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Closing Conference

Anti-corruption (AC) Assessment Report

- 1 – General overview of the current situation on corruption
- 2 – Fundamental safeguards and corruption prevention
(Judges, Prosecutors, Police)

Pristina, 28 April 2015

1- General overview of the current situation on corruption

(AC Strategy and Action Plan)

- **Progress**: too little follow-up from the 1st cycle (forthcoming revision of the A-C Action plan)
- **Challenges**: A-C Strategy and Action Plan do not bring about real change
 - ❑ Many institutions do not report, or report insignificant progress to KAA, including the NGOs.
 - ❑ Measuring the impact of strategic objectives and activities is poor, therefore possibility to see whether or not the strategy/action plan generated tangible results is reduced.

- **Key recommendations**

1. In the revised AP 2015: Develop more **result-oriented measures**, based on clearly identified **risks of corruption** and **impact indicators**.
2. **Adopt integrity measures** throughout the government
3. **Raise the credibility of the monitoring/evaluation of the A-C Strategy/Action Plan**
4. **Integrate listed A-C measures into annual work plans of each institution/ministry in order to increase responsibility.**

1- General overview of the current situation on corruption

(Conflict of Interest and Declaration of Assets)

- Progress:

- ☐ Partial harmonisation of the relevant legislation with the 2013 Criminal Code (only Law on Declaration of Assets has been amended, Law on Col is pending in the Assembly)
- ☐ Co-operation between KAA and Prosecutor notably improved in 2014, yet to be extended to judges.

- Challenges:

- ☐ Sanctioning regime of DA and Col is weak and not deterrent
- ☐ Addressing the issue of unexplained wealth (illicit enrichment)

- **Key recommendations**

1. Strengthen **operational capacities** to investigate conflict of interest and false declaration of assets, with a view to increase the **number of prevented, detected and channelled cases to courts and convicted officials**.
2. Proactively engage with **Tax Administration** as a tool to **undercover irregularities in asset declarations**.
3. **Develop comprehensive policy on tackling unexplained wealth, which can be further translated into a concrete regulation on illicit enrichment (criminal offence).**

2- Fundamental safeguards and prevention (Judges, Prosecutors)

- Progress:
 - ☐ **Draft Code of Ethics** for judges has been made, **although not fully addressing the outstanding recommendations (incompatibilities, internal Col within the KJC and judiciary)**
 - ☐ **Anti-Corruption statistics** of the KAA and Prosecutor's Offices are more harmonised - selection of **50 top priority corruption cases** has been made by the SPRK
 - ☐ Internal organisation of courts has been improved, yet **random allocation of cases is not effectively used (CMS not operational).**
 - ☐ Launched revision of the **Law on the Office of Disciplinary Prosecutor** with an objective to strengthen its position.

2- Fundamental safeguards and prevention (Judges, Prosecutors)

- Challenges:

- ☐ Aligning safeguards on **independence of the judiciary** with CoE standards (majority of judicial members of the KJC/KPC to be elected by their pairs; 3-year probationary period before final appointment should be phased out, etc.)
- ☐ Ensuring more strict monitoring of **implementation of ethical rules** and assessing whether **disciplinary sanctions have a deterring effect** or not.
- ☐ Addressing the issue of **outside employment**, respectful of ethics of judges and prosecutors and avoiding conflict of interests.

2- Fundamental safeguards and prevention (Judges and Prosecutors)

- **Key recommendations:**
 1. Initiate the process of **constitutional amendments** to fully align the Constitution and Laws on KJC/KPC with CoE standards on **independence of the judiciary**
 2. New Law on Office of Disciplinary Prosecutor should provide for **more efficient disciplinary mechanisms**; effectively use the random allocation of cases and implement the CMS
 3. Finalise and adopt the **new Code of Ethics for judges**, with the focus on addressing outstanding recommendations (e.g. re-introduce **vetting for judges**).
 4. **Proscribe clear and enforceable restrictions on outside employment for judges and prosecutors (along the KAA advice or following the model of Kosovo Police)**

2 – Fundamental safeguards and prevention (Prosecutors)

- Progress:
 - ❑ KPC Regulation (2013) partially addresses prevention of irregularities and other forms of corruption in the process of appointment of prosecutors
 - ❑ Formal relationship between ODC and KPC has been proscribed under the Law on KPC, yet there is no substantial evidence of this co-operation in practice (no. of disciplinary procedures against judges and prosecutors carried out and no. of sanctions applied)
- Challenges:
 - ❑ Addressing the Constitutional Court decision (July 2014) and ensuring procedural safeguards (vetting, transparency and motivation) for nomination to the highest positions

2 – Fundamental safeguards and prevention (Prosecutors)

- **Key recommendations:**
 1. **Reinforce anti-corruption safeguards in the selection process** (give strong emphasis on how the KPC conducts the vetting of prosecutors, what happens with the refused documentation, right of appeal, etc.).
 2. **Restore the trust in the disciplinary system** and criminal prosecution by engaging in more **proactive investigation** and disciplinary/criminal proceedings for alleged corruption against judges and prosecutors.

2 – Fundamental safeguards and prevention (Police)

- Progress:
 - ☐ Law on Police sets the minimum objective criteria for the appointment/dismissal procedures of senior police management, yet the **risk of certain political interference** remains.
 - ☐ **Secondary employment** (in/out of service) is regulated in detail, including supervision, as well as Col rules. **Serves as example** for other categories (judges and prosecutors).
 - ☐ Record of **disciplinary/criminal proceedings** has significantly improved: appointment of special prosecutors to deal exclusively with cases forwarded by the KPI; feed-back notification from courts on final conviction is required.

2 – Fundamental safeguards and prevention (Police)

- **Challenges:**

- ☐ Create better conditions for a **corruption-free appointment/dismissal procedures** of highest police officials
- ☐ Ensure that **well controlled secondary employment practice remains exceptional** and that salary limitations are applied in practice; post-employment in the police to be further regulated.
- ☐ Phenomenon of “acting” personnel remains, while a number of vacant positions in various disciplinary bodies is still significant.

2 – Fundamental safeguards and prevention (Police)

- **Key recommendations:**

1. Further develop **anti-corruption mechanisms in the procedure of selection/dismissal of top police management** (addressing Col in the Selection Committee; preferential ranking of candidates etc.).
2. Establish **post-service limitations** to professionally engage with bodies the police officers have been investigating ("pantouflage"), as well as a strict controlling and sanction mechanism.
3. **Fill vacant positions within Police disciplinary bodies**, and reduce significantly the number of "acting" positions.
4. On the basis of the KPI 2014 report provide **analytical overview** of trends and variations in applying disciplinary/criminal sanctions.