



PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

Law No.2004/34

SUPPRESSION OF CORRUPTION LAW

Assembly of Kosovo,

Based on the authority granted to the Provisional Institutions of Self-Government by UNMIK Regulation No. 2001/9 of May 15 2001, "On a Constitutional Framework of Self-Government", in particular Chapters 5.1 (r), 5.2 (b), 9.1.1., 9.1.26 and 11.2 thereof,

Recognizing that UNMIK Regulation No. 2003/25 of 6 July 2003 "On the Provisional Criminal Code of Kosovo" incriminates several criminal offences of corruption.

For the purpose of protection of the rule of law, democracy and human rights, good governance, fairness and social justice, competition, economic growth, general trust in public institutions and moral values of society,

Hereby adopts the following:

SUPPRESSION OF CORRUPTION LAW

CHAPTER 1
GENERAL PROVISIONS

Article 1

This Law foresees anti-corruption measures within the scope of the anti-corruption strategy, particularly in the field of administrative investigation of public corruption, eliminating the causes of corruption, the incompatibility of holding public office and performing profit-making activities for official persons, restrictions regarding the acceptance of gifts in connection with their execution of office, supervision of their assets and those of persons from their domestic relationship, and restrictions regarding contracting entities participating in public tenders conducting business transactions with firms in which the official person or person from his/her domestic relationship is involved.

Article 2

For the purposes of this Law, individual expressions in the text are defined as follows:

Corruption - shall mean every violation of duty of official persons or responsible persons in legal entities and every activity of initiators or beneficiaries of such behavior, committed in response to a directly or indirectly promised, offered, given, demanded, accepted or expected reward for oneself or some other person.

Official person - shall mean a person in regard of Article 107, paragraph 1 of Provisional Penal Code for Kosovo.

Responsible person in legal entity - shall mean a person in regard of Article 107, paragraph 2 of Provisional Penal Code for Kosovo.

Senior official person - shall mean the President of Kosovo, the Prime Minister, elected members of the Assembly, ministers, secretaries of the government, permanent secretaries, directors of offices within ministries, judges and prosecutors and international senior officials in the meaning of this Law.

Domestic relationship - means the relationship between two persons: who are in unlimited consanguinity, in indirect line up to the fourth step, and in affinity up to the second step.

Serious corruption offence - shall mean a corruption offence as defined in the Criminal Code of Kosovo, which involves values of 10.000 € or the participation of a senior public official.

Personal advantage - shall mean achieving any material or immaterial benefit in the form of a right or advantage that is not due to that person as well as providing such an advantage for another party.

Article 3

3.1. No one may abuse his/her office or duty by performing, or failing to perform an act, which under law must not, i.e. must be performed, nor to subordinate the implementation of a legal action to one's own personal interest or the interest of another party.

3.2. The official person from whom his/her superior asks in performing his/her service to act in an illegal, dishonest and disloyal way towards the public body, or to give privilege or discriminate an individual or legal entity, is required to inform his/her direct superior in writing, if the direct superior after the oral opposing still insists on the demands mentioned above.

3.3. Only after the written statement the official person is relieved from the obligation to perform illegally such an official activity, and may not be held accountable for that but it is obligated to inform the competent public bodies and the Kosovo Anti-Corruption Agency.

Article 4

4.1. Everyone has the right to an equal approach in the performance of activities of public interest and equal treatment on the part of official persons, without being the victim of corruption.

4.2. The official person is obligated to carry out his/her function or duty conscientiously, expertly, without discrimination or privileges for anyone, with due respect for human freedoms and rights and human dignity.

4.3. Everyone has the right to free appearance on the market and to free competition, without fearing becoming a victim of monopolistic or discriminatory behaviour, which results from corruption.

Article 5

5.1. When an individual or a legal entity believes that the decision of the official person or the decision of the responsible person in legal entity was made because of corruption he/she may address in writing the Kosovo Anti-Corruption Agency.

5.2. The Kosovo Anti-Corruption Agency is obliged to review the address and within 60 days of receiving it to inform the individual or the legal entity about the findings following the address.

Article 6

6.1. Performing public functions or duties is transparent and liable to public control.

6.2. No one can use the law or other regulation that limits or excludes the transparency or publicity in order to cover up the misuse of a function or duty for personal advantage.

Article 7

7.1. Legal acts resulting from corruption are invalid. Person having a legal interest may demand their revoking.

7.2. The person damaged by a corruption act may request damage compensation.

CHAPTER 2 KOSOVO ANTI-CORRUPTION AGENCY

Article 8

8.1. For the purpose of discharging the responsibilities defined by this Law, and independent body known as the Kosovo Anti-Corruption Agency (hereinafter: the Agency) shall be created.

8.2. The funds for the functioning of the Agency shall be provided from the Kosovo Consolidated Budget on the Agency's proposal. The Agency shall decide on the methods of utilizing of the funds.

Article 9

9.1. The operations of the Agency shall be managed by one director who is a permanent resident of Kosovo.

9.2. The director shall be over 35 years of age, shall have a university education and shall be considered personally suitable to perform the functions in the Agency.

9.3. The director shall have a term of office of five years and may be reappointed once.

9.4. The function of the director of the Agency shall not be compatible with any position in the Government, Assembly, local authorities, political parties or trade unions, or with performing any work in a public domestic, international or supranational organization or local authority.

9.5. The Agency shall engage the necessary number of other staff.

9.6. The Agency may outsource experts and professionals.

Article 10

10.1. The Council shall initiate the procedure for the selection of new Agency's director through a public invitation, 6 months prior to expiration of his mandate.

10.2. The Council shall initiate the above-mentioned procedures through a public invitation for proposals to fill in one position of the Agency's director and through a direct invitation for an appointment to the SRSG to fill in the second position. The proposals shall be submitted within thirty days of the invitation.

10.3. The Council recommends two candidates to the Assembly of Kosovo for the position of the director. The Assembly of Kosovo appoints one of the proposed candidates.

10.4. If the candidate procedure or the selection or nomination of candidates is unsuccessful, the procedure shall be repeated until the director is nominated.

Article 11

The director of the Agency may be prematurely discharged:

- a. if he so request,
- b. if he is incarcerated for criminal acts,
- c. if he fails to stop performing work or functions that are not compatible with the position of director,
- d. as a result of permanent or partial loss of the ability to perform his job,
- e. if he breaches applicable law in the course of his duties.

Article 12

The director of the Agency shall represent, lead and organize the working of the Agency and, in accordance with the law, shall carry all other powers and responsibilities of heads of the body.

Article 13

Following prior proposal given by the Agency, the Council shall adopt rules of procedure which shall define the Agency and its method of approach in greater detail. The rules of procedure shall be published in the Official Gazette of Kosovo.

Article 14

The Agency shall be allowed to carry out administrative investigations relating to disciplinary actions against civil servants.

Article 15

Public bodies, local authorities and official persons shall be required to provide the Agency, at its request, with all information they require to perform their tasks, and to enable them to inspect any relevant documentation.

Article 16

16.1. Official persons shall report cases of corruption, which come to their knowledge, to the Agency. The Agency shall forward all such cases to the Office of the Public Prosecutor of Kosovo (OPPK) for consideration.

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

16.3. A person that had given a statement or acted as a witness in a process on a corruption offence is provided with protection provided for in the Criminal Procedure Code of Kosovo and is entitled to damage compensation that s/he or a member of his/her family may suffer due to the given statement or testimony.

Article 17

Persons who are preventing, discovering or investigating corruption enjoy full independence for the purpose of efficient carrying out of their competencies and obligations, and no undue pressure shall be imposed upon their work or when undertaking certain concrete actions in compliance with the present Law.

Article 18

The Agency submits annual report, approved by the Council which shall be adopted by the Assembly of Kosovo.

Article 19

19.1. An Agency Council shall be established to exercise direct supervision of the Agency.

19.2. The Agency Council shall comprise 9 (nine) members, 3 (three) members appointed by the Assembly and 1 (one) member appointed by each: the President's Office, the Government, the Supreme Court, the Public Prosecutor's Office, the local authorities and the civil society.

19.3. Members are entitled to the remuneration of expenses arising from their work in the Agency Council.

19.4. Members of the Agency Council shall have a term of office of two years and may be reappointed. Two months prior to the expiry of the mandate, the institutions mentioned under paragraph two of this article shall perform the necessary procedure and nominate new Council members.

Article 20

The Agency Council shall have a president and deputy president elected by the members of the Agency Council from among themselves for a period of two years, and rules of procedure which shall regulate the details of the working of the Agency Council.

Article 21

21.1. The Agency Council shall be given regular and complete inspection of the Agency's work, and supervisions of assets of the official persons working in the Agency. To this end, the director of the Agency shall report to the Agency Council every six months on the contents and extent of supervision of assets, and on the findings of the Agency regarding incompatibility, conflict of interests, gifts and concluded investigations.

21.2. The Agency Council shall exercise its functions as determined by this Law provided that at least one half of the members are in attendance.

Article 22

Professional and technical tasks shall be provided to the Agency Council by the Agency.

Article 23

The agency:

- a. shall pass any information relating to possible corruption offenses to the OPPK for further action and shall conduct administrative investigations of alleged cases of corruption where no criminal proceedings will be initiated;
- b. shall co-operate with all domestic and international law enforcement authorities during investigation proceedings conducted by those authorities.
- c. prepares anti corruption strategy for the Government and approval by the Assembly and has the responsibility for making amendments and its implementation,
- d. supervise and analyze statistics which are in connection with corruption condition in Kosovo,
- e. take part together with competent public authorities in redaction and harmonization of acts on corruption prevention,
- f. supervises realization of these acts and ensures initiatives for their amendment,
- g. Participates as a main body in the field of anti corruption in similar organizations in other countries and international organizations which deal with corruption,
- h. Notifies Kosovar authorities on fulfillment of duties arising from international acts and offers recommendations on how to fulfill them,
- i. Participates together with professional, scientific, medial organizations and other nongovernmental associations on preventing corruption,
- j. Participates and advices during the drafting of platform and code of ethics in private and public sector,
- k. shall provide opinions and clarification on the incompatibility, conflict of interests, gifts and other issues related to the contents of this Law,

- l. shall participate and give advice on the elimination of the causes for corruption in the public and private sectors by organizing consultations, seminars, workshops and other forms of training,
- m. shall issue an annual report on the most serious and most common violations of laws, regulations and ethical principles.

CHAPTER 3 CONFLICT OF INTERESTS

Article 24

24.1. In case of a conflict between personal and general interests the official person is required to act according to the general interest.

24.2. There is a conflict between personal and general interests when by carrying out certain official or other activity touches upon the material and other interests of the official person or the person living with him/her in the domestic relationship.

Article 25

25.1. The official person who performs his/her job professionally (hereinafter: a professional official person) shall not independently or within the scope of his/her position perform professional or other activities intended to generate income without the prior written approval of his/her superior.

25.2. The approval of the superior can be given if activities from the first paragraph do not represent any danger for a conflict between the personal interests of the official person and general interests of his/her position.

Article 26

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

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

Article 27

A non-professional official person shall not hold an administrative or representative function in a public institution, company, fund or agency over which their position gives him/her a supervisory role.

Article 28

A official person who previously held a post which, according to this Law, is incompatible with their public function shall be required to relinquish their post immediately after election or nomination, or the confirmation of their mandate.

Article 29

29.1. If, after election or nomination or confirmation of the mandate, a official person continues to perform an activity or function which this Law determines to be incompatible with their new function, the Agency shall issues a warning to the official person and determine a deadline by which they shall be required to stop performing the activity or relinquish the position. The deadline determined by the Agency shall not be shorter than fifteen days or longer than three months.

29.2. In the event that the official person referred to in the preceding paragraph continues to perform incompatible activities or functions despite the Agency's warning, the Agency shall propose that the procedure terminating the position be initiated by the competent body.

29.3. If the competent body determines that the official person is performing an incompatible activity or function, it shall initiate the procedure for terminating the function. The competent body shall inform the Agency about its final ruling.

Article 30

Contracting entities participating in public tenders conduct business transactions with a commercial in accordance with the Law No. 2003/17 on Public Procurement (UNMIK Regulation No. 2004/03 for promulgation of the Law approved by the Assembly of Kosovo on Public Procurement in Kosovo).

Article 31

The Agency shall regularly publish in the Official Gazette of Kosovo a list of commercial undertakings with which, pursuant to the provisions of this Law, contracting entities participating in public tenders referred to in article 33 may not conduct business transactions.

Article 32

32.1. The commercial undertakings referred to in the third paragraph of Article 33 of this Law are not entitled to public aids from the Kosovo Consolidated Budget.

32.2. Agricultural holdings owned by the official person or by the person from his/her domestic relationship are also not entitled to public aids from the Kosovo Consolidated Budget.

32.3. The provisions of the preceding two paragraphs shall not apply to public aids from the Kosovo Consolidated Budget in the case of natural emergencies or extraordinary events.

CHAPTER 4
ACCEPTANCE OF GIFTS

Article 33

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

33.2. Formal gifts shall be considered gifts presented by the representatives of foreign countries and international organizations during visits and other opportunities, as well as other gifts presented under similar circumstances.

33.3. Occasional gifts of small value shall be considered gifts presented at various working and personal jubilees, holidays and similar occasions, and shall not exceed EUR 50 in value, or their total value shall not exceed EUR 100 in a single year if they are presented by the same person.

33.4. Official persons may not accept more than 10 occasional gifts within a year.

33.5. The prohibitions and restrictions arising from this article are also applicable to the persons living in the domestic relationship with the official person.

Article 34

34.1. All received gifts and their corresponding value shall be recorded by the official person in the catalogue of gifts kept by the body at which the official person performs his function.

34.2. Should the value of the gift be determined to exceed the value described in the preceding article, the gift shall become the property of the public authority, under the safekeeping of the body at which the official person performs his function.

34.3. Formal gifts, regardless of their value, shall become the property of the public authority, under the safekeeping of the body at which the official person performs his function.

Article 35

35.1. Public bodies that are obliged by law to keep a catalogue of gifts shall forward copies of the catalogue for the previous year to the Agency by the last day of March of the following year.

35.2. The Agency shall report any deviation from legal restrictions to the public body that provided the catalogue.

Article 36

Should the Agency determine that, in a specific case, the official person was on breach of the provisions of articles 34 and 35 of this Law, it shall inform the body at which the official person holds his/her position.

CHAPTER 5
SUPERVISION OF ASSETS

Article 37

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

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

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

Article 38

The body in which the senior official person holds the office shall notify the Agency in seven days after the beginning or conclusion of the duty of that person.

Article 39

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

Article 40

Within one month of assuming office, the senior official person shall provide the Agency with the following information:

- a. the function being performed professionally or non-professionally,
- b. other functions or activities being conducted by the official person,
- c. functions conducted by the official person immediately prior to assuming office,
- d. the status of their assets and the assets of persons living with them in their domestic relationship.

Article 41

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

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

41.2. Movable property of greater value as referred to point (b) of the preceding paragraph shall be considered to be movable property whose value exceeds 5.000 EUR.

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

Article 42

42.1. Any changes to the assets status referred to in indents 1 to 6 of paragraph one of the preceding article shall be reported by the senior official person to the Agency annually until the last day of March.

42.2. The Agency may at any time request that the senior official person submits the information referred to in indents 1 to 6 of paragraph one of the preceding article. The senior official person shall comply with the Agency's requests within fifteen days of receiving the request.

Article 43

43.1. Should the senior official person fail to submit the information referred to in article 41 or 42 of this Law within the deadlines determined by this Law, the Agency shall issue a warning and determine a new deadline, which shall be no less than fifteen days from the day the warning was delivered.

43.2. Should the senior official person fail to submit the required information within the deadline determined in the preceding paragraph, the Agency shall inform the body in which the senior official person is executing his office or the body responsible for determining the payment of wages or wage compensation.

43.3. In the case described in the preceding paragraph, the wage or wage compensation shall be reduced by one-fifth every month following the expiry of the deadline referred to in paragraph one of this article, and until the Agency's notice that the senior official person submitted the required information is received.

43.4. Should the senior official person fail to submit the required information within three months of the expiry of the deadline referred to in paragraph one of this article, the Agency shall notify the body responsible for initiating the procedure for termination of office. The payment of wage or wage-compensation shall be stopped.

43.5. If the competent body determines that the senior official person failed to submit the required information, it shall initiate the procedure for the termination of office and inform the Agency about its final ruling.

CHAPTER 6
DATA PROTECTION AND STORAGE AND RECORD KEEPING,
CONFIDENTIALITY OF INFORMATION

Article 44

44.1. Members of the Agency, the Agency Council and any persons employed by the Agency shall be required to guard as an official secret any information acquired by the Agency in the execution of its duties that is considered an official secret.

44.2. All persons who come into contact with official secrets during their co-operation with the Agency shall be informed about the obligation to protect official secrets and the consequences of their release. Individuals shall confirm by signature that they have been acquainted with the warning.

44.3. Even after the termination of the employment, persons referred to in Paragraph 1 of this Article shall be obliged to keep the professional secret within the following 15 years, unless the director of the Agency decides otherwise.

Article 45

Data acquired in accordance with this Law shall only be used for the purposes defined by this Law.

Article 46

46.1. The Agency shall be obliged to keep any data, information and documentation acquired on the basis of this Law for a period of 15 years after the conclusion of the matter.

46.2. The Agency shall keep the following records:

- a. records on corruption investigations and involved persons,
- b. records on official persons and persons living with them in a domestic relationship (personal name, date of birth, place of stay and place of residence),
- c. records on commercial undertakings referred to in Article 33 of this Law (name of the commercial undertaking, registration number and head office) and agricultural holdings referred to in paragraph two of Article 35 of this Law,
- d. records on the catalogue of gifts referred to in paragraph one of Article 37 of this Law, and records on notification referred to in paragraph two of Article 38 and Article 39 of this Law,
- e. records of information from articles 43 and 44 of this Law for the persons mentioned in the second indent of this paragraph.

46.3. The data and information in the records kept by the Agency pursuant to this Law must be stored for a period of 15 years and then archived or dealt with in accordance with the Law.

CHAPTER 7 PENAL PROVISIONS

Article 47

47.1. Contracting entities participating in public tenders shall be required to pay a fine of 50% of the value of the contract if it is confirmed that they have issued a public tender to commercial undertaking referred to in paragraph three of Article 33 of this Law.

47.2. The responsible persons of the contracting entities participating in public tenders shall be obliged to pay a fine from EUR 5.000 to EUR 50.000 if they are found to have committed the breach referred to in the preceding paragraph.

CHAPTER 8 TRANSITIONAL AND FINAL PROVISIONS

Article 48

The bodies of the official persons referred to in Article 2 of this Law shall be required to submit a list of official persons and persons living in their domestic relationship to the Agency within three months after the Agency becomes functional.

Article 49

49.1. Official persons shall be required to submit to the Agency the information referred to in articles 43 and 44 of this Law within six months after the Agency becomes functional.

49.2. Official persons shall be required to terminate the activities determined by this Law to be incompatible with the execution of office or to acquire the approval of the superior referred to in Article 28 of this Law within six months after the Agency becomes functional.

Article 50

Within fifteen days after the Agency becomes functional, the directors shall invite the institutions referred to in the second paragraph of Article 19 of this Law to appoint the members of the Agency Council. The constitutive session shall be convened by the directors of the Agency within fifteen days of receiving information on the appointment of the last member of the Agency Council.

Article 51

51.1. The Assembly of Kosovo appoints domestic director within 60 days after the promulgation of this Law.

51.2. The Agency shall commence functioning after the directors of the Agency have been appointed.

Article 52

52.1. Within twelve months after becomes functional, the Agency shall confirm the applicable anti-corruption strategy or submit for adoption through the President of the Assembly the appropriate and relevant amendments and supplements to already adopted strategies or a new strategy.

52.2. The proposal for the rules of procedure referred to in Article 14 of this Law shall be submit by the Agency for approval to the Agency Council within three month following the appointment of the Agency director.

52.3. The Council shall issue an opinion on the proposed rules of procedure within thirty days of its submission. Within fifteen days of receiving approval for the rules of procedure, the Agency shall issue acts regarding internal organization and systemization.

Article 53

The present law shall enter into force after adoption by the Assembly of Kosovo, signature of the president of the Assembly and on the date of its promulgation by the Special Representative of the Secretary -General.

Law No.2004/34
22 April 2005

President of the Assembly

Academic Nexhat Daci