border and KP Crime, etc. An effective approach to 'cross-border' crime also requires a rational and efficient use of the finite human and other resources available to the KP. The current re-structuring programme for the KP organization should be acutely aware of the need to maximize the use of limited resources and guard against unnecessary overlapping and duplication of effort. There should be no areas in which different parts of the organisation find themselves 'in competition' with each other.

EULEX RECOMMENDATION – PSD/25/2009

Target: KP, Senior Commanders in Crime and Border Pillars

To mentor and advise the relevant senior KP staff regarding the rationalization of the KP structure, to avoid unnecessary duplication of effort and overlapping. This issue is particularly relevant to tackling 'cross-border crime' (part of IBM development), and the use of investigators in the KP Crime and KP Border pillars.

As a further step in the development of IBM, the KP should work with KP Customs, the PPO and EULEX to generate a cross-border crime strategy. Such a strategy ought to establish certain key objectives over the next three years, based on the best available intelligence and statistical data on cross-border crime trends in Kosovo and the western Balkans. Moreover, the strategy should maximize the use of resources across the agencies, and eliminate unnecessary duplication of effort, overlapping and unhelpful competition. As with the criminal justice system as a whole, cross-border crime can only be tackled by close cooperation, team work and shared strategy.

EULEX RECOMMENDATION – PSD/26/2009

Target: KP, Senior KP Commanders, Public Prosecutors' Office and Customs Service Managers

To mentor and advise the relevant senior KP staff regarding the development of a joint cross-border crime strategy, with the Kosovo Customs Service, and Public Prosecutors' Office. Such a strategy should to establish key objectives over the next three years, maximize the use of resources across the agencies, and eliminate unnecessary duplication of effort, overlapping and unhelpful competition.

As a final note, EULEX monitors recommend that the Head of KP Border and other senior staff make more frequent visits to their operational staff, throughout the sector. Such practice reaps a number of benefits that, although not readily quantifiable, add to the effort to improve staff morale, raise standards, and increase effectiveness in achieving KP Border aims and objectives. Senior commanders are able to learn about operational concerns and difficulties, hear the views of operational officers, and communicate the concerns of senior commanders to their staff.

RECRUITING, PROMOTING AND RETAINING THE BEST PEOPLE

KP Staffing and Structure

The Kosovo Police (known as the Kosovo Police Service before 2009) was founded in 1999 and was jointly assisted in its development by the United Nations Mission in Kosovo (UNMIK) and the Organisation for Security and Cooperation in Europe (OSCE). For much of its formative period the policies, procedures and legislation of the KP were largely shaped by UNMIK. Whilst final transition of authority for policies in respect of staff recruitment and development were transferred incrementally after 2006, the current principles that underlie the number of staff, organisational structure, rank structure, recruitment and promotion systems were set in place by UNMIK.

In terms of its overall size, the KP represents one of the leanest police organizations in the western Balkans and Europe as a whole. As it entered 2009 the KP had a total of 7076 police officers to provide policing services for an estimated population of 2.2 million. As indicated in Table 4.1 this represents 321 officers for every 100,000 persons in the population, placing it firmly at the lower end of the regional police/population scale, behind Croatia (449) and FYROM (488). Within the sample group of EU member states the KP falls roughly in the middle ground, behind Austria (320), Germany (304), Ireland (301), England and Wales (265), and Netherlands (215).

As a useful measure of potential workload, the total number of recorded crimes can provide a comparative indicator of the policing burden placed on police organisations. Table 4.1 indicates in the final column the average number of crimes per officer (per annum) in each police organization. The relative burden on the KP is significant. At an average of 9.2 crimes per officer, the KP has much more to deal with than FYROM (2.2 crimes per officer) and Croatia (4). Moreover the KP has more crime per officer than 4 of the 11 EU states in the sample group. As discussed under Section “Tackling crime effectively”, the high proportion of crime per officer is perhaps influenced more by the relatively high volume than the apparently low number of officers per 100,000 population. It is clear, however, that, within the context of the western Balkans, the KP – the youngest police organisation in the region – is faced with considerable challenges and requires yet more efficiency and effectiveness in dealing with law and order than some of its neighbours.

Table 4.1a – Number of Police – International Comparison²⁰

Country	Total Police Officers	Population	Total Recorded Crimes per Officer	Number of Crimes per 100,000 Population
Austria	26 623	8.3	320	22
Belgium	38 963	10.6	367	25
France	241 998	64.4	375	15
Germany	250 284	82.2	304	25
Greece	48 521	11.1	437	9
Ireland	12 954	4.3	301	7
Italy	324 339	59.6	544	8
Netherlands	35 324	16.4	215	34
Portugal	48 082	10.5	457	8
Slovenia	7 857	2	392	11
(UK) England & Wales	141 381	53.3	265	38
EU Sample Average			361	18
Croatia	19 790	4.4	449	4
FYR Macedonia	9 776	2	488	2.2
Kosovo	7076	2.2	321	9.2

The staffing total of 7076 refers to the total number of regular police officers employed by the Kosovo Police in January 2009, excluding civil servants and KP Security Officers.

Exact figures for the population of Kosovo are not available and 2.2 million is the best estimate provided by international agencies.

The estimated 9.2 crimes per KP officer is based on the total recorded crimes for Kosovo in 2008, namely 65,238 (provided by the KP Crime Pillar).

Source: 'Confront' television debate, broadcast on Koha Television (KTV) on Friday 30th January 2009.

As shown in Table 4.1b the KP organization reached a peak in staffing numbers in 2006, with a combined total of 8368 employees. This figure included 7187 police officers and 1181 civilian support staff. Although KP police officer recruitment has slowed since 2007, the overall number of police officers has remained stable. The combined total of regular police (i.e. not including KP Security Officers) and civilian support staff, has seen a 1.9% reduction since 2006. Although the police union had reported that large numbers of officers had left in recent years as a result of the low level of remuneration²¹, the figures do not seem to support this claim. Police staffing has fallen by just 1.5% and there have been significant increases in the number of officers in the important first line supervisory ranks of Sergeant and Lieutenant (5.2% and 12% respectively).

20. Source of data for EU states, Croatia and FYR Macedonia: Tavares, C. & Thomas, G., (2008), *Statistics in Focus: Crime and Criminal Justice*, EUROSTAT. Retrieved January 29, 2009 from: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-08-019/EN/KS-SF-08-019-EN.PDF

21 Source: 'Confront' television debate, broadcast on Koha Television (KTV) on Friday 30th January 2009.

Whilst EULEX staff report that remuneration is a cause of concern among KP officers, it cannot be viewed as a major threat to the sustainability of the KP organization in the current economic climate of Kosovo. Secure employment – whether in the public or private sector – remains insufficient for Kosovo’s expanding workforce, and police officers have limited options for alternative employment if they feel unsatisfied with conditions in the police service. Areas of particular concern to EULEX are those other factors that influence individual and group motivation within all police organizations: equality of opportunity in promotions and selection for specialist roles and the quality of supervision and leadership. Although officers may feel that they should earn more money as a just reward for their work, they will acknowledge that decisions about remuneration rates ultimately lie beyond the organisation. Whereas decisions about the promotion system and the quality of police leaders are issues that lie within the control of the organisation and its leaders.

Table 4.1c provides a brief analysis of the overall ethnicity of the KP organization, comparing the status in 2006 and that in 2009. As with the overall numbers of officers in the organization (see Table 4.2 above), there has been little change in the ethnic diversity of the KP over the last three years.

Table 4.1b - Kosovo Police Ranks and Staffing Levels – 2006 and 2009 Compared				
October 2006		January 2009		Difference
Rank	Number	Rank	Number	
General Lieutenant Colonel	1	General Lieutenant Colonel	1	None
Major General	4	Major General	4	None
Colonel	16	Colonel	16	None
Lieutenant Colonel	28	Lieutenant Colonel	25	- 3
Major	33	Major	31	- 2
Captain	93	Captain	88	- 5
Lieutenant	263	Lieutenant	299	+ 36 (12%)
Sergeant	790	Sergeant	834	+ 44 (5.2%)
Patrol Officer	5959	Patrol Officer	5778	- 181 (3%)
Total Police	7187	Total Police	7076	- 111 (1.5%)
Civilian Support Staff	1181	Civilian Staff	1131	- 50 (4.2%)
Total Staff	8368	Total Staff	8207	- 161 (1.9%)

The KP appears – in terms of its overall numbers – to reflect or mirror the ethnic mix of the society it serves. Although the number of Albanian officers has increased slightly the change represents less than 1% of the overall number. Perhaps of greater concern has been the reduction in the number of Kosovo Serb officers. Whilst the change represents less than 1% of the overall number, the loss of 39 officers is a significant drop in their original number (5.3%).

Table 4.1c – Ethnic Composition of the Kosovo Police (2006 and 2009 compared)

Ethnicity	Number of officers in each ethnic group		Ethnic group as % of total officers	
	2006	2009	2006	2009
Albanian	6031	5987	83.9	84.6
Ashkaelia	21	20	0.29	0.28
Bosniac	228	210	3.1	2.97
Cerkezi	5	5	0.07	0.07
Croat	3	3	0.04	0.04
Egyptian	6	7	0.08	0.10
Goran	38	37	0.53	0.52
FYROM	1	1	0.01	0.01
Montenegrin	2	0	0.03	0.00
Roma	23	20	0.32	0.28
Serbian	740	701	10.3	9.91
Turkish	86	85	1.2	1.2
Other	1	0	0.01	0.00
Total	7185		7076	

Table 4.1d – Ethnicity of KP Officers by Rank

Ethnicity	Ranks								
	General Lieutenant Colonel	Major General	Colonel	Lieutenant Colonel	Major	Captain	Lieutenant	Sergeant	Patrol Officer
Albanian	1	4	14	21	27	78	276	701	4868
Ashkaelia	-	-	-	-	-	-	-	3	17
Bosniac	-	-	1	3	1	1	4	41	159
Cerkezi	-	-	-	-	-	-	-	-	-
Croat	-	-	-	-	-	-	-	2	1

Egyptian	-	-	-	-	-	-	-	3	4
Goran	-	-	-	-	-	-	2	6	29
FYROM	-	-	-	-	-	-	-	-	-
Montenegrin	-	-	-	-	-	-	-	-	-
Roma	-	-	-	-	-	-	2	1	17
Serbian	-	-	2	1	3	9	13	65	608
Turkish	-	-	-	-	-	1	2	13	69
Non-majority %	0	0	17.6	16%	12.9%	12.3%	7.6%	16%	15.7%
	Supervisory and Management 13.5%								

According to one source the approximate ethnic composition of Kosovo is 87% ethnic Albanian, 9% ethnic Serb and 4% other ethnic groups²². Ideally, therefore, the ethnic mix of the KP should mirror this picture, both in overall numbers and at each level of the organisation. As shown in Table 4.1c the ethnic Albanian representation in 2009 is 84.6%, slightly less than the estimated proportion of Albanians in the population; the ethnic Serb representation in the KP is 9.9%, slightly more than the estimated proportion of the population; and the other ethnic groups make up 5.5% of the KP, slightly above the proportion in the population. As indicated in Table 4.1d the effort to reflect the ethnic mix of Kosovo across the rank structure of the KP also appears to be reasonably successful. Ethnic Serbs and other minority ethnic groups are represented by 13.5% of the supervisory and management ranks (i.e. above the rank of patrol officer), just over the proportion of non-majority communities in Kosovo.

Although the most senior ranks (General Lieutenant Colonel and Major General) are occupied by five ethnic Albanian officers, ethnic non-majority representation in the middle ranks is more than proportionate. Minority representation is 17.6% at the rank of Colonel, 16% at the rank of Lieutenant Colonel, 12.9% at the rank of Major, and 12.3% at the rank of Captain. With the exception of the rank of Lieutenant, the first three ranks also achieve more than proportionate representation. This level of minority representation has set the KP apart as an exemplary police organization, in the context of the western Balkans and Europe as a whole. EULEX commends the KP for its achievement in mirroring the society it serves and encourages the organization to maintain its high standard.

In terms of mirroring the gender mix of Kosovo society the KP, like many other police organizations, falls far short of a perfect level of representation of females. That said, the KP has continued to maintain a level of female representation far higher than other police organizations in the western Balkans and Europe as a whole over the last three years. In February 2009 females made up 13.3% of the KP, compared with 13.6% in 2006. As indicated in Table 4.5 the majority of the 945 female officers are at the rank of patrol officer (87.4%) and they represent just 9.1% of the total supervisory and management ranks of the organisation.

22. *Living Standard Measurement Survey (2000), Statistical Office of Kosovo.*

Table 4.1e – Gender of KP Officers by Rank

Gender	Ranks								
	General Lieutenant Colonel	Major General	Colonel	Lieutenant Colonel	Major	Captain	Lieutenant	Sergeant	Patrol Officer
Male	1	3	15	23	27	83	272	758	4952
% Male	100%	75%	88.2%	92%	87%	93.2%	90.6%	90.7%	85.7%
Female	-	1	2	2	4	6	27	77	826
% Female	-	25%	11.7%	8%	12.9%	6.7%	9%	9.2%	14.2%
Total	1	4	17	25	31	89	299	835	5778
Egyptian	-	-	-	-	-	-	-	3	4
Goran	-	-	-	-	-	-	2	6	29
Females in Supervisory and Management Ranks 9.1%									

Female officers are present in all but the most senior rank and a female officer was appointed Deputy General Director of the Kosovo Police in February 2009. All of this demonstrates that the KP is an organization that provides a good degree of equality of opportunity to women. EULEX commends the KP for its policy of equality of opportunity and encourages it to maintain and develop upon this proud achievement.

In terms of evolving toward European best practice, the system of promotion employed by the KP has some scope for development. It has been observed that the system could be made more objective and transparent. At present, a selection exam is used as a primary filtering system for the first three supervising ranks (Sergeant, Lieutenant, and Captain). This consists of a 150 Multiple Choice Question Exam and refers to knowledge of the Policy & Procedure Manual, Penal Procedure Code and Penal Code and other areas of the law. Examinations are not used in the selection process of middle and senior ranks (i.e. Major, Sub-Colonel, Colonel, General Major, and General Lieutenant Colonel). Interviews are used in the selection process for all ranks: however, the exact modus operandi varies in each rank. Those who seek promotion to the rank of Sergeant are questioned about core skill areas, such as communication, leadership, decision-making, professional knowledge/experience, motivation, and judgement. For those who would be Lieutenants there are questions concerning core skill areas, such as communication, leadership, decision-making, professional knowledge/experience, motivation, and judgement. Also team work, equal opportunities, cultural diversity, community awareness, time management, operation planning, and innovation.

Candidates for the rank of Captain are required to make a formal presentation on an assigned subject and assessed in terms of communication, decision-making, team work, equal opportunities, cultural diversity, community awareness, motivation, time management, operation planning and innovation. Likewise, can-

didates for the rank of Major are required to make a formal presentation on critical incident management and assessed in terms of communication, leadership, decision-making, team work, equal opportunities, cultural diversity, community awareness, motivation, time management, strategic and operational planning and innovation. Candidates for the ranks of Sub-Colonel and Colonel are interviewed by an interview panel and there appears to be no exact format or suggested content.

At the most senior level, candidates for the ranks of General Major and General Lieutenant Colonel are interviewed by the Senior Police Appointments and Discipline Committee (SPADC), a panel of Municipal representatives and Permanent Secretaries²³, regulated under the Police Law of Kosovo. EULEX commends this approach to selecting the most senior commanders. It provides an opportunity for cross-party and ethnic minority community representatives to have an input in the selection of senior commanders.

In addition to the selection filters referred to above, an officer requires an appropriate grading in his or her annual staff appraisal and – by implication – the approval of line managers. Although difficult to fully evaluate, there is a perception among some KP officers that the promotion system could be made more objective and fair. EULEX monitors recommend that senior KP commanders should initiate a programme of review and reform of the promotion system. Such a programme should conduct a survey of KP opinion regarding aspects of the promotion system and perceptions of its objectivity and fairness. It should also look at the integrity of the current exams, assessments and interview panels. Additional or alternative selection methods should be considered and evaluated, and a comprehensive report prepared as the basis for possible reform measures.

EULEX RECOMMENDATION – PSD/27/2009

Target: KP, Senior Personnel and Training Managers

To mentor and advise the relevant senior KP staff regarding the development of a programme of review and reform of the promotion system. The programme should survey KP opinion regarding aspects of the promotion system, perceptions of its objectivity, and the integrity of the current exams, assessments and interview panels. Additional or alternative selection methods should be considered and evaluated, and a comprehensive report prepared as the basis for possible reform measures.

Personnel and Training Pillar

In November 2007 the functions of the Administration Pillar were divided under the Personnel and Training Pillar and the Support Services Pillar. The latter is managed by a civilian employee, whilst Personnel and Training falls under the command of an Assistant Director General. As with the other sectors, these administrative functions are managed and directed from KP Headquarters, Prishtinë/Priština. A range of personnel, administrative and support services are clustered under the two Pillars.

The KP Personnel and Training Pillar has responsibility for ensuring compliance with the law and Policy and Procedure Manual (PPM) in respect of staff selection and development, as well as administering staff abstractions and individual performance appraisals.

23. *Permanent Secretary is the title of the most senior civil servant in a Ministry, according to Kosovo's Civil Service Law.*

Table 4.2a – Basic organisational appraisal – Personnel and Training

Indicator	Performance	Target	Comment
Staffing structure, role definition and training	Good	Satisfactory	Good structure, with defined role and properly trained staff
Ethnic/gender mix	Poor	Satisfactory	Insufficient ethnic minority staff
Facilities & equipment	Satisfactory	Satisfactory	
Law/PPM/SOPs	Satisfactory	Satisfactory	
Managing abstractions	Satisfactory	Satisfactory	
Managing compliance	Very good	Satisfactory	
Managing performance/work quality	Satisfactory	Satisfactory	
Planning activities	Good	Satisfactory	
Use of intelligence/statistics	Satisfactory	Satisfactory	Department produced quarterly and annual activity reports that use statistical data

The Training Department has an authorized strength of 115 staff (Civilians and police officers) and in February 2009 approximately 87.8% of the posts were occupied. EULEX experts judged the current structure to be good, albeit there is a need to select staff to certain functions (Chief of Basic Training, Chief of the Career Development Unit, and Director of Administration and Training Support). The Training Department is divided into three main functional units: the Directorate of Basic Training (64 staff), the Directorate of Specialised Training (19 staff) and the Directorate of Administration and Training Support (15 staff). The bulk of the staff (81%) are located at the *Kosovo Centre for Public Safety Education and Development (KCPSED)*, Vushtrri/Vučitrn, the primary training venue for the KP organization.

The Department is well-structured with a good level of role definition and staff training. EULEX staff judged the planning capability of the Department to be good, as evidenced by the Training Department Annual Plan for 2008. Training courses and materials were found to be focused on the needs of employees and the KP organization, designed with clear learning objectives and delivered by qualified trainers.

EULEX monitors found no evidence of corruption or undue political interference in the activities of the Pillar. Relations with the Ministry of Internal Affairs are generally good. The Department's main point of contact with MoIA is KCPSED, an Executive Agency of the Ministry. EULEX monitors found that staff of the Department and KCPSED met regularly and enjoyed a good level of cooperation.

PROVIDING A SUSTAINABLE ORGANISATION

In November 2007 the functions of the Administration Pillar were divided under the Personnel and Training Pillar and the Support Services Pillar. The latter is managed by a civilian employee, whilst Personnel and Training falls under the command of an Assistant Director General. As with the other sectors, these administrative functions are managed and directed from KP Headquarters, Prishtinë/Priština. A range of personnel, administrative and support services are clustered under the two Pillars.

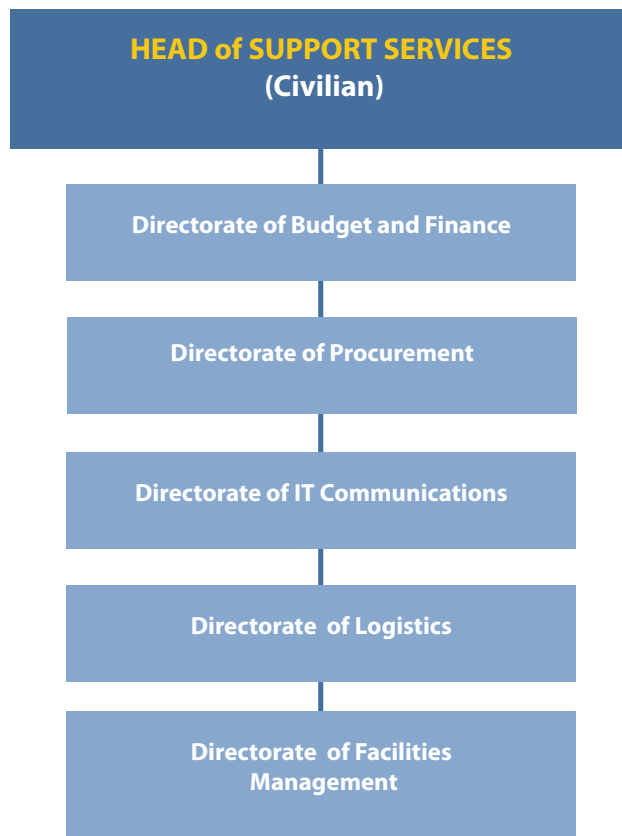


Figure 5.1 – Structure of the new Support Services Pillar

The Department of Support Services is the hub of many technical support functions that are critical to the fundamental sustainability of the KP organization. It includes five Directorates that correspond to core administration functions: budget and finance, procurement, logistics, facilities, and Information Technology (IT) and Communications.

The **Budget and Finance Directorate** has a team of civilian staff qualified and competent to perform their specialist functions. Financial planning is conducted in full compliance of the law (Law on Public Financial Management and Accountability) and directives of the Ministry of Finance and Economy (MFE). EULEX actively monitored the KP 2010 budget planning process.

Table 5.1a – Basic organisational appraisal – Budget & Finance Dir. (Support Services)

Indicator	Performance	Target	Comment
Staffing structure, role definition and training	Good	Satisfactory	Totally civilianized – all staff are qualified and competent
Ethnic/gender mix	Poor	Satisfactory	Insufficient ethnic non-majority staff
Facilities & equipment	Satisfactory	Satisfactory	
Law/PPM/SOPs	Good	Satisfactory	
Managing abstractions	Satisfactory	Satisfactory	
Managing compliance	Poor	Satisfactory	Failure to tackle KP managers who are in breach of financial rules
Managing performance/work quality	Satisfactory	Satisfactory	
Planning activities	Poor	Satisfactory	Need to move to long-term planning, and multi-year projects
Use of intelligence/statistics	N/A	Satisfactory	

Budget and Finance is a centralized department that deals with all transactions at the MHQ Police level, regions and stations. Quarterly budget allocations for each component and expenditures are authorized, certified and approved at the central level. Budget proposals for the coming year are compiled at the central level based on inputs submitted by each component. On occasion the allocations are done based on priorities of managers instead of strategic goals of the organization. EULEX monitors observed situations when a component changed its priorities during the preparation of the budget or even after the approval of the budget. In other cases EULEX monitors noted that components submit a multi-year project for financing from Kosovo Consolidated Budget, then make the commitments of funds but in the following year change it and, in this case, the funds remain unspent and are sent back as surplus to the Kosovo Consolidated Budget. It was also found that the trend of expenditures during the fiscal year resulted in a concentration of expenditures in the last quarter, indicating mismanagement of funds and/or poor planning. EULEX noted the absence of corrective measures taken by the senior KP management against the persons responsible for such mismanagement of funds.

Whilst these cases are in breach with the law and the procedures adopted by Kosovo Government and Assembly, no measures are taken against senior management and as such, there is little indication that the organization can develop and learn from experience, in terms of planning and execution of budget. The effectiveness of this system is poor. EULEX monitors suggest that a number of points of action are required to improve the effectiveness of the budget planning and execution:

- a) Planning should be based on a long term KP strategy;
- b) KP should operate in terms of multi-year projects including an assessment of the recurrent expenditures (maintenance costs) that will occur in each year, instead of yearly projects;

- c) Managers of KP components that fail to utilize their budget according to allocations should be considered for disciplinary action by the PIK;
- d) Records of all budget planning meetings should be retained in order to demonstrate accountability;
- e) Steps towards decentralization of the budget and finance should be considered, as a way of increasing accountability and effectiveness;
- f) Decentralization of the payroll and changes to the unified payments list should be considered.

EULEX RECOMMENDATION – PSD/28/2009

Target: KP, Senior Support Services' Managers

To mentor and advise the relevant senior KP staff regarding a programme designed to improve the administration of budget and finance in the organization. This will include development of a long-term strategy, multi-year projects, a review of the benefits of decentralization and the need for increased training for KP managers who are responsible for budget submissions and expenditures.

Cooperation with the Ministry of Internal Affairs (MoIA) is still in an incipient phase. A budget request was sent for approval to the MoIA for the first time in 2008. There is limited or non-existent interference from the MoIA side, in terms of the types of projects proposed for financing or the level of recurrent expenditures. Nevertheless the Law on Police does not foresee any involvement of the MoIA in the planning of the KP budget. Article 67 .2 of the Law on Police states that "the General Director [of the KP] shall prepare the budget of the police, and shall submit it to the Minister for review and further processing in accordance with the procedures established by law".

EULEX monitors noted some poor MoIA cooperation in the preparation of the Administrative Instructions for the use of the confidential funds for KP. According to the Law on Police, Administrative Instructions governing this fund should be prepared by the MoIA. Consultation with the KP – particularly the Budget and Finance Directorate - is required to ensure that the procedure is consistent with existing procedures and legislation. However, such consultation has not taken place and the process of implementing the Administrative Instruction has been made difficult and there is a need for additional amendments.

The Directorate has produced an "End of Year Financial Report" which EULEX monitors judged to be of a 'satisfactory' standard, especially in terms of the information provided. It describes the percentage of expenditures by economic categories against the quarterly allocations, expenditures for the first quarter of 2008 compared with first quarter 2009, allocations in the first quarter of 2008 compared with the first quarter allocation of 2009. However, there is no reference to the expenditures executed by programmes and no reference to the situation regarding capital investments planned for 2009.

This report reflects once again a poor budget planning within the KP. Although the budget quarterly allocations have been done based on the KP cash flow needs, the utilization percentage by economic categories

ries is very low compared with the allocations (with the exception of wages and salaries utilized at 100%). For example, Goods and Services – 59% of the quarterly allocation; Capital Investments - 8% of the quarterly allocation; Utilities- 73% of the quarterly allocation; and Subsidies - 62% of the quarterly allocation. The total utilization of the Budget is almost 67%, but this indicator is influenced by the 100% utilization of the Wages and Salaries.

The most important economic category, Capital Investments, has the lowest percentage of utilization at just 8% and is a strong indicator that the 2009 planning for the KP capital investments was very poor. This report should be a basis for organizational change in terms of improving KP financial management, but EULEX monitors have noted that this situation has existed since 2007 and no action has been taken to improve it.

EULEX RECOMMENDATION – PSD/29/2009

Target: KP, Senior Support Services' Managers

To mentor and advise the relevant senior KP staff in the conduct of a special investigation into the poor performance of capital investment expenditure. The investigation should seek to identify the key causes of poor performance and bring forward potential remedies. This will form the basis of a programme of reform to greatly improve performance in 2010.

The **Procurement Directorate** is utilizing the Public Procurement Law and the connected administrative instructions only, since there is no internal regulation within KP. This legislation is consistent with the basic EU principles in the field of procurement, but its implementation is – according to EULEX monitors – considerably below EU best practices. For example, there is no internal structure in procurement, and there are no units to deal with certain fields or tenders, only assistants and one lawyer.

According to EULEX monitors, the Directorate needs further development with job descriptions, internal regulation (SOPs), established cells within the directorate, a purchase order/contract and tender database and basic computer training of employees.

The procurement planning process is derived from that of the budget planning, and, according to EULEX monitors, the procurement forecast seems too general and fails to specify the material or service that is to be purchased. This allows the future needs of the KP to be covered without violating the forecast and, as a result, the players in the marketplace are unable to foresee future possibilities.

EULEX monitors noted that the internal consultation within the Directorate is weak, because the senior staff meets once a week to discuss the projects of Support and Services and this is the only official opportunity where they can discuss the issues. For unknown reasons, the Directors/unit leaders are not communicating effectively during the week other than at meetings, but ask advisors to inform others. EULEX monitors found that there are no weekly meetings within the Directorate and, as a result, employees have insufficient knowledge of what is going on in the Directorate and cannot learn from the mistakes of others.

Moreover, there appears to be limited feedback to the requesting units on the tendering results and, therefore, there are frequent complaints from the regions. Capital investments tend to be prioritized by Facilities Management and the Director of Procurement has limited influence, resulting in several months delay last year. EULEX recommends that its monitors should follow up the ongoing tenders and act as quality manager/project manager, together with one appointed KP official, familiar with procurement practice. One of the most important requirements in Public Procurement Law (PPL) is transparency and, according to EULEX monitors, this is not fully achieved by the KP. It is suggested, therefore, that the project manager should act as an information focal point in respect of requesting units as well. This role would include the task of identifying the gaps and causes of delays in the practice/procedures of the Directorate, including planning and implementation of the annual procurement forecast.

EULEX RECOMMENDATION – PSD/30/2009

Target: KP, Senior Support Services' Managers

To mentor and advise the relevant senior KP staff regarding ongoing tenders and act as quality manager/project manager, together with one appointed KP official, familiar with procurement practice. The project manager should act as an information focal point in respect of requesting units, and assist in identifying the gaps and causes of delays in the practice/procedures of the Directorate, including planning and implementation of the annual procurement forecast.

Recent active KP contracts fail to cover all the needs derived from the purchase of certain products, such as maintenance of newly purchased vehicles. There is, according to EULEX monitors a need for life cycle cost calculations to be introduced beside and more professional contract management. This could be done by establishing a contracting cell or developing closer cooperation with KP Logistics. In addition, the implementation of the PPL must be reviewed with the entire internal procurement procedure. Whilst the law itself is consistent with international standards the manner in which it is implemented is not.

The **Logistics Directorate** is responsible for KP fleet management, transport, armoury and munitions, uniforms and equipment and warehouse management. There are structural weaknesses: at the time of its basic assessment, EULEX found that no less than 46 posts in the authorized structure were vacant. There are a significant number of police officers in the Department and EULEX would recommend that the KP should continue with its policy of civilianizing the whole of the Support Services Pillar, thereby reflecting European best practice and ensuring that police officers are only deployed in policing functions.

Table 5.1b – Basic organisational appraisal – Logistics (Support Services)

Indicator	Performance	Target	Comment
Staffing structure, role definition and training	Satisfactory	Satisfactory	There are 46 vacant posts in the authorized structure
Ethnic/gender mix	Poor	Satisfactory	Insufficient ethnic non-majority staff
Facilities & equipment	Satisfactory	Satisfactory	
Law/PPM/SOPs	Good	Satisfactory	

Managing abstractions	Satisfactory		Satisfactory	
Managing compliance	Good		Satisfactory	
Managing performance/work quality	Satisfactory		Satisfactory	
Planning activities	Satisfactory		Satisfactory	
Use of intelligence/statistics	Good		Satisfactory	

It was noted that the Directorate has encountered great difficulty in meeting its mandate of maintaining the KP fleet of 1,521 vehicles (including 63 different models): it has to some extent sought to maintain the fleet by using its own workshops, and encountered difficulty in storing or sourcing sufficient spare parts. At the same time, the Directorate has also outsourced some maintenance and repair work to private companies. The Head of the Depart of Support Services is reviewing the vehicle fleet maintenance strategy and looking at the relative cost benefits of outsourcing all the work.

The **Information Technology and Communications Directorate** (ITCD) represents a critical function for a modern and effective police organization. At the time of its initial evaluation the EULEX monitors found that ITCD is not yet fully sustainable, due to its ongoing dependence on foreign technical support. Two Turkish police officers continue to provide support into the summer of 2009. Of the total 63 IT/Comms positions allocated in the budget, 23 (36%) were vacant as a result of the inability of the KP to retain trained and experienced staff.

Table 5.1c – Basic organisational appraisal – IT & Comms Directorate (Support Services)

Indicator	Performance		Target	Comment
Staffing structure, role definition and training	Poor		Satisfactory	Current staffing is not yet sustainable because it relies on the direct support of IMM. 36% vacancy rate.
Ethnic/gender mix	Poor		Satisfactory	Insufficient non-majority staff
Facilities & equipment	Satisfactory		Satisfactory	
Law/PPM/SOPs	Satisfactory		Satisfactory	
Managing abstractions	Satisfactory		Satisfactory	
Managing compliance	Good		Satisfactory	An effective system of ensuring compliance by PC users throughout the KP organisation
Managing performance/work quality	Satisfactory		Satisfactory	
Planning activities	Very good		Satisfactory	
Use of intelligence/statistics	N/A		Satisfactory	

The Department was found to be effective in ensuring compliance by PC users throughout the KP: all standard software is properly licensed (via the Ministry of Internal Affairs), and the majority of PCs are connected to the KP independent network. The latter is separated from the public network with firewalls, net-

work protection security protocols and virus protection systems. Only persons with administration rights are permitted to load new software on KP computers.

The structure of KP IT/Comms solutions and network were first created by UNMIK and guided by recommendations of UNMIK advisors from different countries. Most of the IT systems are based on donations from other countries and, therefore, IT and Comms has been built piece by piece and does not form an integrated structure. For example, there are two overlapping border/boundary crossing control projects in the 2009 investment plan. The IT system in use at five Border/Boundary Crossing Points, known as PISCES, does not fulfil Schengen requirements and an EU supported project which will fulfil the requirements and should be implemented in all border/boundary crossing points during 2009.

In terms of sustainability, the IT capacity of the KP organisation is problematic. The KP does not have sufficient competent technical personnel to maintain or enlarge and update their systems. This represents a significant problem when the scale and import of the current IT/Comms projects are considered:

(a) Analog radio system. Around 7000 hand set radios, more than 600 mobile radios installed in vehicles, more than 95 radio bases and approximately 60 transmission/repeater towers functioning in UHF frequency. KP will widen this system with new radio bases, mobile radios and towers.

(b) KP Telephone System (VOIP) is built on the IT bases of signal distribution through microwave links (Motorola Canopy Links) PABX's in every KP Station. KP will widen this system and include additional equipment for network safety.

(c) KP Main Computer Network covers 95% of the organisation's computers. KP will widen this network to all Police Stations and Border/Boundary Points. It is also planned to improve network safety.

(d) Digital System of Communication (Matra Radio Tetra Pol) is UNMIK property. KP has 300 Tetra Pol handsets used by their more secret sections. KP has raised the request to receive the system as a donation from UNMIK and requested the EU to donate €2.6 million for maintenance, training and widening this system. However, the system does not fulfil European standards.

(e) KPIS System (Kosovo Police Information System) is designed to support centralized management of main KP Database. The installation is complete in the following regions: Prishtinë/Priština Main HQ, Mitrovicë/Mitrovica, Pejë/Peč, Prizren/Prizren, Ferizaj/Urosevač, Gjilane/Gnjilane and within Border Police Main HQ Lluzhane, Gjakova/Djakovica, Airport and Kaqanik/Kaçanik. KPIS will be installed in police stations with 'read only' rights.

(e) PISCES System²⁴ is a donation from the USA and supported by ICITAP. It is used to control entry-exit of people at Border/Boundary Crossing Points. Currently this system functions at the Airport, Verrmica, Hani I Elizit, Mutivoda (4) and Qafa e Prushit. However, this system does not fulfil Schengen requirements.

(f) Control System for Passengers with Compatible Schengen System is a project supported by ECLO to install a modern control of passengers and vehicles at all BCP's. In the first phase hardware will be installed (servers, computers, passport scanners and other associated equipment), whereas the second phase involves the installation and implementation of software.

(g) License of PCs and Servers with Necessary Applications. KP will join the agreement made by MoIA every third year and pay license fees annually.

(h) Development of specific applications for KP needs. Development of internal applications for the various Departments: e.g. billing system for existing telephones of KP; Budget and Procurement Systems management; and a system for archiving documents and assets management; etc.

(i) UPS system to stabilize electrical supply at the main points of KP network. To avoid faults and break down of equipment because of unstable electricity.

(j) Building a centralized antiviral system - a centralized system to protect the KP network from virus damage and other threats.

KP IT/Comms lacks a common plan to balance the various projects and tasks with sufficient personnel, equipment, facilities and other resources. At the level of its strategic planning, the KP has not imposed any specific requirements for IT/Comms: the Department has done its best to develop separate projects through the support of donating countries, filling gaps in inadequate resources. EULEX monitors believe that these separate and disparate systems can never be integrated, and, to a certain extent, they fail to meet European standards and Schengen requirements (e.g. the digital TETRA Pol radio system and PISCES (Personnel Identification Secure Comparison and Evaluation System)).

EULEX monitors believe that economy of scale factors demand a rational approach to IT/Comms in the KP. Due to the small size of Kosovo and its limited financial resources, there must be more co-operation within and between government institutions in order to achieve synergy interest.

EULEX recommends that its monitors can assist in moving KP IT/Comms forward toward sustainability. This can be done by mentoring and advising on the condition of registers and readiness to integrate them into controlling systems (i.e. citizen, criminal, weapon, passport, driving license, vehicle and stolen vehicle registers), and co-operation between registers. They should also mentor and advise regarding the structure of IT/Comms projects: i.e. organisational documents, calculating life cycle costs, personnel requirements and their training needs, spare parts and maintenance.

EULEX RECOMMENDATION – PSD/31/2009

Target: KP, Senior Support Services' Managers

To mentor and advise the relevant senior KP staff regarding the condition of registers and readiness to integrate them into controlling systems (i.e. citizen, criminal, weapon, passport, driving license, vehicle and stolen vehicle registers), and co-operation between registers. They should also mentor and advise regarding the structure of IT/Comms projects: i.e. organisational documents, calculating life cycle costs, personnel requirements and their training needs, spare parts and maintenance.

In addition, EULEX monitors will be required to assist in moving KP IT/Comms staffing toward a fully sustainable basis. They will mentor and advise KP senior staff regarding the development of a strategy to recruit, train and – most importantly – retain a team of local IT/Comms specialists and end the reliance upon foreign specialists.

EULEX RECOMMENDATION – PSD/32/2009

Target: KP, Senior Support Services' Managers

To mentor and advise the relevant senior KP staff regarding the development of a strategy to recruit, train and – most importantly – retain a team of local IT/Comms specialists and end the reliance upon foreign specialists.

Certain functions of the KP Administration pillars (i.e. Personnel and Training, and Support Services) are decentralized. In each **Regional MHQ** there are teams of administration staff to facilitate the two-way flow of information between the central functions and regional KP staff. EULEX monitors noted some structural weaknesses at the regional level, as part of their basic organizational appraisal. Although most of the relevant staff have job descriptions, none of the documents have been formally approved by KP MHQ, and some of the staff (30% in Prishtinë/Priština) have not been trained to perform specific administration and logistical support functions. It was observed that, in general, RHQs have insufficient administration staff to meet the workload.

Table 5.1d Basic organisational appraisal – Regional Admin. Units (Support Services)

Indicator	Performance		Target	Comment
Staffing structure, role definition and training	Poor		Satisfactory	Insufficient staff, unauthorised job descriptions, insufficient training in some areas.
Ethnic/gender mix	Poor		Satisfactory	Insufficient non-majority staff
Facilities & equipment	Satisfactory		Satisfactory	
Law/PPM/SOPs	Satisfactory		Satisfactory	
Managing abstractions	Satisfactory		Satisfactory	
Managing compliance	Satisfactory		Satisfactory	
Managing performance/work quality	Satisfactory		Satisfactory	
Planning activities	Poor		Satisfactory	
Use of intelligence/statistics	Poor		Satisfactory	

Although all the regional supervisors have completed the standard management and supervision courses at the Police Academy (KCPSED), EULEX monitors noted very poor planning skills. Planning documents were found to be poorly structured, and lacking specific and measurable objectives. A linked issue was the poor use of statistical data. There was no connection between objectives and the administration data gathered from the region, nor indications that managers had the capacity or will to exploit the data in decision-making. Data gathering appears to be an end in itself and there is no culture of analyzing data and using the results to inform decision-making.



JUSTICE

This section of the report refers to the pillars of a functioning judicial system in Kosovo, namely whether the Kosovo judiciary decides on the basis of facts, application of the law without improper external interferences and is equipped with adequate resources. The assessment also examined the appropriate assumption of authority by the Kosovo Judicial Council (KJC) for the oversight of the independence of the Kosovo Judiciary.

A crucial prerequisite of a functioning judicial system is the independence of Kosovo Judges and the autonomy of Kosovo Prosecutors. The independence of Kosovo Judges requires that the formal conditions (de jure independence) are in place and that the formal conditions can translate into reality (de facto independence). The de jure independence relates to the appointment, promotion and dismissal procedure of Kosovo Judges and that recruited Judges are professionals with the highest standards of integrity, adequate qualification and training, the responsibility of which has been vested in the Kosovo Judicial Council. This requires the absence of a politicised judicial system, and therefore the absence of political considerations that may be brought to bear on the appointment, promotion and dismissal procedures. The de facto independence again relates to factors such as the existence of improper external interference and of related appropriate protection mechanisms in place to prevent such interferences, but as well to the remuneration of Kosovo Judges.

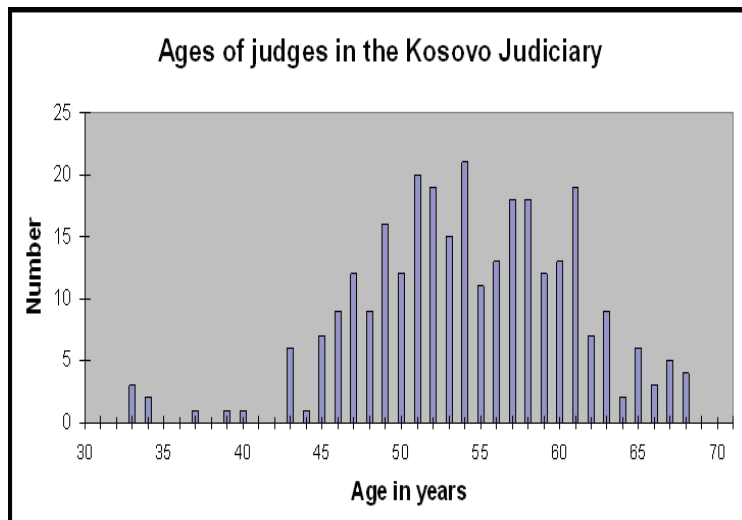
The Judiciary must not only be independent but also subject to transparent mechanism of accountability to ensure the fairness of the system. Adequate Institutions and procedures, that ensure the accountability of the Kosovo Judiciary in the eyes of the Kosovo population, need to be in place. The level of accountability shall measure the extent to which degree the judicial decisions reflect domestic and international legal and professional standards.

A functional Judicial System also relies on a functional Kosovo Correctional Service with sufficient capacity and integrity to humanely detain and manage prisoners and control prison incidents. The picture will be completed by a functional Ministry of Justice which ensures the development and implementation of policy and legislation in the field of justice including prosecutions, correctional service, fair and effective access to justice, missing persons and external relations.

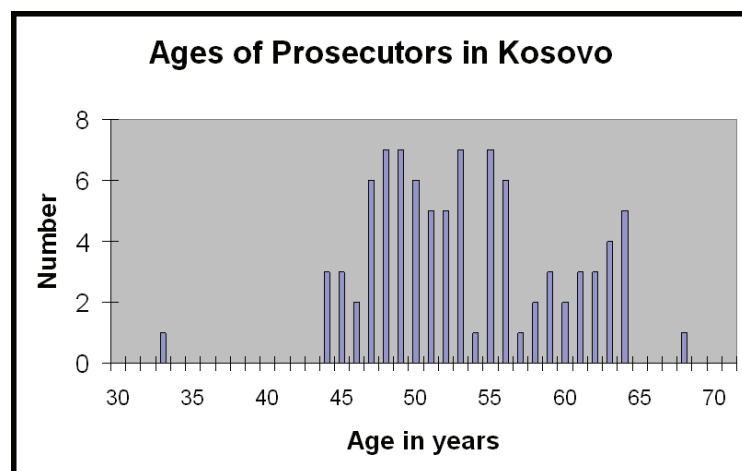
Demographic situation among Kosovo Judges and Prosecutors

The statistics illustrate that the great majority of Kosovo Judges and Prosecutors received their legal education during the former Yugoslav era.

As seen from the chart below, the ages of the 269 Kosovo Judges range from 32 to 68, where the average age is 54. This shows that 18% of the Kosovo Judges are over the age of 60, and 27 % of them are below the age of 50, whereas 2.7 % of the Judges are below the age of 40.



As seen from the chart below 21% of the Kosovo Prosecutors are over the age of 60 (except one Judge who is under the age of 40).



KJC Strategic Plan

The Kosovo Judicial Council (KJC) adopted a strategic plan to improve the functioning of the judiciary (it refers to topics such as access to justice, integrity of judicial process and functions, resolution of caseloads, reduction of case backlogs and accountability to the public) covering the period between 2007 and 2012 and there are scarce indications that the KJC is currently working on the implementation of the Strategic Plan. Some within the Council claimed that the Strategic Plan was a product of international organisations, thus being perceived as not owned.

EULEX RECOMMENDATION – JC/1/2009

Target: KJC

To enhance the implementation of the Strategic Plan by defining priority areas

Judges in the criminal field

EULEX Judges have successfully introduced the mission mandate with a specific focus on the Law on EULEX Jurisdiction to their counterparts in the District Court (DC) regions²⁵. All EULEX Judges reported a high degree of cooperation with their local colleagues and unhindered access to information, apart some initial hesitation by some local Judges. MMA activities could not be launched in the DC Mitrovica/Mitrovicë North region for reasons beyond the scope of this report, and generally MMA activities were undertaken alongside executive functions required of the EULEX Judges.

Judges in the Civil Field

EULEX Judges from the DC regions reported a good level of cooperation with counterparts as evidenced by unhindered access to information. EULEX civil Judges responded with a high degree of professionalism and commitment in taking assignments as (criminal) pre-trial or Presiding Judge.

All DC regions report the phenomenon of repeated re-trials of civil cases that result in a high backlog of cases. EULEX Judges from one DC region (Prizren/Prizren) undertook a detailed analysis of this situation to determine the number of finished civil cases at the DC level.

Statistics from the DC court in Prizren/Prizren revealed that more than 61% of civil cases are remitted to the first instance court for retrial. These cases are apparently categorized as new cases providing the basis for future statistics. Kosovo wide statistics revealed that 43.6 % of all finished civil cases were cases in which the first instance decision was revoked and remitted back to the first instance. In legal theory, second instance Judges should advise the first instance as to all the mistakes and omissions that have led to remittance. There are no statistics available as to how many retrials on average take place before a verdict becomes legally binding. It is of note to mention that the majority of the complaints filed by the public in this DC region relate to the length of the civil proceedings and these complaints mostly relate to cases commenced in 2000/2001.

EULEX reports that judicial functions have been assumed in 10 civil cases that were pending for several years which all stem from the MC Klinë/Klina and Istog/Istok).

EULEX RECOMMENDATION – JC/2/2009

Target: KJC and Kosovo Judges

To (1) abolish the legal basis for retrials, (2) the KJC to issue a guideline that Second Instance Judges remit civil cases presenting a substantial reasoning, (3) EULEX Judges to establish a model of regular deliberations between EULEX civil and Kosovo civil Judges to establish a platform for legal discussions, which include among other the topic of repeated retrials.

²⁵ *The Law regulates the integration and jurisdiction of EULEX Judges and Prosecutors in the judicial and Prosecutorial system of Kosovo.*

The representation of non-majority communities and the gender balance

EULEX assessed that non-majority communities and female staff members are not sufficiently integrated in the Kosovo Judiciary.

Out of all employed Kosovo Judges, 31 belong to non-majority communities (15 Kosovo Serbian, 5 Kosovo Turkish, 11 Kosovo Bosniak). This roughly matches the representation of the non-majority communities across Kosovo. However according to information received two Judges from the Kosovo Serbi non-majority community are active in the Kosovo Judiciary, although positive indications in the KJC to support the integration of non-majority communities can be registered:

There are currently 89 Prosecutors employed in the Kosovo Prosecution service, out of which 5 Prosecutors belong to the non-majority communities (5,6 %) and only 23,6 % of the Kosovo Prosecutors are female. Among the 237 non-judicial staff members 6 % (14 members) belong to the non-majority population and 60,3 % are female staff members.

EULEX RECOMMENDATION – JC/3/2009

Target: KJC, KPC, and President of the Courts

- 1) Enhance the reintegration and representation of non-majority communities into the Kosovo Justice System
- 2) Ensure a strong commitment to gender balanced policies

Council Body of the Kosovo Judicial Council

EULEX assessed the capacity of the Council body of the KJC to ensure an independent Kosovo Judiciary to be of concern due to the composition of the Council body which implies considerable involvement of political authority in the decision making process. As the Council body is currently not operational, no practical assessments could be conducted yet.

According to Principle 1 c) of the Council Recommendation No. R (94) 12 of the 'Committee of Ministers to Member States of Independence, Efficiency and Role of Judges' (hereinafter referred to as Council Recommendation), the authority taking the decision on the selection and career of Judges should be independent of the government and administration.

Following the cessation of the UNMIK/REG/2005/52, the Law on the temporary composition of the Council of the KJC has been enacted as a filling the gap intervention pending enactment of the Law on the Kosovo Judicial Council. The Law on the temporary composition of the Council stipulates the partial authority of the Council as the responsibility to recruit Judges and Prosecutors have been assigned to the IJPC. The Disciplinary Committee (which is composed of Supreme Court Judges who are members of the Council) is not functioning properly.

Whereas the high number of 9 Judges plus 1 member of the Bar as members of the Council body of the KJC is a positive element in ensuring the political neutrality of the Council body, the circumstance that 4 Judges plus the member of the Bar are to be appointed by the Assembly is a rather negative element.

Considerations over the involvement of the Assembly of Kosovo in appointing Judges and member of the Bar of the Council Body of the JKC have also been requested by the CSOs/NGOs, as evidenced by queries related to the involvement of a politically appointed authority in the decision making process of the Council.

EULEX RECOMMENDATION – JC/4/2009

Target: KJC

To ensure that the Council body of the KJC becomes operational by appointing Judges and conducting disciplinary enquiries.

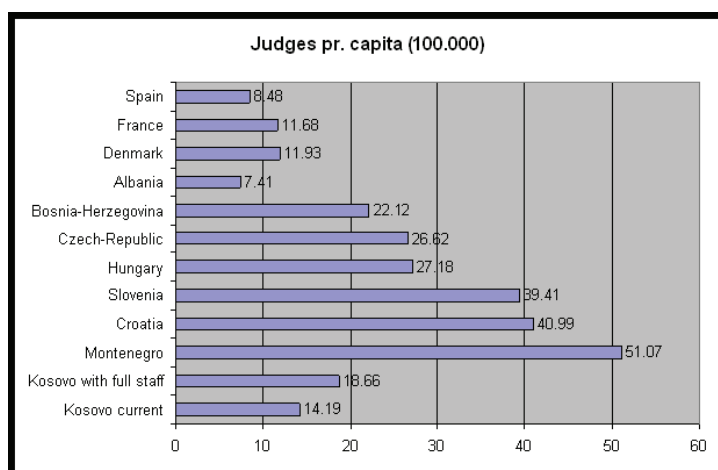
Infrastructure of the KJC

EULEX assessed that the general infrastructure in terms of office space and technical equipment available is sufficient. However, the KJC lacks a library accessible by all employees which should be equipped with relevant legal literature such as legal commentaries, legal books, law compilations and material on professional and ethical standards. The assigned budget does not appear to be adequate to ensure the operational capabilities of the KJC.

Number of Judges and Prosecutors in relation to the population

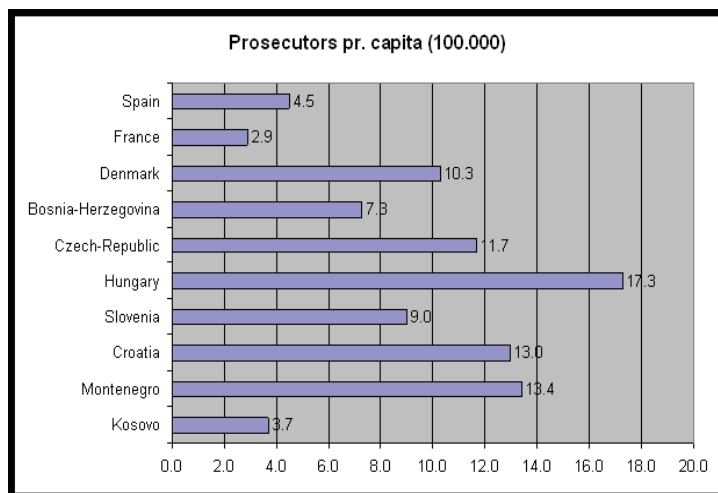
EULEX assessed that the number of Kosovo Judges per 100,000 inhabitants in comparison to neighbouring and European countries is low.

According to information provided by the statistical office there are currently 269 Kosovo Judges serving approximately 2,2 million people. An average of 14.19 Kosovo Judges performs their judicial functions per 100,000 inhabitants. However the budget would be sufficient for the appointment of 392 Kosovo Judges which would provide a ratio of 18.66.



Information to the chart provided in: Report of the Secretariat of the Kosovo Judicial Council, Statistical Department, "Survey on the workload of the courts during 2008", page 2

There are currently 89 Prosecutors employed in the Prosecutorial Service in Kosovo, resulting in 3.7 Kosovo Prosecutors per 100.000 inhabitants.



EULEX RECOMMENDATION – JC/5/2009

Target: KPC

To monitor the level of working conditions for Kosovo Judges and Prosecutors and closely follow their recruitment process

Support staff

EULEX assessed that Kosovo Judges lack a sufficient number of support staff in order to perform their judicial functions.

The information provided by the statistical office of the KJC, reveals that Kosovo Judges lack sufficient support staff in order to perform their judicial functions. Courts in Kosovo employ 1292 non-judicial staff members, out of which only 2.24 % are legal support staff who should provide direct professional support to the Kosovo Judges. On average one legal support staff member has to support over seven Judges, which illustrates the lack of capacities for Kosovo Judges to rely on in the discharge of their duties.

Remuneration

EULEX assessed that the salary of Kosovo Judges is hardly sufficient to ensure their economic independence.

A year's salary of the President of the Supreme Court is (including 81€ monthly allowance) 8,004.00€. Year's salary of a District Court Judge is 6,000 €. In Kosovo in 2007 family households with completed elementary education or less, consume around 5.380 €, while those with secondary education consume 5.718 € and

those with higher education consume 7.472 €. The Draft Law on Courts anticipates an increase of Judges' salaries equivalent to salaries for senior civil servants and political appointees at comparable levels. In a letter dated 30 June 2008 to the Ministry of Economy and Finance, the KJC Director put forward a proposal for a salary increase of the Judges.

EULEX RECOMMENDATION – JC/6/2009

Target: KJC, Department of Civil Service Administration (MPS), Ministry of Economy and Finance
To monitor the current proposal by the KJC to increase the level of Judges salaries.

Infrastructures at District Courts level

EULEX assessed that the infrastructure available for Kosovo Judges serving in District Courts is insufficient. The circumstance that trials are conducted in offices raises direct concerns with respect to access to justice as the ability of the public to follow court trials is limited. Judicial operations are directly hampered by a lack of safe storage facilities for case files and of safe deposit rooms.

According to Principle III 1d. and e. of Council Recommendation proper working conditions should be provided to enable Judges to 1) work efficiently and, in particular, by inter alia providing adequate support staff and equipment and 2) ensure that Judges can act efficiently and without undue delay by taking appropriate measures to assign non-judicial tasks to other person in conformity with Council Recommendation No. R (86) 12 concerning measures to prevent and reduce excessive workload in the courts.

Some of the deficiencies shall be outlined here: Kosovo Judges and Prosecutors do not have adequate office space where they can work privately and securely, and conduct their work properly, as offices are shared with clerk assistants or other colleagues. It is reported from all DC regions that due to the lack of available court rooms, Kosovo Judges conduct the majority of trial sessions in their offices. One DC region reported the insecure storage of case files in unlocked cupboards in corridors of the court and cleaning personnel were reported to have unattended access to the offices. In one DC region, the deposit room was reported to be unsecure as the door did not meet basic security standards and, allegedly, enabled the theft of 6 weapons out of the deposit room in September 2008. In another DC region, the room reserved for Defence Counsels deliberations with respective defendants is currently being exclusively used by lay Judges. Judges lack court support staff, namely executive officers and legal assistants, and are therefore obliged to finalise executive orders and to conduct their own legal research. A delay by the KJC in paying for expert opinion charges during hearings is reported; this often generates subsequent delays in criminal proceedings as experts await final settlements of the bills before issuing their opinion to the courts. A delay of up to 2 months is reported.

EULEX RECOMMENDATION – JC/7/2009

Target: KJC
Monitor the enhanced level of infrastructure available for Courts

Training of Judges and Prosecutors

EULEX assessed the theoretical framework for trainings and their practical implementation for Kosovo Judges and Prosecutors is sufficient.

The independence of the judiciary requires that Judges shall be individuals of integrity and ability with qualifications in law and the process of recruitment need to ensure this requirement. According to Principle I 2. c) of the Council Recommendation, all decisions concerning the professional career of Judges should be based on objective criteria, and the selection and career of Judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. According to Principle III 1. a) and c) of the Council Recommendation proper conditions should be provided to enable Judges to work efficiently by recruiting a sufficient number of Judges and providing for appropriate training and a clear career structure in order to recruit and retain able Judges.

A theoretical framework with respect to training of Kosovo Judges is in place. Considerable improvements towards a pedagogical framework to provide training have been made since 2008 by the Kosovo Judicial Institute (KJI) which is an independent public professional body to provide judicial training to Kosovo Judges and Prosecutors. In 2008 the KJI adopted a strategic plan for the period between 2008 and 2011, the core results of which shall be to ensure the delivery of high quality training, through researching, developing and implementing best practices training standards and methods. Following the implementation of the strategic plan and as a result of a consultation process with Kosovo Judges, the KJC under the supervision of the KJI launched two programmes aimed at the inauguration of a pedagogical framework in the field of training for Kosovo Judges. A "Continuous Programme" for sitting Kosovo Judges was developed and introduced as an essential step towards creating an efficient system of continuing professional education for Kosovo Judges. In addition, the education of the 'new generation' of Kosovo Judges and Prosecutors was considered by launching a 15-month long "Initial Programme for future Kosovo Judges and Prosecutors". A first group of 30 students (of which five are women) have commenced this programme having successfully completed an entry exam organized by UNDP Kosovo. For six months from September 2008 to March 2009, students attended theoretical legal training linked to a three-month period of practical training (on mediation, communication skills, case management, etc.) where they are separated into groups of trainee Judges and Prosecutors. The training concludes with a six-month internship at courts, the Ministry of Justice and/or the KJC. It has to be noted that there is no regular training provided to non-judicial staff other than a 3 days training on the Case Management System (CMIS).

Promotion and selection of Kosovo Judges

EULEX assessed that the promotion and selection process of Kosovo Judges so far conducted by the KJC did not ensure the independence of the Kosovo Judiciary. The lack of a performance evaluation system for Kosovo Judges indicates that promotion cannot be based on merits, which again impacts on the extent to which the recruitment and promotion procedure is objective and transparent. The lack of a performance evaluation system also implies the lack of possibilities to enhance the capacities of Kosovo Judges in a targeted manner. Currently the International Judges and Prosecutors Commission (IJPC) has taken over

the recruitment procedure. However, after the conclusion of the project the routine recruitment of Kosovo Judges will be again carried out by the KJC. Therefore detailed provisions for the recruitment and promotion procedure need to be developed and EULEX needs to follow the implementation closely.

The theoretical framework for the provision of evaluations for Judges and Prosecutors is in place and offers details as to how to assess the performance of Judges and Prosecutors'. However the practical implementation of the theoretical framework remains poor. Hardly any performance evaluations were conducted for Kosovo Judges since 1999.

A positive development which can be noted, however, is that in August 2008, the KJC initiated the formation of a Working Group to determine internal standards against which the monthly performance of the Kosovo Judges is to be measured. The Working Group encouraged all courts in Kosovo to deliver proposals for the monthly standards and 15 Municipal Courts and 3 District Courts delivered their proposals. The proposal of the Working Group is pending confirmation by the Council body of the KJC. However this initiative is considered as a positive sign of pro-activity of the KJC, as it displays a willingness to establish objective criteria against which the performance of Kosovo Judges are to be measured and forms the basis for future performance evaluation procedures for Kosovo Judges. In addition, the initiative displays clear signs of cooperation between the Kosovo Judicial Council Secretariats and the Courts in the regions.

With respect to the selection procedure of Kosovo Judges, the verification of formal qualifications is a relatively straightforward process whereas the determination of personal integrity is more elusive and requires an adequate method of appointment which ensures that appropriate candidates are selected. The interviews conducted with Kosovo Judges in the past were not eligible to evaluate the qualifications of the applicant, as all candidates were interviewed together as a group. It is hard to see how a procedure conducted in this way accurately assesses the candidates' legal qualifications, motivation, commitment, personal standards and integrity. Furthermore, background checks (police records, etc) of applicants were missing.

Pursuant to section 7 of UNMIK/REG/2006/25 and with the funding of the European Commission and the United States, the IJPC was appointed as of 1 February 2009 to conduct a comprehensive, Kosovo-wide review of all appointments for judicial and Prosecutorial positions. The re-vetting procedure conducted by the IJPC will introduce a fundamental change to the situation as to how Kosovo Judges will be recruited.

EULEX RECOMMENDATION – JC/8/2009

Target: KJC

To support the development and the implementation of a promotion system and a selection system, based on objective criteria for Kosovo Judges

EULEX assessed that the KJC needs to improve its role as a service oriented judicial institution. There is hardly any practice in place that aims at integrating Kosovo Judges in the decision making process of the Council body of the KJC by taking into considerations the opinion, recommendations and ideas of Kosovo Judges.

The minutes of several meetings of the Council body strongly indicate a lack of cooperation between the Council body of the KJC and the Kosovo Judges. From the DC regions it is also reported that co-operation and communication between the KJC and the Kosovo Judges Association has to be enhanced. The lack of a service orientated approach is further determined by the circumstance that the provision of technical support to the courts is poor.

EULEX RECOMMENDATION – JC/9/2009

Target: KJC, President of the Courts, Kosovo Judges and Kosovo Judges Association

Enhance the service oriented and integrated approach of the KJC towards the Kosovo courts

ACCOUNTABILITY OF THE KOSOVO JUDICIARY

EULEX assessed that core accountability mechanisms are currently not operational. Notwithstanding this the implementation of the accountability measures as stipulated in the Law on the Suppression of Corruption by the Anti-Corruption Agency and the KJC (the process of verifying the financial asset declarations by Kosovo Judges) is a positive sign that contributes to enhancing the accountability of the Kosovo Judiciary.

Judicial independence is founded on public trust, which requires that Judges are held accountable to the public. This requires that measures are in place to detect, investigate and sanction practices contradicting the public trust, such as serious breaches of the law or corrupt practices. According to Nr. 7 and 8 of the Explanatory Memorandum of Council Recommendation No. R (94) 12 powers conferred to Judges are counterbalanced by their duties which makes it essential to make Judges liable to a system of supervision which makes sure that their rights and duties are respected.

As the Disciplinary Committee of the KJC is currently not operational, disciplinary cases prepared by the Office of the Disciplinary Commission cannot be progressed. However, the IJPC will take pending disciplinary cases into consideration by discussing the allegations against them with the applicants during the interview. However this implies that the heart of accountability measures in the Kosovo Judiciary is currently not functioning.

Another accountability measure is stipulated in the Law on the suppression of corruption. The Law foresees among other measures, to fight the corruption in the Kosovo Judiciary, especially by overseeing the financial assets of Kosovo Judges and Kosovo Prosecutors. Kosovo Judges and Prosecutors are according to Art. 41 of the Law on Suppression of Corruption obliged to provide information regarding “real estate, movable property of greater value, their holding of shares in commercial companies, securities, cash held in banks, saving banks and other savings and loans institutions, debts, undertaken sureties and other obligations and annual income”. Kosovo Judges and Prosecutors are requested to annually declare their financial assets prior to the deadline of the last day of March. Indeed the Anti-Corruption Agency and the KJC cooperate on verifying to which extent Kosovo Judges have submitted their financial asset declarations.

Out of the 14 Judges who were reported in 2008 not to have disclosed their financial asset declaration;

- 3 Judges had been dismissed due to the breach of code of ethics,
- 2 Judges were suspended due to pending disciplinary proceedings without receiving salary,
- 1 Judge's salary was cut by 20 %,
- 1 Judge was reported to be in prison
- 7 Judges were reported to belong to the Kosovo Serb non-majority community

Out of the 8 Judges who were reported in 2009 not to have disclosed their financial asset declaration;

- 4 Judges' salaries were cut by 20% as of 1st June,
- 1 Judge was reported to be on sick leave without payment, and
- 4 Judges were reported to belong to the Kosovo Serb non-majority community

EULEX RECOMMENDATION – JC/10/2009

Target: KJC

To ensure that the KJC Disciplinary Committee becomes operational

WITNESS PROTECTION

EULEX Judges and Prosecutors assessed as low the level to which Kosovo Judges and Prosecutors request trial witness protection measures in serious crime cases. In particular Kosovo Prosecutors report to be aware of these measures, but do not consider them as effective in ensuring proper protection of the witnesses due to the close-knit society in Kosovo, which is generally considered being the major bottleneck.

Kosovo Judges are reported to be familiar with the basic trial witness protection measures applicable for vulnerable witnesses, although their familiarity with all the available measures (according to the Provisional Criminal Procedural Code for Kosovo -PCPCK-) could be enhanced.

Kosovo Judges at the District Courts level are reported to apply "closed sessions" as protection measure in cases of juvenile, sexual, and domestic violence crime cases. At the level of Municipal Courts (MC) the number of cases which could require witness protection measures is smaller. One MC considered the lack of infrastructure as being the main weakness though limiting the willingness of witnesses to provide the Court with testimony, arriving to "covering the face of the witness with a blanket" as a witness protection measure. Other measures, such as the petition for an emergency protection according to UNMIK Reg. 2003/12 Art. 9.1. are reported as not being applied.

The level of application of witness protection measures in serious crime cases is considered to be low, apart from one DC region where Kosovo Judges applied trial witness protection measures (condition of anonymity) in three serious crime cases (drug trafficking, prostitution, and smuggling of migrants).

2 DC regions report a total lack of application of witness protection measures applied or requested in serious crime cases by Kosovo Judges and Prosecutors and since 1999.

One case illustrates the weaknesses in applying trial witness protection measures: In a case, which was presided over in a joint team of Kosovo and EULEX Judges and the charges of the indictment were drug trafficking, three undercover investigators involved in the investigation were requested by the Kosovo SPRK Prosecutor to give testimony in front of the court. The SPRK Prosecutor had mentioned the undercover investigators with their full names in the indictment, therefore revealing their identity to the defendant. During the trial the undercover investigators requested not to testify in front of court referring to the need of protecting their identities. It was only then that the SPRK Prosecutor requested witness protection measures for them.

EULEX RECOMMENDATION – JC/11/2009

Target: KJC, KPC, Kosovo Judges and Kosovo Prosecutors.

Enhance the effective application of witness protective measures in crimes involving vulnerable witnesses and serious crimes

PROSECUTORS AND PROSECUTORIAL ACTIVITIES

All EULEX Prosecutors have successfully introduced the mandate of the Mission with specific focus to the Law on EULEX Jurisdiction to their counterparts in the DC regions.

Co-operation with counterparts displays different features in each DC region. It is of note to mention the observation of EULEX Prosecutors in one DC region, where no “wilful resistance” to advice was observed but rather a “reluctance to change” due to entrenched legal cultures that have developed in the Kosovo Judiciary.

Detention

EULEX Prosecutors in one DC region assessed that Kosovo Prosecutors display a low willingness to request alternative measures in order to ensure the presence of the defendant before court.

It is reported that Kosovo Prosecutors mainly request detention on remand measures from the Kosovo Judge without closer evaluation of the prevailing circumstances (e.g. the seriousness of the crime, the risk of flight, the risk of commission of further crimes or possible intimidation of witnesses). In most of the cases, the Kosovo Prosecutors did not apply an obligation to request the least intrusive measure for the defendant. The responsibility to apply the least intrusive measure remained at that stage solely vested with Kosovo Judges.

In a joint seminar between EULEX and Kosovo Prosecutors, it was agreed that detention on remand would be requested only in serious cases regardless of the defendant’s personal circumstances.

EULEX RECOMMENDATION – JC/12/2009

Target: KPC

- 1) Enhance the willingness of Kosovo Prosecutors to request alternative measures in order to ensure the presence of the defendant at court.
- 2) Adopt guidelines on pre-trial detention on remand at the District Court level.

Evidential test procedures

EULEX Prosecutors in one DC region assessed that common rules for the evidential test procedure are lacking which guide Kosovo Prosecutors in evaluating the evidence.

It is reported that Kosovo Prosecutors requested witnesses to appear before courts despite the fact that their testimonies were clearly not relevant for the proceedings. Kosovo Prosecutors justified this attitude on the grounds of cultural obligations towards the families of the injured parties. The family representatives were attributed a moral right to participate in the court proceedings by giving a witness statement in front of the Judge even though the family representative has not witnessed the alleged crime and their testimony was hearsay.

In a joint seminar between EULEX and Kosovo Prosecutors, an evidential test procedure model and its implementation was agreed.

EULEX RECOMMENDATION – JC/13/2009

Target: Kosovo Prosecutorial Council and Kosovo Prosecutors

To enhance the application of pre-trial evidential test procedures by adopting and implementing pre-trial evidential test procedures.

Specialized Units/Multidisciplinary teams

EULEX assessed that DC Prosecution Offices do not have specialized units for prosecuting specific categories of crimes. Only one DC region has assigned a single Prosecutor to juvenile and possession of weapons cases and as an alternative measure, specialized units/multi-disciplinary teams could prosecute complex cases.

EULEX RECOMMENDATION – JC/14/2009

Target: KPC and Kosovo Prosecutors

Enhance the concept of specialization of Kosovo Prosecutors and the willingness to assemble multi-disciplinary teams

Cooperation structures

EULEX assessed that the level of cooperation between the Kosovo Prosecutors and Kosovo Police is not institutionalized.

Kosovo Prosecutors and Kosovo Police are reported to cooperate on an ad-hoc basis. There is currently no region that benefits from an institutionalized way of cooperating through regular meetings where cases could be discussed.

EULEX RECOMMENDATION – JC/15/2009

Target: KPC, Kosovo Prosecutors and Kosovo Police

To enhance institutional cooperation between the Kosovo Prosecutors and Kosovo Police

COURTS SECURITY

EULEX Judges and Prosecutors assessed the general measures available to provide security for Kosovo Judges and Prosecutors as poor. The assessment refers to measures taken in court and those provided outside of the court, including the protection beyond working hours.

A crucial prerequisite of a functioning judicial system is the independence of Kosovo Judges and the autonomy of Kosovo Prosecutors. According to Principle I d) of the Council Recommendation, Judges should be independent in their decision-making process and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. According to Principle III 2. of the Council Recommendation, all measures should be taken to ensure the safety of Judges, such as ensuring the presence of security guards on court premises or providing police protection for Judges who may become or are victims of serious threats.

EULEX Judges and Prosecutors assessed the general measures available to provide security for Kosovo Judges and Prosecutors as poor. Of specific concern is the practice that the public can approach Kosovo Judges and Kosovo Prosecutors without any discretion mechanism. In cases of intimidation towards Kosovo Judges or Prosecutors those could not resort to institutionalized protective measures. Cooperation with the Kosovo Police in this regard needs to be enhanced and joint planning of more adherent protective measures applied beyond working hours and outside of courts is required.

EULEX RECOMMENDATION – JC/16/2009

Target: KJC, Ministry of Justice, Ministry of Interior, Kosovo Police

Enhance measures and mechanisms to ensure the security of Judges, Prosecutors, and Courts.

CASE MANAGEMENT INFORMATION SYSTEM

EULEX assessed that Case Management Information System is, despite some recent improvements, not integrated into the daily operations of the Kosovo Courts and Prosecution Offices. The KJC has not been sufficiently active in taking a lead role to promote the application of the CMIS system in the DC regions

According Principle I d) of the Council Recommendation No. R (94) 12, proper working conditions should be provided to enable Judges to work efficiently and, in particular, by providing adequate support staff, equipment, office automation and data processing facilities to ensure that Judges can act efficiently and without undue delay.

All DC regions report a lack of application of the CMIS system, hence a lack of integration of the system into the daily operations of the court. There is no computerized way of tracking down cases and compiling relevant statistics. It appears rather difficult to identify, in a reliable manner, cases where a particular deadline is approaching expiration.

The CMIS was prevented from becoming operational in the DC regions either because of the non compat-

ibility of the computer system (old models) with the software or due to mere use of the CMIS system as a double-register, a sort of second step after the manual registering.

Indeed, as of April 2009 European Commission Liaison Office (ECLO) has completed the process of installing 616 new computers in all courts, including the relevant software. Training is planned to be provided in early summer 2009, under the auspices of the ECLO.

EULEX RECOMMENDATION – JC/17/2009

Target: KJC, Kosovo Judges and Prosecutors

MMA the integration of the CMIS into the daily operations of the courts

CASE ALLOCATION SYSTEM

EULEX assessed serious weaknesses in applying an objective and transparent case allocation system on the side of the District Courts and Prosecution Offices. Though formally a case allocation system is reported to exist, the level to which it is implemented is poor and exemptions made to it are likely to undermine the aim of such a system. There is further no check mechanism in place which could prevent possible manipulations of such a system.

The case allocation system has to provide mechanisms to prevent preferential assignments and thereby ensure that cases are not allocated to Judges following bad practices. The case allocation system touches upon the two core pillars of the court organization: a) Judicial independence and impartiality and b) court efficiency. The Case allocation procedure aims to balance these two core pillars. According to Principle I e) of the Council Recommendation No. R (94) 12 the distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing of lots or a system for automatic distribution according to alphabetic order or some similar system. According to Principle I f) of the Council Recommendation No. R (94) 12, a case should not be withdrawn from a particular Judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a Judge should be taken by an authority which enjoys the same judicial independence as Judges.

There is a variety of models of case allocation system across EU. The criteria for the allocation of cases may vary in their nature, but they remain based on objective mechanisms.

On the side of the DC a best-case example is where theoretically a case allocation system is put in place by the President of the DC, but the implementation of this system reveals exemptions made to an extent that endanger its effectiveness. The worse-case example was found with a total lack of strategy in allocating cases. Cases are distributed without any system, and in addition Judges re-assign cases among themselves. This lack of a case allocation strategy is aggravated by the circumstance that often the President of the Court and the Registry Office are not aware of the re-assignment.

On the side of the Prosecution Offices the assessments indicate that all DC Prosecution Offices formally apply a case allocation system, although several exemptions have been noticed. One DC region applies the model of a specialized Prosecutor for juvenile cases and weapons possessions; therefore all cases of this legal classification are assigned to this Prosecutor in derogation to the numerical system. Another DC region reported that after the assignment of cases to Kosovo Prosecutors according to objective criteria, a re-assignment of cases is possible and practiced and Kosovo Prosecutors can request a case from the Chief Prosecutor. Another DC region reported that the Chief Prosecutor selects certain cases and assigns them at his sole discretion. "Sensitive files" are assigned to a limited group of 2-3 Prosecutors including the Chief Prosecutor.

EULEX RECOMMENDATION – JC/18/2009

Target: KJC, KPC, Kosovo Judges and Prosecutors

Enhance the Implementation of an objective and transparent case allocation system, including mechanism that prevent from possible manipulation of case allocation.

BACKLOG OF CASES

EULEX assessed that the lack of appropriate infrastructure, such as lack of support staff, budget and limited courtrooms, contributes to the increase of case backlogs in the Kosovo Judiciary. This is also ascertained by statistics provided by the Statistical Department of the Kosovo Judicial Council and which are set out in chart below. According to the statistics the case backlog in the Kosovo Judiciary increased by 13.90 % from 2007 to 2008 by putting the number of inherited cases from 2007 in relation to the number of pending cases at the end of 2008. However it needs to be noted that these statistics are likely to be higher as they do not include information from the courts located in the predominantly Kosovo Serb Municipalities.

		Number of the cases in the court admitted during 2008	Out of it		Total number of the completed cases in 2008	Number of the pending cases in the end of the year
			Inherited cases –from 2007	Admitted in 2008 ⁸		
1	Supreme Court	6595	2889	3706	4196	2399
2	Business Court	2072	588	1484	743	1329
3	District Courts	20356	8993	11363	10003	10353
4	Municipal Courts	460433	150595	309838	278546	181887
Total regular Courts		489456	163065	326391	293488	195968
1	Superior Minor Offences Court	1876	0	1876	1876	0
2	Municipal Minor Offences Courts	254700	70839	183861	184240	70460

Minor Offences Courts	256576	70839	185737	186116	70460
Regular courts & Minor Offences	746032	233904	512128	479604	266428

The statistical office of the Kosovo Judicial Council calculated that at the end of 2008 the case backlog in the Kosovo Judiciary amounted to 280.638 cases. From 2001 to 2008 an increase of case backlogs for each type of court is reported. The figures on the level of District Court display an increase of pending cases from 2964 to 10353 from 2001 to 2008.

Years when cases are admitted from year to year	Pending cases as per courts							All courts
	Supreme Court	Commercial Court	District Court	Municipal Court	Superior Minor Offences Court	Municipal Minor Offences Court		
1 2001	295	56	2946	33538	0	14666	51501	
2 2002	747	94	5905	61713	0	24390	92849	
Year 2002 in comparison with 2001 (%)	153,22	67,86	100,44	84,01	0	66,30	80,29	
3 2003	777	132	9042	81357	0	34505	125813	
Year 2003 in comparison with 2002 (%)	4,02	40,43	53,12	31,83	0	41,47	35,50	
4 2004	741	152	10517	115350	0	45243	172003	
Year 2004 in comparison with 2003 (%)	-4,63	15,15	16,31	41,78	0	31,12	36,71	
5 2005	2048	134	11802	129357	0	55384	198725	
Year 2005 in comparison with 2004 (%)	176,38	-11,84	12,22	12,14	0	22,41	15,54	
6 2006	2907	653	12342	135245	0	64058	215205	
Year 2006 in comparison with 2005 (%)	41,94	387,31	4,58	4,55	0	15,66	8,29	
7 2007	2889	588	8993	162485	0	70839	245794	
Year 2007 in comparison with 2006 (%)	-0,62	-9,95	-2,28	13,92	0	10,59	11,73	
2008	2399	1329	10353	181887	0	70460	266428	

Year 2008 in comparison with 2007 (%)	-16,96	126,02	15,12	18.06	-0,54	10.81
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The chart below reveals that the case backlog may be broken down further into the different type of courts and that during 2008, the Supreme Court resolved more cases per year than were received and hence contributed to a case backlog reduction. It becomes apparent that the increase of case backlog is produced on the side of the Commercial, District and Municipal Courts.

		Number of the cases in the court admitted during 2008	Number of completed cases during 2008	The efficiency of the court in solving of the admitted cases during 2008 (%)
1	Supreme Court	3706	4196	113,22
2	Commercial Court	1484	743	50,07
3	District Courts	11363	10003	88,03
4	Municipal Courts	309838	278546	89.90
Total Regular Courts.		326391	293488	89.91
1	Superior Minor Offences Court	1876	1876	100,00
2	Municipal Minor Offences Courts	183861	184240	100,21
Total Minor Offences Courts		185737	186116	100.20
Regular & Minor Offences Courts		533339	479604	89.92

At the level of Supreme Court, the number of incoming cases from 2001 to 2008 has increased by 136,60 %, and at the level of Commercial courts, by 368,14 %. The District Courts saw an increase of 33,63 %, Municipal Courts by 179,61 % and Minor Offence Courts by 82,12%.

In this context it is noteworthy to mention the number of cases pending for execution: In November 2008 the statistical office of the Kosovo Judicial Council had registered a total of 7599 pending cases for execution out of which 1552 (20,42%) cases were pending for execution by a punishment with a sentence and 6047 (79, 58%) cases were pending for execution by a fine.

The increasing backlogs is aggravated by a decreasing number of Kosovo Judges in the Judiciary. The current employment figure marks a decrease of 9.43%.

COMPLAINT MECHANISM FOR THE PUBLIC

EULEX Judges assessed that the habit of the members of the public to discuss ongoing cases with the President of the Courts or Kosovo Judges clearly conflicts with the independent and impartial proceedings.

EULEX Judges and Prosecutors deployed to the DC regions, have received complaints from the local population since launch of operations. The President of Assembly of EULEX Judges and the President of Assembly of EULEX Prosecutors in an effort to streamline the efforts in receiving and following up complaints issued Standard Operative Procedures (SOPs) for the management of complaints, requests and/or proposals submitted to the DC teams. Had the accountability structures of the Kosovo Judiciary been effective, there would have been no need for the members of the public in Kosovo to approach EULEX Judges and EULEX Prosecutors with complaints. In this respect it is noteworthy to mention that neither the Judicial Inspection Unit nor the Kosovo Judicial Council have any field representations, ensuring that complaints about the judiciary can be received regionally. Instead complaints have to be conveyed to the relevant institutions in Prishtinë/ Priština.

In this respect EULEX Judges in one DC region supported the Kosovo Judicial Council in the launch of a court information point, where the population can address their requests without discussing ongoing cases directly with Kosovo Judges. The initiative has requested two representatives from the KJC to be assigned to the model region for implementation. One administrative assistant is to provide assistance in filing the complaint and initially assess the alleged subject of concern. A legal advisor is to undertake the legal evaluation of the complaint.

EULEX RECOMMENDATION – JC/19/2009

Target: KJC and Kosovo Judges

Enhance appropriate mechanisms for the local population to complain about Kosovo Judiciary by ending direct consultations of complainants with Kosovo Judges and introducing a Court Information Point of contact scheme.

KOSOVO CORRECTIONAL SERVICE (KCS)

The EULEX Correctional Unit (CU) reported a good level of cooperation with national counterparts, however not evidenced by an unhindered access to information.

EULEX CU could not be collocated with the KCS HQ. Invitations for EULEX CU to attend meetings with the KCS often occurred in the very last moments. Mentoring activities of the EULEX CU often lacked feedback by the KCS.

In this context it is to be mentioned that the Security Unit of the EULEX CU has issued a thorough Dubrava Prison Security Assessment, with concrete proposals for follow-up actions. The assessment was handed to the Commissioner of the KCS in March 2009 with a request for a discussion and follow-up meetings in order to agree on strategies as to how to overcome assessed weaknesses. A response from the Commis-

sioner is still pending.

EULEX CU also advised the Commissioner to deploy more EULEX Correctional Unit staff members to the security department in Dubrava prison. This advice has been rejected by the Commissioner despite the history of numerous security breaches in Dubrava prison.

As a result of Intelligence efforts, a confidential report highlighted several routes of entry of contrabanded goods in the prison and details of staff members who are suspected of dealing/supplying contraband to prisoners. The report was submitted through the KCS chain of command in March 2009 but to date the EULEX Correctional Unit has not received comments.

Review of Laws and Standard Operating Procedures (SOP's)

EULEX CU participates in the Working Group on the Law on Execution of Sanctions and assessed that amendments currently proposed and discussed are not in compliance with European Standards. The review on SOP's has been pending for a considerable period of time. According to information provided by counterparts it allegedly remains unclear within the KCS as to who has the ultimate authority in taking decisions (the KCS, the Ministry of Justice, the Commission of Legislation and Judiciary under the Assembly of Kosovo).

New SOP's on a) Categorizing; b) Management of Categorized Prisoners; c) Command of serious incidents; d) Prison Leave; e) Early Release; f) Conditional Release Procedures; g) Visits and other communication outside the prison; h) High Risk Prisoner Escort need to be adopted.

EULEX RECOMMENDATION – JC/20/2009

Target: Kosovo Correctional Service

To revise and update existing policies and SOPs in the field of KCS

High risk and Medium risk Prisoner Escort

EULEX assessed several operational weaknesses in the field of high and medium risk prisoner escort, such as in the field of an effective threat assessment prior to an escort due to a lack of a proper prisoner classification system, further in the field of training, and infrastructure available.

Prisoners require an effective threat assessment prior to the escort, in order to develop and implement the necessary security strategies during the escort. It is of vital importance that adequate security assessments of each individual high risk prisoner are provided prior to escort. This standard contributes to guarantee the security of the escort group or the public during the escort by preventing escape, but also safeguard compliance with Human Rights standards during the escort. The threat assessment conducted by the prisoner escort group should in principle be based on the classification of the prisoner which is to be assessed by the Prisoner Oversight Committee (recently re-established upon the advice of EULEX).

The prisoner classifications conducted by the Prisoner Oversight Committee are still at a limited standard

with subsequent negative impact on the on assessment/planning of the prisoner escort group.

The applicable SOPs foresee that medium risk prisoners have to be hand and foot cuffed. This practice is in contradiction to standards which foresee that prisoner are to be foot cuffed only if there is grounded reason to believe that there is a high risk of flight or a high level of aggressive behaviour. EULEX is closely monitoring that medium risk prisoners are no longer foot cuffed during individual transports. Due to a lack of vehicles, very often two high risk prisoners have to be escorted in the same car. The High Risk Prisoner Escort Unit is reported to be equipped only with basic security equipment and not capable of ensuring adequate safety during High Risk escorts. Basic equipment such as long barrel weapons, armoured vehicles, body protection devices and a radio communication system is lacking (including the corresponding training).

The cooperation between the High Risk Prisoner Escort Units and the courts is assessed to be in place although policies to conduct appropriate security assessments in the courts are still required.

Medium Risk Prisoner Escort Unit suffers from the same gaps identified for the High Risk Unit: need for training on interpersonal skills, communication and radio techniques, convoy tactics, security driving, side arm training and long barrel weapon.

EULEX RECOMMENDATION – JC/21/2009

Target: Ministry of Justice and Kosovo Correctional Service

(1) Agree a memorandum of understanding with EULEX on joint teams for high and medium risk prisoner escorts, (2) Enhance the performance of the Prisoner Oversight Committee with specific focus on procedures on prisoner classification, (3) Improve operational planning and cooperation with the KP (High Risk), (4) Improve the quality and level of vocational training, (5) Revise and implement improved standard operating procedures.

Dubrava Block 1

EULEX assessed that the daily management of Dubrava Block 1 suffers from numerous deficiencies in the field of security standards, of relationship between high risk prisoners and prison staff and in the field of appropriate training and infrastructure available.

Weaknesses in applying security rules relate to insufficient searching practices, the lack of control of movements of prisoners inside and outside the Block1, the lack of adequate control of the conduct of visits to the prisoners, unlimited access to the telephone.

A distinct factor is the relationship between high risk security prisoners and senior staff in Dubrava prison. Prisoners upon their request can directly access senior staff and discuss their imprisonment situation.

Apart from the security standards, the prisoner classification procedure itself is reported to be of great concern. It is reported that only half of the high risk prisoners are imprisoned in the high risk security Block

1. Recently all prisoners of Block 1 have been reclassified from “Cat. A” (high risk) to “Cat. E” (medium risk), which assigns more freedoms to the prisoners. According to EULEX CU some of the “Cat. A” prisoners should have not been reclassified. It is reported that the KCS HQ through the Commissioner or Deputy Commissioner directly interferes with the classification of top risk and high risk prisoners in Dubrava prison. This direct intervention is in contravention to the existing rules for classification of prisoners as the Commissioner needs to consult with the Prisoner Oversight Committee for the classification of prisoners.

EULEX CU has drafted a comprehensive assessment of a “strategy as to how to manage High Risk Prisoners”. The report concludes that security measures alone would in all likelihood not solve the recurring challenges associated with managing this section of the prison population. The report recommends the need to take a holistic approach that reviews all aspects of high risk prisoners to also include prison administration, regimes, policy etc. The intended outcome of the paper is to offer a model in an attempt to come up with a strategy that deals with sensitive area of operations. The successful implementation of the strategy requires full support by the MoJ and KCS.

EULEX RECOMMENDATION – JC/22/2009

Target: Kosovo Correctional Service and Ministry of Justice

(1) Revise and implement SOPs in the field of high risk prisoners (2) to enhance the professional relationship of Dubrava Block 1 personnel towards high risk prisoners, (3) to enhance the implementation of procedures with respect to classification of prisoners with a specific focus on high risk prisoners, and (4) enforce and improve existing security standards in Block 1.

Security Unit

The Kosovo Correctional Service has finalized its fast reaction plan to deal with critical incidents in Dubrava prison. EULEX CU sees the need to conduct a joint exercise together with all involved agencies to effectively assess the capacities of the KCS in case of a critical incident. The planning of the joint exercise yet requires a plan by the Kosovo Police, as to how they can support Dubrava prison in case of an emergency. As KFOR is no longer an automatic responder for emergency situations in Dubrava prison, EULEX CU advised the KP to take over a sufficient scope of tasks, in order to replace KFOR appropriately.

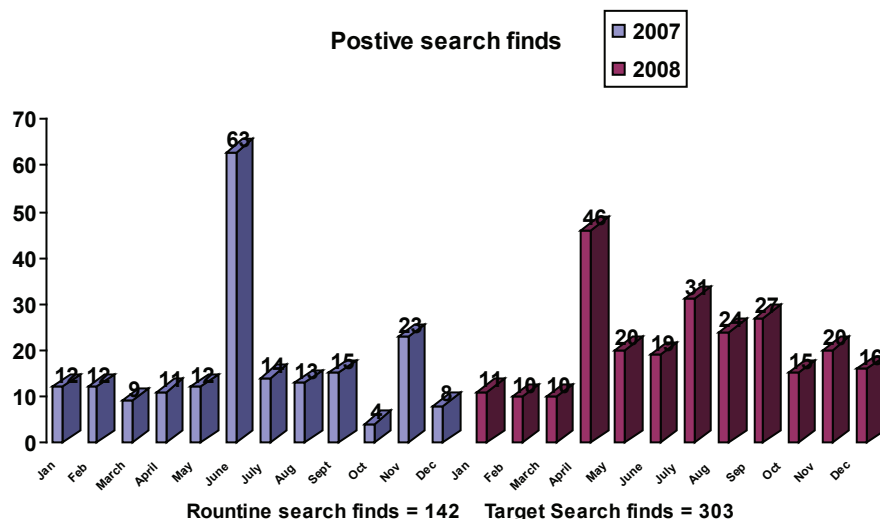
EULEX CU reports a need for training for KCS senior staff in the field of command of serious incidents, as many former senior staff members who had received this kind of training under UNMIK have been recently removed from the office or demoted (only 1 of the former directors is still in post).

EULEX CU also sees a need for updating the procedures in the field of command of serious incidents. Additional weaknesses relate to searching procedures (contraband) and the proper collection of security related records.

The data related to contrabands entering Dubrava prison underlines the critical need to address this issue: findings illustrate that items have been smuggled into Dubrava prison on a regular basis (such as cell phones and drugs).

The chart below illustrates the number of positive search finds for each months in 2007 and 2008.

Breakdown of Positive Search finds at Dubrava 01/01/2007 – 31/12/2008



A crucial pre-condition to prevent security incidents in Dubrava prison, is the functioning of the Security Information Reporting System, which is not sufficiently integrated into the daily operations of the KCS Security Unit.

EULEX RECOMMENDATION – JC/23/2009

Target: Kosovo Correctional Service and Ministry of Justice

(1) Plan and carry out a multi-agency exercise in Dubrava and Lipjan prisons to assess the capacity of the KCS to deal with a simulated critical incident, (2) to enhance the SOPs in the field of searching contrabands and the implementation, with a focus on the proper keeping of reliable statistics, (3) to enhance the professional relationship of KCS staff members towards high risk prisoners and (4) to enhance the field of dynamic security.

Kosovo Correctional Service Financial Management

EULEX CU assessed that the budgets for the prison administrations are too centralized so that respective administrations cannot autonomously manage the budgets which directly impacts the operations.

In 2009, 12.274.186 Euros was allocated for Kosovo Correctional Service. 35,2 % of the budget was assigned to wages and salaries, 39,9% to goods and service, 5,3 % to utilities and 19,6 % to capital expenditures. The KCS budget experienced gradual increase over the past 3 years from 11.7 Million Euro in 2007 to 12 Million Euro in 2008. For 2010 the KCS requested a budget of approximately 15 Million E.

Prior to 2009, KCS HQ planned the initial budget without consulting the respective prison administrations and therefore, the needs of individual prison administrations were not taken into consideration. Though the KCS HQ in a meeting claimed that prison directors were consulted for drafting the budget of 2009, this information was not verified through information provided by prison management of Dubrava prison.

In addition, each prison is not provided with the chance to administer their budgets autonomously. This

implies that budgetary and procurement decisions are taken on a central level in the Ministry of Justice which causes a lack of flexibility of prison administration in purchasing items necessary for the daily running of a prison and hence the delays caused by the centralized procurement causes the lack of basic equipment in the prisons.

EULEX RECOMMENDATION – JC/24/2009

Target: Ministry of Justice, Kosovo Correctional Service

(1) Enhance the involvement of prison administrations in the budgetary planning and (2) to devolve budgeting for individual prisons from Ministry of Justice

Personnel capacity/ Representation among KCS staff

The Kosovo Correctional Service has 1534 staff members in total, out of which 306 are civilians and 1228 are correctional staff. It is reported that the KCS does not currently operate with full capacity due to the resignation of 89 members of the Kosovo Serb community. 6 members of the non-majority communities have been reinstated to the Kosovo Correctional Service (4 belonging to the Kosovo Serb and 2 belonging to the Kosovo Roma non-majority communities). It is reported that 6 more representatives of the Kosovo Serb non-majority communities are in the process of being reinstated to the service.

The percentage of female staff among the Correctional Staff is currently 16.38%. There are no statistics available within the KCS that illustrate the gender balance within all levels of KCS. However according to the observations of the EULEX Correctional Unit there is no female staff assigned to senior position other than the Deputy Director of one prison administration.

EULEX RECOMMENDATION – JC/25/2009

Target: Ministry of Justice

Enhance the re-integration of non-majority communities into the Kosovo Correctional Service and the representation of women at all levels within the KCS.

MINISTRY OF JUSTICE (MOJ)

EULEX advisors have established a good cooperation with the MoJ structures. The cooperation is not necessarily evidenced by unhindered access to information. Though EULEX advisors are generally able to gain access to relevant documents, delays in providing documents occur which require a persistence of requests. The information provided was sometimes not eligible to update EULEX on actual developments, e.g. changes to draft laws were introduced after the Working Group had finalized its activities (as happened in the case of the Law on Anti-Corruption). EULEX advisors also report that decisions taken during meetings between EULEX and counterparts remained with inappropriate implementation, which required

that the same topics be re-discussed.

EULEX advisors have assessed a need of continuous training of staff in the Legal Affairs Department in the areas of legislative drafting, draft law assessments, legal policy formulation, regulatory impact analysis and of *acquis communautaire*. There is further a need in developing skills in the field of legal librarianship and online legal knowledge management. EULEX also defined ideas as to how to train and professionally develop the counterparts in the Legal Department, such as e.g. model legal policy formulation project or the development of a drafting style manual in conjunction with the MoJ counterparts. EULEX MoJ advisors identified a need to train not only junior but also senior Legal Officers.

The strengthening efforts seems to suffer from a continuous turnover of staff within the MoJ.

EULEX assessed MoJ's capability and willingness to develop policies to ensure fair and effective access of all communities to the justice system.

It is reported that the Minister should foster more pro-active policies in order to promote the inclusion of non-majority communities.

EULEX assessed that in several circumstances, Legal Officers in the process of drafting a law were not only engaged in the technical drafting itself but in addition have to get acquainted with the practical matter to be regulated. Given the broad range of subjects to be currently covered by the MoJ the challenge becomes apparent.

Above all the MoJ faces a problem of enhancing the capacity and skills of the Legal Officers due to the high staff turnover. A lack of motivation to remain in the MoJ induces Legal Officers to leave their posts for better paid professional opportunities. The majority of Legal Officers are fairly young and the assignments constitute their first jobs.

Several Permanent Secretaries have succeeded to each other over the last year, which had a considerable impact on the link between the ministerial and administrative structures of the MoJ. The lack of a Permanent Secretary has an impact on the functionality of the ministerial bureaucracy.

The Minister of Justice assumed responsibilities in the field of International Legal Assistance (ILA) in March 2009 and signed the Decision on Assumption of responsibilities in the legal field of ILA for those countries who have recognized the independence of Kosovo. This was followed by an Administrative Instruction for Kosovo courts, outlining the procedures for requests of and responses to international legal assistance.

EULEX RECOMMENDATION – JC/26/2009

Target: Ministry of Justice

- 1) To ensure a proper distribution of labour between Minister and Permanent Secretary
- 2) To monitor the increase in legal drafting capacities for legal officers

Office for Missing Persons and Forensics (OMPF)

EULEX OMPF advisors report that OMPF currently lacks any policy in developing staff members and creating retention policies within the OMPF service. A high staff turnover is reported.

EULEX RECOMMENDATION – JC/27/2009

Target: Ministry of Justice

To 1) draft a strategic plan for the OMPF outlining the vision and mission; 2) create policies that tackle the high staff turn over in the OMPF; 3) enhance the level of working conditions for OMPF staff members with a specific focus on the available budget and leadership skills of senior staff.

The background is a gradient of blue shades, from light at the top to dark at the bottom. Several light blue stars of varying sizes are scattered across the page. A solid yellow square is positioned to the left of the word 'CUSTOMS'.

CUSTOMS

ACCOUNTABILITY

Legislation, policies and operating procedures

The Law on Customs and Excise Code of Kosovo (Code No. 03/L-109) entered into force on the 10 November 2008. As this law states in article 1, the customs legislation will consist of the Code itself and an Administrative Instruction of Minister of Economy and Finance implementing the Code. It stipulates that it shall supersede any provision of the law which is inconsistent with the new Code, and that - as passing provision - EULEX shall have such responsibilities in the field of customs as are set forth in the relevant legal instruments defining its mandate. While the Customs and Excise Code entered into force on the 11 November 2008, the Administrative Instruction is still being drafted. The instruction is expected to repeal all administrative instructions issued by the Director-general with regard to customs procedures, valuation, origin and customs debt, etc. A fixed time frame for a progressive review of all customs rules, regulations and instructions or guidelines in line with the new customs legislation (and in compliance with EU standards) was not observed to be in place. For the time being Kosovo Customs is implementing and enforcing several UNMIK Regulations and Administrative Directions, as well as laws approved by the Kosovo Assembly, which reduces the legal gaps. The review and amendment process could be speeded up when a new EC funded technical assistance project will be launched (expected later this year).

The actual organization and structure of Kosovo Customs is provided in the Organizational chart 2009 document. Under the Director-General are operating four directorates:

- the Directorate of Revenue Operations is organized into three departments (one Central and two Border regions); it comprises all customs border/boundary and inland stations;
- the Directorate of Law Enforcement comprises three departments (Compliance, Anti-Smuggling and Investigation & Intelligence); the flexible anti-smuggling teams are part of this directorate;
- the Directorate of Finance and Systems is providing most of the support services and is divided into four departments: Human Resource, Finance & Logistics, Procurement and Information Technology;
- the Legal Directorate is the smallest one, consisting of one department with 4 units and is responsible for advisory services, decision review procedures and court representation.

A detailed description of duties and responsibilities of each Directorate (and their "sectors" within) seems to be available in Albanian language only. The organizational structure has not been changed from the UNMIK Customs Service structure; pending the Administrative Instruction and taking into account developments such as the approval of a national Integrated Border Management strategy, changes could occur in the future.

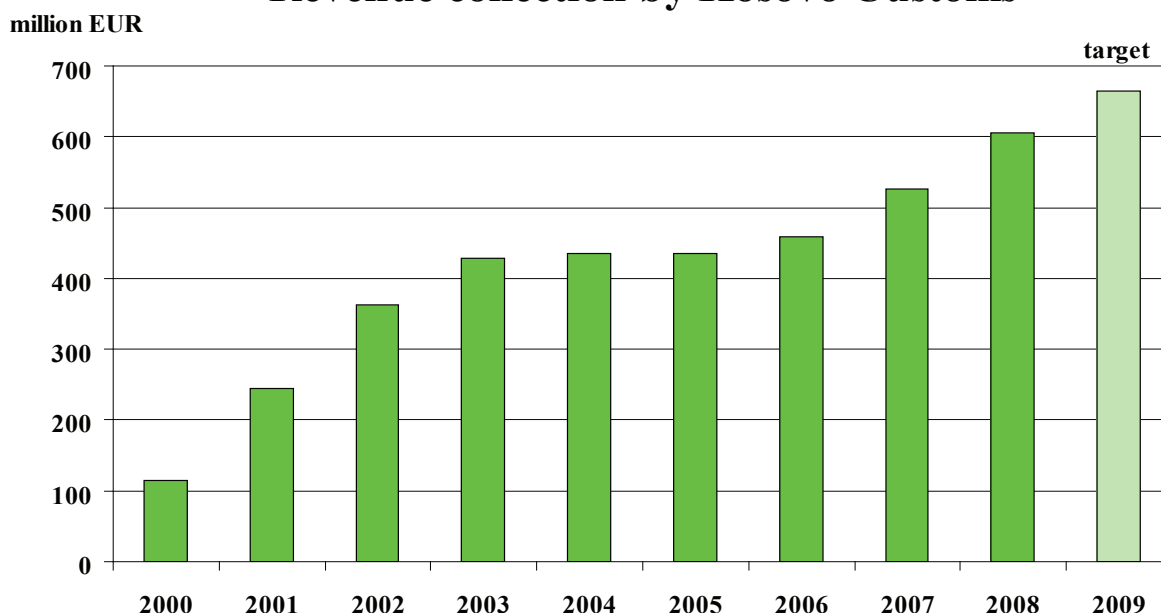
Powers of customs officers are regulated in the Customs and Excise Code, Provisional Criminal Procedure Code, and the Law under preparation on Customs Measures for Protection of Intellectual Property Rights.

In order to tackle cross-border crime and especially commercial fraud, and in order to improve the efficiency of enforcement measures, there is a continuous need to improve Customs legislation so as to give customs officers better tools and adequate powers to gather and process crucial information as well as to apply modern risk analysis.

Institutional relations between the Minister of Economy and Finance and Kosovo Customs are governed mainly by the Customs and Excise Code. The Minister of Economy and Finance (MEF) establishes a selection committee and proposes the candidate for the Customs Director-General (DG) position, while it is the Prime Minister who is appointing the DG. Until the end of the international supervision period, the appointment procedure needed the consent of the International Civilian Representative. The DG reports to the Minister of Economy and Finance. He needs to consult with the MEF in several matters, e.g. in establishing the committee recommending the nomination of Directors, in defining the conditions of vacancies for customs staff, in setting rules for administering Customs (e.g. location and working hours of customs/tax collection offices), or in issuing administrative instructions regarding movement of excise products, payment of excise tax, use of fiscal marks, information to be furnished by revenue traders, records to be kept at airports, designation of places for examination of goods, and disposal and accounting of samples of goods.

Apart from the Customs and Excise Code, the basis for the fiscal policy - particularly the part relevant for Kosovo Customs and administered through Customs - can be found in the Law on Public Financial Management and Accountability (Law no. 03/L-048). While some changes are occurring due to the transition of Customs, none of them can be described as 'considerable'. The Laws on Value Added Tax (No. 03/L-114) and on Excise Tax Rate (No. 03/L-112) might have a considerable impact on Customs revenue collection, by rising of VAT from 15% to 16% and increasing excise on tobacco, coffee, alcohol, petrol and motor vehicles. Kosovo Customs is of utmost importance for Kosovo, as it accounts for 65 % to 70 % of the revenue in the Consolidated Budget.

Revenue collection by Kosovo Customs



Performance of Customs in revenue collection has been impressive since the creation of the service: from 114 million Euros in 2000 revenues constantly increased (with some slowdown between 2003 and 2005) to reach 604 million Euros in 2008. The target of revenue collection of 665 million Euros through Customs for 2009 is considered as overambitious and unrealistic in the given economic context (including drops in commodity prices), and needs to be subject of regular monthly monitoring and review. As indicated on the Customs website, with a total of 180 million Euros collected, the revenues during the first 19 weeks of 2009 were lagging about 10% behind schedule.

The Customs and Excise Code has been prepared by the then UNMIK Customs Service in conjunction with the UNMIK Pillar IV Legal Office, it was then verified by the EC financed technical assistance programme "TACTA": the model used in the preparation of the Code was the "Community Customs Code". It therefore has received positive feedback by the Taxation and Customs Union Directorate-General of the European Commission (TAXUD), and notwithstanding some minor differences, it can be considered as compliant with EU standards (Council Regulation (EEC) No 2913/92). The draft Administrative Instruction (implementing provisions) may be judged as EU compliant as well, as they have been drafted according to the Council Regulation (EEC) No 2454/93 laying down provisions for the implementation of Community Customs Code.

Compliance mainly refers to the legal provisions of the Customs and Excise Code governing procedural rules (entry and exit of goods, customs procedures and free zones, re-exportation, destruction and abandonment) and rules on customs duties (customs tariff, origin, customs value, customs reliefs and customs debt), which are in line with the *acquis communautaire*.

Activities will need to be coordinated between KC Legal Directorate, EULEX Customs Component and a expected EC assistance project in order to improve the quality of Customs rules and regulations and bring them fully in line with EU standards and best practices.

Kosovo Customs legislation adheres to criteria set in the EU Customs Blueprints, although further alignment is required (e.g. introduction of the AEO -Authorized Economic Operator system- and system for pre-arrival/pre-departure declarations).

The Advisory Unit of the KC Legal Directorate plays a vital role in ensuring that customs legislation is applied correctly and uniformly through the entire customs territory. The Unit provides legal advice to customs staff, however quite often instructions and guidelines provided to customs staff are not extensive enough. Customs officers are relatively quickly made aware of newly revised legislation (by advisory letters, through seminars and training events), but the meaning and/or interpretation of the EU compliant customs rules is not always understood properly, and hence it is difficult for Kosovo Customs staff to correctly implement or enforce it in practice.

Although the Customs and Excise Code and its Administrative Instruction form the basic primary and secondary legislation, new legislation for customs is being developed, e.g. the Law on Customs Measures for Protection of Intellectual Property Rights in order to combat counterfeiting and piracy, and this in line with the guidelines of the EU Customs Blueprints (reflecting EU best practices).

In addition to the ongoing monitoring, mentoring and advising exercise, complaints submitted to the Director-general could be analyzed to identify which problems and patterns exist with regard to legal interpretation. Seminars with participation of KC Legal Directorate staff and officers from all customs stations could be organized on a regular basis, in order to ensure a correct interpretation of all customs rules.

EULEX RECOMMENDATION – CC/1/2009

Target: Customs Legal Directorate

To mentor and advise the Kosovo Customs Director-general on streamlining coordination with future European Commission assistance and other projects in order to further align Customs legislation and apply best practices. This should include topics as Authorized Economic Operator systems and pre-arrival/pre-departure declarations, but also efforts to ensure correct interpretation and implementation of customs rules in daily operations.

Equitable service delivery

Equitable delivery of customs services is certainly an element of accountability, although it has strong links with the aims of multi-ethnicity and even sustainability. In this respect, EULEX Advisors and Monitors have assessed the ability of Kosovo Customs to reach out to all communities (by making information accessible to the general public) and to the business community, and to ascertain the type and distribution of inland controls, inspections and actions of the FAST teams, as well as controls by customs officers and teams at border/boundary crossing point.

Information and communication

Different channels are used to provide information to the general public: brochures, leaflets and posters are available in customs premises and stations; press conferences and interviews are organised when successes occur; the website provides information regarding customs legislation (new Customs and Excise Code), guidelines on customs procedures with economic impact, TARIK (Integrated Tariff for Kosovo), free trade agreements (CEFTA -Central European Free Trade Agreement), etc. EULEX Advisors are reporting that specific attention goes to the business community, at least according to the plans (e.g. the operational plan 2009 of the Revenue Operations directorate), involving e.g. Chambers of Commerce and business associations, and targeting larger companies with frequent international business transactions. One example is the change of excise legislation where advance contacts have been established with relevant importers/exporters/producers of alcohol products, in order to inform them on new regulations and procedures, and establish smooth implementation measures. The 2008 Customs annual report is certainly more exhaustive than earlier years' reports, but more accessible terminology for the general public would probably improve readability of some sections.

EULEX Monitors are indeed reporting a mixed picture of availability of notices, handouts, information leaflets or brochures informing the public and traders of their obligations or rights. Depending on the time of observation, in several BCP there was only limited information available, at others there was but not in several languages or not easily visible, while in few cases it was virtually missing. Sometimes Customs officers were able to provide (additional) information, but Monitors impressions on public information at border/boundary stations can be summarized as not being up to standards.

Although efforts are done to renew the information of the website, leaflets or posters, the general impression is that contents are not always exhaustive nor up to date. Public information specifically at border/boundary posts or stations still need to be improved: frequently information is outdated, and not systematically or necessarily available in three languages (Albanian, Serbian and English). Specific customs forms not always happen to be available in other than one (Albanian) language, although EULEX MMA efforts seem to have had already some influence. Quite an effort will be needed to renew all public information once the MEF Administrative Instruction, and further instructions, guidelines or procedures by the Director-General have been issued. Whether the Kosovo Customs communication strategies are fully in line with EU Customs Blueprints criteria for Public Relations and Communication still needs to be assessed.

EULEX RECOMMENDATION – CC/2/2009

Target: Director General

To mentor and advise the Kosovo Customs on the adherence of the Customs communication strategy with the Public Relations and Communications criteria of the European Union Customs Blueprints. Specific attention should go to up to date and sufficient public information at all Customs stations, at all times available in Albanian and Serbian, and for travellers and economic operators also in English.

Kosovo Customs is - excluding in the North part of Kosovo - carrying out various types of inspections throughout Kosovo: at the Border/Boundary Crossing Points, Inland Customs Terminals and Vehicle Check Points (VCP).

Controls at BCP and terminals are mainly based on risk profiles from the centralized TIMS - Trade Information Management System – which automatically indicates vehicles and goods to be examined by station officers when customs declarations are processed. Controls are reaching 20 to 30 per cent of the traffic; in 2008 33% of import and export consignments were examined.

VCP controls are conducted by Kosovo Customs Flexible Anti-Smuggling Teams (FAST) along the road side. As an example, in a 14 days period in spring 2009, FAST carried out 51 VCP stops (of which 16 resulted in seizures of goods) and 80 examinations by mobile scanner (for which 8 seizures were made); the annual report 2008 is mentioning 941 customs offences detected by FAST and seizure of 91 vehicles carrying illegal goods in a one year period. FAST are also taking part in “Task Force” actions and patrols (including of green border/boundary); this Task Force is established to prevent smuggling, and involves Customs and Police.

In principle, control activities are not guided by geographic distribution but – following best practice – based on risk criteria. In 2009 efforts will be made to decrease the level of control in order to facilitate legitimate trade, but targeted controls will need intensified risk management. Companies will be assessed as high risk if they have an existing offence record, if they are suspected as bogus or if existing intelligence indicates suspicious activity.

Complaints and appeals

The way an organisation deals with complaints and the existence of appeals procedures are indicators of its accountability to public and institutions. EULEX Advisors had an initial look at the number, nature and outcome of complaints recorded against Kosovo Customs and its personnel for non-compliance with the legislation, policies and procedures, or regarding potential breach of the Code of Conduct. When it comes to complaints against Customs decisions by individuals or companies, they can submit a request for review of decision by the Director-general of Kosovo Customs. Appeal against these decisions is then possible through the Independent Review Board.

Preliminary indications with regard to 160 requests received in January and February 2009, seem to confirm the trends/findings of the 2008 Kosovo Customs annual report. Between 70 % and 80 % of the requests for review by the Director-general are being refused (which means that the initial decision is sustained), while most cases are related to valuation of goods.

As valuation of goods remains the most important subject of requests for review, and customs valuation being a quite complicated area, further analysis is needed to check whether valuation methods are applied appropriately and consistently. Similar exercises are needed to detect the nature of claims and the possible underlying causes, and subsequently identify if certain (and which) areas need to be strengthened within Kosovo Customs.

The Independent Review Board (IRB), governed by the Law on Tax Administration and Procedures (Regulation No. 2005/17), is the body for appeal on Kosovo Customs decisions. It has not been operating between March 2008 and April 2009. Since the Kosovo Assembly has appointed new board members, and after a one year interruption, the IRB has recently started to organise hearing sessions on the appeals of duty payers.

Cooperation with EULEX Customs Component is being established, in order to detect trends or patterns in the appeals and indicating possible weaknesses in Kosovo Customs functioning.

Within the Human Resources Sector of the Finance and Systems Directorate, a Professional Standards Unit (PSU) is investigating and dealing with cases of potential breach of the Code of Conduct. Cases identified as minor violations are resolved with local measures, cases suspected as serious violations of official duties are forwarded to the Disciplinary Board while cases of criminal/penal nature are referred to the District Prosecutor's Office in Prishtinë/Priština. As a sample, during the months of February and March 2009 a total of 10 cases have been initiated, involving 17 customs officers, and classified by the PSU as cases related to traffic accidents (4), suspicion of misuse of official duty (5) and negligence in duty (1). Advisors learned that out of these cases 8 were reported by line managers, 1 case initiated by the Director-General based on a Internal Audit report, and 1 case by a third part person (which is in line with average percentages of cases submitted to the PSU: about 80% by managers and 20% by sources from outside Kosovo Customs). Complaints seem to be related to relatively minor violations and during the period serious violations (for instance bribery) have not been reported, nor cases been referred to the competent authorities for criminal investigation.

Anti-corruption

The PSU has drafted an action plan 2009 to combat and prevent corruption within Kosovo Customs, which is supposed to complement the Kosovo Government Strategy and Action Plan of Anti Corruption. It has as main objectives:

- to increase the integrity of Customs staff through development, amendment and implementation of the Code of Conduct and Disciplinary Procedures, as well as warning on negative effects of corruption, and information on possible disciplinary measures in case of violation of applicable legislation;
- to improve the internal cooperation and exchange of information in order to investigate cases and combat corruption;
- to develop campaigns to encourage citizens and business community to report possible corrupt behaviors, to instruct how to submit complains, and to guarantee confidentiality in case of presenting cases;
- to improve cooperation with other Kosovo Institutions of Law Enforcement (Police, Kosovo Agency on Anticorruption, Kosovo Tax Administration, Office of Public Prosecutor, Courts);
- to respect human rights and applicable legislation in the process of investigation;
- to monitor the management of human resources (movement/transfer of staff), in order to decrease the possibility to cheat and corrupt and avoid possible cases of conflict of interest.

As the action plan states, it will need the continued engagement and commitment of all staff of Kosovo Customs and particularly its senior management.

Neither EULEX Advisors nor Monitors are reporting any recorded incident of corruption involving Kosovo Customs staff during the first months of 2009. The annual report 2008 is not very explicit when reporting on anti-corruption, as it is only referring to disciplinary procedures against 85 customs officers and to 34 disciplinary measures resulting in *inter alia* warnings (24), cases handed over to police (13) and/or courts and dismissals (6).

The fact that no incidents of corruption were reported contrasts with public perception of corruption in Customs. Although the UNDP Kosovo Early Warning Report of April 2009 points out that corruption is not seen as a paramount problem which Kosovo is facing (ranked fifth in the top nine list), 9-13% of respondents declared they had encountered a situation in which public officials were asking for bribes, gifts or other favors. Surprisingly Kosovo Customs is ranked third in the list of Kosovo institutions where "large scale" corruption is perceived to exist. Further MMA will be definitely needed in the future in order to identify areas of concern, to improve co-operation with e.g. Police and Public Prosecutors in identifying corrupt practices and developing strategies to reduce possible problems.

Strengths and weaknesses

With regard to different aspects of accountability, strengths and weaknesses of Kosovo Customs can be summarized as follows:

Strengths

- The primary legislation is in place and compliant with EU standards: a Customs and Excise Code compliant with the Community Customs Code.
- Legal gaps are reduced considerably as former UNMIK rules and regulations are still applied.
- A stable Customs organization is in place and well functioning.
- Kosovo Customs has a proven performance record in revenue collection.
- Complaints and appeals procedures are well in place, with most reviews of decisions handled in time.
- A Professional Standards Unit is dealing with potential breaches of the Code of Conduct, while internal reporting of breaches seems to be well established.
- Kosovo Customs has an Action Plan to prevent and combat corruption, and has some proactive measures in place.
- EULEX did not turn to executive responsibilities or to reverse Kosovo Customs decisions in the past six months period.

Weaknesses

- The secondary Customs legislation not yet issued (Administrative Instruction by the Minister of Economy and Finance), and no new administrative instructions issued yet by the Director-general, as stipulated in the Customs and Excise Code.
- A fixed timeframe for review of existing regulations, policies and instructions has not been set.
- Lack of coordination between the Ministry of Economy and Finance and Customs.
- Complaints on decisions by Customs seem to be consistently related to the same few areas, especially valuation of goods.
- The Independent Review Board has not met for more than a year, generating a backlog in appeals resolution.
- The perception by the public of corrupt practices in Kosovo Customs seems to persist.

Conclusions

Apart from the Customs and Excise Code, scrutiny of all existing legislation and eventual modification of secondary legislation, regulations, policies, instructions and/or standing operational procedures is still in the very early stages, as the Administrative Instruction with implementing provisions has not been issued yet by the Minister of Economy and Finance.

With a Customs and Excise Code which is compliant with the *acquis communautaire* it is expected that the basis has been laid for all further legislation and regulations to be developed according to European standards.

While appeals procedures seem to be well in place, further analysis could be done to detect the underlying causes for complaints.

Efforts will be needed to decrease the perception of corruption within the organisation, including transparent communication.

SUSTAINABILITY OF THE SERVICE

Human resources

EULEX Advisors and Monitors gathered information about training and performance assessment policy within Kosovo Customs and understanding of job descriptions by staff, through interviews at Head Office and at BCP's and terminals.

In May 2009, the total staff of Kosovo Customs including managers, supervisors and officers stood at 555. In line with the authorized budget, the proposed 2009 organizational structure reflects a maximum of 572 staff. Depending on recruitment, the staffing level of the customs administration seems to fluctuate between 540 and 560. As the Directorate of Revenue Operations comprises all customs border/boundary and inland stations, it has the highest number of staff, around 310. The Directorate of Law Enforcement comprises the flexible anti-smuggling teams and therefore is the second largest one with a staffing level of about 140 officers. The Directorate of Finance and Systems has around 85 staff, while the Legal Directorate is the smallest one with currently 18 staff assigned to it.

Grades and numbers of staff at Kosovo Customs (19.05.09)

G20	Director-general	1
G10	Director	5
G9	Head of Department	11
G8	Head of Unit	42
G7	Shift Leader	123
G6	High Customs Officer	188
G5	Customs Officer	172
G4	(Lower Grade Customs Officer)	13
Total (all ranks):		555

EULEX Monitors at BCPs often received complaints of lack of sufficient staff. Also the IBM Strategy mentions that current number of personnel in the different agencies involved do not meet daily needs and requirements. Staff attendance and abstraction levels are monitored on a daily basis. In case of lack of personnel for a short period of time, staff may be regrouped into teams to guarantee a minimum of officers on duty in every shift but sometimes the re-deployment of personnel from or to other BCP's is required.

Training and development of core skills

A Kosovo Customs training plan ("Training Map") is being developed on a yearly basis by a Committee consisting of Heads of Sectors, Head of Training Sector and the Director of the Finance and Systems, through an appraisal and assessment of training needs in core skills and requirements at organizational unit level. According to Kosovo Customs the basis for training and development activities has been laid by a medium term training framework, but no further details nor assessment are available. The Training

Map 2009 covers a selection of introductory, advanced and specialized trainings, in a broad range of areas and topics, e.g. Implementation of Customs Procedures, Introduction to Prevention of Financial Crime, Basic training on Investigation of Financial Crimes, Operational Analysis, IT Equipment Analysis, Financial Investigation, Investigation of Corruption, Investigation of Tax Evasion, Investigation of Smuggling and Evasion of Customs Revenues, Investigation of Crimes Performed through IT, Counter Money Laundry and Investigation of Assets, Investigation of Frauds and Invasion of Debtors, Investigation of Counterfeiting, Leading Investigation for Financial Crimes, Account Holding / Legal Audit, Forensic for Investigation of Financial Crimes through IT.

Preliminary assessment indicates that the training plan is not very ambitious, notably in respect of customs law enforcement. It largely focuses on operational procedures, audit and investigation rather than on prevention or detection of customs offences. Although the current law enforcement training seems to be relevant and adequate, more emphasis will be required on specialized training in e.g. profiling and advance risk assessment, interview techniques, covert surveillance techniques or informant handling, and especially if Kosovo Customs has serious intentions to deal with organised crime.

Training within Kosovo Customs is mainly delivered by its own qualified and certified instructors which include senior members of the customs administration itself. This is supplemented with courses (included in the Training Map) provided by the Kosovo Center for Public Safety Education and Development (KCPSED). This Center is an executive agency within the Ministry of Internal Affairs, responsible for providing technical education, curriculum development and support services for public safety training of Kosovo civil servants employed in areas related to public safety e.g. police service, corrections service, customs service and emergency services.

As training within customs is delivered by own instructors of the customs administration, the capacity of training managers to ensure compliance with training strategy, policies and procedures for most of the customs basic training is considered adequate. The need for continuous specialist trainings however persists; traditionally they have been outsourced, but with changing environment, challenges and threats for customs the Training Sector would benefit from additional (full time) specialist trainers.

The annual training budget amounts to 2.5% – 3% of the annual running costs of Kosovo Customs. In 2008, according to the latest annual report, 1.155 persons attended a training session, which means on the average two trainings attended per staff member. An in depth assessment of the compliance of training strategy, policies, structures and procedures with key training indicators of EU Customs Blueprints is not yet available.

Basic training for new recruits of the customs service is spread over an 8 week period and conducted in two phases. Theoretical training covers a 5 week phase; subject matters are related to the mandate (role, duties and responsibilities) and are based on the Customs Code. This training phase is followed by a written test, and is being supervised by the Customs Training Sector. Theoretical training is then supplemented by a on the job practical training phase of 3 weeks. The Training Sector evaluates the training and trainers through forms to be completed by trainees, including items as delivery style, course content, effectiveness and practical use of the training.

With regard to the levels of training and skills development of customs staff in most relevant customs areas such as law enforcement & prevention of crimes/protection of society, revenue collection, audit and investigation, human resource management, information technology & infrastructure, it seems – as initially graded by Advisors at Kosovo Customs Headquarter - to be at a satisfactory level and perceived as fit for purpose. In general EULEX Monitors confirmed these observations, although with the reservations that new staff clearly needs on the job training and a “learning by doing” approach under the guidance of experienced colleagues, and that when staff are rotated they need training/briefing on the particular requirements/skills needed in the new workplace and on profile or risks of the border/boundary post.

Although the training of individual staff members can be proposed by supervisors or line managers (e.g. based on staff performance evaluation), it seems to be mainly initiated by the above mentioned Committee which is selecting and identifying staff for training.

The performance appraisal & evaluation process (see below) explicitly recognizes the key role it has to play in identifying training and development needs, but there seems to be little provision for individuals nor awareness of the possibility to indicate their own training needs. Monitors have confirmed this observation; staff do not know how or to whom to express their willingness for training, and the selection process is not clear and perceived as being per nomination by line managers; the same officers are apparently more often called for training than others. FAST staff expressed dissatisfaction as they were very rarely sent to training, including for use of special equipment.

Based on interviews at Headquarter and on responses to questionnaires in respect of particular training programmes, customs staff perceives training as being both useful and effective. This seems to be mostly confirmed by staff at Customs Stations, whether it is basic or further formal in service training. EULEX Monitors observed however that no manuals on training modules or search guides were available for easy reference to station staff.

Improvements could however be suggested in training contents, scope, delivery and methodologies – including remote “on line” training facilities – to cope with the changing economic and political environment and challenges, as well as to respond to ad hoc requests or individually expressed needs. Particular attention could be given to training for the use of specialized equipment.

EULEX RECOMMENDATION – CC/3/2009

Target: Head of Sectors, Head of Training Sector, Director of the Finance and Systems

To mentor and advise Kosovo Customs Directorate of Finance & Systems and Heads of Departments and Units on the review and improvement of training strategy and plans. These should especially include specialist training in law enforcement (e.g. prevention and specialized detection) and in risk management aspects (e.g. profiling and advance risk assessment).

Performance of duties

Based on interviews at HQ, staff members are generally well aware of their duties and responsibilities and their job descriptions are fully understood. Tasks of their Units or Sector have been clearly communicated. Monitors as well are reporting that job descriptions are available and duties are on the average well understood at customs stations, although specific action is mostly taken on indication of supervisors or based on instructions from Head Office. On few occasions Monitors have intervened to clarify procedures. Current job descriptions exist from UNMIK Customs Service but due to changing demands and responsibilities, especially those in middle management, they might be subject to review. Specialized staff as in the Legal Directorate have an appropriate educational background or university degree, but is still quite inexperienced with few years of service in customs. The wide range of tasks for officers in Revenue Operations demands training in several fields (e.g. procedures, revenue collection, customs control), and hence new recruits need time to adapt to their duties.

EULEX Monitors observed that reference material for staff at Customs stations to carry out their duties is available in hard copy or electronically, but an important source of information about legislation and procedures seems to be Kosovo Customs website. Line managers are responsible to ensure the accurate level of knowledge of the officers by informing and sharing information through e-mails and briefings.

Customs staff are assessed on a regular basis, according to the Performance Appraisal & Evaluation System which was conceived under the UNMIK Customs Service. A Performance Evaluation Report is to be completed on an annual basis (due in the month of November), which includes an intermediate midyear review (six months period) and a final end year review due in the month of November. Criteria or aspects covered by the evaluation are: professional and technical competence, quality and quantity of work accomplished, timelines of work, initiative, innovation and skills in solution finding, work relationships, written and oral expression in working language(s), management of staff or resources, planning and organization of work, and ability to negotiate and persuade. Clear guidelines are available to the direct supervisors on how to apply the provisions of the appraisal procedure. Performance Evaluation Reports need to be approved by line managers/approving managers and a appeals procedure exists. Performance does have an impact on the salary (increments) of individual staff. In 2008 only three appeals concerning the individual assessments were received.

The number of complaints could indicate that the quality of the performance appraisal is perceived as fair. However, it could also indicate that the procedure has been reduced to a formality, with no consequences (including financial) for officers, nor with the possibility for staff to express freely their concerns during assessment meetings. Due to the particular periods during the year (June and November), the quality of the performance evaluation process in practice could not been assessed (e.g. the direct one-to-one meeting between the supervisor and officer) nor the procedures for addressing any grievances and/or complaints of discrimination or unfair treatment during the performance evaluation.

Advisors are reporting that a fairly basic automated personnel management system is currently in place which maintains employment records, performance appraisals and records of promotions. Training records are however maintained by the Training Sector independently, and stored in a separate database.

As initially assessed, the actual system does not seem to meet the Human Resource Management criteria of the EU Customs Blueprints which are calling for integrated personnel systems for recruitment, retention, performance management and assessment, promotion, career progression, training and development, transfer, severance, dismissal, retirement, remuneration and working conditions...

Other resources (infrastructure, equipment, facilities)

Although detailed assessments of these resources might not be the first objective of a Rule of Law mission and be more the competence of other (international) actors in Kosovo, it is however important to have a broad impression of availability and quality, as they are a prerequisite for Kosovo Customs to carry out its duties in a sustainable way.

The management of operational equipment and resources can be considered as rather adequate, but a complete evaluation of all infrastructure and equipment (on the basis of the manually recorded inventories) is not carried out. In several cases, the search premises at Customs stations or terminals are not at a satisfactory level for adequate customs examinations and inspections. Some stations meet the basic requirements but others are lacking e.g. separate (roof covered) examination space in order to avoid blocking traffic lanes, or areas for use of e.g. the X-ray vehicle; indications for “goods to/not to declare” channels (red/green routes, at the bigger BCP) are not always clear. Mobile Units have completed Border/ Boundary Crossing Point and Terminal profiles, which identify deficiencies in equipment or affecting their proper use. They are reporting on long response time by Customs HQ concerning repairs, servicing or replacement of equipment. Equipment levels are quite different and when present, equipment is not always used, properly used or to its full potential.

In order to identify possible gaps in infrastructure and equipment, all equipment should be registered/ recorded in a electronic database using bar codes. Search premises at some customs stations need to be considerably upgraded, including with facilities and technical equipments, e.g. X-ray machines. The Integrated Border Management Action Plan of the Kosovo Government intends to rectify some of the gaps.

EULEX RECOMMENDATION – CC/4/2009

Target: Head of Sectors, Head of Training Sector, Director of the Finance and Systems

To mentor and advise Kosovo Customs Directorate of Finance & Systems on compliance with human resource management criteria of the European Union Customs Blueprints. This should include the development of integrated personnel management systems. Specific attention is needed to include training records which are currently kept in a separate database.

Operational management plans

EULEX Advisors have only been able to preliminary assess quality of the operational management plans, as they have not been finalized yet (following the transition of Customs to the Ministry of Economy and

Finance).

The Strategic Operating Framework 2009 – 2011 has been released on the website of Kosovo Customs; it remains very similar to the UNMIK Customs Service Strategic Operating Framework 2006 – 2009. Factual information has of course been updated (e.g. staffing levels, revenue collection targets, operating budget).

Recent developments e.g. creation of Kosovo Customs and the consequences of transition to a executive agency under from the Ministry of Economy and Finance get no particular emphasis, and as aims and objectives remain broadly the same, the strategy of Kosovo Customs is not expected to change dramatically.

Draft Operational/Action Plans with goals and objectives for 2009 have been prepared for and within each of the Directorates. As reported by the EULEX advisors, these plans are expected to be discussed and agreed upon between the Minister and the Director-General in the near future. They haven't been consolidated in one Customs Management Plan 2009.

The fact that the new Kosovo Customs and Excise Code came into effect in November 2008 only and that the Administrative Instruction has not been issued yet by the Minister of Economy and Finance, might hamper the finalization and implementation of management or operational plans. Notwithstanding the obligation for the Director-General to report to the Minister, and while strategic plans need to be guided by the overall policy set by the Ministry, there seems to be space for political interference in Kosovo Customs headquarter priority setting and decision making, if indeed operational plans need to obtain formal approval from the Minister.

EULEX RECOMMENDATION – CC/5/2009

Target: Director General Customs, Directorates

To mentor and advise Kosovo Customs Director-General and Directors on updating the strategic framework and operational plans. This should include the integration of the different Directorates plans into a consolidated plan which defines clearly the objectives and responsibilities. Specific attention should be given to incorporate all elements of the recently approved national Integrated Border Management Strategy and the future government strategy against organized crime.

The draft Legal Directorate "Action Plan 2009" sets out as objectives further development of administrative and professional capacities within the Directorate; review and identification of specific requirements for legal services within Customs and other institutions; review of claims against decisions issued by Customs, development of appropriate capacities for representation of Customs at the Independent Reviewing Board and in court sessions; support to staff in applying Customs Code and its sub-legislation in the most appropriate way; and harmonization and approximation of internal legislation and customs procedures with the *Acquis Communautaire*.

The draft is not very detailed and activities are defined quite broadly without setting clear outcomes or defining timeframes. Although some activities seem to belong to the normal duties and responsibilities of the Directorate, other are clearly depending on further steps in developing (secondary) legislation and instructions. Although the Legal Directorate reports on a monthly basis to the Director-General

(mainly on activities and containing statistics on legal advices requested, on appeals,...), planning would probably benefit from more analytical (and more critical) reporting in order to identify problems related to (uniform) application of customs legislation.

The draft Law Enforcement Directorate Operational Plan 2009 sets out as objectives: to reduce fraud in tax and duty collection, smuggling of drugs and other forbidden goods through detention, detection and investigation; to improve compliance of traders and business community; to improvement liaison, cooperation and coordination of tasks, and exchange of intelligence with other (Kosovo and international) law enforcement agencies; to continuously develop the law enforcement administrative, professional and technical capacities within the Directorate; to implement a Code of Ethics and especially to enhance measures to combat corruption.

The plan is quite detailed, including indicators in terms of numbers or statistics which can be used for measuring progress or performance. Although it seems quite generic in some areas and includes extensive lists of activities without proper timelines, the quality of the Law Enforcement plan in general terms is perceived as satisfactory and it offers a clear framework to guide the Directorate's activities. Some organised/serious crime topics have been introduced as a result of EULEX MMA activity, however in general little reference is made to organized crime.

The objectives of the draft Revenue Operations Directorate Operational Plan 2009 are to ensure proper collection of revenue according to the target set by the Ministry of Economy and Finance; to enhance cooperation with the business community and with other law enforcement agencies in the framework of Integrated Border Management while facilitating legitimate trade; and to enhance prevention and detection of fraud, money laundering and smuggling and to establish systems to minimize opportunities for corruption of staff.

In general there seem to be no integration or consolidation of operational plans into one plan with clearly set objectives for the whole of Kosovo Customs, which makes it difficult to track progress and clearly spell out the responsibilities. Overlaps seem to frequently occur, and reporting against these operational plans thus becomes quite confuse.

Combating serious crime

The fight against all forms of serious crime, and the support to Kosovo institutions in this respect, belongs to the highest priorities of EULEX, as can be learnt from its strategic objectives. EULEX Advisors have therefore been asked to establish the degree to which investigative and enforcement functions connected to serious crimes are operational, e.g. procedures in place, existence of targeted operations to detect crime and active targeting of suspected criminal groups (based on risk analysis and intelligence), capacity and willingness of managers to develop proactive strategies to combat serious crime and to act upon serious crime cases.

Although the picture is far from complete, and information regarding current recorded serious crime trends and detection rates could not be provided, preliminary findings can be summarized as follows:

- The examination and control of vehicles and goods are based on risk analysis derived from the Trade Information Management System (TIMS), which is providing examination tasks to station officers when customs declarations are processed. The vehicles and goods to be examined are automatically selected by TIMS based on risk analysis, risk indicators and risk profiles. Risk categories are: “high” (requiring document and physical examination), “medium” (requiring document check and possible physical examination), and “low” (requiring at least a document check).

A thorough review might be needed to check all existing profiles, the risk analysis process and the use of the TIMS system itself, e.g. when no “hits” have been recorded for consignments or importers in certain categories of risk and no customs offences or illegal goods have been detected in long periods of time. Field observations seem to indicate that many of the control measures are not based on selectivity and it is not yet clear whether profiles are a result of thorough risk assessment. The same would apply to the almost automatic screening of passengers of some of the incoming flights at Prishtinë/Priština International Airport while other flights are systematically considered as posing no risk. More emphasis on training staff in profiling and advance risk assessment might be needed.

- Within the Law Enforcement Directorate the majority of the research is carried out within the Intelligence Sector and the Compliance Measurement Unit; however no specific information system dedicated to serious crime exists. Also here, the primary database used is the TIMS, with access to the importer, exporter and risk database within the system.

Although targeted operations have been carried out, their effectiveness is assessed as rudimentary. Much development work seems to be required in this area, as Kosovo Customs needs a thorough database that can deliver their intelligence needs, as availability and use of intelligence data are for now relatively unsophisticated.

EULEX RECOMMENDATION – CC/6/2009

Target: Directorate Law Enforcement, Directorate Revenue Operations

To mentor and advise Kosovo Customs Directorates of Law Enforcement and Revenue Operations on enhancing internal communications and data sharing. This refers specifically to intelligence communication and dissemination, as well as data sharing in order to proactively tackle organised crime, and to identify target criminal groups. It should also enhance the capacity in profiling and advance risk assessment, and the selectivity of controls.

- As mentioned in an earlier section, there is little specific reference to organized crime in the Kosovo Customs operational plans. However the Directorate of Law Enforcement has demonstrated the willingness to develop relevant strategies and improve intelligence led operational activity, illustrated by planning to target specific criminal groups through joint green border/boundary operations involving Kosovo Police and KFOR, and use of the data received from the gates in Northern Kosovo.
- Identifying target criminal groups is a task of the Intelligence Sector, but it seems to be rather unsophisticated in this area. Kosovo Customs has limited powers to deal with organised crime and relatively little experience, and has no separate plans to deal with it.

Deployment of resources for specific exercises is more driven by the operational plans than by information produced by the Intelligence or Compliance Measurement Sectors, and hence is more a reactive than proactive approach.

- Intelligence is mainly disseminated by the Intelligence Sector (by e-mail) to the relevant station heads and is then further disclosed to station staff where necessary; however border/boundary post staff state that they receive little information from the Intelligence Sector. On the other hand the impression at Head Office is that little effort is done on intelligence provision from the border/boundary crossing points. Reports of Monitors confirm to a certain extent that officers and supervisors do not see it as their task to collect intelligence, unless they received advance information or instructions. Station staff do not seem to have access to update information directly into the database, and cannot necessarily appreciate if information sent to Head office using specific reporting formats (e.g. suspect information form) is being used for intelligence purposes

Communication, intelligence dissemination or data sharing between Law Enforcement and Revenue Operations Directorates seems therefore to be quite limited, and improvement of internal communication should enhance efficiency of Customs control.

- Customs legislation regarding crime is mainly covered by the Customs and Excise Code, the Criminal Code, and the Criminal Procedure Code. A preliminary analysis indicates that there is no legal basis for Kosovo Customs to collect, record and disclose crime related personal data.

Protection of personal data should be properly regulated, otherwise it will not be possible to exchange data with other countries on basis of international agreements, and especially with EU Member States as personal data from EU member states may only be transferred to third countries (like Kosovo) if they provide an adequate level of protection.

EULEX RECOMMENDATION – CC/7/2009

Target: Director General

To mentor and advise the Kosovo Customs Director-general on possible data protection within Customs and to implement appropriate laws and legal guidance in order to regulate the exchange of crime related personal data at national and international level. This should include an assessment on data protection mechanisms and legal provisions needed in order to exchange data under regional and international cooperation agreements.

Cooperation

Interagency cooperation within Kosovo and international cooperation are particularly important to combat serious (cross-border) and organised crime. EULEX Advisors and Monitors have been asked to identify the current state of Kosovo Customs coordination and co-operation measures, structures and plans, including agreements with regional and EU member state institutions.

Preliminary assessment concludes that there is little cooperation on organised crime with other law enforcement agencies, also because Kosovo Customs has few powers in this respect. Public Prosecutors and also Kosovo Police to a certain degree seem to have little or no faith in the Customs' role or capability, and give little or no support or authority to investigate/prosecute organized crime. There are no regularly scheduled meetings, but they are rather organized on an ad hoc basis; the number of joint or synchronized operations is low; communication and exchange of daily information at local (BCP) level seems to be limited. Although staff at crossing points consistently consider cooperation between Border Police and Customs to be good and effective, at times confirmed by EULEX Monitors, the impression remains that some differences in levels of cooperation remain. However, Monitors also observed efforts by Kosovo Customs and Border Police to improve cooperation on the ground due to the new IBM concept and strategy, including the "one stop – one search" method to improve the control at the borders/boundaries.

In order to develop the capacity within Kosovo Customs, the Legal Directorate is planning to create an additional unit specifically for liaison and cooperation with Public Prosecutors, and to provide legal advice within Customs with regard to pre-investigation procedures.

Cooperation with Public Prosecutors is assessed to be a key to Kosovo Customs having any success in tackling organised crime in Kosovo. Public Prosecutors need to be convinced that Customs have the capability to investigate organized crime, and on the other hand Kosovo Customs need to ensure that all enforcement and investigation activities are performed consistently and in accordance with the law.

EULEX RECOMMENDATION – CC/8/2009

Target: Directorate Law Enforcement, Legal Directorate

To mentor and advise the Kosovo Customs Legal and Law Enforcement Directorates on intensified cooperation with other law enforcement agencies, and especially with Public Prosecutors. This should include improving the capability of Customs to investigate serious crime in accordance with legal provisions, as well as the coordination of activities in the framework of the Integrated Border Management Strategy.

In May 2009 the "National Strategy on Integrated Border Management" was approved by the Kosovo Government, specifically involving Border Police, Customs and the Veterinary and Food Agency. It not only covers cooperation within the agency, but lays – apart from any earlier agreement or Memorandum of Understanding – the basis for interagency cooperation. The Directorate of Revenue Operations has been actively involved in the preparatory work, and the Director-General of Kosovo Customs will be part of the Executive Board of a coordinating structure which will be, amongst others, responsible for coordination with all state administrations and regional bodies. The strategy is accompanied by an action plan covering legal framework, organization and management, procedures, human resources and training, communication, information technology and infrastructure and equipments, which should better define the objectives and set the priorities for each actor.

Especially between Police and Customs this could drastically strengthen cooperation at border/boundary crossing points. On top, it should through improved cooperation and information sharing, allow more targeted and selective controls. It is indeed hoped that the IBM strategy will clarify control mechanisms

and responsibilities, and intensify controls at the borders/boundaries in order to create effective protection of society and to prevent and reveal cross border/boundary crime.

Regarding international agreements, at the moment Kosovo Customs still has Memoranda of Understanding in place concluded by UNMIK with Customs Administrations of FYROM, Montenegro, Albania and with the Tax Administration of Serbia. The intention is to review the existing agreements and conclude agreements on cooperation and mutual assistance with other EU member States services/law enforcement agencies.

EULEX RECOMMENDATION – CC/9/2009

Target: Director General, Directorate Revenue Operations

To mentor and advise Kosovo Customs on the implementation of the Integrated Border Management Action Plan, and especially the actions under the responsibility of Customs. This should especially include the upgrading of infrastructure and equipment at Customs stations.

The above mentioned National Strategy on Integrated Border Management – in line with the European Commission Guidelines for Integrated Border Management in the Western Balkans – evidently covers cooperation across the borders/boundaries, including development of joint emergency plans and joint standing operational procedures, which are especially important in view of tackling cross-border and organized crime.

Important to note is that the other countries (FYRoM, Albania, Bosnia Herzegovina, Montenegro and Serbia) which have benefited from EC funded technical assistance with regard to customs and tax matters (TACTA) have adopted the Community Customs Code as well, which enhances the chances for smooth international cooperation.

Strengths and weaknesses

With regard to different aspects of sustainability, strengths and weaknesses of Kosovo Customs can be summarized as follows:

Strengths

- Human resources are well in place, lacking at times not more than 5 % of authorized staffing levels, and with only few signs of de-motivation.
- Training opportunities are available, organized on a yearly basis and covering introductory, advanced professional and technical training.
- Basic customs training is provided by own trainers including experienced (senior) staff.
- Training is generally perceived by staff as useful and effective.
- In general, duties seem to be well understood by all staff, and tasks are clearly communicated; reference material for staff is available.

- A performance assessment system is in place, and seems to be perceived as fair by customs staff.
- The Strategic Operating Framework announces no major shifts in overall objectives of Kosovo Customs.
- Operational Plans exist for each Directorate and form the basis for internal reporting.
- The examination and control of vehicles and goods are based on risk analysis derived from a Trade Information Management System (TIMS) which is including a risk module.
- There is a willingness of senior management to develop strategies and intelligence led operational activity targeting serious/organized crime.
- The Legal Directorate will be strengthened in view of better cooperation with other law enforcement agencies and particularly Public Prosecutors.
- Government Strategy on Integrated Border Management has been approved; Kosovo Customs actively contributed to its preparation.
- Memoranda of Understanding with most of the neighboring countries exist, with the intention to review them in execution of the new Customs and Excise Code.

Weaknesses

- Complaints of understaffing at border/boundary crossing points have been recorded, however no assessment seems to be available within Customs.
- The training plan is not very extensive in more specialized areas of law enforcement and prevention (in view of combating organized crime), and specialized trainers are lacking.
- New and recently rotated staff does not get sufficient specific briefings or training upon arrival at the new workstation.
- In practice, there is little provision or opportunity for staff to indicate themselves or express their perceived training needs.
- There is a potential risk that the Performance Appraisal and Evaluation is being reduced to a annual formality.
- No integrated human resources management system is in place which includes training and development.
- Equipment levels at border/boundary crossing points are quite different; in several cases the search premises at stations are not at a satisfactory level for adequate customs examinations and inspections.
- If operational plans need to be formally approved by the Minister of Economy and Finance, there is risk of political interference.
- Directorate operational plans seem to consist of routine tasks, and no consolidated operational plan for Kosovo Customs as a whole exists, setting clearly the objectives to achieve as organization.
- There is little reference to organized crime in the operational plans.
- The TIMS is not equipped for generating information on serious crime, and no specific database is available which is adapted to specific intelligence needs.
- Internal communication and intelligence sharing between Law Enforcement and revenue Operations is rather limited.
- Customs legislation does not sufficiently cover or regulate collection, recording and disclosure of personal crime-related data.

- The cooperation with other law enforcement agencies is generally quite limited, although at local level more cooperation has been observed.
- Information sharing between Kosovo Customs and Kosovo (Border) Police is not very extensive.
- Although regional cooperation is formally in place, the exchange mostly takes form of exchange of information with official character only.

Conclusions

Customs staff seems to be well aware of their duties, is quite well trained and is regularly assessed. However, in view of future challenges to Kosovo Customs, specialized training in law enforcement areas might be needed.

The human resources management and training management do not seem to be in line with EU Customs Blueprints.

Infrastructure and equipment will need to be upgraded at several locations, especially in view of the Kosovo Government Integrated Border Management Strategy.

Although Kosovo Customs is willing to develop strategies to tackle organized crime, this is not yet well reflected in operational plans. Kosovo Customs will need to follow up on the government strategy and action plan to tackle organised crime (under preparation). Functions related to serious crime will need to be further developed in line with the government strategy, which might include databases tailored to intelligence needs and active information sharing within Kosovo Customs and with other law enforcement agencies, especially Border Police.

The recently approved Integrated Border Management Strategy of the Kosovo Government opens the prospect of improving the cooperation with Border Police, including at border/boundary crossing points.

FREEDOM FROM POLITICAL INTERFERENCE

As a rule of law institution, Kosovo Customs needs to uphold the law and serve the community in a politically neutral way. Although it will be carrying out its functions in accordance with government policy, at the same time it must be free of politically motivated influences in its decisions. Political interference is possible in many ways, e.g. by manipulating operational decisions or interfering with staff selection and promotion decisions. Double-hatting of Customs officers for temporary assignments should be closely monitored.

Neither EULEX Advisors nor Monitors are reporting incidents of (party) political interference in Kosovo Customs headquarters decisions (i.e. concerning revenue operations, enforcement, finance, budget, procurement or human resources) or staff decisions at border and boundary crossing points. It is to be recognized that it will however be extremely difficult to detect or observe these types of interferences. Some Mobile Team Monitors have touched upon the subject and are stating that Customs officers are extremely prudent or reluctant to report political (or any) interference at border/boundary posts, out of fear for possible consequences as they are quite vulnerable to intimidation, directly from politicians or through management.

Advisors and monitors were tasked to assess whether Kosovo Customs staff are being selected and appointed according to applicable legislation and good practice established for the Kosovo Civil Service, hence recruited and promoted based on merit and without political interference. Since UNMIK Customs Service was transformed into Kosovo Customs, only one recruitment procedure for Customs Officers has been started.

All indications show that the selection process is fair and transparent in identifying suitable candidates. EULEX Advisors at Customs HQ level, through interviews at senior management level, confirm a good level of compliance with legislation, policies and procedures.

There is no direct recruitment into the Law Enforcement Directorate, but vacancies for Investigation, Intelligence, Anti-Smuggling and Risk Analysis are advertised internally in Kosovo Customs. Candidates have thus been serving in other Directorates - presumably most of them in the Revenue Operations – and are identified through training and performance assessment processes, preselected and interviewed by an independent panel (comprised of representatives of HR Sector and a third Directorate – mostly Revenue Operations). This seems to indicate that also for internal vacancies and promotions, selection of staff is based on professional experience, skills and qualities.

EULEX Monitors report that also at Customs station level, selection and promotion procedure is perceived as being fair and transparent.

As no changes in positions of senior staff have occurred over the last six months of operations nor vacancies announced, compliance with legislation and procedures (and absence of political interference) in the appointment and selection process for senior-level Kosovo Customs positions could not be verified. The Ministry of Economy and Finance does have neither a department or unit concentrating on customs matters nor any officials specialized in customs matters, although there are plans to appoint a contact officer for relations with Kosovo Customs.

There is scope for intensified MMA in this matter as Kosovo Customs staff through these assignments will bypass the chain of command and organizational structure. In taking up a policy role according to the priorities of the Minister, they could become vulnerable to political interference while dealing with matters of legal nature.

Concerns have been raised with regard to new members of the Independent Review Board to be appointed by the Government. The appointment process should exclude political considerations and be based on the professional background of applicants, i.e. extensive experience with regard to customs and tax matters including good knowledge of customs legislation and procedures. EULEX and other international actors and should pay close attention to the functioning of this Board.

Conclusions

Through monitoring of Advisors and Monitors, although limited in extent, selection and promotion of Customs staff seem to be transparent, fair and with respect of procedures, free from political interference.

No incidents of (party) political interference in Kosovo Customs headquarter decisions or staff decisions at border/boundary crossing points have been recorded.

However vulnerability to possible interference has been raised, e.g. Customs staff being assigned with tasks in the Ministry of Economy and Finance, and through the composition of the Independent Review Board.

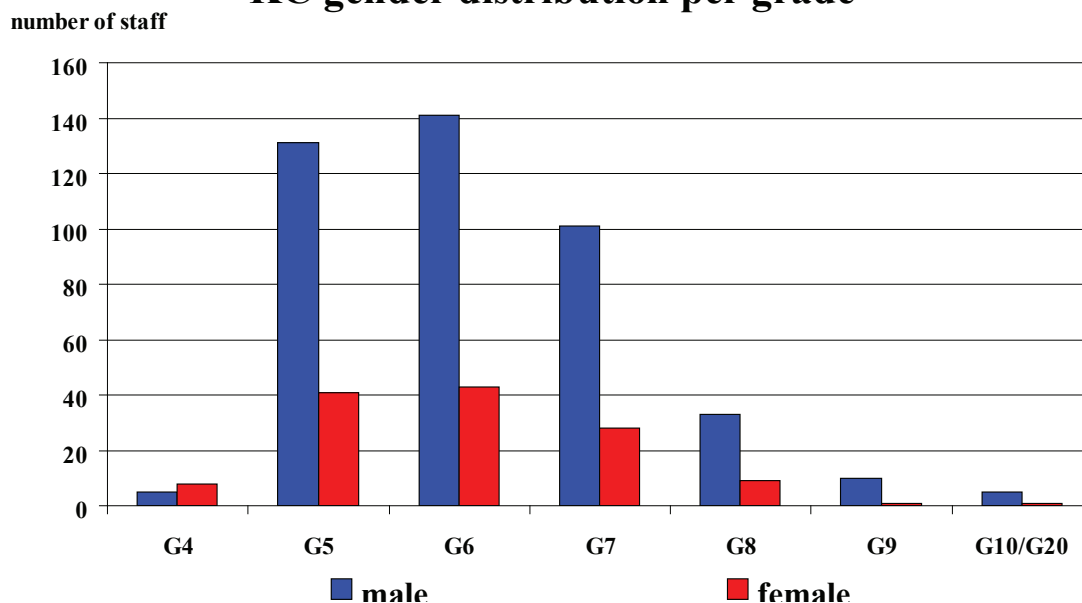
MULTI-ETHNICITY / HUMAN RIGHTS / GENDER

While multi-ethnicity of Rule of Law institutions is an overall aim of the EULEX Mission as reflected in its mandate, respect of international standards concerning human rights and gender mainstreaming belongs explicitly to its strategic objectives. Advisors and Monitors have therefore been tasked to initially assess whether operations respects human rights and are conducted in a non discriminatory way (as reflected in the code of conduct), and to which level minority communities and women are represented in Kosovo Customs.

Kosovo Customs has already a Code of Conduct which is based on the recommendations of the World Customs Organization 2003 Revised Arusha Declaration concerning integrity in Customs and which reflects ethical standards and respect of human rights. The organization is preparing a new Code of Conduct, which will be at least of the same standards. Several mechanisms are in place in order to ensure respect of the Code of Conduct, e.g. all officers are issued with their own copy of the Code, monitoring by line managers is established, possibility to complain about possible violation of the Code (including sealed boxes at customs offices). Customs officers at border/boundary posts need to act according to applicable legislation especially during the control procedures; if a person needs to be thoroughly examined, e.g. “security checks” and “personal checks” require presence of same gender as the person examined. In case of a “body check” has to be conducted by an authorized person (a doctor). However, in practice the obligations and rights of Customs officers are not always very clear: some reports of Monitors are indicating that the Standard Operational Procedures or instructions in case of body search are not always known or available at BCP.

Regarding ethnic and gender diversity of Kosovo Customs, there are currently no specific (media) campaigns to attract female or non-majority recruits nor specifically to promote Kosovo Customs as a gender balanced and multi-ethnic employer. Although no explicit (proactive) actions are being undertaken, vacancy announcements clearly indicate that women and minority community candidates are strongly encouraged to apply.

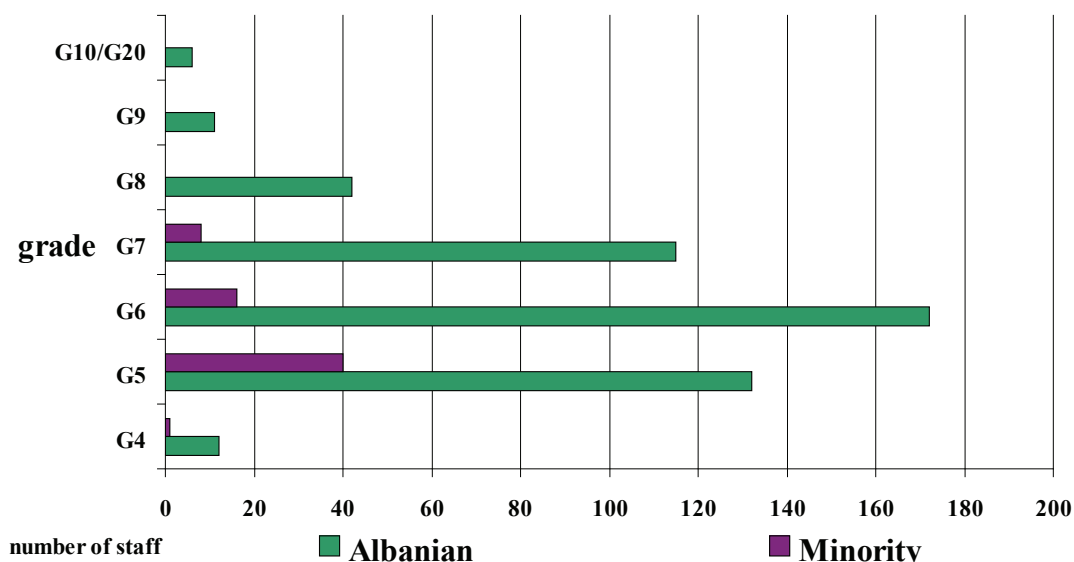
KC gender distribution per grade



As of mid May, Kosovo Customs had 131 female and 426 male employees, women accounting thus for 23,5% of positions within the service. Except for the Customs Officers with lowest grade (G4) accounting for only 13 in total, women are under-represented at all levels. There is one female Director out of 6 positions at senior management level (G20 – Director-General & G10 – Directors); At middle management level there is one female Head of Department (G9) on 10 positions and 9 female Head of Units (G8) on 33 positions (21%, although all of the G8 Heads of operational Stations are male). Women account for a fairly stable 21%-23% of staff at the levels of Shift Leader (G7), High Customs Officer (G6) and Customs Officer (G5).

Revenue Operations Directorate has the operational border/boundary and inland stations under its responsibility and thus has the largest number of customs officers; while the second largest directorate is recruiting more internally (Law Enforcement) most of the new staff have to start in Revenue Operations. One of the reasons for gender imbalance could be the harsher working conditions at the stations, influencing the number of female applicants.

KC minority representation per grade



In March 2009, total Kosovo staff number in Customs stood at 555, reflecting the following ethnic composition: 490 Albanian (88,3%), 31 Serbian (5,6%), 14 Bosnian (2,5%), 14 Turkish (2,5%), 3 Goran (0,5%) and 3 other (Roma e.a., 0,5%). None of the minority ethnic groups is ranking in positions above Shift Leader (G7), and thus are not represented in senior or middle management, including Heads of (operational) Customs stations.

According to the Kosovo Customs 2008 annual report, 46 Kosovo Serbian officers left the service, but also 16 new Kosovo Serbian officers were recruited. The imbalance in higher positions could be attributed to these changes, as experienced officers left while new ones are recruited in lower ranks. There seem to be no signs that non-majority communities are being excluded or prevented from promotions, but neither is positive discrimination being observed.

Conclusions

Kosovo Customs has a Code of Conduct which reflects ethical standards and respect of human rights, and has mechanisms in place in order to ensure respect of the Code; however operational procedures do not always seem to be very well applied or understood. Women and minority community candidates are – according to the job announcements - encouraged to apply. About 12% of staff belong to ethnic minority communities, but are not represented in management functions. Female staff represents 23,5 % of Customs personnel, but are generally underrepresented in management positions.

EULEX RECOMMENDATION – CC/10/2009

Target: Director General

To mentor and advise the Kosovo Customs Director-General on policies in order to increase the representation of ethnic non-majority communities at management level and to facilitate a more gender balanced representation in management positions. This might also include efforts to increase recruitment of minority and female staff and support their career development.



CIVIL SOCIETY

METHODOLOGY

The following section will illustrate the current standings in local civil society vis-à-vis EULEX Mission's aims. The reason for establishing contacts and analyzing local civil society is clearly stated in the EULEX Programmatic Approach, which intends to enhance local ownership of the processes through increasing local leadership and widespread civil society participation

Within this framework, the Mission has undertaken since January 2009 a series of activities for increasing awareness on its role among relevant stakeholders of local civil society, and at the same time built on EUPT previous achievements for mapping potential partners in future activities.

It is of worth to briefly provide a summary of all actions implemented hitherto, in order to introduce the methodology at the core of the following paragraphs. The findings gathered here below do not derive from the EULEX Information System, unlike the rest of the present report. In other words, they do not draw from inputs by EULEX monitors in the three components, grounding instead on a series of direct sources which will be exhaustively described further below.

The past six-month workload addressed the completion of four main outputs:

1. Produced briefing packages on EULEX mission mandate, objectives and monitoring activities delivered to CSOs/NGOs active in the field of Rule of Law
2. CSOs/NGOs relevant for EULEX monitoring activities adequately mapped
3. Developing modalities for regularly processing information from CSOs/NGOs
4. Steady dialogue between EULEX and CSOs/NGOs synchronized with the programming cycle of monitoring activities

These outputs required a series of activities put in place during the period at stake, which enable to detect the data and to draw the conclusions presented in this report. The EULEX Programme Office has hitherto managed to:

- deliver 60 information packages on EULEX aims and monitoring activities
- set up a database containing references of 63 CSOs/NGOs relevant to EULEX objectives
- conduct 18 meetings with civil society counterparts
- participate to 4 outreach meetings with Kosovo Serb communities
- attend a three-day workshop with 23 Serb and Kosovo Serb civil society members
- organize a introductory workshop attended by 39 CSOs/NGOs
- collect 21 reports on rule of law issues produced by local CSOs/NGOs between 2007 and 2009
- gather 6 assessment forms on EULEX Programmatic Approach filled by local CSOs/NGOs

All actions were finalized to achieve a two-fold aim: to inform civil society on the role of EULEX and on the roll-out of its monitoring, mentoring and advising activities; and to acquire information for potential partnerships with local constituents. Moreover, the Mission acquired a detailed picture of civil society in

Kosovo with reference to rule of law matters, and established useful contacts with non-governmental organisations involved in investigative and monitoring tasks on public institutions.

The report will follow the format in use for the sections referring to EULEX three components: it aims at outlining comments gathered from civil society with regards to the Mission aims. For reasons related to the nature of civil society in Kosovo some sections are richer than others, while some have been incorporated with others or recalibrated accordingly. It is therefore useful to provide a concise picture of civil society in Kosovo before introducing the findings related to EULEX interest.

CIVIL SOCIETY IN KOSOVO

Kosovo hosts a remarkably high number of non governmental organisations: the registry of the Ministry of Public Services (MPS) counted 4952 organisations listed in its archive by the end of January 2009, with an average of 20 new applicants on a weekly base. These figures result to be unmatched in many EU countries, and require some background information in order to be properly understood.

First of all, requirements for introducing an organisation to the MPS Department for registration and liaison with CSOs/NGOs are rather basic, and applications are seldom rejected. The 2009 Law on Freedom of Association in Non Governmental Organisations (art. 61-2-3) requires local applicants to submit a “founding instrument” containing names and addresses of the organisation and its founders together with a statute outlining aims and internal procedures; this does not seem to discourage citizens to constitute themselves in non governmental organisations and obtain an enrolment in the registry, which includes also “any NGO registered under UNMIK Regulation 1999/22” (ibidem , art. 26).

Secondly, an incentive to form an CSO/NGO is given by the public beneficiary status granted to organisations performing humanitarian assistance. Organisations enjoying such status are exempted from all fiscal duties except from charges for municipal public services; the current set up of the Department for registration and liaison with CSOs/NGOs, which counts 11 employees (out of which a half work on financial analysis) may not be sufficient for screening all registered CSOs/NGOs and detect possible misuses of the public beneficiary status. The Department Director stated to EULEX representatives that his team can only monitor CSOs/NGOs with a relevant budget (above 100.000 euros for international, above 50.000 euros for nationals).

Another reasons for the high quantity of registered CSOs/NGOs relates to the current legislative framework regulating civil society in Kosovo: any corporate initiative not included in the public or the private sector gets acknowledged as an NGO; the MPS registry consequently comprehends associations such as sport clubs (approximately 350) or cultural circles.

A 2008 report by the Kosovo Advocacy Training and Resource Center (ATRC) estimates active CSOs/NGOs to be approximately 500. Dependence on foreign aid (a source of income which has been steadily decreasing in the last years) and weak organisational capacities are at the root of the idleness of many CSOs/NGOs.

Financial viability is a particularly serious issue for many organisations, partly because most CSOs/NGOs have not yet successfully developed strong constituencies as noted by the USAID 2007 NGO Sustainability

Index. Intercourses between civil society and the wider public opinion are complex and influenced by mixed feelings among citizens. While some CSOs/NGOs (particularly those dealing with watchdog and anticorruption activities) receive large coverage on media and enjoy a generally positive reputation, transparency and accountability of local civil society are not always perceived as undisputed values.

Some of the interlocutors contacted for this report admitted the existence of a considerable portion of CSOs/NGOs driven by external agendas (influenced by political or international factors) rather than on an objective assessment of their communities' needs. Another reason for the scarce relevance of civil society in Kosovo is due to its fragmentation and a consequent lack of "economies of scale": CSOs/NGOs born as spin-offs of larger organisations and with thin memberships are numerous, and their efficacy is questionable. The current trend of establishing CSOs/NGOs networks and platforms is a solution to this problem and shall be fostered in the future for instance by entering in partnership with platforms of CSOs/NGOs rather than with individual organisations.

Interethnic relations within civil society recorded some positive results according to the Ministry of Public Services, which refers of 185 registered CSOs/NGOs with a multiethnic membership and 546 CSOs/NGOs ascribable to the Kosovo Serb community (including some established in northern areas of Kosovo). However, interaction between ethnic groups through civil society remains sporadic; the 2008 EU Progress Report on Kosovo comments that "civil society organisations are mainly ethnically exclusive and there continues to be almost no co-operation between ethnically divided CSOs/NGOs in Kosovo".

Relations between public institutions and civil society in matters of relevance to the Mandate of EULEX will be described in the following paragraphs; on a general note, efforts are made by both sides for an effective fine-tuning on policy making, although outcomes are not always easy to be evaluated. In the past months the level of cooperation was denoted by two events of opposite nature: the first one consists in the approval of the above mentioned Law on Freedom of Association in CSOs/NGOs (No. 03/L-134) which replaced the previous UNMIK Regulation 1999/22. The law can be conceived as a result of CSOs/NGOs involvement in the process of discussions, which brought to changes in the proposed draft law such as the removing of a provision entitling the MPS Department for registration and liaison with NGO to monitor NGO activities. Similar consultations occurred in other cases as well, for instance with the signature of the 2008 Memorandum of Cooperation between the Government and CiviKos – a platform gathering over 200 local CSOs/NGOs – aiming at structuring a continuous dialogue on policy making matters.

On another hand, contrasts between the Government and exponents of four organisations (Çohu, Fol 08, INPO and KDI) arose in late February 2009 when the Anti Corruption Action Plan at the review of the Assembly of Kosovo was deemed by the quoted organisations (members of the working groups for drafting the Action Plan) to contain substantial deficiencies and to be inadequate for the achievement of its objectives. To date, the government has not yet forwarded to the Kosovo Assembly a modified version of the Anti Corruption Strategy and the Action Plan, there is no certainty that recommendations from the mentioned NGOs will be taken into consideration upon its approval. On another note, the Law on Anti Corruption has been adopted by the Kosovo Assembly in first reading on July, 10th 2009. The fight against corruption stand as a main priority for all the organisations consulted during the draft of this report, and remains a field of frequent dispute between Kosovo civil society and local authorities.

A final note to better define the civil society related context where EULEX is required to operate relates to the perception of the Mission by Kosovo civil society in the past six months. The following remarks recurred in nearly all meetings hitherto held:

a) Discontinuity between UNMIK and EULEX: CSOs/NGOs are generally aware about the differences between the UNMIK and the EULEX mandates, and appreciate the desire of the Mission to work closely with them.

b) The priority: fight against corruption and organised crime: almost all interlocutors – particularly in Albanian contexts - have hitherto indicated the fight against corruption as the first priority for EULEX. A number of CSOs/NGOs began questioning local authorities on high level corruption but the situation is still considered far from acceptable. Contrasting corruption and organized crime appears as more urgent than dealing with war-related crimes or interethnic reconciliation.

Most of the consulted CSOs/NGOs recognized the urgent need for a rule of law mission to Kosovo, and reckoned the presence of EULEX as necessary. Civil society in Kosovo is highly interested in monitoring public authorities, having priorities similar to those stated in article 2 of the European Council Joint Action 2008/124/CFSP. However, local CSOs/NGOs have preferences within the domain of tasks assigned to EULEX; it is important to pinpoint each of them in order to detect which areas are more likely to generate fruitful cooperation between EULEX MMA officers and Kosovo non governmental organisations.

SUSTAINABILITY

The sustainability of relatively young public institutions such as the Kosovo Judiciary, Police and Customs is a concept open to different views. An immediate link would lead to the financial grounds of these public bodies, followed by an assessment on their capacity to allocate available resources with desired results. Civil society in Kosovo comprises a still relatively limited number of think tanks able to conduct in-depth technical researches in the above quoted field; nonetheless, the growth in analytical capacity of some non governmental organisations gave ground to analyses and reports (particularly in the areas of judiciary and police) which offer interesting suggestions for a more efficient management of rule of law authorities.

A recurrent remark on the sustainability of public institutions, herein including the three supported by EULEX, refers to salaries: the Institute for Advanced Studies (GAP) draws a parallel between two recent decisions taken by the government with enforcement as per January 1st 2009: the 10% monthly increase of civil servants' salaries and the monthly increment of pensions and welfare assistance by 5 Euro. These decisions' effects on Kosovo social stability are yet to be evaluated, although salaries of public officials and particularly of judges and prosecutors are considered a key point for efficiency of the rule of law system in Kosovo. FIQ – Forum for Civic Initiatives states that "low salaries for judges could also be deterring new people from joining the profession. The low salaries paid to judges are seen to be one of the key drivers of corruption in the judiciary, and combined with the large backlog of cases, there are frequent examples of people paying to get their cases heard sooner". International judges higher salaries prompt debates among civil society, with some stakeholders believing that this prevents corruption and is therefore positive, and others arguing that the salary difference is yet another example of double standards. According to FIQ, the level of personal protection of "international judges having bodyguards" is conceived as something that "mitigates corruption and demonstrates how unsafe local judges can feel in their everyday work".

The sustainability of rule of law institutions in Kosovo depends also by the ability of CSOs/NGOs in monitoring their performances. To this extent, analyses and researches are increasing as well as the awareness by civil society of its role in improving public services. Difficulties in approaching Kosovo public bodies – as well as shortcomings due to lack of transparency – will be reviewed in the chapter on accountability; the focus of this paragraph will regard CSOs/NGOs monitoring capacities in two fields crucial to EULEX MMA activities: correctional services and trial monitoring. The former attracted remarkable interest among civil society, while the latter has not been a core mission for local CSOs/NGOs so far. Analyzing strengths and weaknesses of watchdog performances by Kosovo CSOs/NGOs through these two concrete examples will enable a better comprehension of the matters at stake, and suggest ways for future common commitments between EULEX and non governmental organisations.

Correctional Services

Closely related to human rights' standards, conditions of inmates in Kosovo stirred the interest of many CSOs/NGOs and – in some cases - caused frictions between authorities and independent monitors.

Reports by local CSOs/NGOs show appreciable skills in monitoring correctional services, both in applied methodologies and in the quality and quantity of collected data. Visits to correctional and detention centres across Kosovo were possible thanks to cooperation with the Kosovo Correctional Services (KCS), this being a promising sign for the foreseen local ownership of MMA activities. However, partnership between civil society and public bodies should not be limited only to the monitoring phase but extended to the realization of shared recommendations.

Three documents have been assessed to verify CSOs/NGOs capacities in monitoring correctional services: a 2009 report by the Council for the Defense of Human Rights and Freedoms (CDHRF), and two researches by the Kosovo Rehabilitation Centre for Torture Victims (KRCT), published in 2009 (see details in references). Both organisations show consistent knowledge of the relevant legal background at local and international level: monitors structured their researches on standards deriving from documents such as the European Convention for the Protection of Human Rights and fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and other cruel, Inhuman or Degrading Treatment or Punishment (CAT), UNMIK regulation 2004/46 on Execution of Penal Sanctions. These documents were reviewed in details, and served as benchmarks against which assessed conditions were measured; in all cases the researches were carried out throughout Kosovo with periodical visits to correctional and detention centres (the studies took from six to nine months for completion), interviews targeted both prisoners and Kosovo correctional service officers and treated issues were adequately categorized and presented in the reports.

Findings cover hygienic conditions, provision of medical services, access to information, education, labor and leisure, contacts with external visitors, filing of complaints; targets such as juveniles, foreigners, prisoner in solitary confinement and women are particularly highlighted and, unsurprisingly, recommendations are similar: both organisations suggest authorities to tackle overpopulation of Kosovo prisons more efficiently and to improve the working conditions of KCS officers; moreover, external monitors wish a deeper access to correctional services in Kosovo: notwithstanding the support receive by authorities (commended by both

organisations), civil society monitors admitted not to have been able to verify alleged mistreatment of inmates, thus reporting only indirect – numerous – sources on abuses occurred in correctional services.

KRCT is stated to be “concerned about the seriousness of some allegations of ill-treatments by members of KCS staff in Correctional Centre Dubrava. According to these allegations, masked members of KCS staff, referred to as ‘Delta Bravo Unit’/Special Intervention Unit, enter cells at night or after incidents and physically and verbally abused prisoners”. Similarly, CDHRF reports that “the claims that violence is exercised against the persons deprived of their liberty are not completely untrue. CDHRF observers have managed to corroborate the claims alleging the use of force against those detained in these facilities. In the Dubrava Prison, the use of force is associated to the “Delta Bravo” intervention unit. These interventions are mainly carried out during the night and after incidents, i.e. this is a unit for emergency situations.”

Providing external monitors with direct access to information on cases of abuses – including those committed by inmates – is one of the ways for improving the screening of prisons by CSOs/ NGOs; for instance, CDHRF recommends to the Ministry of Justice and to the Correctional Service Commissioner to include CSOs/NGOs in the commissions awarding benefits to prisoners. A similar concern has been expressed by FIQ, which reports mistrust registered through polls on the use of bail in Kosovo, which would “enable the accused to escape from the country, buy the witnesses or manipulate them, and cause the disappearance of evidence.”

Trial monitoring

If civil society represents a strong resource for EULEX for evaluating correctional services in Kosovo, the monitoring of trials by local CSOs/NGOs has not given similar results hitherto. Trial monitoring is carried out by a few CSOs/NGOs, and it usually refers to specific cases of interest to the mandate of the interested NGO. This may result difficult to understand, particularly when considering the attention dedicated to correctional services and the evident correlation between court procedures and sentence execution.

A closer insight to civil society initiative in trial monitoring does nonetheless allow spotting some of the hurdles currently preventing CSOs/NGOs from efficiently assisting international monitors in screening court procedures. A first remark refers to capacity: CSOs/NGOs involved in following trials lament scarce human resources for putting in place a systematic court monitoring; the fragmentation of CSOs/NGOs in Kosovo is not to be positively regarded under this point of view. Quantity is not the only matter: staff dedicated to monitor trials must possess adequate technical knowledge and skills, this being often beyond average NGO means.

The Balkan Investigative Reporting Network – BIRN - released in June 2009 a comprehensive assessment of trials held in Kosovo, comprising approximately 600 cases all over Kosovo. The BIRN research results to be an exception in trial monitoring by civil society: only a few local CSOs/NGOs are undertaking limited initiatives in this field, among these the CDHRF and the Kosovo Law Center – supported by the OSCE Mission to Kosovo. EULEX also contacted the Kosovo Law Institute, a newly established organisation aiming at monitoring the functioning of courts and the legal framework enforcement which could represent a possible interlocutor for the Mission; the Kosovo-branch of the Humanitarian Law Center monitors trials related to war crimes as per its mandate; other minor initiatives are also ongoing.

ACCOUNTABILITY

Many CSOs/NGOs are shifting from pure humanitarian assistance to watchdog activities, this being a steady trend in the past few years. The ATRC report read that “the role of CSOs/NGOs shifted from being service providers in partnership with government institutions to a watch dogging and corrector of state performance. Several new CSOs/NGOs (...) have recently increased their watch dogging activities and criticisms of government both at the municipal and local level”. Such evolution may be related to the consolidation of public services in Kosovo, some of which were delivered by CSOs/NGOs in the past. As long as public authorities grew in their capacity of providing public services, civil society devoted more resources to measure the outcomes of Kosovo institutions. Civil society in Kosovo comprises a still relatively limited number of think tanks able to conduct in-depth assessments of public bodies; nonetheless, the growth in analytical capacity of some non governmental organisations gave ground to analyses and reports (particularly in the areas of judiciary and police) which offer interesting suggestions for a more efficient management of rule of law authorities.

A sign of spread willing to independently monitor public institutions is the low rate of organisations receiving financial support from the government: an ATRC poll indicates that “82% of the surveyed CSOs/NGOs declared that they would not prefer to be funded by governmental institutions”. But are local public authorities, particularly those dealing with rule of law issues, perceived as accountable by Kosovo civil society and, more broadly, by public opinion? The consistent presence of international stakeholders in these fields would induce to be confident in improvements, but can also generate confusion: a 2007 report by the Forum for Civic Initiative (FIQ) signals that “the unclear division of competencies between local and international institutions creates confusion over who is responsible for which aspects of security provision and the legal system, making it difficult to hold institutions accountable and opening up space for corruption”.

Another hurdle hampering civil society to turn public institutions fully accountable lies in oscillating reactions of rule of law bodies to monitoring activities performed by CSOs/NGOs. A significant example derives from KRCT, a non governmental organisation implementing various monitoring programmes, including a round of visits to detention places in Kosovo to assess the enforcement of local regulations on inmates. All efforts were finalized in a report issued in December 2008, enlisting the findings from visits and interviews with prisoners in Kosovo. The research was conducted with the official green light of the Ministry of Justice, and in cooperation with Kosovo Correctional Services: contacts with inmates were established without any intermediation, in order to consent an exchange of information not influenced by any part at stake. The report was however judged disrespectful and grounded on allegations in many of its parts by the Kosovo Correctional Services management, which consequently ordered to all correctional facilities that in the event of visit to prisoners by KRCT members, the visits shall be supervised by a correctional officer or a social worker. This implies a lower level of directness in questioning inmates, with clear impacts on the quality of future reports; mediation between all parts involved is ongoing for overcoming the problem. This episode, although not constituting a major matter of concern, gives the idea of existing hurdles on the way to full accountability of public bodies to civil society, and justifies the work of EULEX monitors on the ground.

Several feedbacks indicated KP as the most highly trusted rule of law institution in Kosovo. An opinion poll run by FIQ ranks the Kosovo Police Service as the second most trusted institution in Kosovo, second only to the Kosovo Protection Corps. Yet, space for improvement has been detected by several CSOs/NGOs over viewing policing practices: for instance, levels of trust in KP amongst non Albanian communities – and particularly by Kosovo Serbs – are sensibly lower than those registered in the main ethnic group in Kosovo. Meetings with local Serbian civil society exponents helped to discover some practical reasons behind discredit; scarce information provision stands as the first issue, with poorly translated documents and alleged reluctance by KP in addressing Kosovo Serbs in their language. Interlocutors reckoned also that KP does not openly recognize nor has the capacity of addressing inter-ethnic crimes, dismissing these misconducts under other kinds of law violation.

On another note, the same polls collected by FIQ classify the Kosovo Serbs community as the least concerned by crime, a finding which can be regarded from different perspectives. The FIQ report quotes a 23-year-old male student from Mitrovicë / Mitrovica: “People accept that criminals are around us and that criminality is the most developed business in our society. It became a part of our reality, a part of our everyday life”. Where the perception of crime is widespread, illegal acts are no longer considered unusual and may therefore not receive the appropriate consideration in quantitative surveys. It should be considered that gangs related crimes have scarce influence on day-to-day lives of ordinary citizens, and might consequently pass unnoticed.

Another ground for dissatisfaction is the poorly perceived level of communication between KP and judiciary: investigations seldom ending into trials, or arriving to courts after longtime, are causes of irritation for the public opinion, especially if information about the processing of cases is insufficient. The Kosovo Center for Security Studies – a local think tank researching on security matters in Kosovo – suggested EULEX to introduce a robust vetting system in order to avoid the political affiliations among the police structures, including a detailed check of KP background in its various components for the last ten years.

The picture turns greyer when reviewing civil society assessment on Kosovo judiciary: a number of complaints towards the court system are easily collectable among CSOs/NGOs and civil society organisations. The considerable backlog of cases in courts, weak enforcement of court decision, high risks for witnesses in trials, poor infrastructures and inept human resources are the most recurrent grounds for criticism to the way justice is handled in Kosovo. However, corruption is the incontestably main reason of dissatisfaction related to the justice system, as a cause of inequity in judgments and – especially – of lack of oversighting on elected authorities.

Corruption

Civil society in Kosovo is particularly active in the fight against corruption, considered the primary target by many CSOs/NGOs, and the first problem in Kosovo by the vast majority of non governmental organisations. There is little appreciation for government initiatives against corruption, seen as micro measures with low impact and high visibility on media, useful for diverting the attention of public opinion from serious episodes of embezzlement. Some CSOs/NGOs gather investigative reporters as members, and publish frequent analyses on local authorities’ ill practices in management of public funds. These organisations are

strongly opinionated, and take often public standings against the government; most of them admitted using provocative ways to drag attention on their researches, this being in their views a guarantee of safeness against perils deriving from their activities. QOHU! (Stand up!), Fol'08 (Speak up '08), and KDI are amongst the main active interlocutors in anticorruption activities.

QOHU! reads some recent police actions as inspired by political necessities rather than guided by objective investigative criteria: this organisation's latest report on corruption lists a "a number of spectacular arrests by the police" throughout the second half of 2008, such as the imprisonment of the former executive manager of the Prishtina Airport in March last year, the detention of six custom officers - allegedly on the same day the government had to overturn its decision on dismissing the Customs Director - and the arrest of six persons for illegal fuel trading at a time when public pressure was mounting on the government to act against illegal trading in the North. QOHU! refers that all detainees were freed after a short period of time mostly due to the lack of supporting evidence, and cases were never finalized into court rooms.

CSOs/NGOs are highly sensitive to transparency in incomes of elected officials, whose feedbacks are not always matching the expectations of researchers. FOL '08 - an organisation engaged in increasing transparency in the public administration - asked the main five institutions in Kosovo (Presidency, Assembly of Kosovo, Prime Minister, Kosovo Anti-Corruption Agency and Ministry of Energy and Mining) to provide information in line with Chapter Four of the Anti Corruption Law issued on April 22nd 2008 (on formal and official gifts to official persons); these benefits are to be tracked by relevant institutions, duly transmitted to the Kosovo Anti Corruption Agency (ACA) and made available to any qualifying requester in accordance to the Law on Access to Official Documents no. 2003/12. Out of the five requests, three remained unanswered while the two feedbacks did not anyhow include data on gifts: ACA communicated that in 2008 only three of the eighteen institutions compelled to submit catalogues of gifts fulfilled their obligations (but did not disclose which institutions nor the submitted data), while the Office of the Prime Minister replied to have sent their information to ACA (but did not forward the list to FOL'08).

Funding of political parties is an issue civil society would seek judiciary to be more interested at, even though there is awareness of a yet uncompleted legislative process to this regard: QOHU! reminds that as per May 2008 the Law on Declaring the Origins of Wealth of High Public Officials as well as the Law on Financing of Political Parties in Kosovo have been returned to initial procedures, depriving judges of tools for effectively fighting the occurrence of misdemeanours. Some of the findings relating to anticorruption activities and outlined in the 2008 EU Progress Report, such as references to widespread corruption undermining the proper functioning of the institutions, or a still unclear institutional framework to tackle corruption are widely shared by local civil society.

CSOs/NGOs are not only targeting high level corruption: projects fostering common awareness of the problem are being implemented in Kosovo, as demonstrated by the Advocacy and Legal Advice Centre. ALAC was established through a 15-month project to be concluded in December 2009 and implemented by the Kosovo Democratic Institute; the initiative is based on a model successfully experimented in 19 other countries mainly located in Eastern Europe and offers various outreaching tools to citizens to help detecting wrongdoings in public institutions: for instance, a phone number can be used free of charge by witnesses of corruption. These sources of information can serve to complement information already at the disposal of EULEX officers.

FREE ACCESS TO SERVICES

All citizens of Kosovo must equally access rule of law services, and civil society has been intensively looking at relations between rule of law institutions and social groups with potential disadvantages in approaching courts or police. The gender perspective on access to justice generated a considerable literature by CSOs/NGOs, and has been the target of a research published by the Kosovo Judges Association in 2009. The Kosovo Judge Association (KJA) is a voluntary non-governmental organisation representing more than 300 active judges serving in all levels of the judiciary, and from all regions of Kosovo. Its management board includes a judge from the Kosovo Serb community, and another from the international community – currently the President of the EULEX Assembly of Judges. KJA records female students enrolled in the Faculty of Law – University of Prishtina to be nearly a third of the total number for the academic year 2008/2009; female candidates succeeding in the 2008 Bar exam were slightly more than a half of their male colleagues, while current figures on employment in Kosovo courts show 218 male judges against a presence of 83 women chairing courts. Similar trends are registered for prosecutors and lawyers as well, and testify the scarcity of women working for rule of law institutions in Kosovo.

Such concerns are not the only ones worrying civil society: trafficking and violence against women are issues tackled by several CSOs/NGOs, and conceived as priorities for any rule of law agenda in Kosovo. The Kosovo Women Network (KWN) informs about the establishment of a Coalition against Family and Sexual Violence gathering a number of organisations in charge of implementing a 2009 strategy, including awareness campaigns on the dangers of violence against women, recommendation for completing the relevant legal framework, and increase of shelters' capacities. The Coalition holds regular meetings which may be of interest to attend for EULEX officers interested at civil society initiatives on gender issues.

KWN actively monitors local trends in domestic violence, considering these crimes as a direct threat to security in Kosovo. There is appreciation on initiatives hitherto taken by the local legislator, which made it possible for KWN to state that "Kosovo has a number of sophisticated laws to prosecute and protect victims of domestic violence." If laws such as the ones on Gender Equality, on Anti Discrimination, on Family and Social Services approved by the Assembly of Kosovo are considered as milestones in promoting and defending gender equality and non discrimination principles in Kosovo, the enforcement of the legal framework in place results to be less satisfying. Although recognizing that "Kosovo Police ability to protect victims of domestic violence has improved significantly since the passage of the Domestic Violence Regulation", KWN report numerous difficulties in implementing the current legislation by local judges and prosecutors, with victims of violence in many cases still dwelling together with condemned perpetrators.

Social factors and deficiencies in delivery of public services are acknowledged to have a major impact in failures to address domestic violence: a 2006 study by the Women Wellness Center detected that "sixty-one percent of women reporting violence sought help; of those, all but three women sought help from family or friends. Few who have experienced violence are likely to seek assistance from resources other than family or friends. Reasons for this lack of help-seeking from external sources of support require further investigation, but are likely related to the dearth of available services: well over half of the survey respondents rated medical services, reproductive health services and police as being difficult to access

in their communities". Things might have improved since then, and the justice system cannot obviously replace or take the burden of other public services such as social assistance. Police and courts are not requested to cope with spread mindsets which brought two thirds of the citizens polled by KWN to agree that "sexual intercourse can never be violence if it happens between two adults who are married." Nonetheless, improvements in rule of law management can deter misbehaviours against women, and delays in court proceedings are indicated as one of the main factors hampering efforts to protect victims of domestic violence. Scarce resources for assisting women and children in shelters are also pinpointed as part of the weak reaction against this social phenomenon, with again KWN reporting on the Ministry of Labor and Social Welfare to cover only 50 percent of the expenses of CSOs/NGOs-run shelters not including staff or operational costs.

Suggested remedies by KWN include the appointment of more judges to deal with domestic violence cases, the appointment of prosecutor dealing exclusively with domestic violence cases, the delivery of specific trainings on the application of relevant laws to judges involved in domestic violence cases; most of these recommendations were agreed by Kosovo institutions such as the Ombudsman, but not yet enforced. CSOs/NGOs running shelters for victims of domestic violence would be interested in a closer cooperation with the Ministry of Labor and Social Welfare, this entailing more continuity in funding and clear criteria for licensing CSOs/NGOs (allegations of misuse of international funds by CSOs/NGOs running shelters have been reported to the Mission). In general, civil society shows a remarkable commitment in these issues, and proposals coming from organisations actively engaged in fighting domestic violence could constitute a solid base for future partnerships including EULEX and local institutions.

Access to justice by ethnic minorities in Kosovo is also a common concern to local civil society. Most of the CSOs/NGOs consulted for this report are mono-ethnic in membership, although many of them claim to have regular contacts with CSOs/NGOs of different ethnic background. Nonetheless, feedbacks and reactions on Kosovo judiciary, police and customs vary sensibly when considering ethnic affiliation. A EULEX outreach campaign co-organized with the Youth Dialogue Programme and conducted among Kosovo Serbian communities in the first quarter of 2009 allowed to gather the main views over expectations from Kosovo institutions and EULEX itself. The outreach campaign itself was positively assessed by interlocutors.

Despite a certain initial resistance in cooperating with EULEX – which brought for instance to several delays in organizing the above mentioned outreach campaign towards Kosovo Serb civil society - recurrent issues emerged during meetings, such as missing persons and property rights. The latter theme has been the object of an accurate analysis by the International Center for Transitional Justice which relates on historical causes, estimates the size of the problem and finally suggests ways for EULEX to assisting in coping with property issues: "in the past, the Kosovo police have not been very responsive to property crimes. They have also been reluctant to conduct criminal investigations of property crimes. EULEX should include a section on what the police are doing to prevent crime against IDP properties and how they are applying the Kosovo Criminal Code against lawbreakers in its regular reports to the Security Council and Brussels. The aim, in cooperation with the Kosovo Ministry of Internal Affairs, should be to provide both pressure and incentive for the Kosovo police to be more proactive in fully applying the Kosovo Criminal Code against usurpers and re-occupiers of IDP properties and investigating alleged patterns of property fraud". Property related issues – a common concern for all communities in Kosovo – have been regularly referred as one of

the main hurdles for integration by Serbs in Kosovo. Difficulties in ensuring a proper enforcement of court decisions are often perceived as discriminatory measures against Serbs.

Limited access to justice has already caused some distortion in the way disputes are settled: mechanisms of informal justice are an obvious consequence of failures by public bodies in administering justice, and can be currently detected in many areas across Kosovo. The previously quoted FIQ report on access to justice reveals different forms of informal justice mechanisms in Kosovo, from a joint commission composed by Kosovo Albanians and Serbs in a village in Ferizaj/Urosevac and in charge of dealing with property issues, to the use of Kanun on rural areas, particularly in blood-feud cases where jailing is not perceived as a sufficient punishment, and the feud can continue if forgiveness is officially sought and granted. The report interestingly lists authorities with a stake in facilitating justice management where courts are not properly functioning, hereby including the “Serbian Orthodox Church, especially the monasteries, which plays not only cultural, religious and traditional roles, but also and increasingly the role of counsellors and mediators, making the SPC one of the strongest, if not the strongest, informal mechanism for addressing the common problems of Kosovo Serb community members”.

FREEDOM FROM POLITICAL INTERFERENCE

Civil society in Kosovo largely shares a common negative refrain on Kosovo public institutions: i.e. their permeability to interferences from politicians. Examples brought up to EULEX attention by local CSOs/NGOs are numerous, and some of them are clearly related to ethnic tensions.

As per political influence in appointing members of the judiciary, the working experience in Yugoslavian courts of many local judges and prosecutors is a threat to the independency of Kosovo judiciary in the views of many CSOs/NGOs. Representatives of the Kosovo Law Institute suggested that speeding up the replacement of senior judges by holding new BAR exams can help in overcoming the problem, although the last BAR exam was organized in January 2008 and holding the next one attains to the competences of elected officials and is a policy rather than a technical matter.

Many CSOs/NGOs consider the proximity of civil servants and elected officials with attorneys as a clear cause of conflicts of interest; being relative to high ranking officials in the Ministry of Justice can favor private lawyers in the acquisition of clients. More transparency on the private networks of civil servants and elected officials – particularly those in charge of administering rule of law institutions – is a frequent instance for many CSOs/NGOs.

RECOMMENDATIONS

Kosovo Civil society is heterogeneous and reflects the changes ongoing in other areas of Kosovo. There are potentials for EULEX to establish profitable relations with organisations involved in rule of law activities, and structure joint initiatives in monitoring tasks. Many CSOs/NGOs already asked the Mission for co-monitoring programs, given the awareness that access to information can be eased by the presence of EULEX. Findings

suggest that local civil society offer specific monitoring capacities in fields such as corruption, trafficking and domestic violence, correctional services; however, contributions to MMA activities shall be also sought in many other areas of EULEX pertinence, in line with the priorities identified by each of the Mission's components.

The change strategies to be formulated and implemented in the oncoming period by EULEX justice, police and customs monitors will incorporate inputs coming from civil society and, where possible, will include modalities for cooperating with CSOs/NGOs relevant for the activity at stake. Proximity between EULEX MMA staff and local CSOs/NGOs will also lead to more frequent inputs from civil society to the Mission on specific cases; directing such cases to the appropriate institution and analyzing them internally will enable the Mission to facilitate rule of law mechanisms in Kosovo and to detect the main instances of local civil society. A third benefit of future partnership with CSOs/NGOs derives from their ability of conveying information to the wider public: co-monitoring activities will consent to spread visibility on EULEX work and, more important, on the Rule of Law in Kosovo to a considerable number of citizens.

EULEX is not alone in benefitting from working closely with local CSOs/NGOs: the latter will increase their capacity in monitoring public institutions by observing methodologies in use at EULEX; it is not to be excluded that future joint activities will attract the interest of other donors, or will lead to detect gaps to be filled by interested international organisations.

Finding suitable partners among local CSOs/NGOs will not be an easy task for EULEX. Few CSOs/NGOs seem to have the capacity to implement monitoring activities all over Kosovo, and many of them are too small to have an impact on issues of relevance to the Mission. Fostering aggregative initiatives is an effective solution for the problem, for instance by fostering relations through memoranda of cooperation with large networks of local non governmental organisations.

EULEX RECOMMENDATION

Target: Ministry of Justice, Kosovo Correctional Services, Kosovo based Justice Monitoring and Human Rights NGO's

1) Encourage dialogue and information exchange to identify and strengthen shared purpose and goals. 2) MoJ and KCS to introduce accountability policies to reassure the public that they are in compliance with procedures.

EULEX RECOMMENDATION

Target: Kosovo Police, Kosovo Serb RoL CSO and NGO bodies

Enhance dialogue and communication to address concerns and improve accountability towards Kosovo Serb communities

EULEX RECOMMENDATION

Target: Inter-ethnic CSO and NGO bodies concerned with Rule of Law

Encourage dialogue and information exchange to identify and strengthen shared purpose and goals

EULEX RECOMMENDATION

Target: Presidents of the District Courts, RoL CSO and NGO bodies

Initiate formal consultative mechanisms to address the concerns of local inhabitants

Acknowledgements

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Special Thanks to the EULEX Policy Office

Layout by:

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of June 2009. Nevertheless, EULEX cannot accept responsibility for the consequences of its use for other purposes or in other contexts.