

ARCHITECTURE OF ACCOUNTABILITY AND THE RULE OF LAW IN PUBLIC FINANCE IN KOSOVO: THE IMPACT OF THE AUDITOR GENERAL

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Abstract Accountability and the rule of law are fundamental and indispensable elements of democracy. The legitimacy and transparency of the collection and spending of public finances is a sine qua non of democratic governance. To ensure this, it is necessary to take legal action and find specialized mechanisms that have the authority to exercise control and prevent possible abuse of power. These mechanisms are an integral part of the architecture of economic governance and most countries have designed the institution of the Auditor General as the best way to achieve this goal. This institutional mechanism ensures financial and legal control as well as a performance appraisal of the government. Therefore, this paper analyzes the development of the Auditor General in Kosovo, discusses the legal framework and its relation with other branches of government, and also examines the challenges and prospects in implementing its recommendations from the public sector in the future.

Keywords

good governance, rule of law, accountability, transparency, audit of public money, public interest, Auditor-General of the Republic of Kosovo

1 Introduction

The control of public funds is part of democratic governance and it includes control of accounts and control of operations. One of the most credible and widely used forms of this control is an external audit which is done to verify that the figures in the accounts are declared correctly, public funds are used as defined by the law on budget enacted by the legislature and the transactions comply with the relevant legislation and regulations. The main purpose of this paper is to examine the impact of the Auditor General on ensuring accountability and respect of the rule of law in the public finance sector in Kosovo.

The role of this institution is essential especially in transitional states in which the activity of parliament is usually dominated by the governing majority. The work of this institution increases the confidence in the spending of public funds and has an active impact on securing the interest of taxpayers and other stakeholders in increasing public responsibility. Meanwhile, one of the biggest challenges related to the work of this institution is the implementation of its recommendations. The constitutional mandate of the Auditor General (hereinafter: AG) covers the entire public sector, but some specific laws have provided that some public institutions be audited by other mechanisms. This has influenced the creation of some "restricted areas", which will be subject to examination through this paper as well.

The impact of the AG on improving the accountability and integrity of the public sector should increase in the future, in light of Kosovo's European integration process. The Stabilization and Association Agreement (hereinafter: SAA) between Kosovo and the European Union (hereinafter: EU), which entered into force on April 1st 2016, is the first contractual agreement between the EU and Kosovo that sets out the reforms that Kosovo needs to undertake to gradually approach EU policies and legislation. Article 97 of the SAA also defines the development and consolidation of external audits according to international standards. Furthermore, the implementation of key recommendations is one of the critical indicators measuring the progress of Kosovo institutions in the process of strengthening the rule of law and democratic governance.

2 Auditor General: Accountability and the Rule of Law

2.1 Theoretical Framework

In a democratic society, people entrust governance to their elected representatives. These representatives, known in other words as the Legislators, mandate the executive branch to govern, among other things, its national resources. However, it is the elected representatives who approve the budget at the end of the fiscal year, while the executive branch is required to give an account for its execution. Still, the legislature could not devote enough time or even expertise to verify the accounts presented by the executive branch. Therefore, to ensure accountability and the rule of law, external independent institutions have been created to assist the parliament in exercising its mandate and increase public confidence and governmental accountability.

Since the government exercises the power of managing the economy and society on behalf of the people, it must respect, abide by and safeguard laws and stick to the principle of administration according to the law. One of the guiding principles of good governance is accountability. In this sense, "accountability is the process whereby public service organizations and individuals within them are held responsible for their decisions and actions, including their stewardship of public funds, fairness, and all aspects of performance" (INSOSAI: GOV 9100).

External audit is one of the most important forms of accountability. This form of control is done by the Supreme Audit Institution (hereinafter: SAI). The main task of the SAIs is to ensure that financial expenditures followed the rules and accounts of the allocation and had a true picture of how the budget was spent (Stevens, 2004: 23). The accountability system varies from country to country, but it must have certain mechanisms, dimensions, and areas of competency for the SAIs to function properly, as well as interrelationships with state and social actors. Thus, to ensure effective accountability, the existence of the dimensions of information, explanation, responsibility and sanction is necessary (Insausti and Leal, 2014: 15).

SAIs operate according to the principles and standards of the International Organisation of Supreme Audit Institutions (INTOSAI). Such basic principles are: independence, integrity, unlimited access to official financial documents and publication of findings, making them available to the public. Among these documents, the Lima Declaration (1977) represents the most important document for the functioning of the SAI and is also counted as the constitution or "magna carta" of government audit. According to the Lima Declaration (Section 1), "Audit is not an end in itself but an indispensable part of a regulatory system of which aim is to reveal deviations from accepted standards and violations of the principles of legality, efficiency, effectiveness and economy of financial management early enough to make it possible to take corrective action in individual cases, to make those accountable accept responsibility, to obtain compensation, or to take steps to prevent - or at least render more difficult - such breaches."

SAIs are determined by the constitutions and legislation of the respective countries which regulate their scope. SAIs undertake financial, legal, (compliance) and often, performance ("*value for money*") audits of government, revenue and spending work that is essential to the legislature's ex-post oversight of government accounts (Pelizzo and Stapenhurst, 2014: 49). In literature on audit structures, three different types of audit models are usually distinguished: (1) Westminster (also known as the Anglo-Saxon or parliamentary model), (2) the judicial or Napoleonic model (Court of Audit) model, and (3) the Board or Collegiate model.

In the Westminster system, used principally in Commonwealth countries, the Office of the Auditor General is an independent body that reports to parliament. Within the parliament, a specialized public accounts committee reviews the audit reports, investigates further incidents of waste and abuse of funds, and recommends the parliament corrective government actions (Stapenhurst and Titsworth, 2006: 102). In the Westminster system, the focus is on financial and performance audits. The financial audit gives a true and fair view of the financial transactions that have taken place in the previous accounting year. On the other hand, performance audits

(which are also known as value for money) confirm whether public funds are spent economically,¹ efficiently² and effectively.³

The second model, known as the Court of Accounts, has both judicial and administrative authority and is independent of both, the legislative and the executive branches of government. The institution is part of the judiciary; it makes legal judgments on compliance with the laws and regulations and exercises a budget control function to assure that public funds are well used. Judicial systems traditionally concentrate on compliance with detailed rules and regulations to ensure that money has been properly spent and often focus less on wider financial management issues relating to the economy, efficiency and effectiveness of expenditure (DfID, 2004: 5). The audit by the Court of Accounts can result in either a discharge or a penalty in the form of payment. In some systems, for instance, in Slovenia, the Court of Audit serves as a misdemeanor authority deciding upon violations and imposing fines for any individual and authority user of public funds whose operations irregularities or inefficiencies have been disclosed (Court of Audit Act, Article 39).⁴

The third, and one of the least used models, is the Board of Audit Model which is similar to the Auditor General model in that it helps the parliament exercise its oversight role. Some countries have a board system comprising an audit commission, which is the decision-making body, and the general executive bureau, which is the executive body. The Board of Audit is a constitutional organization independent of the executive; its primary mandate is to analyze the state's "expenditures and revenues and report its findings to parliament" (Stapenhurst and Titsworth 2006: 102).

¹ Economically – the principle of economy implies minimising the cost of inputs. Inputs should be available at the right time, quantity and quality and at the lowest price.

² Efficiently - the principle of efficiency implies achieving the maximum from the available inputs. It relates to the relationship between input and output in terms of quantity, quality and time.

³ Effectively - The principle of effectiveness implies the achievement of set objectives and the achievement of expected outputs.

⁴ Court of Audit Act of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, No. 11/0 and 109/12, www.rs-rs.si/en/about-the-court-of-audit/legal-basis/court-of-audit-act/.

2.2 The Establishment of the Auditor General in Kosovo

The institutional development of the AG has gone through a unique experience, having been established and managed by the International Civilian Mission for more than a decade. In 1999, Kosovo was placed under the international administration of the United Nations Mission in Kosovo (hereinafter: UNMIK). In the period 1999-2003, the external audit in Kosovo was performed by the Dutch Court of Audit, which was contracted by UNMIK. The Office of the Auditor General and the Office of the Auditor of Kosovo were established⁵ by the UNMIK mission in 2002.

This office became operational in 2003 with the necessary support of the Dutch Court of Audit. In 2004, for the first time, the Office of the AG began to audit the legality of Kosovo's budget expenditures. By the same token, the work of this office in exercising budgetary control was based on international auditing standards of the EU and the International Standards on Auditing (IAS). In addition, in October 2004, the Office of the AG was accepted as an associated member of the European Organization of Regional External Public Finance Institutions (EUROSAI) (Kosovo: Progress Report, 2005: 51).

In 2008, Kosovo declared its independence and adopted its constitution. Nevertheless, the AG remained international up until the end of the international supervision of independence as stipulated by the provisions of the Constitution (Constitution of Kosovo: Chapter XIV, Article 157).⁶ In addition, after the end of the supervisory period of independence, the AG became a domestic institution managed by the Kosovo institutions (appointed by the Assembly).

⁵ Regulation No. 2002/18, On the Establishment of the Office of the Auditor-General of Kosovo and the Audit Office of Kosovo, 4 October 2002, unmik.unmissions.org/sites/default/files/regulations/02english/E2002regs/RE2002_18.pdf

⁶ Constitution of the Republic of Kosovo, 2008, kryeministri-ks.net/wp-content/uploads/2020/03/Constitution1Kosovo-11.pdf

In 2016, according to Law No. 05/L-055,⁷ the Assembly of Kosovo (hereinafter: Assembly) elected the first local Auditor. This law established the National Audit Office (hereinafter: NAO), which consists of the Auditor General, the Deputy Auditor General, Assistant Auditors General, the General Director of the Office, auditors and administrative/supporting staff (Article 8). As a *lex specialis* in this field, this law also regulates the financing from the public budget by guaranteeing sufficient human material and administrative resources.

In Kosovo, the AG was developed following the Westminster model or the parliamentary model. According to the Constitution (Article 136.3.), the Auditor General is elected by a majority of all members of the Assembly, based on the proposal of the President of the Republic of Kosovo for a 5-year term, while dismissal can be done by a majority of 2/3 of all members of parliament. The AG is independent in its work and answers only to the constitution and the law. The independence of this institution includes organizational, budgetary and functional independence. Accordingly, the independence of this institution has been confirmed by the jurisprudence of the Constitutional Court (Case No. K073/16).⁸ In this judgment, the Constitutional Court *inter alia* states that the independent institutions "assist the three branches of government in ensuring the rule of law, the protection of fundamental human rights and the supremacy of the Constitution, which makes them specialized and uniquely independent institutions."

The Constitution of Kosovo guarantees that public finance expenditures must be based on the principles of accountability, effectiveness, efficiency and transparency (Article 120). Pursuant to Article 137 of the Constitution, the AG control consists of various activities, including: (1) the economic activity of public institutions and other state legal persons; (2) the use and safeguarding of public funds by central and local authorities; and (3) the economic activity of public enterprises and other legal persons in which the State has shares, or the loans, credits and liabilities of which are guaranteed by the State. Thus, the common denominator of all these activities is

⁷ Law No. 05/L-055 on the Auditor General and the National Audit Office of the Republic of Kosovo, Official Gazette of the Republic of Kosovo No. 17, 10 June 2016, Pristina, gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=12517/

⁸ Constitutional Court, Judgment in Case No. K073/16 Constitutional review of Administrative Circular No. 01/2016 issued by the Ministry of Public Administration of the Republic of Kosovo on 21 January 2016, gzk.rks-gov.net/ActDetail.aspx?ActID=13155.

to promote high standards regarding transparency and accountability in the governmental financial sector and the performance of the public administration.

Budget control is one of the most complicated and sensitive elements in the budget law of contemporary states (Peci, 2017: 389). In Kosovo, however, according to Law No. 05/L-055 (Article 18), NAO has the comprehensive mandate in the exercise of financial control. "The National Audit Office is entitled to audit all financial, administrative and other activities, programs and projects managed by one or more of the institutions referred to in this article, including the process and proceeds of sales of assets, privatizations and concessions." In line with its duties, NAO performs several types of audits, such as regularity audit (*financial and compliance audit*) and performance audit (*value of money*).

3 External audit in the Governmental Sector

3.1 The regularity audit

In Kosovo, the budget is proposed by the government and approved by the Assembly with a special law which is valid from January 1st to December 31st of the same calendar year and this period is known as the fiscal year. Pursuant to Law No. 07/L-001 on the budget appropriations, the budget is "the amount allowed by law which is in disposal for expenditure from Kosovo Fund for a sub-program, specific purpose or, wherever specific purpose is not identified, for an expenditure category of a budgetary organization, as provided by this law."

Auditing is an integral part of the budget process because it sets out the government's fiscal policies, revenues, expenditures, and the economic policies on which they are based (Stapenhurst and Titsworth, 2006: 103). Forms of the external budget audit include financial compliance and performance auditing. However, Law No. 05/L-055 integrates financial auditing and compliance auditing into a form called regularity audit, which is the main form through which control over the legality of expenditure is exercised. In this regard, the regularity audit is done by examining the annual financial statements and the main accounts, auditing whether the management acted according to the principle of legality in the spending of public funds, and controls the public money systems, therefore performing an internal financial control function.

In regards to the methodology of applying the regularity audit, it is important to note that during this process the sampling model is applied. Hence, NAO auditors do not examine all transactions, files or financial statements of the audited institution because this would take a long time and make the audit impossible to complete. According to INTOSAI standards, the audit is done through a sampling method, where samples are selected within an audited entity. During the process of examining the selected files, the auditors can take notes, pose questions, as well as conduct interviews to provide an accurate and fair opinion.

NAO is obliged to annually carry out a statutory regularity audit of all budget organizations that have directly received a budget in the annual budget law and are required to produce annual financial statements. Upon completion of the examination, NAO prepares the draft regularity (interim audit) audit report and submits it to the audited institution for notification and eventual comments, which must be submitted in writing. Therefore, the audited entity submits its comments to the NAO, within a time limit of fifteen (15) days.

In the preparation of the final report, in case of disagreement between the findings of the auditor and the audited entity, comments are attached to the final report. In practice, in case of comments that reveal any kind of disagreement between the auditor and audited entity, such disagreements are included in the letter of confirmation issued by the audited entity. Through this letter, the audited entity undertakes the responsibility of implementing the findings. These reports ensure transparency, legitimacy, and efficiency of budget spending. For instance, the audits carried out in 2019 have identified a number of shortcomings and weaknesses in most of the budget organizations, which relate to poor management of budget funds and failure to achieve value for money (NAO: The Annual Audit Report, 2019: 6).

Additionally, AG makes recommendations in the audit reports to budget institutions, the Government and the Assembly, to address the weaknesses identified during the audit process. Pursuant to the law, each audited entity is obliged to submit to NAO within 30 days from the day of receipt of the Report, an action plan for the implementation of the recommendations. These recommendations are intended to help the management level institutions improve the level of good governance, support better public financial management and enhance service delivery to taxpayers. These recommendations are mainly related to better management of

public property, especially its registration, improvement of procurement procedures, contract management, human resource management, IT system and the work of the internal auditor.

The implementation of the recommendations from the regularity audits is monitored annually by NAO and the Assembly. The implementation of the recommendations is not at a satisfactory level. According to the data, only about 33% (NAO: Annual Reports, 2015-2018) of these recommendations are implemented by relevant institutions. To date, besides the engagement of the institutions, no sanctions exist in case of failure to implement the recommendations. On the other hand, there might be some sanctions for an entity that does not implement the recommendations, such as the responsibility of the institutions' managing councils and financial limitations for the upcoming fiscal year. As a result, failure to implement these recommendations remains a major and ongoing challenge, and this will certainly be an essential process that will take time to consolidate.

In fact, the impact of the audit is measured by the level of implementation of its recommendations, and this is the best indicator of whether management has been improving existing processes and controls in areas where errors and irregularities have been identified. The low implementation of the auditor's recommendations has been continuously emphasized in the EU Progress Reports for Kosovo. The NAO has recognized the need to improve the impact of audit work, as audited institutions, especially at the local level, do not implement audit recommendations sufficiently or in a timely manner (European Commission: Kosovo Report, 2019: 87).

Table 1. Number of recommendations and their implementation in the period 2015-2018⁹

Years	Total no. of recommendations	Fully implemented	Partly implemented	Unimplemented	Closed unimplemented
2015	1162	26 %	37%	38%	/
2016	1,177	34%	26%	40%	/
2017	1,121	39%	18%	32%	11%
2018	920	40%,	12%	34%	14%

3.2 Performance auditing (value-for-money)

The essence of performance audits is the value-for-money which confirms whether taxpayers were able to receive the value for their tax revenues (Stapenhurst and Titsworth 2006: 103). These audits are performed to assess whether public institutions use resources effectively and economically without loss, with due diligence on their overall costs and benefits. Performance audits are independent, objective and reliable reviews that assess whether the government's actions, systems, operations, programs and activities are considered a key instrument for the administration and function of state and public administration, whether organizations comply with the principles of economy, efficiency and effectiveness (*so-called 3Es*), and whether there is room for improvement. Also, it examines if the best use of human, financial, and other resources is taking place, including procedures, information systems, and performance measures used by audited organizations, and that the organization's performance helps to achieve its overall institutional objectives.

AG, in addition to regularity audits, also performs performance audits which are a special form of audit. According to Law No. 05/L-055 (Article 21.3), the NAO, when carrying out performance audits or other types of audits, shall, in compliance with internationally recognized public sector auditing standards, assess the economy, efficiency or effectiveness of a particular aspect of the operations of the whole or part of any institution, program or activity.

⁹ Source: Auditor-General: <http://www.zka-rks.org/en/publications/>.

Table 2: The regularity and performance audit: comparative features¹⁰

The regularity audit	Performance or value-for-money auditing
<ul style="list-style-type: none"> – financial and regularity auditing; – transactions are in line with applicable laws; – is mandatory and is performed annually in every public sector institution; – is not very analytical; – does not treat cost analysis versus results; – audits the current and previous budget activity of an institution; – audits the adequacy of internal control and internal audit functions; 	<ul style="list-style-type: none"> – if the use of resources is done according to the principle of 3E; – is not mandatory in every budget institution on an annual basis; – is analytical and requires deep knowledge; – analyzes costs versus results; – audits the performance of the past, present and future of the institution; – does an objective and systematic examination of a program, function, operation or management system and procedures

For the first time, NAO started doing performance audits in 2009, as they require high resources and qualifications. Thus, the first performance audit report was on the administration of the Ministry of Labor and Social Welfare disability pension scheme in the period from July 2007 to June 2008. In this report, the NAO found *inter alia* that the average time spent processing an application for a disability pension was 149 days, compared to 90 days, as foreseen by the law (NAO: Report No. 21.7.9-2008-08). In the first 5 years, AG had released a very modest number of performance reports - one or two per year. However, from 2013 and onwards, this number has constantly been increasing as a result of the development of the capacities within the NAO and the prioritization of the audit activities. Therefore, until 2020, NAO had realized roughly 100 performance reports for various fields such as: education, public procurement, security, health, environment, economic development, grant management, information technology systems, *etc.*¹¹

Unlike regularity audits, which are focused within a given entity, performance audits may include or extend simultaneously to several budget organizations. By conducting performance audits simultaneously in several institutions, it is possible to address the programs of the same activities within several budget organizations. For instance, in the audit performed on the efficiency in civil case management, the basic courts of Prishtina, Peja and Gjilan, as well as the Kosovo Judicial Council were included. In this report, the main findings were: the civil case management

¹⁰ Source: National Audit Office, http://www.zka-rks.org/wp-content/uploads/2017/06/PA_GUIDE_ENG_2391371.pdf.

¹¹ NAO: <http://www.zka-rks.org/?s=&search-type=publications>.

process had numerous irregularities in all its phases; the current procedures established in the basic courts to distribute civil cases to judges were not uniform in all three audited courts. In addition, each of the applied procedures were characterized by their own irregularities, including cases of citizens who had to wait for several years for the final court decisions to be rendered (NAO: Report No: 24.18x.9-2015/16-08: 2017).

Another essential element of the performance audit is that it can include several institutions at the same time, and it is realized for longer periods. For instance, in the performance audit for evaluating the planning for construction contracts, NAO had audited 11 projects at the Ministry of Public Administration and Ministry of Culture, Youth and Sports, which were realized in the period between 2013-2016. In this case, both institutions (Ministries) had spent 58 million € on the construction, and the purpose of this investment was to improve infrastructure in the public administration and the standard of living of citizens (NAO: Report No. 21.9; 5.3-2013/16-08). However, in regards to performance evaluation of most projects examined by the NAO, there were problems identified, not only when it comes to defining the needs of the user and examining the physical conditions of the locations, but also problems concerning funding and securing whether the technical specification initially prepared by the authorities fully corresponds with reality. As a result, the construction projects led to a cost overrun and took a longer time to complete than expected or needed (NAO: Report No. 21.9; 5.3-2013/16-08).

As regards the implementation of the recommendations generated from the performance reports, a longer period of time is usually required for them to be implemented, and the situation is even worse with the implementation of the regularity audit recommendations. According to Law No. 05/L-055 (Article 23.5), the audited entities are obligated to draft and submit their actions plans for implementation of the recommendations of NAO within 30 days from the publication of the report. The action plan serves as a guide and is also a commitment of the responsible persons and institutions toward the implementation of the audit recommendations. However, the number of institutions that draft action plans is very limited. It is obvious that the NAO mission does not end upon publication of the audit report. On the contrary, it ends with the evaluation of the impact of audit activities concerning the improvement of expenditure of public money.

In relation to that, in 2020, the NAO conducted a test through which it evaluated the implementation of the recommendations given in seven reports of the audit performance published in the year 2017. According to the data provided by 35 entities included in the audit performance for the given year, it turned out that only (4) entities had submitted the action plans for the implementation of the recommendations. From the evaluation generated by this test, it resulted that 59% of the recommendations were listed in the category as implemented, in the final phase or initiated implementation, while, for the other 31% of the recommendations, there was no information by the responsible entities entitled to implement such recommendations, (NAO: Evaluation Report, 2020).

Therefore, the lack of willingness to implement the recommendations and preparation of action plans, as well as the lack of response to the requirements of the NAO to enable the evaluation of the measures undertaken for the given recommendations, inevitably show the lack of accountability of the public institutions to improve the quality of their performance and the way they manage public money. In regards to finding an efficient mechanism for implementing the NAO recommendations, there has recently been a debate to equip the NAO with legal competencies to impose administrative fines like, for example, the court of audit. However, initially, such changes inevitably involve amending the constitution in order to implement the system from the Westminster model to the court of audits model.

4 "Restricted areas" for the Auditor General

As noted earlier, the Constitution of the Republic of Kosovo has stipulated in its provisions the AG as the highest body that controls the use and protection of public funds by central and local government authorities. Furthermore, according to Law No. 05/L-055 (Article 18), this institution is obliged to conduct on an annual basis the regularity audit of "all Budget Organizations that have directly received a budget in the Annual Budget Law and are required to produce Annual Financial Statements." In addition to the mandatory audition, the AG has the mandate to conduct other audits as follows: (1) funds provided from the budget to an institution

or organization; (2) the handling of all public money;¹² (3) public-private partnerships; (4) owns, credits and liabilities guaranteed by public sector entities.

Despite the obligations cited above, there are still some important public sector institutions and laws that regulate the activities of certain public institutions that are not subject to audit control by the AG. The laws governing the activities of these institutions have provided for other audit mechanisms by creating some "restricted areas" for the AG. This practice is in contraction to national legislation and international auditing standards. In the future, this practice should be reversed so that it allows the AG to audit these institutions.

In the following, we will give a thorough examination about the institutions that are excluded from the authority of the AG, and also provide the reasons why the auditing of the financial activities of such institutions by the AG would directly contribute to good governance practices and increased public confidence.

4.1 Kosovo Intelligence Agency

The Kosovo Intelligence Agency (hereinafter: KIA) is a constitutional institution and has the mandate to investigate, detect and prevent security threats to the Republic of Kosovo (Constitution of Kosovo: Article 129). This agency is funded by the state budget and is not subject to audit by NAO, on the grounds that its mandate is specific and its audit is performed by the Inspector General of KIA. Pursuant to Law No. 03L-063¹³ on KIA (Article 10.4), "the responsibility of the Inspector General will include financial audits of the activities of the KIA. The

¹² "Public money" means money or financial assets received by, in the custody of, held in trust by, or under the control of (i) any budget organization, public authority, or controlled public undertaking, or (ii) person for or on behalf of any of the foregoing. Public money includes, but is not limited to: a) taxes, fees, duties or user charges; b) interest, dividends or other payments; c) proceeds from the sale, rental or lease of any type of property of any description; d) regulatory fees, licensing fees and similar fees and charges; e) payments, fees and charges for services provided, goods supplied or works performed; f) proceeds received or arising, directly or indirectly, from the licensing or selling of any rights involving a public resource, including – but not limited to - radio spectrum rights, land use rights, natural resource exploration or exploitation or use rights, and intellectual property rights; g) royalties; h) security and escrow deposits; i) fines, damages from civil actions, and insurance proceeds; and j) grants and donations from international organizations, foreign governments, or any other source. Law No. 03/L-048 on Public financial management and accountability, Official Gazette of the Republic of Kosovo, No. 27/3, June 2008, gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2524.

¹³ Law No. 03/l-063 on the Kosovo Intelligence Agency; Official Gazette of the Republic of Kosovo, Pristina: year III, No. 30, 15 June 2008, gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2538.

results of these audits will be made available to the Prime Minister in addition to the KIA Director."

It is undoubtable that activities of the intelligence agencies are more special and cannot be compared to other government agencies, so their control mechanisms have to be more specific as well. However, the SAI has the right to audit the financials or performance of intelligence agencies. In many countries, it also happens that the audit office investigates the legality, effectiveness and efficiency of particular projects, such as the building of a new headquarters (for instance, in Canada and the UK), the purchase of new Sigint (Signal Intelligence) systems (*e.g.*, in the UK) or the exchange of information between the service for coordinating anti-terrorism policy in the Netherlands (Born and Leigh, 2005: 115). Therefore, the audit of KIA funds can be done by NAO and this practice is in line with international standards. According to the Lima Declaration (Section 18.3): "All public financial operations, regardless of whether and how they are reflected in the national budget, shall be subject to audit by Supreme Audit Institutions. Excluding parts of financial management from the national budget shall not result in these parts being exempted from audit by the Supreme Audit Institution." In the present case, the audit of the KIA should be placed under the competence of the NAO and not remain as a sole authorization conducted by the KIA itself. Thus, the NOA should apply its legal powers, as laid out in the constitution, to oversee the KIA's budget. Such a solution is also suggested in other European international organizations' reports (CESS, 2021: 6-9).

4.2 Radio Television of Kosovo

Another "restricted area" for the AG is the Radio Television of Kosovo (hereinafter: RTK), the only public broadcaster, which is funded by the public budget. According to Law No/L-046 on RTK (Article 4), the RTK is established by the Assembly.¹⁴ In addition, the Assembly shall ensure the institutional autonomy and adequate financing for the execution of RTK's public service mission as provided for by the law. However, the annual financial report of revenues and expenditures for the

¹⁴ Law No. 04/1-046 on Radio Television of Kosovo, Official Gazette of the Republic of Kosovo, No. 7, 27 April 2012, Pristina. gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2812

previous year is audited by an independent external audit until June 1st and is then sent to the Assembly for further action, if needed.

4.3 Kosovo Central Bank

The Central Bank of Kosovo (hereinafter: Central Bank) is the central banking authority of the country that has the mandate to ensure a stable financial system in the function of economic development. This institution is not financed by the public budget, but it administers public property and assets and therefore should be audited by the AG. In this regard, the Law on Central Bank¹⁵ (Article 63) has defined another form of audit: "The accounts, records, and financial statements of the Central Bank shall, at least once a year, be audited in accordance with the International Standards on Auditing by independent international external auditors who shall be of good repute and have recognized international experience in the auditing of major international financial institutions." Given the independence of the Central Bank, the AG should at least conduct performance appraisal audits.

4.4 Pension Fund of Kosovo

Another public institution not subject to audit by the AG is the Kosovo Pension Fund. The Fund is an independent legal entity established for the sole and exclusive purpose of administering and managing individual accounts for pensions savings. This institution is under the supervision of the Central Bank of Kosovo, which also serves as a regulator for its audit. According to Law No. 04/L-101 on pension funds (Article 13), the Central Bank "appoints independent auditors or other providers of professional services to conduct surveys, actuarial evaluations, or examine the accounts, books, documents and other records of Supplementary Pension Funds and Individual Pension Funds."

¹⁵ Law No. 03/L-209 on Central Bank of the Republic of Kosovo, Official Gazette of the Republic of Kosovo, Pristina: year V, No. 77, 16 August 2010, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2696>.

4.5 Political Parties

Political parties are organizations of individuals who voluntarily work together on the basis of common ideas, interests or views. Hence, in constitutional and legal terms, political parties cannot be equated with state institutions or other state legal entities. However, political parties are also financed by the public budget, and this budget cannot exceed 0.34% of the Budget of the Republic of Kosovo.¹⁶

Therefore, this fund should be audited by the AG, but the legislation on the financing of political entities stipulates that the Assembly, through the Committee for the oversight of public finances, selects, in January of every year, at least ten (10) licensed auditors through a public announcement, who will audit the annual financial reports and financial declaration reports of the campaign of political parties.¹⁷ In this case, these auditors, after concluding the audit process through the Oversight Committee, submit the final report to the Central Election Commission, including all the findings in regards to the audited political party. However, this form of regulation turns out not to be very efficient due to the frequent dissolutions of parliament.

In fact, the financial transparency and financial accountability of political parties in Kosovo continue to be assessed insufficiently and non-transparently. The financing and expenditures of political parties and electoral campaigns remain non-transparent, the existing legal framework is largely unenforced, and most political parties represented in the Assembly continue to exhibit serious weaknesses in internal financial control (European Commission: Kosovo Report, 2020: 10).

As elaborated above, it is of great importance that the aforementioned institutions undergo performance audits, particularly. The reason is that the performance audit unveils the regularity and conformity of these institutions with the duties to conduct their activities in compliance with laws. This regularity would have an impact on increasing the transparency and institutional integrity.

¹⁶ Law No. 04/1-058 on amending and supplementing the law No. 03/1-174 on financing political parties, Official Gazette of the Republic of Kosovo, No. 01, 12 January 2012, Pristina. <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2795>.

¹⁷ Law No. 04/1-212 on amending and supplementing the law No. 03/1-174 on the financing of political parties, amended and supplemented by law No. 04/1-058, Official Gazette of the Republic of Kosovo No. 30/23, August 2013, Pristina, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8866>.

5 Relationship with the Parliament, Government and the Justice Sector: cooperation within the institutional architecture

5.1 Auditor General and the Kosovo Assembly

The AG is an independent institution, which is subject only to the constitution and the law, but its functioning is in interaction with other institutions. Its most important relationship lies with the Assembly, because the AG is part of the group of institutions that are considered as extra-legislative accountability institutions. These institutions are designed to enhance government accountability and operate outside the parliament and the political processes expressed through parliament (Evens, 1999: 87). By the same token, the parliament may conduct its basic role, the oversight functions, most effectively when it uses - and can rely upon - the auditing work of an SAI. Similarly, an SAI can be much more effective when parliament and its committees provide both a forum for the presentation and discussion of the SAI's important audit results and, potentially, an ally in taking or strongly encouraging others to take appropriate corrective actions (OECD: 2002).

The relationship between the Assembly and the AG is structural, not only because the Assembly elects the AG but also because the Constitution (Article 138) obliges this institution to submit the following three forms of reporting to the Assembly: (1) to report on the execution of the state budget; (2) to give an opinion on the report of the government on its expenditures of the previous year before it is adopted by the Assembly; (3) to inform the Assembly on conclusions of audits when requested. Furthermore, the AG is obliged to submit to the Assembly an annual work report which is reviewed in the plenary session. The Assembly has the legal mandate to ensure the accountability of this institution and to select an external company that will conduct a statutory audit of NAO's annual financial statements.

The interdependence of the Assembly and the AG is largely realized through the Committee on Oversight of Public Finance. It is a permanent committee and its scope of work, among others, includes: (1) overseeing the legality of public expenditures according to the reports and annual and periodic audit reports as well as audit reports of the Office of the AG; (2) overseeing all reports of the Office of the AG of budgetary organizations and public enterprises; (3) overseeing performance indicators reports drafted by the Office of the AG (Rule of Procedure

of Assembly: Annex 2. No. 13).¹⁸

This commission was established in the third legislature of the Assembly (November: 2009). These committees originate in the Westminster tradition and are a staple of the parliamentary committee systems throughout the British Commonwealth. However, such committees have also been formed in other countries with no British legacy, such as Indonesia, Kosovo and Thailand (Pelizzo and Stapenhurst, 2014, 57).

This parliamentary committee is designed according to international best principles and standards and it is led by an opposition party. One of the examples for such a model was the Commission for Public Finance Control of the National Assembly of Slovenia (Rules of Procedure of the National Assembly: Article 39).¹⁹ Therefore, the Kosovo parliamentary committee's framework is identical to some extent to the aforementioned Rules of Procedure of the Slovenia National Assembly (Rules of Procedure of Assembly: Annex 2, No. 12, p. 90).

The Committee addresses certain AG reports and issues relevant recommendations. Several criteria are used to select topics to be addressed by the committee, including: auditor findings and modification of opinions; data from the media or civil society; *ad-hoc* selection of cases according to the evaluation of the commission, *etc.* The commission handles approximately 25-30% of NAO annual reports on the regularity of budget or performance expenditures over the course of a year (Simnica: 2020).

Heads of institutions are invited to be present at the meeting and are required to provide clarifications and comments on the findings. In some cases, the Committee issues recommendations which it sends to the relevant institutions, while in other cases, depending on the findings and recommendations about the NAO reports, they are sent for consideration and approval in the plenary session of the Assembly. The Committee serves as a "*meeting place*" where the findings of the NAO and the arguments presented by the heads of the audited institutions are confronted, and

¹⁸ Rules of Procedure of the Assembly of the Republic of Kosovo, Pristina, 29 April 2010, [http://meiks.net/repository/docs/RULES_OF_PROCEDURE_OF_THE_ASSEMBLY_OF_THE_REPUBLIC_OF_KOSOVO_\(29.04.2010\).pd](http://meiks.net/repository/docs/RULES_OF_PROCEDURE_OF_THE_ASSEMBLY_OF_THE_REPUBLIC_OF_KOSOVO_(29.04.2010).pd).

¹⁹ Rules of Procedure of the National Assembly of the Republic of Slovenia, www.dz-rs.si/wps/portal/en/Home.

this increases the transparency and accountability of the work of public bodies funded by the public budget.

5.2 Cooperation with internal governmental control

The AG represents the top tier of the public money control pyramid, whereas the internal audit, which is carried out within public sector institutions, is at the core of the pyramid. According to the law on public internal control (Article 17), the internal audit shall provide independent and objective assurances to the head of a public sector entity on the adequacy and effectiveness of the financial management and control system and advise for its continuous improvement.²⁰

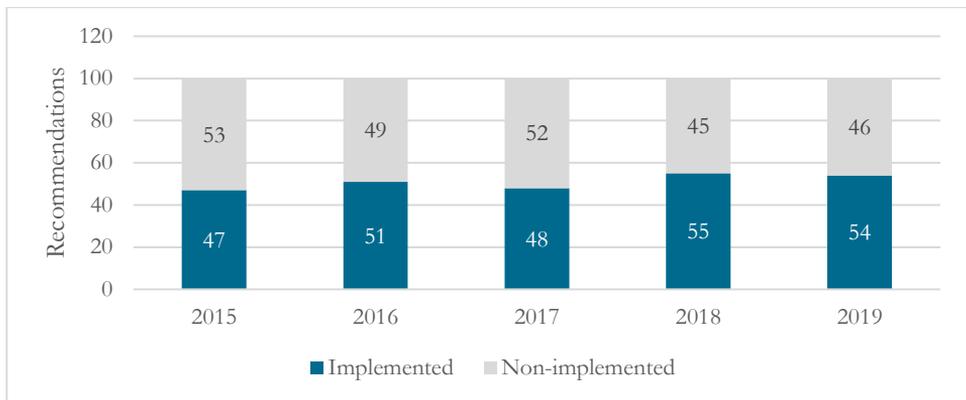
Internal auditing mechanisms in public institutions are the independent internal audit unit and the audit committee, which have a key role in supporting and promoting good governance. The internal audit unit consists of a professional auditor and reports directly to the head of the public sector entity, and he/she notifies the Audit Committee. This unit is independent of other units within the public entity and has functional independence in planning audit work, performing audit and reporting. On the other hand, the Audit Committee is an independent advisory body to the senior management of the public sector entity and supports internal auditors. This mechanism is designed to ensure transparency and integrity of the internal audit work as it consists of three (3) or five (5) members, where two thirds (2/3) are external persons, while the rest are staff of internal affairs of the public sector entity (Law No. 06/L – 021, Article 20).

In addition to these structures, there is a *Central Unit for Harmonization of Internal Audit* within the Ministry of Finance, which is responsible for the coordination and harmonization of internal audit for each subject of the public sector. On this note, according to Law No. 05/L-055 (Article 31), the AG can "*audit internal audit and internal control functions.*" This law article stipulates that the AG can play a "watchdog" role for the internal audit.

²⁰ Law No. 06/L – 021 on Public Internal Financial Control, Official Gazete of the Republic of Kosovo No. 3/19, April 2018, Pristina, gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=16267.

In this regard, for each year, the AG presents its findings on the functional evaluation of the internal auditor. From the main findings, it results that the internal audit in public entities continues to remain oriented towards compliance audits and is less focused on performance audits. Another important finding is that the implementation of the recommendations of the internal auditor within the public entities still continues to be insufficient.

Table 4: Implementation of recommendations from the internal audit²¹



5.3 Auditor General and law enforcing institutions

The AG has a wide and complex cooperation with law enforcement institutions and shall notify law enforcement authorities when noticing legal violations. These violations are mainly related to misstatements and fraud in financial statements. Two types of intentional misstatements are relevant to the auditor - misstatements resulting from fraudulent financial reporting and misstatements resulting from misappropriation of assets. Although the auditor may suspect or, in rare cases, identify the occurrence of fraud, the auditor does not make legal determinations of whether fraud has actually occurred (ISO 240: 3).

²¹ Source: Annual Reports of Auditor General (2015, 2016, 2017, 2018, 2019) <http://www.zka-rks.org/>

Since the AG does not cover the cases related to fraud, the Progress Report of EU Commission 2020 recommended the establishment of the Anti-Fraud Unit within the AG. The reason for the establishment of the Anti-Fraud Unit is to empower the auditors with additional legal competencies in order to verify legal violations [fraud] besides only reporting suspicious cases. However, the main law enforcement bodies with which the AG cooperates are: the Chief State Prosecutor (with regards to indicative cases with elements of criminal offenses encountered during the audit work), the Anti-Corruption Agency, and the Economic Crimes Unit of the Kosovo Police. In addition, NAO provides training for newly appointed prosecutors so that they can become more closely acquainted with the role, mandate and audit process of the NAO. A new legal mechanism that serves as a safeguard for the detection of various violations by the auditors is enshrined in the new legal framework recently enacted by the Assembly - which is the law on the protection of whistleblowers. The new law serves as a ground for rectifying any mismanagement of public funds by governmental institutions. Additionally, this law is based and complies with international standards and best practices in this field (Law No. 06/L-085).²²

6 Conclusion

Kosovo as a new state has established the legal and institutional infrastructure for exercising effective control and oversight of public funds. The AG is an independent constitutional institution that exercises complete control over the spending of public money and performance throughout the public sector. Detection of abusive actions of corruption, fraud and mismanagement of public property affects the substantial improvement of the management of the audited institution. This is because, according to modern concepts, the auditing exercise is not done to detect illegal or unethical actions but to prevent them.

In this journey, without a doubt, the scope of work of this institution and the implementation of its recommendations should be seen as a "scanning" exercise, especially for the documents such as the SAA and the Progress Report for Kosovo. Certainly, this will be achieved by advancing the enforcement of the rule of law and installing an overall culture of good governance in Kosovo.

²² Law No. 06/L-085 on protection of whistleblowers, Official Gazette of the Republic of Kosovo No. 22, 18 december 2018, Pristina, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18303>.

In order to advance the work of this institution, the following list of recommendations has emerged from the elaboration of this paper:

- The implementation of the AG's recommendations should be addressed comprehensively and in cooperation with other institutions;
- The Assembly and its parliamentary committees should prioritize oversight of the implementation of recommendations from the findings of audit reports;
- Increasing performance audits should be the main goal of modernizing the audit activity of the AG;
- The budgeting of public administration organizations should be "conditioned" with efficient spending of the budget and the implementation of the preliminary recommendations of the AG;
- Adopt legislation mandating the AG to conduct external audits of all budget organizations funded by the public budget, therefore removing "restricted areas" as this would increase institutional instability.

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