

The Capacities of the Agency for the Prevention of Corruption in the Fulfillment of Legal Obligations



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1. Introduction

Studies and reports of specialized international institutions, media reports and researches of non-governmental organizations in Kosovo are proving the presence and great consequences of corruption in Kosovo. On the other hand, the spread of corruption is being fought with various methods and tools. The legislative body of the Republic of Kosovo has created an institutional and legal framework by introducing a series of laws, such as the Law on the Agency for the Prevention of Corruption, the Law on the Declaration, Origin and Control of Assets and Gifts of Senior Public Officials, the Law on the Protection of Whistleblowers and the Law on the Prevention of Conflict of Interest in the Exercise of Public Functions.

However, in addition to this legal and institutional constellation, in public opinion there continues to be a view on the serious lack of actions in improving the fight against corruption due to many institutional mechanisms mandated to fight corruption with unclear mandates and conflicting mandates, and the lack of accountability on the part of institutions to properly follow up and improve the implementation of anti-corruption policies.

The need to fight corruption as a negative phenomenon, in addition to being a necessity, also reflects the desire for development and efficient functioning of state institutions. Therefore, the states in their institutional compositions foresee special bodies for preventing and fighting corruption. Thus, certain objective competencies and institutional responsibilities for preventing and fighting corruption in the Republic of Kosovo have been entrusted to the Agency for the Prevention of Corruption.

The Agency for the Prevention of Corruption, based on legal authorizations, constitutes the specialized body for the implementation of state policies for the prevention of corruption in Kosovo. So, the Agency for the Prevention of Corruption is an independent body which, among other things, has as its basic legal objectives the imposition of measures and the supervision of the declaration of assets of public officials, the prevention of conflicts of interest,

with the aim of preventing corruption, strengthening the integrity and institutional transparency in the Republic of Kosovo, as well as monitoring the implementation of the State Strategy and Anti-Corruption Action Plan (henceforth: Anti-Corruption Strategy). Therefore, looking at these authorizations and legal powers of the Agency for the Prevention of Corruption, the need to analyze its effective functionality follows naturally. The continuous analysis of the functional capacities of the work of the Agency for the Prevention of Corruption means the determination of proactive actions towards the systematic evaluation of (none) successful implementation of legal provisions by this institution.

However, in addition to the commitment of state institutions in the fight against corruption, the social perception of the high level of the presence of corruption continues to remain one of the main challenges faced by the state apparatus in general and the Kosovar society in particular. The methods and the fight against reducing the level of corruption must be systematic and well planned, adding here the harmonization of our national legislation with the practices of the European Union legislation.

Therefore, the fight and prevention of this negative phenomenon must be done through institutional cooperation, based on full compliance with legal standards. The synergy formed through the action of the bodies of the justice system is the first important and essential step towards fighting this phenomenon. In addition, capacity building for specialized institutions to fight corruption should be seen as a necessity to increase efficiency and effectiveness in the fight against corruption.

2. Methodology

The report is based on legal and political analysis to assess the real capacities of the Agency for the Prevention of Corruption on the dynamics and possibilities of fulfilling the legal mandate, i.e. the powers and responsibilities, in relation to the increase in the volume of work foreseen by the Law on the Agency for the Prevention of Corruption.

Between the review of the institutional history of the Agency for the Prevention of Corruption, the evaluation of legislative changes and the analysis of the functional and human capacities of the Agency's institution, it is necessary to determine the real general capacities of this institution. So, the purpose of this analysis is to reflect the real situation regarding the current capacities of the Agency for the Prevention of Corruption for the operationalization of its mandate for the prevention of corruption.

In order to fulfill the purpose of this report, FOL has used the method of analysis of the legislation, as well as the method of interviewing and surveying the responsible officials of the relevant institutions, as well as the responsible persons of the Agency for the Prevention of Corruption.

At the beginning of the report, the legal framework on the basis of which the Agency for the Prevention of Corruption exercises its powers and responsibilities is elaborated in general, while the second part deals with the history of the Agency for the Prevention of Corruption, from its functioning as a specialized agency for fighting corruption, in addition to changing the basic laws on which the powers of this institution are regulated.

While in the following part of the report, the budget of the Agency for the Prevention of Corruption foreseen for the year 2023 by the Law on Budgetary Allocations is analyzed in relation to the one foreseen in 2022, as well as the responsibilities of other relevant institutions that come within the scope of the Law on the Agency for the Prevention of Corruption.

3. Legal Framework on the Competences of the Agency for the Prevention of Corruption (APC)

For the realization of powers and responsibilities, the work of the Agency for the Prevention of Corruption is based on a series of legal and sub-legal acts. The legal acts that regulate the powers of the Agency include: *the Law on the Agency for the Prevention of Corruption and the Law on the Declaration, Origin and Control of Assets and Gifts, the Law on the Prevention of Conflict of Interest in the Exercise of Public Function, as well as the Law on Protection of Whistleblowers.*

Whereas, among the by-laws on the basis of which the work of the Agency is organized, the following are included: *Regulation for the internal organization and systematization of workplaces in the Anti-Corruption Agency; Code of ethics for employees of the Anti-Corruption Agency; Work regulations of the Anti-Corruption Agency (amended/supplemented); as well as the Regulation for the organization, functioning and management of the Anti-Corruption Agency's archive.*

In the following text, only the provisions of the Law on the Agency for the Prevention of Corruption, as well as the Law on the Declaration, Origin and Control of Assets and Gifts, which were recently approved by the Assembly of the Republic of Kosovo, have been elaborated.

3.1 What Does the New Law Provide for the Agency for the Prevention of Corruption?

Law no. 08/L-017 on the Agency for the Prevention of Corruption was approved by the Assembly of the Republic of Kosovo in July 2022. The entry into force of this law repealed *Law no. 03/L-159 for the Anti-*

Corruption Agency. The finalization of this law was foreseen within the legislative program of the Ministry of Justice for 2020.

This law, among other things, clarifies the scope of the Agency in the field of corruption prevention, especially in the field of administrative investigations related to the prevention of conflict of interest, the process of declaring assets and gifts, and issues related to whistleblowers.

With the new law, the name of the agency was changed, i.e. from "Anti-Corruption Agency" to "Agency for the Prevention of Corruption", and it was transformed into a specialized body for the implementation of state policies for the **prevention** of corruption in Kosovo.

Article 5 of this law defines the powers of the agency. The implementation of these three laws is part of these powers:

- *Law on Prevention of Conflict of Interest in the Exercise of Public Function,*
- *Law on Declaration, Origin and Control of Assets and Gifts, as well as*
- *Law on Protection of Whistleblowers*

Among the other competencies of this institution is the undertaking of actions in the field of monitoring the action plan of the National Anti-Corruption Strategy, the anti-corruption assessment of legal acts, the assessment of the risk of corruption and integrity plans; referral of criminal charges to the state prosecutor's office after information received by natural or legal persons, or according to official duties; the imposition of fines and the undertaking of other measures in accordance with the legislation in force; the collection,

analysis and publication of statistical data or other data related to the state of cases that fall within the Agency's competences, as well as the performance of other tasks determined by the legislation in force.

The Agency for the Prevention of Corruption is led by the Director, who, unlike the provisions of the previous law¹, is appointed for a 5-year term without the right to re-election.

Also, one of the essential changes foreseen in the new law in relation to the law that has been repealed, is that now the *State Strategy and Action Plan against Corruption* is drawn up and approved by the Government of the Republic of Kosovo. In this case, the Agency participates and provides professional assistance to the Government in the drafting of this strategy as well as monitors its implementation.

Whereas, according to the provisions of the previous law, the Agency had the obligation to draft the Anti-Corruption Strategy in cooperation with the Government and other governmental and non-governmental institutions, and the same document would have to be approved by the Assembly of Kosovo.

The new law also provides for the obligation of the central administration bodies, independent agencies, as well as the municipal authorities of Kosovo to adopt **integrity plans** in order to identify sensitive processes to behaviors and actions that may be corrupt, which must be issued by public institutions in a period of 6 months after the entry into force of the by-laws defined in this law. Meanwhile, the agency monitors the implementation of these plans.

Integrity plans are three-year plans and are updated by the institution every year. Uniform methodology and guidelines for the compilation and implementation of integrity plans are determined by sub legal act issued by the Director of the Agency.²

Another novelty foreseen in the law is that the Agency evaluates the risks of corruption in different fields

or sectors, which are considered to be particularly exposed to the risks of corruption or suggested by public organizations, where their suggestions are not binding for the Agency.

Also, the law already foresees the obligation of the Agency, upon the request of the proposing body, during the drafting procedures of draft laws and draft by-laws, to assess the risks and loopholes that could potentially increase corruption.

3.2 What Does the New Law Provide for the Declaration of Assets?

In July 2022, the Assembly of the Republic of Kosovo also approved **Law no. 08/l-108 on Declaration, Origin and Control of Assets and Gifts** and the same entered into force 6 months after publication in the Official Gazette. The entry into force of this law repealed *Law no. 04/l-050 on the declaration, origin and control of the assets of senior public officials and the declaration, origin and control of gifts for all official persons*.

Among the most substantial changes made in the new law was the expansion of the range of persons who are obliged to declare their assets.

In addition to senior public officials, the declaration of assets has become an obligation for other public officials, such as: *licensed doctors who practice in public institutions at the secondary and tertiary level; professors of Public Universities, including assistant professor, associate professor and regular professor; forensic and forensic psychiatry experts; internal auditors as well as auditors in the national audit office; police inspectors; central and local level inspectors from the Prime Minister's Office, ministries, judicial and prosecutorial system, executive agencies, independent agencies, commissions, inspectors in municipalities and various regulators established by law; public procurement officials in all public institutions at the local and central level and in public*

¹ The repealed law provided for the mandate of the director of the Agency for a duration of 5 years and he/she could only be re-elected for another term.

² The Agency has already established the working group and has started creating the methodology for the compilation of integrity plans.

enterprises; the experts of the Public Procurement Review Body; managerial positions in the Court and the Prosecutor's Office; customs officials, tax inspectors and police investigators; as well as unit leaders and officials who perform investigation, inspection, licensing, verification or certification tasks in the Prime Minister's Office, ministries, judicial and prosecutorial system, executive agencies, independent agencies, commissions, inspectors in municipalities and various regulators established by law".³

Also, another substantial novelty that has been incorporated into the new law is the creation of an electronic way of asset declaration through the electronic system. So the declaring entities shall be required to declare assets electronically, using the agency's system for the electronic asset declaration. The Agency will provide each declaring official with secure individual access to its electronic asset declaration system.⁴ This asset declaration system for the first time was operationalized in the annual asset declaration for 2022, made in March 2023.

The declaration of assets shall be monitored and controlled by the Agency. The agency therefore has access to the data of all asset declarations of the declaring entities.

The law also provides other punitive measures for minor offenses against declaring entities that do not declare assets within the time provided in this law. According to Article 23 of this law, the agency imposes a fine on each reporting entity that does not fulfill the requirements within the stipulated period. The imposed fine will be in the amount of 30% of the net monthly salary of the reporting entity, but in no case will this amount exceed the threshold of 500 euros, with the caveat that if it continues to commit any violation provided for in paragraph 1 of this article after the additional period of 8 days, criminal charges will be filed against the same.

If the declaring entity, even after the imposition of the fine, but not later than fifteen (15) calendar days from the day when it was supposed to fulfill the obligation, does not fulfill the obligation, then the Agency files a criminal charge with the relevant prosecution.

³ Official Gazette of the Republic of Kosovo, Law no . 08/l-108 for Declaration, Origin and Asset and Gift Control, Article 5.

⁴ Ibid, Article 11.

4. Legislative Background of the Agency for the Prevention of Corruption

The first efforts of the Government of Kosovo to take measures in the making of policies to prevent and fight corruption, as well as in the creation and strengthening of the relevant mechanisms, start as early as 2004.

In addition to these efforts, the **Kosovar Anti-Corruption Agency**, as it was known in the early days of its establishment, was operationalized in February 2007 as an independent institution to verify and report on the declared assets of state officials and to fight the conflict of interest.

At that time, the purpose and scope of the Agency was focused on the detection and investigation of corruption cases, while the duties and powers of this institution were exercised based on **Law no. 2004/34 against Corruption**, published in the Official Gazette in March 2007.

At that time, the work of the Kosovo Anti-Corruption Agency was supervised by *the Council of the Agency*, which was a collegial body composed of nine members, three of which were appointed by the Assembly, and the remaining ones by the Office of the President, Government, Supreme Court, Public Prosecutor's Office, local authorities and by Civil Society. Members of the Council of the Agency each had a two-year mandate, and they were eligible for reappointment.

Based on the legal framework of the time, the Agency mandatorily reported to the Council of the Agency every six months regarding the content and scope of the assets and gifts supervision as well as the Agency's findings regarding incompatibility, conflict of interest,

and completed investigations as well as the detailed work and activities performed by the Agency during the reported period.

The agency was composed of three departments: the Department for Anti-corruption Strategy and Administrative Investigations; the Department of Prevention of Corruption; and the Department of Administrative Services.

During this time, the Agency faced substantial problems, which have had an impact on the fulfillment of the institution's mission. Among the problems highlighted during that time, were as follows: the small number of officials and the impossibility of recruiting additional personnel as a result of the limited budget, the salary level of the Agency's staff, unsatisfactory coordination with the Prosecutor's Office, the lack of work space, etc..⁵

In 2009, *Law no. 03/l-159 on the Anti-Corruption Agency was approved*, which changed the name of this institution to "**Anti-Corruption Agency**".

The Law on the Anti-Corruption Agency determined the status and responsibilities of this institution in the field of fighting and preventing corruption, especially in the field of reporting, detection and investigation of corruption, implementation of the Strategy and Action Plan against Corruption. Also, unlike the previous law, where the work of the Kosovo Anti-Corruption Agency was supervised by the *Council of the Agency*, with the amended law the work of the Anti-Corruption Agency was supervised by the Legislation Commission, Mandates, Immunities, the

⁵ Kosova Anti-Corruption Agency, Annual Report of the Kosova Anti-Corruption Agency, January 1- December 31, 2007

Regulation of the Assembly and the Supervision of the Anti-Corruption Agency, established by the Assembly of Kosovo. The new law limited the powers of the agency in conducting "preliminary investigations", while the criminal investigations foreseen in the new law remain within the prosecutorial competency.

The Anti-Corruption Agency continued to function with these powers and with this name until August 2022, when **Law No. 08/L-017 on the Agency for the Prevention of Corruption** was approved (the changes of which are described in the chapter on the legal framework), and in addition to the name, some of the competences of this institution were also changed (the changes of which are detailed in Chapter 3 of this report).

5. How Much Capacity Does the Agency Have to Fulfill the above Competences with the New Legislation?!

The competences and responsibilities of the Agency for the Prevention of Corruption have increased to a large extent with the entry into force of the *Law on the Prevention of Corruption and the provisions of the Law on the Declaration, Origin and Control of Assets and Gifts*

This increase in responsibilities is particularly affected by the increase in entities / public officials who are obliged to declare their assets. So, in addition to about 5,000 public officials who were previously obliged to declare their assets, with the provisions of the new Law on Declaration of Assets expected to enter into force in August 2023, this number of officials who will be obliged to declare their assets will grow to around 20,000 officials.

Whereas, the provisions of the Law on the Agency for the Prevention of Corruption related to the creation of the by-law for the *creation of the uniform methodology for the compilation and implementation of integrity plans, the creation of the by-law for the definition of the methodology for assessing the risk of corruption, as well as the by-law for determining the methodology for assessing the potential of corruption in the legislation*, will also enter into force in August 2023, namely 1 year after the entry into force of the law itself.

The work towards the compilation of the by-law for the creation of the uniform methodology for the compilation of integrity plans has begun, so it remains to be seen whether its finalization will be achieved within the stipulated time.

After the creation of these by-laws and 6 months after their entry into force, namely in February 2024, the Agency will begin monitoring the implementation of integrity plans formed by central, local institutions and independent agencies, make risk assessment of corruption in different fields or sectors, as well as to assess the risks and loopholes that could potentially increase corruption, made at the request of the proposing body.

But despite the increase in the workload and responsibilities of the Agency for the Prevention of Corruption made by the Assembly of Kosovo, the legislative body has foreseen a minimal increase for the budget of the Agency for the Prevention of Corruption for the year 2023.

According to the Law on Budgetary Allocations for the Budget of the Republic of Kosovo for the year 2022, the total budget of this institution was €545,778.00, while according to the Law on Budgetary Allocations for the Budget of the Republic of Kosovo for the year 2023, this budget is foreseen to be €557,844.00, so with an increase only for €12,066.

Based on the Law on Budgetary Allocations for the Budget of the Republic of Kosovo for the year 2023, the budget of the Agency for the Prevention of Corruption for the year 2023 has increased by only

compared to the previous annual budget (year 2022), which expressed as a percentage includes the increase only for



€12,066

or

↑ 2.21 %

So, this implies that the Agency for the Prevention of Corruption, as a result of the budget cost, will find it impossible to fulfill the obligations that have been added to it with the amended laws.

The table below presents the Budget of the Agency for the Prevention of Corruption foreseen for 2022 and 2023, including salaries and wages, goods and services, utilities and capital expenditures, as well as the anticipated increase in the budget between the respective years.

Fiscal year	Salary and wages	Goods and services	Utilities	Capital expenditures	Total budget
2022	€ 413,222	€ 114,056	€ 8,500	€ 10,000	€545,778
2023	€ 415,288	€ 114,056	€ 8,500	€ 20,000	€557,844
Budget increase	↑ €2,066	€ 0	€ 0	↑ € 10,000	↑ €12,066

Table 1. The budget of the Agency for the Prevention of Corruption for the year 2022 and 2023 foreseen in the Laws on Budgetary Allocations for the Budget of the Republic of Kosovo for the respective years.

So, based on the table above, the increase in the budget is reflected only in capital expenditures, namely 10,000 euros more than in 2022, and in salaries and wages, where the budget has increased by 2,066 euros. As for goods and services, as well as utilities, the budget allocation is foreseen to be the same as last year.

According to *the Law on Budgetary Allocation for the Budget of 2023*, respectively according to Table 3.2 (Capital projects for the central level)⁶, capital investments include only the purchase of the server cabinet and UPS (where 10,000 euros will be spent), the agency's website development (where 6,000 euros will be spent), as well as the purchase of information technology equipment - laptops (where 4,000 euros will be spent).



Also, despite the multiplication of the work volume of the Agency for the Prevention of Corruption, the number of employees in this institution during the year 2023 will continue to remain the same as in the previous year, i.e. only 43 employees.

FOL has requested from the Agency for the Prevention of Corruption to answer on how the minimum budget increase of 12,066 euros of this institution for 2023 is intended to be used. In relation to this issue, officials of this institution have responded:

"From the increased budget of 12,066 Euro:

a) the additional budget of 2,066 euros is intended to cover the annual work experience allowance for one year for all positions approved for APC (43 positions in total);

b) the budget of 10,000 Euros are intended for 2 capital projects (supply with material goods that have a unit value of more than 1000 Euros and that have a useful life of more than 1 year, as well as for the creation and design of the website of the Agency and the supply of laptops for Agency's needs".

In addition, the officials of this institution added that:

"As for the Electronic Asset Declaration System is concerned, in 2023 we are being supported by UNDP and covered for the overtime work of the current IT staff by one official, as well as other asset declaration officials"

So, from the answers of this institution, it can be seen that the planned budget for this institution for 2023 does not manage to cover the expenses created by this institution with the approval of the new legislation, and the same obligations are being covered by the support of international partners.

6. What do they say from the agency about the current capacities of this institution?!

In order to become familiar with the requirements of the Agency for the Prevention of Corruption in relation to the fulfillment of institutional objectives and the responsibilities foreseen by the legislation in force, FOL has communicated with officials responsible for public communication in this institution. Communication was done through questionnaires and supplementary written interviews.

In the question posed by FOL regarding how much human and functional capacity the agency has to fulfill the legal obligations provided for in the new law, the officials of this institution said:



Human capacities of the Agency currently cover minimally the needs for the performance of the Agency's legal obligations in relation to the implementation of the legal framework in its mandate. The agency has submitted requests for additional human resources and for financial and non-financial support".

Regarding the question on what was the biggest challenge of the institution in terms of fulfilling the institutional goals, the officials of this institution have answered as follows:



The agency has encountered successive challenges over the years, starting from the establishment, the supervision by a board which delayed decision-making, then the removal of the board, but on the other hand the increase in the field of activity and the lack of adequate personnel, all the way to the operations during pandemic times. While during 2022, based on the increase in the number of requests which has also doubled the number of actions, the main challenge of the Agency was the lack of human resources and budget insufficiency, which to some extent has been covered by the support of donors. We believe that the work of the Agency has contributed positively to the improvement of Kosovo's ranking in credible international reports in relation to fighting and prevention of corruption. As a result of the increase in the dynamics of the Agency's actions, transparency and the open door policy for the prevention and fight against corruption, the number of reports and requests also increased and ended up with twice the number of cases handled compared to the previous two years."

Regarding FOL's question whether the Agency's budget is sufficient to achieve the objectives and responsibilities foreseen by the new law, the officials of this institution answered as follows:



No. The main challenge of the Agency is the lack of human and technical capacities and lack of budget, certainly, that is, in order to achieve the implementation of its objectives and goals for the prevention of corruption in Kosovo. It is universally known that the Agency is obliged to implement the electronic assets declaration, a process that needs an adequate budget and additional professional staff either in the field of ICT or investigations in order to verify the declaration. Then, the Agency is required to perform additional functions such as, review of the anti-corruption legislation, integrity plans, national anti-corruption strategy, etc. So, the budget allocated to the Agency is not enough, but the Agency is in constant contact with the responsible institutions so that the Agency's budget covers the requirements and needs for the implementation of the Agency's legal obligations."

In FOL's question about what the Agency's requirements are in terms of institutional development and internal capacity building, the officials of this institution answered:



The Agency's requests for building internal capacities are oriented towards the fulfillment of legal obligations to implement the Agency's new powers related to the new powers in the field of asset declaration, doubling the number of declaring entities, imposing fines, preventing corruption in the drafting of laws and by-laws, monitoring

the implementation of the integrity plan of institutions. Naturally, for the implementation of these obligations, the Agency does not have sufficient human capacity to implement these responsibilities, either in terms of the number of staff or professional expertise.

So, according to the answers of the responsible officials of the Agency for the Prevention of Corruption, the current capacities of the agency do not meet the requirements for the fulfillment of legal obligations. In addition to the Agency's increased competences in the field of asset declaration, imposition of fines, monitoring of integrity plans and prevention of corruption during the drafting of primary and secondary legislation, the current structure of the Agency continues to remain the same. Consequently, the Agency continues to work with the staff it had before the new legislative amendments and supplementations, whereas the request for additional staff continues to remain unapproved by the competent institutions.

FOL movement has also raised questions about the number of Agency officials who perform two or more tasks within the agency. In relation to this issue, the officials of this institution have said that there are 5 agency officials within this institution who perform also additional duties such as: financial functions, expenditures, certifiers, asset officials, etc.

Whereas in FOL's question about how many officials of the Agency are engaged in work outside this institution, APC officials answered that there are 7 officials with certain positions who, in addition to the work they do in APC, are also engaged in other jobs. Among these positions, the following were mentioned:

- The position of Procurement Manager, who is engaged in the Procurement Review Body as an external expert. Whereas, according to the Regulation on the Internal Organization and Systematization of Workplaces in the Anti-Corruption Agency, the Procurement Manager organizes, leads and supervises procurement work and activities, as well as performs other tasks defined by this regulation.

- The position of Senior Official for the prevention of conflict of interest, who is engaged as a trainer (upon request) at the Kosovo Institute for Public Administration (KIPA). According to the regulation, the senior official for the prevention of conflict of interest has the following duties and responsibilities: identifies possible cases of conflict of interest of senior officials, defined according to the law in force; develops the procedure for investigating cases of conflict of interest; as well as perform other duties defined by this regulation.
- The position of Senior IT Administrator for Systems, who is engaged (part time) as a lecturer at PBC Academy (private institution). According to the regulation, this position in the agency has the following responsibilities: designs, develops and installs the various information technology systems; analyzes new programs with existing ones by pre-testing for compatibility with information technology equipment; as well as perform other duties defined by this regulation.
- The position of the Director of the Department for Prevention of Corruption - who has been engaged as a Certified Trainer by KIPA supported by the Council of Europe, PECK III project, in the areas of "Protection of the rights of whistleblowers". According to the regulation, the duties and responsibilities of the director of this department are: leads and organizes the work of the department and is responsible for the overall work of the Department for the Prevention of Corruption (DPC); oversee the process of declaring assets and gifts, preventing conflict of interest and corruption in public procurement and corruption as a whole, as well as perform other duties defined by the regulation in force.
- The position of the Director of the Department for Combating Corruption, who is engaged in the Kosovo Institute for Public Administration as a Trainer for the training of employees in the public administration. According to the

regulation, the duties and responsibilities of the director of this department are: leading and organizing the work of the department; supervising the work of department officials; to participate in legislative initiatives related to the prevention and fight against corruption, as well as perform other duties provided by the regulation in force.

- The position of the Senior Official for Investigations and Analysis, who is engaged outside the APC in the private company IPSOS as RED. According to the regulation, this position has the following responsibilities: develops the preliminary investigation procedure for the cases assigned by the head of the division; in cooperation with the head of the division determines the way of conducting preliminary investigations; informs the head of the division about the stages of the investigation and possible cases of corruption; prepares criminal reports, decisions on administrative violations and decisions on closing cases, as well as performs other tasks defined by regulations.

Also, according to the answers received, there are two officials who maintain their positions in the Agency according to the Law on Public Officials, one of whom is a Member of the Assembly of Kosovo, while the other is in a diplomatic mission.

So, despite the fact that the Agency for the Prevention of Corruption faces difficulties in terms of the lack of human resources, in this institution there are officials who, in addition to exercising very important functions in the agency, also perform other functions outside this institution.

This undoubtedly significantly affects the efficiency in performing their duties and functions within the scope of the Agency for the Prevention of Corruption. So, the question naturally arises as to whether these officials who have secondary jobs will be able to fully fulfill their duties in the institution where there is a marked lack of human resources.

In the end, according to the answers received by the Agency for the Prevention of Corruption, the request of this institution remains as follows:



- "The number of staff to be increased by **15 in 2023 and 10 in 2024 (total 25 staff)**).
- The salary budget is increased to **139,320.00 Euros in 2023 and 95,000.00 Euros in the following year, 2024.**
- The budget for goods and services to be increased to **EUR 10,000.00** for 2023 and continue with the growth trend in the following years.
- To improve the infrastructure of the facility".

But despite these requests, the Agency for the Prevention of Corruption continues its work with unchanged capacities, in addition to the increase in the volume of work and responsibilities.

7. What Are the Actions of the Relevant Institutions in Fulfilling the Obligations Provided for by the New Legislation?!

For the needs of this research, FOL has submitted questions to the responsible officials of several state institutions, inquiring about (1) new obligations, obligations and communication/coordination needs with the Agency for the Prevention under its expanded mandate; and also (2) the status of various initiatives concerning the Agency for the Prevention of Corruption.

Institutions contacted include: the Government of Kosovo; the Legislation Commission, Mandates, Immunities, the Regulation of the Assembly and the Supervision of the Anti-Corruption Agency (hereinafter: Legislation Commission); Ministry of Justice; as well as Ministry of Finance, Labor and Transfers.

7.1 Government of Kosovo

Institutions of the Republic of Kosovo, more than 4 years after initial drafting commenced, continue to lack a Strategy and Action Plan for Fighting Corruption.

The last drafted strategy, entitled "*National Anti-Corruption Strategy 2018-2022*"⁷, was approved by the Government of Kosovo on March 23, 2018. In the decision issued for the approval of this document⁸, the Government obliged the Anti-Corruption Agency and other competent institutions in its implementation, and it was foreseen that this strategy enters into force on the day of its signature.

However, this action of the Government contradicted the Law on the Anti-Corruption Agency, which was in force at the time. This law, in paragraph 2 of its article 16, determined that:



"The Agency, through the Government, presents the Anti-Corruption Strategy to the Assembly of Kosovo for approval, a document which contains anti-corruption policies that must be implemented by the responsible institutions of the Republic of Kosovo, both at the central and local levels."

It is clearly seen from this paragraph that the obligation to approve the National Anti-Corruption Strategy was the Assembly of Kosovo, not the Government of Kosovo.

So the Government of Kosovo has illegally applied the competencies of the Assembly of Kosovo in the case of the approval of the National Anti-Corruption Strategy 2018-2022, and therefore the Republic of Kosovo for more than 4 years formally does not have any strategic document for the fight against corruption.

While with the changes made after the entry into force of *the Law on the Agency for the Prevention of Corruption*, the competencies for approving the State Strategy and Action Plan against Corruption have passed from the Assembly

⁷ For more, see: https://www.akk-ks.org/lajmi_i_plote/443.

⁸ Official Gazette of the Republic of Kosovo, Government of Kosovo, Decision no. 02/37, dated 23.03.2018.

of Kosovo to the Government of Kosovo⁹, where the latter has already issued the decision for the establishment of the responsible structures for drafting the strategy.¹⁰

Therefore, FOL has submitted questions to the responsible officials of this institution, asking on what are the actions that the Government has undertaken to fulfill this legal obligation.

The responsible officials of this institution have answered as following:



"The Government of the Republic of Kosovo has approved the decision to establish the responsible structures for drafting the Strategy for the Fight against Corruption - Government Decision No. 06/130, dated 22.02.2023".

So, the Government of Kosovo has responded that the responsible structures for drafting the Strategy have been established. This implies that the process of drafting the strategy can be considered to be still in its initial stages, considering that only the Decision 06/130 dated 22.02.2023 was issued, but yet no concrete action was undertaken in the direction of ideation and determination of state policies, as well as the proposal of concrete measures and activities in the prevention and fight against corruption.

According to this decision, this document will be finalized on December 1, 2023. However, knowing that the work to draft this strategic document has not yet begun, the question naturally follows whether this document will be finalized within the foreseen time period.

7.2 Legislation Commission

Based on the provisions of the law in force, the Legislation Commission supervises the work of the Agency for the Prevention of Corruption, examines the reports of the

agency, periodically supervises and evaluates the work of the Director of the Agency, initiates the procedure for the election and dismissal of the Director of the Agency, as well as it checks and supervises the assets declared by senior officials of Agency as well as dealing with conflict of interest issues.¹¹

Therefore, FOL has submitted questions to the responsible officials of the Legislation Commission regarding the obligations of this institution according to the law in force.

In FOL's question whether the Legislation Commission has done any analysis of the assessment of the needs of the Agency for the Prevention of Corruption after the adoption of the new Law on the Agency for the Prevention of Corruption, the responsible officials of this institution responded as follows:



Until now, the Legislation Commission has not made any analysis of the needs assessment of the Agency for the Prevention of Corruption."

Regarding the question of whether the Legislation Commission has requested a report from the Government of Kosovo regarding the budget to draft the State Strategy and Action Plan against Corruption, the responsible officials of the Commission have answered as follows:



Until now, the Legislation Commission has not asked the Government to report on this obligation."

To the question of whether the Agency for the Prevention of Corruption submitted budget requests to the Legislation Commission after the approval of the new legislation, the responsible officials of the Legislation Commission answered as follows:

9 Official Gazette of the Republic of Kosovo, Law on the Agency for the Prevention of Corruption, Article 24.

10 Official Gazette of the Republic of Kosovo, Government of Kosovo, Decision no. 06/130, dated 22.02.2023.

11 Official Gazette of the Republic of Kosovo, Law on the Agency for the Prevention of Corruption, Article 16.



In the meeting held on December 30, 2022, after reviewing the budget requests of the institutions that fall under its scope, it presented the proposal-amendments to the Draft Law no. 08/L-193 on budget allocations for the Budget of the Republic of Kosovo for 2023, as follows:

Amendment 1: To allocate additional funds for the Agency for the Prevention of Corruption, with the organizational code 236 and with the program (sub-program) code 20400, in the amount of €80,000.00, within the economic category, salaries and wages and €10,000.00, within the economic category, goods and services."

So the officials of the Legislation Commission had estimated that it is necessary to support the Agency for the Prevention of Corruption, as a whole, in the total amount of €90,000.00, in the economic category, salaries and wages and in the economic category goods and services. This is due to the fact that, as the officials of this institution have explained, the powers of the Agency for the Prevention of Corruption have been expanded and its responsibilities have significantly increased with the entry into force of the Law on the Agency for the Prevention of Corruption and Law no. 08/L-108 on the Declaration, Origin and Control of Assets and Gifts and it is necessary to cover 15 new positions for the year 2023.

However, further on, officials of the Legislation Commission have emphasized as follows:



However, the Assembly did not support this amendment."

In FOL's question that, in addition to the mandatory reports defined by law, has the Legislation Commission requested Ad-Hoc reporting from the Corruption Prevention Agency for the implementation of the new law, the responsible officials of the Commission have responded as follows:



Until now the Committee on Legislation has not requested ad-hoc reporting from the Agency for the Prevention of Corruption."

To FOL's question about what methodology you will use to verify the declaration of the Agency's officials, the responsible officials of the Commission answered as follows:



The Commission has not discussed this issue, which is expected to be discussed after the legal term for the declaration of assets ends."

7.3 Ministry of Justice

The FOL movement has also submitted questions to the Ministry of Justice regarding the obligation of this institution, provided for in "Regulation no. 03/2021 on the Determination of the Procedure for the Admission and Handling of Whistleblowing Cases" that in cooperation with the Agency for the Prevention of Corruption within a period of 6 months after the entry into force of this regulation to draft guidelines for:

"the protection provided to persons who submit reports in the public interest; [and]

the obligations of employers to protect whistleblowers from harmful acts and the right of whistleblowers to judicial protection and the manner of conducting an administrative investigation."

In relation to this issue, the Ministry of Justice has responded as follows:



The Ministry of Justice, in cooperation with the Agency for the Prevention of Corruption and with the support of the PECK III project of the Council of Europe

Office, is in the process of drafting the Project Guidelines derived from the relevant Regulation.

Very soon the Project Guidelines will be discussed and finalized with the relevant actors."

So, even though the Regulation entered into force in May 2021, and the guidance should have been issued in November 2021, this guidance has not yet been finalized.

7.4 Ministry of Finance, Labour and Transfers

The FOL movement has also submitted questions to the Ministry of Finance, Labor and Transfers regarding the additional budget requests that the Agency for the Prevention of Corruption had for 2022 and how much these budget requests have been met.

In this regard, the responsible officials of the Ministry of Finance have responded as follows:



APC has submitted an additional request for an increase in the number of 4 new positions that were approved by the Budget Law for 2019, as well as the return of the monetary amount for these positions. The request for an increase in the number of workers was presented with the rationale of increasing human capacities. The additional monetary request has not been submitted."

APC has submitted an additional request in terms of information technology such as: Purchase of 2 UPS per server in the value of 7,000 euros and Purchase of RACT Monter-42 Unit in the value of 3,000 euros.
"

According to the Ministry of Finance, the reasoning of the Corruption Prevention Agency for submitting these requests was as follows: based on the agreement for donations between the support from the Bureau of International Narcotics and Law Enforcement (INL) at the American Embassy in Prishtina, APC has received equipment for the server room. However, the equipment has not been installed because the purchase of 2 UPS and the purchase of the RACT Monter-42 Unit are needed.

Also, the Ministry of Finance has added the following:



Another request from APC is the improvement of the building's infrastructure of ACA (insufficient space) for which no monetary measure has been presented."

Consequently, according to Ministry of Finance, pursuant to the Law No. 08/L-066 on budget allocations for the budget of the Republic of Kosovo for the year 2022, the Agency for the Prevention of Corruption **had its budget increased in capital investments in the amount of 10,000 euros** to reflect the additional request.

Consequently, the relevant institutions such as the Legislation Commission, Government of Kosovo, Ministry of Justice as well as Ministry of Finance, Labor and Transfers should take more serious steps in terms of the necessary state support to the Agency for the Prevention of Corruption, as well as in carrying out the obligations imposed on them by the legislation in force.

8. Conclusion

From the methodical analysis of the positive legislation, as well as the research of the perception of the relevant institutions, we can draw the following conclusions:

- Despite the multiplication of the volume of work and the increase in the responsibilities of the Agency for the Prevention of Corruption with the approval of Law no. 08/L-017 on the Agency for Prevention of Corruption and Law no. 08/L-108 on the declaration of origin and control of assets and gifts, a minimal increase in the budget was foreseen for this institution for 2023.
- The 2023 budget for the Agency for the Prevention of Corruption has been set at €545,778.00, respectively 2.21% more than in 2022, where the responsibilities and legal obligations of this institution were significantly less compared to those foreseen by the new law. So, the budget planning made by the Government of Kosovo and approved by the Assembly of Kosovo does not meet the needs and requirements of the Agency for the Prevention of Corruption, therefore immanently, this budget must be increased after its revision during 2023.
- Also, despite the multiplication of the work volume of the Agency for the Prevention of Corruption, the number of employees in this institution during the year 2023 will continue to remain the same as in the previous year, i.e. only 43 employees. So, the agency continues to work with the staff it had before the supplementing/amending of the legislation, while the request for additional staff continues to remain unapproved by the competent institutions.
- The Agency for the Prevention of Corruption has also emphasized that for the implementation of additional obligations, the agency does not have sufficient human capacities, both in terms of the number of staff and the necessary professional expertise.
- To fulfill legal obligations, the agency's requests are that the number of staff be increased by 15 in 2023 and 10 in 2024 (total 25 staff); while the budget for salaries should be increased by 139,320.00 euros in 2023 and 95,000.00 euros in 2024, as well as to improve the infrastructure of the facility. This undoubtedly affects the efficiency of performing the duties and functions of this institution.
- Of these 43 officials engaged in the agency, there are 5 officials who perform additional duties within this institution, such as: financial functions, expenditures, certifiers, asset officials, etc., as well as 7 officials who perform other functions outside this institution, such as: lecturers, trainers or other engagements in private companies.
- The Legislation Commission had also assessed that the Agency for the Prevention of Corruption needs to be supported in the total amount of €90,000.00 in the economic category, salaries and wages and in the economic category goods and services, but the Assembly of Kosovo had not supported this amendment.
- Regarding the determination of state policies for the prevention and fight against corruption, the institutions of the Republic of Kosovo have been working for 4 years now without any strategic document for the fight against and prevention of corruption. Although such a document was drafted, it was approved illegally by the Government of Kosovo, removing the powers from the Assembly of Kosovo.
- Whereas, the Guideline for the protection provided to persons who submit reports in the public interest (whistleblowers) as well as the obligations of employers to protect whistleblowers, which should be drafted by the Ministry of Justice in cooperation with the Agency for the Prevention of Corruption, has not yet been drafted, although the same should have been issued at the end of 2021.

9. Recommendations

Based on the findings of this report, the FOL movement makes the following recommendations:

1. Increase the budget earmarked for the Agency for the Prevention of Corruption in the 2023 budget review. This budget increase would enable the Agency to fulfill the obligations imposed by the new law effectively, as well as to meet its objectives in fighting and preventing corruption.
2. Fulfill the agency's requests for increasing the number of staff in the agency, and improve the infrastructure of the agency's facilities.
3. The Government of Kosovo to take quick steps towards the finalization of the State Strategy for the Prevention and Combating of Corruption.
4. The Ministry of Justice and the Agency for the Prevention of Corruption to finalize the Guidelines for Protection offered to persons who submit reports of public interest (whistleblowers) as well as the obligations of employers to protect whistleblowers.
5. Build professional capacities of the agency and other aspects of the advancement of the agency's officials in dealing with cases of conflict of interest, whistleblowing, as well as declaration of assets, through training.
6. Intensify the cooperation between the Agency for the Prevention of Corruption with other security bodies, prosecutorial and Financial Intelligence Unit. In order to maximize the fight against corruption, the Agency for the Prevention of Corruption obviously needs support from the relevant institutions of the prosecutorial system and that of the financial investigation.

