

Institute for Advanced Studies GAP

Parliamentary Committee on Auditing

Policy Brief

INTRODUCTION

Some of the main problems that Kosovo institutions face since their creation in 2001 until today, as we have often mentioned, are corruption and the misuse and mismanagement of public funds. In order to oversee the spending of public funds, in 2003 the SRSG appointed the Auditor General, whose main task is to audit all the public institutions whose funds come from the Kosovo budget. In a parliamentary system, such as Kosovo's, the legislature, not an Auditor General, should have the main and highest responsibility to approve public spending in accordance with the government goals and priorities, as well as to oversee that their expenditure is being conducted in full accordance with the law.

Since the Kosovo Assembly is the highest institution that approves public spending, this policy brief by the Institute for Advanced Studies GAP recommends the creation of a Parliamentary Committee on Auditing. With the creation of this committee, the Kosovo Assembly would take on the responsibility of not just allocating funding, but also of guaranteeing the budget is spent as approved by the Assembly.

In their 2007 report on Kosovo challenges in transition, the US-based Institute for State Effectiveness¹, recommends to the authorities to make system audits carried out by the Office of the Auditor General available to parliament for review, establishing a public accounts committee, and working to increase the capacity of parliament to take action based on these reports.

This policy brief will describe the legal basis used for the appointment and functioning of the Auditor General, as well as for the need to clarify this legal basis. In addition, it will give examples on how similar institutions function in other national assemblies and will argue the need for the existence of a permanent parliamentary committee on auditing in the Kosovo Assembly, and based on this, it will give recommendations to the highest institution in the country – the Kosovo Assembly.

THE HISTORY AND LEGAL BASIS OF THE OAG

Before the creation of the Office of the Auditor General (OAG) in Kosovo, the responsibilities of external audit were given to the Dutch Court of Audits. (Rekenkamer). The legal basis of the OAG was first established under *UNMIK regulation 2002/18 on the creation of the Office of the Auditor General*, while the first Auditor General was appointed by the SRSG on November 1st 2003. According to this regulation, the OAG reports to the SRSG and its mandate is to audit all the public institutions that are financed by the Kosovo Budget.

¹ The Institute for State Effectiveness is chaired by Ashraf Ghani, the former minister of finance of Afghanistan. Apart from the team's experience working in development, Ashraf Ghani organized the first donor conference for Afghanistan raising more than USD 8 billion in commitments. Ashraf Ghani and Clare Lockhart just published "Fixing Failed States" – a book on development experiences.

After the declaration of independence by Kosovo authorities, as foreseen in the Comprehensive Document on the Kosovo Status (Ahtisaari Package), on June 5th 2008, the Kosovo Assembly passed the *Law nr. 03/L-075 on the Establishment of the Office of Auditor General and Kosovo Auditing Office*, which was decreed by the President on June 15th, 2008. According to this law, the OAG is an independent institution that should be appointed by the Assembly and should report to the Assembly. Furthermore, the Kosovo constitution says that the Auditor General should be appointed by the Kosovo Assembly, and goes further than *Law nr. 03/L-075* by saying that the suggested candidate for the position should come from the Kosovo president.

Nevertheless, because of transitional dispositions in this law and in the Kosovo constitution, in reality the system functions slightly differently. These paragraphs in effect freeze several aspects of the same law until the arrival of the International Civilian Representative (ICR) in Kosovo. For example, paragraph 8 of this law says that *“until the end of the international supervision of the implementation of the Comprehensive Proposal on the Kosovo Status, dated march 26th 2007, the Auditor General will be an international appointed by the International Civilian Representative.”*

Table 1. Legal Status of OAG

	UNMIK Regulation 2002/18	Kosovo Assembly Law 03/L-075	Kosovo Constitution
Appointment	Auditor General is appointed by the SRSG (paragraph 2.4)	Auditor General is appointed by the Kosovo Assembly (paragraph 2.3)	Auditor General is appointed by the Kosovo Assembly, based on the proposal of the Kosovo president (paragraph 136.3)
Reporting	The Auditor General reports to the SRSG (paragraph 3.1)	Auditor General reports to the Kosovo Assembly (paragraph 3.1)	
Monitoring Authority	SRSG	Kosovo Assembly ICR	Kosovo Assembly Kosovo President ICR
Provisional Dispositions	-	Until the end of international monitoring of the implementation of the Comprehensive Proposal on the Kosovo Status Settlement, dated March 26 th 2007, the Auditor General should be an international appointed by the International Civilian Representative (ICR) (paragraph 8).	Until the end of international supervision and the implementation of the Comprehensive Proposal on the Kosovo Status Settlement, dated March 26 th 2007, the Auditor General of the Republic of Kosovo will be an international appointed by the ICR. (paragraph 157)

The Kosovo Assembly *Law nr. 03/L-075* on the establishment of the OAG has the same name as *UNMIK regulation 2002/18*, but nowhere in the law is there a provision that nullifies aspects of other legislation that are in contradiction with the new law. This, however, would be in the interest of the Kosovo Assembly, because by invalidating the previous *Regulation 2002/18*, the SRSG competences in the field of auditing would be suspended.

According to the current legislation in force, because of the presence of the ICR, the Auditor General will continue to be an international appointed by the ICR. However, according to the other sections of the legislation, as well as the Kosovo constitution, this does not mean that the Auditor General reports to the ICR. According to the transitional dispositions in the legislation, the Auditor General should report only to the Kosovo Assembly, as it is the highest institution in the country, and furthermore should be supervised by the Kosovo Assembly, the ICR, and the Kosovo president.

Despite that under Law 03/L-075 and the constitution of Kosovo the OAG reports only to the Kosovo Assembly, the fact that the Auditor General is currently an international, appointed by an external authority – in this case the ICR – diminishes will and likelihood of the OAG reporting to the proper local authority – the Kosovo Assembly.

EXAMPLES OF PARLIAMENTARY COMMITTEES IN OTHER COUNTRIES

In other parliaments around the world, there are two types of parliamentary committees that are usually called Inquiry Committees: Ad-hoc inquiry committees for specific issues, and inquiry committees on the reports of financial auditing. Ad-hoc inquiry committees are formed for a limited period of time and investigate a specific issue, which does not necessarily have to do with public spending, but could also have a political or informational character. Examples of ad-hoc inquiry committees can be found in the legislatures of the majority of world parliaments such as Albania, Germany, Israel, among other countries.

Albania, in 2002, passed the *Law on the Organization and Functioning of Assembly Inquiry Committees*, according to which an inquiry committee is formed by the request of 35 members of parliament and its field of inquiry can include a variety of activities as deemed necessary by its investigations. An inquiry committee in Albania should have 9 to 15 members, always having an odd number of members to prevent deadlock in decision-making. The Albanian assembly, under the *Law on the Organization and Functioning of Assembly Inquiry Committees*, to date has created 8 ad-hoc inquiry committees including: The Inquiry Committee on the inquiry of the tendering procedures of the Durres Morine road (11 members), the Inquiry Committee on the privatization of Albtelecom (11 members), Inquiry Committee on the investigation of the state budget spending at the disposal of ministries, main institutions of dependency and public companies through public procurement for the period 2001 and after (13 members), the Inquiry Committee on the implementation of the law on concessions, giving of different state objects via concession, the conditions of these contracts for the period 2001 and after and the procedures on the start of works to build the Vlora

thermal plant (11 members), the Inquiry Committee on the investigation of the monopoly situation in the field of mobile telephony and the preparation of recommendations to liberalize this market in Albania (9 members), etc. All the inquiry committees are based on the law and the constitution of the country and are created by a decision of the Assembly President.

In **Germany**, the lower chamber of the German parliament - the Bundestag - creates parliamentary inquiry committees.² The establishment of inquiry committees in the German Bundestag requires the votes of $\frac{1}{4}$ of members present in the meeting. The majority of inquiry committees are formed with the goal of investigating possible misuse or mismanagement of official office. Inquiry committees question witnesses and experts and, if it finds that there were violations of official duties, ask that further investigation be continued by the courts and other judicial authorities. The inquiry committee prepares the final reports, and presents them in front of the Assembly. In addition, the parliamentary committee of defense has the right to initiate inquiries with the goal of supervising the armed forces.

In **Israel**, the Israeli parliament (the Knesset) also creates parliamentary inquiry committees. So far, since 1951, the Knesset has created 19 inquiry committees. Inquiry committees are ad-hoc and are created with the goal of investigating national issues.

In addition to ad-hoc parliamentary committees, many national assemblies have created permanent inquiry committees, their main focus being the processing of financial auditing reports, as well as doing financial audits. These committees exist in the parliaments of Finland, Great Britain, India, Hungary, Austria and other parliamentary systems.

In the **United Kingdom**, the independent National Audit Office (NAO) scrutinises public spending on behalf of Parliament. The office audits the accounts of all central government departments and agencies, as well as numerous other public bodies, and reports to Parliament on the economy, efficiency and effectiveness with which these bodies have used public funding. The office is headed by the Comptroller and Auditor General and works closely with the parliamentary Committee of Public Accounts (CPA). Each year, approximately 50 NAO reports are investigated further by the CPA. The CPA takes evidence from Accounting Officers - senior governmental officials who have been specially designated by the Treasury and have a personal responsibility to ensure the prudent stewardship of public funds. The CPA then issues its own report. In practice, the Government usually replies to these recommendations within two months. The NAO and/or the CPA can decide to conduct a follow up investigation into the issues raised. In this way, a cycle of accountability operates: once public money has been spent by a central government body, the NAO is free to report to Parliament on the regularity, propriety and value for money with which this has been done. The Committee of Public Accounts can take evidence on this report from the most senior official in that public body, and can then make recommendations to which the Government must respond.

² Based on paragraph 44 of the Basic German Law.

Finland, or more accurately the Finish Parliament (the Eduskunta), has created the Committee on Auditing. This committee is also regulated by the constitution and was created as a result of the dissolution and transfer of powers of the Agency of State Parliamentary Auditors (similar to the OAG that exists in Kosovo), as well as the transfer of some competencies from the Committee on Finance. The main duties of the auditing committee in Finland are the supervision of the financial expenditures of public state agencies and their concurrence with the budget, As well as the preparation of reports on findings and their presentation in the plenary sessions of parliament.

The committee on public accounts in **India** was created by the two chambers of the Indian parliament and its main duty is to monitor government spending and verify they are in concurrence with the budget of the country, as foreseen in budget documents. This committee is also assisted by the Office of the Auditor General.

THE NEED FOR A PARLIAMENTARY COMMITTEE ON AUDITING IN THE KOSOVO ASSEMBLY

One of the main functions of national parliaments, apart from lawmaking, is the approval of the budget for budgetary public bodies. The approval of the budget also includes an oversight function, as part of the system of checks and balances between the three main braches of a parliamentary system (legislature, executive, and judiciary). The legislature (National Assembly) also controls, among other things, the spending of public funds according to the budget and the law.

This oversight function is also performed by the Kosovo Assembly. Through the approval process of the annual budget of Kosovo, the Kosovo Assembly makes decisions about the budgetary spending for all budgetary organizations. With the goal of spending public finances in a just way, the parliament forms institutions to oversee spending of public funds. In Kosovo, the Office of the Auditor General is responsible for oversight of public spending. The OAG is an independent public institution created by the SRSG, and with the entry into force of the Kosovo constitution, the OAG reports to the Kosovo Assembly (paragraph 3.1 of the *Law 03/L-075*). Since the Kosovo Assembly is the main institution which approves public spending, the Kosovo Assembly has the responsibility and the right to ask for accountability over how this money is spent.

OAG has prepared 170 auditing reports since 2003³. However, the Kosovo Assembly has rarely asked for political accountability for the mismanagement of the taxpayer funds, even though it is the main institution controlling the spending of these funds. In one way, the engagement of the parliament was made impossible by the legal status of the OAG until June 15th 2008, an institution that was created and reported only to the SRSG. Furthermore, even though the Kosovo Assembly has had the authority to approve the budget, the last word on the Kosovo budget was given directly by the SRSG.

³ Bekim Ismaili – PR official at AOG

In the second mandate of the Kosovo Assembly, specifically on November 3rd 2006, with a decision of the president of the Assembly an Inquiry Committee was created on the findings in the Kosovo Assembly as reported by the Auditor General Report dated July 3, 2006. This committee was ad-hoc and was dissolved after the presentation of the report in front of the Kosovo Assembly, at the beginning of February 2007. This was the first time the Kosovo Assembly created an inquiry committee and it faced significant difficulties and uncertainties. In order to clarify the duties and responsibilities of this committee, a procedures document was created specifically for this committee. Until that moment permanent committees of the Kosovo Assembly did not have procedures. The committee consisted of 14 members and there were members of the biggest parliamentary political parties represented in this committee as well as minority communities. This committee had an even number of members, made consensus-based decisions, and when these decisions were absent, decisions were made using simple majority rules. In the case of even votes, the decision was made by the head of the committee.

With the independence of the country on February 17th 2008 and with the entry into force of the constitution on June 15th 2008, the highest authority on the budget remains the Kosovo Assembly. However, despite this fact, in practice the Auditor General has not reported directly to the Assembly and the Assembly has not fulfilled its role as monitor and overseer of budgetary affairs. Even when allegations of misuse and mismanagement arise, the Assembly has not followed up by holding those responsible accountable. The OAG should report to the Kosovo Assembly, but more specifically to a Parliamentary Committee on Auditing, whose only responsibility would be to oversee the public spending in Kosovo, including monitoring and oversight of all budgetary matters. This mechanism of accountability will not only lead to more responsible spending and other good practices, but will also further involve local institutions in a domain that has been up to now dominated by the international community.

CONCLUSIONS

There is a need for the Kosovo Assembly to create a Parliamentary Committee on Auditing, which would be permanent, as opposed to ad-hoc. The roles and responsibilities of this committee would be to:

- Oversee the management of public spending in public institutions in Kosovo, based on the reports of the Office of the Auditor General, as well as other direct forms of supervision;
- Request accountability, as well as action plans with deadlines from the respective institutions, if a report by the Auditor General finds facts of mismanagement of public finances in these institutions.
- Undertake inquiries in cases of allegations of mismanagement of public funds;
- Guarantee that the taxpayers funds are spent according to government priorities approved by the Assembly and according to the laws in force;

The parliamentary committee on Auditing should have 9 to 15 members, and should consist from the members of the biggest political parties represented in the assembly and minority parties. The number of members should always be odd and the vote of each member should be equal. The inquiry committee should not have an even number of members, as did the ad-hoc committee created by the Kosovo Assembly, because there were cases of tie voting, and the tie-breaking vote of the head of the committee was given more weight than other votes. The committee should be created by decision of the Presidency of the Assembly and should have its own internal regulations, which would be different from the regulations of other functioning committees.