



THE EASY ROUTE BACK

Monitoring Report on the Integrity of

the Kosovo Tax Administration

september 2018 – february 2019



Monitoring Report on the Integrity of

the Kosovo Tax Administration

september 2018 – february 2019

Authors:

Egzona Kozhani/Kastriot Berisha

Researchers:

Rahman Ramaj/Amire Qamili

Editors:

Visar Rushiti/Kreshnik Gashi

Proofreader:

Perparim Isufi

Legal Team:

Arber Kadriu/Arbelina Dedushaj

Copyrights © 2019. Democracy Plus (D+) and BIRN

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying or otherwise, without the prior permission of D+ and BIRN.

TABLE OF CONTENT

Acronyms	04
Introduction	05
Purpose of the report	07
TAK Monitoring Methodology	08
Main Findings	09
Amnesty of Violations	09
Disregarding the declaration of assets	09
Lack of resources for integrity controls	10
TAK - IOBSC Conflict	10
Technical Shortcomings in the Procedure	10
Whistleblowing and protection of whistleblowers	11
Reports/Complaints Efficiency Tests	12
Summary and Analysis of the Decisions of the TAK Disciplinary Commission	12
Decision No. 1/2018 against a Compulsory Collection Official for driving under the influence of alcohol	12
Decision No. 2/2018 and No. 4/2018 against three officials of a TAK regional directorate for imposing a fine of zero Euros	13
Decision No. 3/2018 against a manager of a regional directorate for absence from work without prior warning	14
Decision No. 5/2018 against an inspector for misconduct toward other TAK officials	15
Decision No. 6/2018 against an inspector for the misuse of official duty	16
Decision No. 07/2018 against an inspector regarding a conflict of interest and not imposing a fine for the absence of a fiscal cash register	16
Analysis of Decisions	17
Summary and Analysis of the Decisions of the Commission for Resolving Disputes and Complaints (CRDC)	21
Summary and Analysis of the Decisions of the Independent Oversight Board for the Civil Service (IOBCS)	22
Conclusions and Recommendations	24
Annex 1: Structures of Disciplinary Procedure within TAK and externally	25
Annex 2: Decisions of the IOBCS	29
Annex 3: Table of reports	35

ACRONYMS

TAK	Tax Administration of Kosovo
PSO	Professional Standards Office
CRDC	Commission for Resolving Disputes and Complaints
HRO	Human Resources Office
IOBCS	Independent Oversight Board for the Civil Service of Kosovo
OFAP	Office for Fines and Administrative Penalties
VAT	Value Added Tax
UNDP	United Nations Development Programme

Introduction

Local and international reports consistently emphasize that Kosovo's informal economy accounts for more than 30 percent of its Gross Domestic Product (GDP), which in annual figures translates to about 1.8 billion Euros¹. The Tax Administration is one of the principal institutions in combating fiscal and tax evasion in the country, with the aim of reducing the tax gap.

TAK and Kosovo Customs are the two main institutions filling the state coffers, and occupying such a position has made these institutions susceptible to corruption. Based on UNDP surveys of citizens' perceptions on the level of corruption, TAK ranked ninth amongst Kosovo's domestic institutions. The UNDP report finds that TAK has experienced a reduction in citizens' perceptions compared to 2017, receiving a lower ranking in May 2018. However, according to the latest Public Pulse Report and based on a comparison between May and November 2018 data, TAK has managed to reduce by 3.5% the perceptions of citizens on the presence of corruption in the Administration, with TAK ranking as the fifth least corrupt institution among the 14 institutions included in the report².

The reduced confidence in TAK can be attributed to many factors, including increased media reporting on corruption cases within TAK, citizens' daily experiences with the absence of fiscal invoices, and the toleration of games of chance in banned areas.

With about 800 civil servants, TAK has been constantly exposed to allegations of corruption, while during 2018 alone over 10 officials faced prosecution investigations for criminal offenses.

Currently, Kosovo has a tax system that collects Value Added Tax (VAT) at the border via Kosovo Customs, focusing the collection of the main revenues on Customs. TAK, on the other hand, collects the domestic VAT, i.e. the added value of goods from the entry into the border to the sale to the last consumer. European Tax Standards recommend the domestic collection of VAT, in order to avoid the burden on businesses at the border.

Consequently, in the years to come, the country will embark on a deep reform of tax collection, and TAK will have an important role in this process.

The work of the Tax Administration of Kosovo is mainly regulated by two laws which govern its relationship with its employees. These two laws are the Law on the Civil Service of the Republic of Kosovo and the Law on the Tax Administration. These laws also regulate the form of recruitment, oversight, transfer and investigation of public officials who have the status of civil servant. The Law on the Tax Administration further specifies TAK's obligations and rights for additional responsibilities towards its officials.

¹ Free Europe Radio, *Informal Economy in Kosovo at over 30 percent*: <https://bit.ly/2Nra5En>

² UNDP, *Public Pulse XV*, p. 16, February 2019: <https://bit.ly/2DYJM47>

This law emphasizes tax inspectors and supervisory bodies that guarantee institutional integrity.

The great power and discretion TAK inspectors have with regards to businesses gives rise to the risk that inspectors get involved in corruption offenses for their own or their immediate family members' benefit. This occurs principally within their controls, visits and fines imposed on businesses, while certain cases are related to the issuing of consents or operating licenses, such as games of chance and casinos.

To prevent this, the legislation has established oversight mechanisms that not only track corruption cases at the administrative level and report them to the prosecution institutions, but also engage in preventive measures. However, in addition to this risk of inspectors engaging in corruption offenses, there is a second risk that they may become the target of influence, violence, coercion or threats to deliver one way or another.

Seeking to establish a balance between these two public interests, the Law on the Civil Service and the Law on the Tax Administration of Kosovo provide not only the prosecution, but also the defense institutions. These institutions guarantee that the rights of inspectors will not be violated by the management or third parties.

In its annexes, this report provides the content of the decisions of the Independent Oversight Board for the Civil Service of Kosovo and an explanation of the disciplinary procedure mechanisms within TAK, namely the Professional Standards Office (PSO) as the administrative investigative body, the Disciplinary Commission as the first instance, and the Commission for Resolving Disputes and Complaints (CRDC) as the second instance in the administrative procedure within TAK.

Purpose of the report

In view of the low level of confidence citizens have in TAK and their perceptions about the level of corruption in this institution, since August 2018, the Balkan Investigative Reporting Network (BIRN) and Democracy Plus (D+), supported by the Embassy of the United Kingdom in Kosovo, have pooled their experience, resources and knowledge to contribute to the monitoring of TAK and the promotion of model cases in combating fiscal evasion.

Likewise, given the importance of the integrity of employees or officials working in an institution, in this case at TAK, BIRN and D+ have also focused on the monitoring of the integrity and discipline of TAK officers.

The goal of this monitoring is to identify the "black holes" in the process and raise "red flags" over the need for improvements to the standards, procedures and legal basis, which enable and improve integrity within TAK.

In addition, the monitoring and this report itself also aim to promote positive cases, since during these six months of direct monitoring there have been cases of positive developments, highlighting the professionalism and quick reaction of TAK.

This report is part of the work performed between September 2018 and February 2019, a six-month period of direct monitoring. This report will be the first in a series of reports that will be the outcome of direct monitoring until March 2021. The main goals of this series of reports are the monitoring of the implementation of the recommendations and advocating for the previously identified, necessary legal amendments.

The report is among the first produced by local NGOs, and the annexes include information and data on disciplinary mechanisms within TAK and the Independent Oversight Board for the Civil Service as an independent institution under the Kosovo Assembly. These four links constitute the instances through which a disciplinary procedure runs, from the start to the end of an administrative procedure.

- Professional Standards Office
- Disciplinary Commission
- Commission for Resolving Disputes and Complaints
- Independent Oversight Board for the Civil Service of Kosovo.

This monitoring report was preceded by the publication of an analysis of the need for legal amendments and changes to TAK's Standard Operating Procedures, which was published in December 2018.

TAK Monitoring Methodology

This report contains data collected between October 2018 and February 2019 from the direct monitoring of disciplinary and complaints proceedings within TAK. The report also contains data from the analysis of disciplinary decisions, complaints and decisions of the Independent Oversight Board for the Civil Service of Kosovo (IOBCS) issued during 2018. The research also aims to monitor TAK procedures for declaring conflicts of interest and for the declaration of assets, by providing an analysis of the current situation and by issuing concrete recommendations for possible changes.

In carrying out direct monitoring, testing reaction procedures and analyzing the obtained statistics, the report also measured the reporting procedures of cases involving the TAK's reporting hotlines, established for the reporting of corruption and misuse within TAK.

For this purpose, BIRN and D+ have also analyzed 17 disciplinary decisions issued by the commissions within TAK, and analyzed nine (9) IOBCS decisions. Likewise, BIRN and D+ have monitored three (3) direct cases addressed by TAK's disciplinary bodies during the direct monitoring period.

Part of the monitoring was focused on the efficiency of TAK in responding to citizen complaints. In October 2018, KALLXO.com launched a campaign to encourage citizens to report fiscal and tax evasion. Among the dozens of reports, seven (7) reports were selected to be tested whether TAK responds in a timely manner when addressing them.

On account of this monitoring, the Professional Standards Office was informed by legal documents from BIRN that contained information on irregularities and tax evasion. Based on these reports, TAK's reaction procedures were tested in seven cases of tax evasion, fiscal evasion and unlawful organization of games of chance.

Main Findings

Amnesty of Violations

- The D+ and BIRN monitoring has managed to identify serious problems in the approach of the Tax Administration of Kosovo with regards to the discipline of its employees.
- Despite the problem with the high fiscal evasion in the country, which is attributed to the under-performance of TAK inspectors, in 2018 TAK's management failed to take disciplinary decisions that would seriously sanction officials and inspectors tasked with tax collections. The analysis of disciplinary decisions in 2018 shows that during the year, despite some serious violations, no TAK official has been dismissed because of serious disciplinary violations. There are only 10 suspended officials, who have been arrested or prosecuted by prosecution authorities after allegations of criminal offenses.
- During the monitoring, BIRN and D+ have observed that TAK has developed a policy of tolerance of serious disciplinary violations, that are not sufficiently sanctioned. Cases that have established that an official has hidden assets, had a conflict of interest with a private business and did not impose fines on the business for the fiscal cash register, have been concluded with the disciplinary measures of transfer, but no dismissal.

Disregarding the declaration of assets

- In terms of controlling integrity, over the last two years TAK management has not taken steps to oblige TAK officials to declare or re-declare their assets. The law leaves it at the discretion of the TAK director to require TAK officials to declare their assets.
- Such a decision has not been taken in the last two years, creating a gap in the declaration of assets. Given the importance of the declaration of assets by TAK officials, such a delay is unreasonable. Consequently, during this year there was only one disciplinary procedure against one TAK official, which was initiated for failure to make a full declaration of assets.
- The report found that TAK imposed a disciplinary measure against the official under disciplinary proceedings, while the case was not prosecuted as no criminal charges were pressed at the state prosecutor's office. BIRN and D+ found that in its standard procedures TAK has not introduced the procedure on filing a criminal report with a prosecutor in cases when a false declaration of assets is made. Article 437 of the Criminal Code provides that "Any person who, by law, is obliged to make a declaration of assets, income, gifts, other property, or financial liability, who forges or does not provide the required data in the declaration, shall be punished by a fine and by imprisonment of six (6) months to five (5) years".

Under Law 03/L-222 on the Tax Administration and Procedures, currently the TAK General Director may request mandatory financial statements (declaration of assets) only from TAK officials; the law provides for no declarations from family members of officials. As the law makes no such provisions, the requirement for family member declarations may be considered an excess of powers, while the exclusion of family members from the declaration of assets limit the possibilities for prevention of corruption. The PSO has sent to the Ministry of Finance proposals for amendments to the law, in order to specify the family, as well as proposals to the Ministry of Justice and the Anti-Corruption Agency.

Lack of resources for integrity controls

- In terms of integrity controls, the report finds that TAK still does not consider the issue as a priority. The Professional Standards Office (PSO), which is tasked with addressing these issues, has only three officials, and such resources are limited when it comes to controlling about 800 TAK officers. The PSO is based on the TAK Central Directorate, and has limited contact with citizens and possible reporters of improper behaviors of TAK officials.
- The report also identifies the problematic composition of the Disciplinary Commission, as the commission has not always reflected gender diversity in its composition. Likewise, neither the Disciplinary Commission nor the Complaints Commission have assigned replacements for members involved in cases of potential conflict of interest.

TAK-IOBSC Conflict

- In the sanctioning and imposing of measures on TAK officials, the monitoring finds serious problems in the procedures and the manner TAK has processed them.
- The monitoring finds that many of the disciplinary and transfer decisions have been annulled by the Independent Oversight Board for the Civil Service due to procedural violations. During 2018, this institution has taken seven (7) decisions against TAK.
- What is most problematic is that the violations identified by this Board are still being repeated by TAK.

Technical Shortcomings in the Procedure

- Regarding the internal treatment of alleged violations and disciplinary cases, the monitoring finds problems in the organization and establishment of procedural rules for the conduct of the procedure. The monitoring finds that the two commissions have no standard procedure for publishing their meeting schedules. In one of the monitored cases, BIRN and D+ monitors found that the party was not invited in a timely manner, as the party was invited on the day the session was held. The

regulation states that the invitation must be sent to the parties two days in advance.

- Likewise, the hearings are often conducted without the presence of the parties, who are only notified of the final decisions. This procedure limits the process of proving and clarifying the circumstances set out in the complaints.
- During the monitoring of the procedures in the Complaints Commission, the monitors have noticed basic procedural problems. For example, the minutes of the meeting are kept by hand, and most of the statements made during the process are not written down.
- At the end of the meeting the parties do not sign the minutes, and there is no accurate procedure on signing and approving the minutes.
- In organizational terms, the monitors found that the monitored processes also had technical problems in terms of facilities, because the meetings were held at the office of the general director, and this was assessed as an inadequate space for holding such hearings.

Reiteration of mistakes

- The report also analyzed reporting hotlines for tax evasion and tax irregularities. Statistical analyses show that TAK has a small number of cases for tax evasion reported by citizens. For the reporting hotline, the data show that there is less than one report per day, while fiscal evasion is estimated at hundreds of millions of Euros at the national level. Such data shows that citizens are making very few reports through the TAK hotline established to report fiscal evasion.

Whistleblowing and protection of whistleblowers

- TAK does not yet have mechanisms for the protection of whistleblowers within the institution and the businesses it inspects. This absence is also attributed to the fact that last November Kosovo adopted the Law on Protection of Whistleblowers. Based on the law, it is imperative for TAK to initiate the creation of whistleblower protection mechanisms.
- The report also analyzed reporting hotlines for tax evasion and tax irregularities. Statistical analyses show that TAK has a small number of cases for tax evasion reported by citizens. For the reporting hotline, the data show that there is less than one report per day, while fiscal evasion is estimated at hundreds of millions of Euros at the national level. Such data shows that citizens are making very few reports through the TAK hotline established to report fiscal evasion.

Reports/Complaints Efficiency Tests

- Within the monitoring of TAK's performance, BIRN and D+ have tested TAK's response to citizens' complaints. Eight official documents with concrete reports were submitted to TAK's offices in order to denounce tax evasion and unlawful games of chance. In these cases, TAK inspectors reacted and found that the reports were grounded.
- However, tests show long TAK response times in addressing complaints and misuse reports. From reporting to field inspection took more than 24 hours, which many times made it impossible to secure evidence in cases of citizen reports of tax evasion. (See Table of Reports in the Annex).

Summary and Analysis of the Decisions of the TAK Disciplinary Commission

This section contains six decisions taken by the TAK Disciplinary Commission between February and November 2018. The second and the fourth decisions are addressed together, as they pertain to the same case, and the Disciplinary Commission decided for the second time after the case was returned to this Commission by the Commission for Resolving Disputes and Complaints (CRDC). First, brief descriptions of the situation for each decision and the measure imposed by each decision are provided, followed by the general analysis section for all decisions. Besides Decision 5/2018, for which we do not have the decision of the CRDC (second instance), no other decision addressed here has passed to the third instance, that of the Independent Oversight Board for the Civil Service (IOBCS).

Decision No. 1/2018 against a Compulsory Collection Official for driving under the influence of alcohol

The case under Decision No. 01/2018³ relates to the imposition of disciplinary measures against a TAK Compulsory Collection Official for having caused a traffic accident while driving an official vehicle under the influence of alcohol. The official in question was driving an official vehicle in the course of official duty, and under the influence of alcohol failed to match the driving speed with road conditions/driving conditions, causing a traffic accident and considerable material damages. The police report from of the scene reveals that the amount of blood alcohol was higher than the amount allowed by the Law on Road Traffic Rules⁴.

Given this fact, at the request of the General Director based on the report of the Professional Standards Office (PSO), a disciplinary procedure was initiated against the inspector in question. The Human Resources Office at TAK forwarded the request on initiating disciplinary proceedings to the TAK Disciplinary Commission. The Disciplinary Commission has reviewed all available reports and facts, and also invited the tax inspector to a hearing in

³ Decision No. 01/2018 of 22/02/2018, of the Disciplinary Commission of the TAK

⁴ Law 05/L 088 on Road Traffic Rules, Article 233, Paragraph 2: <https://bit.ly/2N3C7FA>

this commission, and has verified, based on the facts and evidences in its possession, the disciplinary responsibility of the TAK official, for actions contrary to Regulation No. 04/2011⁵ of Disciplinary Procedures and the Code of Ethics and Conduct for TAK Officials⁶. In this case, the commission has imposed a severe disciplinary measure: "removal from office, transfer to another location with similar tasks, and ban on promotion for a 1-year period".

Decision No. 2/2018 and No. 4/2018 against three officials of a TAK regional directorate for imposing a fine of zero Euros

The case under Decision No. 02/2018⁷ relates to the imposition of a disciplinary measure against three TAK officials who did not act ex officio in respect of the law, hence they did not impose a fine on a business, or they imposed a zero value fine through the Office for Fines and Administrative Penalties. One of the officials was the Director of the regional directorate in a certain region, the other official was an assistant director in the same region, and the third official was a tax collector who also served in the team of the Office for Fines and Administrative Penalties in the respective region. The case was initiated by a tax inspector from this region who complained to the Professional Standards Office on the decision to impose this zero-value fine by the Office for Fines and Administrative Penalties against a business that was not equipped with a fiscal cash register.

After the complaint in question, the Professional Standards Office began to investigate the case under its powers, and compiled a report for the TAK General Director. After the report in question, the General Director requested from the Human Resources Office to forward the case to the disciplinary procedure of the TAK Disciplinary Commission. The Disciplinary Commission, after analyzing some reports and evidence based on the inspector's complaint, the PSO report and the hearing, has, according to the Regulation on Disciplinary Procedures in the Civil Service, imposed the same disciplinary measure to all three concerned officials: "removal from office, transfer to another location with similar tasks, and ban on promotion for one (1) year".

According to the legal advice provided by the decision in question, all three TAK officials filed a complaint with the TAK Commission for Resolving Disputes and Complaints (CRDC), claiming that the decision of the Disciplinary Commission was legally unjust and ungrounded. At the meeting held for this case, the CRDC has taken the decision to return the case for review to the Disciplinary Commission, as it established that the Disciplinary Commission only made a description of the circumstances in the reasoning for the decision, and has not specified the legal provisions on which it has based the decision to impose the disciplinary measure as above, and, in terms of its composition, the commission has not respected the gender equality required by law. The CRDC decided the same for all three persons, with a joint decision, sending this case back to the Disciplinary Commission.

⁵ Regulation No. 04/2011 on the Disciplinary Procedure in the Civil Service, Article 6, Paragraph 1.9: <https://bit.ly/2DkKzpz>

⁶ Code of Ethics and Conduct for Tax Administration Officials, Article 11, Paragraphs 3 and 4, Item 4.2, and Article 13, Paragraph 2: <https://bit.ly/2UT9jTm>

⁷ Decision No. 02/2018 of 09/03/2018, of the Disciplinary Commission of the TAK.

Due to the return of the case once again to the Disciplinary Commission, the latter reviewed the decision of the CRDC and issued the decision 04/2018,⁸ by which it imposed the same disciplinary measure to the persons in question, referring this time to the legal provisions that sanction such misconduct of official duty by TAK officials. It is worth mentioning that the disciplinary measure is based on the Law on the Civil Service, article 51 item 1, and article 52 item 1, which are dedicated to the exercise of duty and the obligation to enforce the law and the obligation to not misuse authority⁹. The repeated disciplinary measure, imposed on three TAK officials, was: "removal from office, transfer to another location with similar tasks, and ban on promotion for one (1) year".

Decision No. 3/2018 against a manager of a regional directorate for absence from work without prior warning

The case involving Decision No. 03/2018¹⁰ was initiated by an immediate senior official, i.e. the Director of a Regional Directorate against a manager in the same directorate, due to the latter's absence from work. The case did not go through the disciplinary procedure of the Disciplinary Commission, and the request of the direct supervisor was rejected with the reasoning that the direct supervisor did not file the case at the human resources office of the respective institution within two days, as is required by the Regulation on Disciplinary Procedures in the Civil Service¹¹.

The case occurred during the 2017 local elections, when the manager of a regional unit asked for one-month's unpaid leave from the human resources office of the directorate, on account of his running for mayor. The unpaid leave was granted to the concerned official until the final certification of the results by the Central Election Commission (CEC), which were certified after the end of the second round of elections, as a result of the organization of a runoff in that municipality.

However, even after the certification of the results by the CEC on December 11, 2017, the official in question was absent from work until January 3, 2018. According to the legal interpretation of the legal office in the respective directorate, each candidate nominated for municipal elections should return to work no later than one (1) week after the certification of municipal election results. The official's absence from work was estimated to be 13 days, and the Human Resources Office had no other request for continuation of the leave or information on the subsequent absence.

⁸ Decision No. 04/2018 of 08/05/2018, of the Disciplinary Commission of the TAK.

⁹ Law no. 03/L-149 on the Civil Service, Articles 51 and 52: <https://bit.ly/1D2CvaE> dhe 4 pika

¹⁰ Decision No. 03/2018 of 29/03/2018, of the Disciplinary Commission of the TAK.

¹¹ Regulation No. 04/2011 on Disciplinary Procedures in the Civil Service, Article 12, Paragraph 1.

In view of this situation, on March 8, 2018 the direct supervisor requested from the human resources office to refer the case to the Disciplinary Commission, which received the request from the concerned office on March 9, 2018. The case or the request for initiation of the procedure was related to the fact that the official who had been a candidate for mayor did not return to work at the established time, and provided no information on the leave of 13 working days. The Disciplinary Commission convened upon request and reviewed a range of evidence related to this case, but rejected the request of the direct supervisor on the grounds that the request was made past the legal deadline.

According to the Disciplinary Commission, which referred to the Regulation on Disciplinary Procedures in the Civil Service, the case should have been filed with the Human Resources Office by the direct supervisor within two (2) working days, and then the respective office should have forwarded it to the Disciplinary Commission. For this reason, the case or request was rejected and the Disciplinary Commission did not proceed with the procedure.

Decision No. 5/2018 against an inspector for misconduct toward other TAK officials

The case under Decision No. 05/2018¹² relates to the misconduct of one TAK official against some other officials of the same institution, specifically sending phone messages and emails with offensive content to the concerned officials. The latter raised this concern with their direct supervisor, who presented the concerns about behaviors against TAK colleagues to the director of the respective regional directorate. Then, the director of the regional directorate asked from the TAK General Director to take measures against the official in question.

As a result, at the request of the General Director, the TAK Office for Human Resources (HRO) sent all the evidence and records it had on the case in question to the TAK Disciplinary Commission. According to the findings of the Disciplinary Commission, the official in question had already been issued an oral warning, but his conduct continued. The Disciplinary Commission, based on its mandate and duties under the relevant legislation, analyzed all the evidence received by the HRO and invited the concerned official to the hearing on this case¹³.

The Disciplinary Commission, having considered all the facts and the preliminary hearing of the party, ascertained that the TAK official had committed a severe disciplinary violation after pressuring other employees through messages with offensive content and disturbances to their privacy. According to their findings, the Disciplinary Commission, based on the Regulation on Disciplinary Procedures in the Civil Service, issued the disciplinary measure: "removal from office, transfer to another location with similar tasks, and a ban on promotion for a three-year period".

¹² Decision No. 01/2018 of 07/06/2018, of the Disciplinary Commission of the TAK.

¹³ Law No. 03/L-149 on the Civil Service, Article 71: <https://bit.ly/2FSB4në>

Decision No. 6/2018 against an inspector for the misuse of official duty

The case involving Decision No. 06/2018 relates to the initiation of disciplinary proceedings by a Regional Director on suspicions of a conflict of interest and misuse of official duty by an inspector.

The case in question relates to the claims of the Regional Director that the inspector under disciplinary procedure had been engaged in a private business while being an inspector, and has not declared his tax obligations. The Regional Director had requested from the Human Resources Office to forward the case to a disciplinary procedure to be conducted by the Disciplinary Commission. The Disciplinary Commission conducted an administrative investigation, since the case required clarification from the Professional Standards Office (PSO) regarding the inspector's private-sector engagements, and whether there was a conflict of interest in that case.

The Disciplinary Commission, after reviewing the alleged violation and after receiving the responses from the PSO, found that the inspector under disciplinary proceedings was not responsible for the alleged violation and was released from disciplinary responsibility.

At the same time, the Commission instructed the case initiator that if he or she provides evidence of misuse of the position, he or she must report it to the prosecuting authorities, because it is a criminal offense provided for by the Criminal Code.

Decision No. 07/2018 against an inspector regarding a conflict of interest and not imposing a fine for the absence of a fiscal cash register

The case involving Decision No. 07/2018¹⁴ relates to the ascertainment of a serious disciplinary violation by a TAK inspector in the Directorate of Large Taxpayers (DLP), and consequently the imposition of a disciplinary measure by the Disciplinary Commission.

The case in question relates to the unlawful conduct of a tax inspector failing to adhere to his duties and responsibilities as a TAK inspector. Such unlawful conduct occurred when the tax inspector: 1) according to the explanation of the Anti-Corruption Agency (ACA) entered into a conflict of interest by being an authorized person in a private business; 2) did not declare that his daughter is in charge of accounting at the private business in the statement of conflict of interest submitted to the Professional Standards Office (PSO), and 3) did not impose a fine to a business that did not have a fiscal cash register.

¹⁴ Decision No. 07/2018 of 28/12/2018, of the Disciplinary Commission of the TAK.

The case was initiated following an anonymous report about the situation. After a report with findings and observations was conducted by the PSS, the General Director of TAK requested that the human resources office forward the case to a disciplinary proceeding to be conducted by the Disciplinary Commission. The latter conducted an administrative investigation, since it requested clarification of the conflict of interest from the ACA, confirmed the allegations that the inspector had been authorized in a private business using the Business Registration Agency (KBRA), and collected other evidence related to this situation.

From these findings, the Disciplinary Commission verified the disciplinary responsibility of the tax inspector for actions contrary to the civil service legislation and the Code of Ethics and Conduct for TAK Officials, and imposed the disciplinary measure: "removal from office,¹⁵transfer to another location with similar tasks, and a ban on promotion for 3 years".

Analysis of Decisions

What is common to all decisions¹⁶ is the same disciplinary measure imposed on all involved persons, varying only with regards to the years of the ban on promotion. The years of the ban on promotion for the involved persons are one year in two cases and three years in two other cases¹⁷. According to the Regulation on the Disciplinary Procedures in the Civil Service, under which these measures were imposed, the ban on promotion for this measure shall be up to five (5) years and shall be imposed by the Disciplinary Commission. In all these cases, the Disciplinary Commission has imposed this measure referring to the Law on Civil Service and other relevant legislation, which give these powers and responsibilities to the respective commission.

However, if we examine the topics or objects of the cases, we can say that instead of removal from office and transfer to another location, a different disciplinary measure could be imposed in some cases. The disciplinary removal from office and transfer to another location with similar tasks seems to be the preferred measure, as the removal from office and transfer to another location severs the links between inspectors and businesses in that region. However, in Decision No. 1/2018, according to which the Compulsory Collection Official had caused a traffic accident driving under the influence of alcohol and causing damage to the official vehicle, against him could have been imposed a different disciplinary measure, instead of the removal from office, transfer to another location and ban on promotion for a of one-year period.

¹⁵ *Code of Ethics and Conduct for Tax Administration Officials, Article 9, Item 3.2:*
<https://bit.ly/2UT9jTm>

¹⁶ *Decision 3/2018 did not impose a measure, since the Disciplinary Commission assessed that the direct supervisor had made a late request for the opening of the disciplinary procedure, and as a result the claim was rejected.*

¹⁷ *Decisions 2/2018 and 4/2018 have the same disciplinary measure, despite the fact that the Disciplinary Commission has decided twice on the same issue after it was returned for review by the CRDC.*

The violation falls in the category of serious violations, and the imposed measure in the category of measures for serious and grave violations, but there is no logical link between the violation and the imposed measure, therefore the measure was not adequate. Since the Compulsory Collection Official caused a traffic accident under the influence of alcohol and damaged the official vehicle, another measure could have been imposed by the Disciplinary Commission, such as "suspension of the exercise of duties and withholding of 1/3 of the salary for a period of up to two (2) months". Since the property of the institution (the vehicle) has been damaged under the influence of alcohol, the most logical measure would be the withholding of one third of the salary for two months, rather than the removal from office and transfer to another location.

A similar elaboration may also be made in the case of Decision No. 5/2018. In this case, due to the misconduct of a TAK inspector against other officials who were not all in the same location as the inspector in question, the inspector was punished with the measure of removal from office, transfer to another location with similar assignments, and a ban on promotion for a period of three (3) years. Even in this case, there seems to be no logical link between the violation and the disciplinary measure, because the problem could only be transferred from one location to another location. Another measure that could be imposed by the commission is paid suspension of up to three (3) months, or another measure, especially since the case in question was not related to the connections between the inspector and any business due to the location, and the reason for the imposition of this measure was the disconnection between the inspector and businesses under his inspection.

On the other hand, applying the same measure when an inspector is found in a conflict of interest with a private business, when there is a false declaration of conflicts of interest, and for failures to impose a fine on the business for the absence of a fiscal cash register, seems not to be adequate to such violations. In this case, there are threefold violations and the measure imposed is the removal from office and the transfer to another location. This measure can disrupt the connection between the inspector and the businesses in that region, due to the change of location for the inspector, but does not appear to be an adequate measure and in accordance with the severe disciplinary violations the inspector has committed in this case.

Based on the decisions outlined above, disciplinary measures have been imposed on persons holding these positions: Compulsory Collection Official (decision No. 1/2018), Director of the Regional Directorate, Assistant Director, and Official in the Office for Fines and Administrative Penalties (Decision No. 2/2018 and No. 4/2018), Regional Director (decision 3/2018) and two TAK inspectors in separate cases (Decisions No. 5/2018 and No. 7/2018). Regarding the locations of occurrence of these cases, it is worth noting that two are in the regional directorate in Prizren, two in the regional directorate in Prishtina and one in the regional directorate in Gjakova. Regarding the instances of decisions, two of the decisions have also been filed with the CRDC; one has been returned for review to the Disciplinary Commission, and in the other case the procedure continued to the IOBCS as the third instance.

The case under decision 3/2018, whereby the request of the direct supervisor was dismissed by the Disciplinary Commission because the request was made outside the legal deadline, also deserves attention and elaboration. In the present case, the violation had occurred in December 2017, while the direct supervisor had sent a request on initiating disciplinary proceedings on this case on March 8, 2018. The Disciplinary Commission dismissed the request because the direct supervisor did not file the request with the Human Resources Office within two (2) days from the time the violation occurred. The committed violation was absence from work, without prior warning, for 13 days. In this case, it can be immediately stated that the deadline within which the direct supervisor may submit a request for disciplinary proceedings is very short. Then, the dilemma that may arise is: what if the direct supervisor is notified late about this violation, meaning he/she was not aware of the violation, and only the fact that it is past the two-day time limit prevents him/her from initiating a disciplinary procedure, even if the violation was severe? Or, what if the direct supervisor intentionally didn't file a request within two days, in order to pass this time and make it impossible to file a request for disciplinary violation?

Table 1: Summary of some of the elements of the decisions discussed above

Elements	Decision 1/2018	Decision 2/2018 and 4/2018	Decision 3/2018	Decision 5/2018	Decision 6/2018
Subject of the decision	Compulsory Collection Official	Director of Regional Directorate, Assistant Director and one Official	Regional Directorate Manager	Inspector	Inspector
Region	Prizren	Gjakova	Prizren	Prishtina	Prishtina
Who initiated the case?	General Director of TAK based on the PSO report	According to the complaint of a Tax Inspector	Director of Regional Directorate	Direct Supervisor	Anonymous report
Reason	Causing traffic accident due to driving under the influence of alcohol	Imposition of the fine for zero Euros because the business did not have the fiscal cash register	Absence from work without notifying the Human Resources Office	Misconduct towards other TAK officials, but also against taxpayers	Conflict of interest, not imposing a fine for absence of a fiscal cash register
Imposed measure	Removal from office, transfer to another location with similar tasks, and ban on promotion for one (1) year	Removal from office, transfer to another location with similar tasks, and ban on promotion for one (1) year	No disciplinary measure has been imposed	Removal from office, transfer to another location with similar tasks, and ban on promotion for one (3) year	Removal from office, transfer to another location with similar tasks, and ban on promotion for one (3) year

Summary and Analysis of the Decisions of the Commission for Resolving Disputes and Complaints (CRDC)

During the monitoring of the Commission for Resolving Disputes and Complaints, BIRN and D+ researchers participated in three hearings and analyzed 9 other decisions of this commission.

The first monitored case relates to a complaint by a TAK official to be reassigned to the position according to the terms of their appointment, after he had been transferred. After the General Director did not reassign him to the position according to the terms of their appointment, the inspector requested from the CRDC to be reassigned to that position.

Deciding on the inspector's complaint, the CRDC approved the inspector's complaint as rightful.

The second case that was monitored relates to the complaint of a games of chance inspector. The inspector in question was sanctioned with the disciplinary measure "removal from office and ban on promotion for 2 years", but despite the measure has asked to be reinstated to his position.

Deciding on his complaint, the CRDC rejected the request of reinstatement to the position according to the act of appointment, on the grounds that the disciplinary measure is in force.

The third monitored case is related to an inspector's complaint against the Disciplinary Commission's decision to impose on him the measure of transfer from office and a ban on promotion for 3 years. The measure was challenged by the inspector, who filed a complaint within the legal deadline, requesting a change of the decision of the Disciplinary Commission, and the annulment of that decision.

The Commission for Resolving Disputes and Complaints, upon reviewing the complaint filed by the inspector, decided to return the case for review to the Disciplinary Commission.

Analysis of Decisions

During the monitoring of cases in the Complaints Commission, monitors noted problems over the lack of coordination and strict definition of procedures.

The keeping of minutes is one of the first problems noted in this process, bearing in mind that, during the monitoring, members of the commission have been observed underlining that they know the person for whom they have decided, and that he is a good person. In the absence of a minutes keeping standard, such data cannot be argued.

The monitors also found that during the hearing the minutes were kept in a notebook, which prevented the recording of the full flow of the procedure and of the statements in the hearing.

The minutes, which ascertains the main statements and events of the hearing, must be kept in a written and clean manner, and must be copied and signed by the parties. This did not happen, as after the conclusion of the hearing, the complainant left the room and neither signed the minutes nor received such a copy, which would be important for the preparation of the third instance complaint to the IOBCS.

Also, the Commission has problems with setting the schedule of hearings, and in one of the monitored cases it was found that the party was notified the instant the hearing began, despite the standard that the party must be notified two days in advance. In its write up of the hearing, the Commission for Resolving Disputes and Complaints reasoned that the delay was due to failure to inform the party on time by the HR office. Likewise, when analyzing the 11 decisions of the Commission for Resolving Disputes and Complaints, we see that in ten cases the CRDC has decided to reject as ungrounded the complaints of the officials subject to the Commission. Thus, the CRDC has almost always confirmed the decisions issued by the Disciplinary Commission.

Summary and Analysis of the Decisions of the Independent Oversight Board for the Civil Service (IOBCS)

The Independent Oversight Board for the Civil Service (IOBCS) serves as a review instance of complaints against the decisions imposed by TAK commissions. The analysis of the decisions of the IOBCS shows that in most cases this institution has decided in favor of TAK employees, by overturning the decisions taken by the Disciplinary and Complaints Commissions.

In seven (7) of the nine (9) cases addressed, the IOBCS has upheld the employees' complaints, by deciding to reinstate them to their positions, or by returning the process for review. Among the main shortcomings ascertained by the IOBCS is the failure to establish the factual situation during the handling of cases. The decisions in these cases have resulted in the abrogation of the disciplinary measures of the Directors of Large Taxpayers on the leaders of the Control Teams.

In the three cases that the IOBCS has returned for review, it has asked from the CRDC to check whether the measures had been imposed within the legal deadline and whether they had a legal basis, and following the review by the CRDC, it resulted that the measures were imposed after the legal term and that they had no legal basis. This finding is proof that the second instance within TAK did not analyze the situation as analyzed by the IOBCS.

This shows that the Commission for Resolving Disputes and Complaints has only verified the decisions of the directors, establishing confidence in their decisions and dismissing all three complaints.

Analysis of Decisions

In three cases, the IOBCS approved the complaint of the complainants, and in two of these cases the IOBCS reinstated the complainant to the position according to the act of appointment.

In one case, an official who was removed from office for a period of one year following a disciplinary measure, requested to be reinstated to the position according to the terms of his appointment after the passing of this period. In this case, the IOBCS decided to approve his complaint and to reinstate him to the same position he had before the measure was imposed.

The other case relates to an official whose position was changed by decision of the General Director, and, upholding his complaint, the IOBCS reinstated him to the same position he previously held.

If we analyze the first case, we see that the Inspector against whom the disciplinary measure had been imposed, was reinstated to the same position he held before being subjected to the disciplinary measure. Thus, with its decision the IOBCS is reinstating tax officials to the same positions from which they were removed as a result of serious violations.

Successful Cases

In two of the issued decisions, the IOBCS has validated the decisions of the CRDC by rejecting the complaints of TAK officials.

One case is related to one official who had been harassed with offensive messages and late-night calls by her colleagues. The complainant objected to the measure in question, but the IOBCS decided to reject her complaint.

In the other case, the IOBCS rejected the complaint of the TAK official who requested to be reinstated to the same position. As the disciplinary measure was still in force, the official's case was dismissed.

Conclusions and Recommendations

The monitoring and analysis by BIRN and D+ conclude that TAK must seriously engage in improving the overall situation and its disciplinary control indicators. In the Law on Declaration of Assets of Senior Public Officials, tax inspectors should be included among the officials declaring their assets. During this time, TAK and other institutions must work on improving the legal basis, as evidenced in the previous report.

In order to improve the current situation, BIRN and D+ recommend the immediate taking of these measures:

- The General Director must issue a decision obliging new officials to declare their assets;
- The new Law on Tax Administration and Procedures must include the issue of declaration of assets with the Anti-Corruption Agency for TAK inspectors;
- TAK must organize a public lottery on the verification of the assets of its officials;
- TAK must educate citizens to report officials who are in conflict with the law;
- The Professional Standards Office must have additional staff and resources;
- TAK must promote the free hotline, which must be accessible 24/7;
- The Disciplinary Commission must take measures to address IOBCS observations;
- TAK must harshen its sanctions policy against disciplinary offenders;
- TAK commissions must start recording the minutes according to the standards required by the Law on the General Administrative Procedure;
- The schedules of disciplinary hearings and complaints must be public and announced in timely manner;
- Disciplinary commissions must have appropriate working spaces;
- The Disciplinary Commission must always take into account gender diversity in its composition, in order to eliminate the possibility its decisions are returned for review due to this reason;
- The Disciplinary Commission must refer to the relevant legal provisions on the basis of which it imposes a disciplinary measure;

- The Disciplinary Commission must consider imposing other serious disciplinary measures, and not use the same disciplinary measure in any decision. The violation and disciplinary measures must be proportionate to each other, because the disciplinary measure "removal from office and transfer..." fails to achieve the desired effect in each case;
- TAK, along with the Ministry of Public Administration, must change the two-day term for the direct supervisor to file a violation with the Human Resources Office. The term must be significantly longer, and such that it allows sufficient time for the direct supervisor to initiate a disciplinary case.

Annex 1: Structures of Disciplinary Procedure within TAK and externally

Professional Standards Office

Under the Law on Tax Administration and Procedures, the Professional Standards Office (PSO) is a unit within the Tax Administration of Kosovo (TAK), whose main role is to investigate all allegations made by citizens about the misconduct of TAK employees, as well as all attempts to corrupt tax officials and all violations of the TAK Code of Conduct. Likewise, the PSO also investigates other activities of employees or citizens threatening the security or integrity of TAK or its employees.

The PSO has the authority to access all tax officials' data, to interview witnesses who may have information that will assist in investigations, to seek evidence and other information, and to assist in an authorized investigation, including in the extraction of banking records.

Likewise, the PSO determines whether the matter under investigation should be reviewed under an administrative or criminal proceeding, can conduct investigations under the supervision of the Public Prosecutor and conduct joint investigations with the Kosovo Police and other law enforcement agencies in matters related to internal security, accusations of misconduct of employees and other activities of employees and citizens that could jeopardize the integrity or security of the TAK.

A complaint for misconduct by a TAK official is first filed with that official's direct supervisor, and it is up to him/her to send the case to the PSO, or directly to the Disciplinary Commission. This choice depends on the extent the supervisor is able to administer by himself/herself the evidence that will be considered sufficient to make the decision by the Disciplinary Commission. If the manager has no evidence, or that in possession is not sufficient, then the case is forwarded to the PSO for further investigation and evidence collection.

The PSO must prepare a report for the investigation it is conducting, to which is attached all other evidence, and submit it to the Disciplinary Commission for further processing.

Disciplinary Commission

The Disciplinary Commission is another structure within TAK, and is established by the TAK General Director.

The function of the TAK Disciplinary Commission is to hear the parties in relation to the alleged violation, to determine whether the violation was committed on the basis of the evidence, and to take a decision on the disciplinary measures for TAK officers when there is a grounded suspicion a disciplinary violation has been committed.

The Disciplinary Commission has the responsibility of assessing the conduct of key managers and all employees during the performance of their duties. Negligence, failure to perform tasks, and abuse within the administration, all represent misconduct. The Disciplinary Commission is obliged to hear the evidence regarding the alleged violations, to decide whether the violation has been committed based on the evidence, and to determine the disciplinary measure to be imposed.

In the cases of disciplinary violations, the Commission is foreseen to impose measures in conformity with the violations. For minor violations, the disciplinary measures that can be imposed are verbal and written warnings. However, for serious violations, the Disciplinary Commission can impose the following measures: suspension from work and withholding of one third of the salary for a period of up to two (2) months upon request by the direct supervisor, removal from office and transfer to another location with similar tasks and a ban on promotion of up to five (5) years, or a termination of the employment relationship.

The relationship of the Disciplinary Commission with the PSO is based on the fact that in any investigation conducted by the PSO, either for the misconduct of employees, attempts to corrupt tax officials or other activities that could jeopardize the integrity of TAK, the PSO shall report any fact and circumstance to the TAK Disciplinary Commission.

Following the internal administrative procedure, the path beyond the Disciplinary Commission continues with the Commission for Resolving Disputes and Complaints, also established within the TAK. If the Disciplinary Commission has imposed a lighter disciplinary measure to the official or officer, such as a verbal or written warning, it does not constitute a measure for the dismissal of the official. However, if an official or officer repeats the misconduct, such as negligence, or failure to perform tasks, or abuse with the administration, this is a grave violation and it is left at the discretion of the Disciplinary Commission to impose disciplinary measures, including suspension or removal from office.

If the official or officer disagrees with the disciplinary measures imposed on him/her, he/she can file a complaint with the Commission for Resolving Disputes and Complaints within 30 days. Then, if the official disagrees with the decision taken by the Commission for Resolving Disputes and Complaints, within 30 days he/she can submit a complaint to the Independent Oversight

Board for the Civil Service of Kosovo (IOBCS). The IOBCS is an independent body that reports to the Assembly of the Republic of Kosovo, which inter alia resolves complaints of civil servants and ensures compliance with the rules and principles governing the Civil Service in the Republic of Kosovo.

Commission for Resolving Disputes and Complaints

Within TAK there is also the Commission for Resolving Disputes and Complaints, which is established by the TAK General Director. The commission in question has a duty to review all complaints from TAK employees who object to an evaluation or a decision of the Disciplinary Commission. This commission is another instance within TAK that reviews the disputes and complaints of TAK officials that previously went through disciplinary proceedings under the Disciplinary Commission. This Commission also addresses complaints of third parties that apply for jobs at TAK and are not satisfied with the final decision.

The Commission for Resolving Disputes and Complaints is composed of three members with the status of civil servant employed in TAK, who may not also be members of the Disciplinary Commission at the same time. To address a case in this commission, the dissatisfied party must file a written complaint within 30 days from the receipt of the decision by the Disciplinary Commission. In the cases proceeding in this commission, the provision of evidence is performed by the personnel unit, which at the same time covers the administrative preparations for the meeting of the commission. The meeting (hearing) shall be held within 10 days from the day of receipt of the complaint, while the decision must be taken within 30 days, and then the party shall be notified of the decision within a period of five (5) days.

Among the mechanisms mentioned so far, the bottom-up communication line is as follows: The Professional Standards Office initiates an investigation, and based on the results of the investigation a case goes through disciplinary proceedings by the Disciplinary Commission. Then, if the official has a complaint against the measures imposed by the Disciplinary Commission, the procedure continues with the Commission for Resolving Disputes and Complaints. If the official in question disagrees with the decision of the last commission, the procedure goes to the IOBSC.

Independent Oversight Board for the Civil Service

The Independent Oversight Board is an independent constitutional institution that ensures compliance with the rules and principles governing the civil service, and reports directly to the Assembly of the Republic of Kosovo.

The Board's functions are focused on examining the complaints of civil servants and applicants for employment in the civil service of Kosovo, overseeing the implementation of civil service legislation, and observing the selection of civil servants of the management level and of the same levels in the Kosovo institutions.

The Board is composed of 7 (seven) members. The members of the Board are selected through open and transparent vacancies, and are appointed by the Assembly of Kosovo. The Chair of the Board is elected by the members of the Board itself. All Board members serve for a term of 5 years.

All Kosovo Civil Servants and applicants for employment in the Kosovo Civil Service may file complaints to the Board. They should initially use the internal procedure of the employing body (by first filing a complaint with the employer's Complaints Commission), and then with the Independent Board.

Supervisors for the Kosovo Civil Service may directly address the Board, exceptionally and in cases defined by law.

Annex 2: Decisions of the IOBCS

Decision A. No. 762/18

With this decision, the Independent Oversight Board has decided to approve the complaint of the Complainant R. A., and to annul the decision of the TAK Dispute Resolution Commission.

With this decision, the Board obliges the General Director to reinstate the Games of Chance Inspector to the same position, because his position had been changed due to the disciplinary responsibility.

In July 2017, the Disciplinary Commission issued the disciplinary measure: "removal from office, transfer to another location with similar tasks and ban on promotion for 1 year" on the official.

The official complained against this decision at the Commission for Resolving Disputes and Complaints (CRDC), but the complaint was rejected because it was submitted after the deadline.

Thereafter, he complained against the disciplinary measure at the Independent Oversight Board, but this instance rejected his complaint.

As the disciplinary measure was approaching its conclusion, the official requested from the TAK to be reinstated to the position he occupied under the terms of his appointment.

Upon this request, TAK informed him that he had been transferred as a Compulsory Collection Official, to which he did not agree and filed a complaint with the CRDC, which replied that his complaint was ungrounded.

After having accepted the decision of the CRDC, the official filed a complaint against this decision with the Independent Oversight Board.

Acting upon the complaint, the Independent Board assessed as grounded the complaint of the official, with which he sought to be reinstated to the position of "Inspector of Games of Chance".

The Board reasoned the decision with the Regulation No. 06/2010, which states that "after the temporary transfer period, the civil servant must be reinstated to the previous position".

In this case, the Board assessed that after having completed the disciplinary measure, the Official must be reinstated to the position according to the terms of his appointment.

Decision A. No. 378/2018

With this decision, the Independent Oversight Board annulled the decision of the TAK Commission for Resolving Disputes and Complaints, and returned the case for Review.

In this case, the official H.A. initially filed a complaint against the disciplinary measure "Reprimand", imposed by the Director of the Department for Large Taxpayers because of the delay in carrying out the controls.

Regarding this measure, the Official had filed a complaint with the Commission for Resolving Disputes and Complaints.

Acting upon the official's complaint, the commission rejected the complaint as ungrounded.

Upon receipt of this decision, the official filed a complaint with the Independent Oversight Board.

The Independent Oversight Board, after receiving the complaint and reviewing it, considers that the Commission for Resolving Disputes and Complaints has not correctly established the factual situation and did not evaluate all of the complainant's claims.

Therefore, considering that the decision of the Commission for Resolving Disputes and Complaints is unclear, incomprehensible, and with an insufficient reasoning whether the concerned official was responsible for not implementing the work plan, and in order to ascertain the complainant's fault the Independent Oversight Board returned the decision for review.

Decision A. 702/2018

With this decision, the Independent Oversight Board has decided to reject the complaint of the TAK official, B.D., and at the same time to reject the decision of the Commission for Resolving Disputes and Complaints.

The Disciplinary Commission has imposed the disciplinary measure "removal from office, transfer to another location with similar tasks and ban on promotion for 2 years".

Following the decision, the TAK General Director has decided to transfer the official in question to the Tax Inspector position in the regional directorate in Mitrovica, thus implementing the decision of the Disciplinary Commission.

However, one year later, via an email, the Human Resources Official informed the official that he had been transferred from the position of Tax Inspector in Mitrovica to the position of Tax Inspector at the Regional Directorate Prishtina2.

Regarding this measure, the concerned official filed a complaint with the Commission for Resolving Disputes and Complaints.

Addressing the complaint, the Commission decided to reject the complaint as ungrounded in the law.

Dissatisfied with this decision, the complainant filed a complaint with the Independent Oversight Board, seeking to be reinstated to the position under the terms of his appointment.

Having considered the case at hand, the Independent Oversight Board found that the disciplinary measure against him was set on July 20, 2017, for a duration of 2 years, and based on this the Board rejected his request to be reinstated to the position according to the act of appointment, because the disciplinary measure is still in force.

The Board also considers that his transfer from Tax Inspector in Mitrovica to Tax Inspector in Prishtina 2 is unlawful, as the employment body has no right to issue another act regarding the transfer of the civil servant until the end of the disciplinary measure.

In view of this, it also overruled the decision of the Complaints Commission, because it considered that the Complaints Commission did not review the tax inspector's complaint, and decided without establishing the factual situation. Thus, it left in force the decision of the General Director for the transfer to the position of Tax Inspector in the Regional Directorate Mitrovica 2.

Decision A. No. 564/2018

With this decision, the Independent Oversight Board upheld the complaint of the official R.Ç., reinstating him to the position he was in before being transferred by the General Director to the position of Collections Inspector, thereby annulling the decisions of the General Director and of the Commission for Resolving Disputes and Complaints.

The complainant in question is, under the "Appointment Act", in the position of the Control Team Leader in Prizren, but by order of the General Director of TAK, he was transferred from this position to Compulsory Collections Team Leader. Dissatisfied with this decision, he filed a complaint with the Commission for Resolving Disputes and Complaints, which rejected the complaint as ungrounded.

Dissatisfied with this decision, the complainant filed a complaint with the Independent Oversight Board, claiming that the decision of the General Director is in violation of the Civil Servants Law and the Civil Servants Transfer Regulation, due to the fact that the decision of the Director did not specify whether the transfer is permanent or temporary, nor the time frame of the decision.

"Under the law on civil servants, senior management officials may be assigned to different positions of equivalent grade for a certain period of time, but not more than 6 months."

Meanwhile, the complainant's claims that the transfer in question was made without the request of the direct leader, is not justified. The Law on Civil Servant stipulates that "The request for transfer shall be made by the direct supervisor of the unit and shall be reasoned".

Therefore, deciding according to the Annex, the Independent Oversight Board found that the decision of the General Director was in violation of the law, and decided to approve the complaint as grounded, obliging the TAK General Director to reinstate him to the same position held before the transfer.

Decision A. 562/2018

With this decision, the Independent Oversight Board rejected the complaint of the official F.A., thus validating the decision of the CRDC, and the decision of the General Director of the TAK. With this decision, the Independent Oversight Board has also validated the disciplinary responsibility of the official F.A., leaving in force the measure "removal from office, transfer to another location with similar tasks, and a ban on promotion for 3 years".

Challenging this measure of the Disciplinary Commission, the complainant complained to the Commission for Resolving Disputes and Complaints, which rejected her complaint as ungrounded. Then, she appealed to the Independent Oversight Board, claiming that the decision was imposed in violation of the Law on Civil Servants.

The Independent Oversight Board, deciding according to the complaint, having reviewed all the files of the case, found the allegation of the official F.A. to be ungrounded, and left in force the decision of the Complaints Commission, after assessing that the decision in question and the imposed measure is in conformity with legal provisions and based on evidence.

On the complainant in question was imposed the disciplinary measure, because it was established she made late-night phone calls and sent offensive SMS messages to colleagues, thereby violating their personal life. Therefore, according to the law on civil servants, the said measures were imposed.

Decision A. No. 380/2018

With this decision, the Independent Oversight Board annulled the decision of the Complaints Commission and returned it for review on the grounds that the decision of the commission did not establish the factual and legal situation.

Initially, the Director of the Department for Large Taxpayers had issued the disciplinary measure of "Reprimand" against the complainant S.D., due to the delays in carrying out the inspections by his inspectors.

Challenging the measure in question, the official filed a complaint with the Department for Resolving Disputes and Complaints, but the complaint in question was rejected as ungrounded.

Deciding on the party's complaint and responding to the complaint, the Independent Oversight Board considered that the decision of the Commission for Resolving Disputes and Complaints was not grounded, because not all claims of the complainant were taken into account,

According to the decision of the Supervisory Board, in the review the Complaints Commission must ascertain the factual situation and the responsibility of the complainant, because the measure against him was also imposed for the work plan, while the complainant was not responsible for the management of that team.

Therefore, in order to ascertain the factual situation, the Board has returned the case for Review.

Decision A. No. 485/2018

Through this decision, the Independent Oversight Board approved the complaint of complainant F.D., and annulled the recruitment process for the official position of the Compulsory Collections Official (5 positions).

Initially, after the completion of the recruitment process for this position, 5 persons were accepted. Dissatisfied with this decision, F.D. filed a complaint with the Commission for Resolving Disputes and Complaints, but received no response from this commission, and in view of the silence of administrative authorities filed a complaint with the Independent Oversight Board.

Deciding on the complaint and the response to the complaint, the Independent Oversight Board found that after the successful recruitment process, three persons did not meet the criteria of the vacancy.

Based on this, the Independent Oversight Board decided to cancel the application process.

Decision A. No. 757/2018

With this decision, the Independent Oversight Board annulled the decision of the CRDC, and returned it for review.

The complainant Sh.Sh. filed a complaint with the CRDC against the decision of the General Director regarding her Transfer from the position of IT System Analyst to the position in the Business Applications Development Division, but the request was rejected as ungrounded.

The complainant then addressed the Independent Oversight Board, claiming that the decision of the General Director was not in accordance with the law.

The Independent Oversight Board found the complainant's complaint grounded, after finding that the decision of the General Director was incorrectly based on Article 28 of the Law on Civil Servant, which does not constitute the legal basis for the case in question, and thus the Director should have made the

transfer in question by complying with the provisions of the regulation on the transfer of civil servants.

Therefore, having in mind that such a decision was made without specifying the type of transfer and its duration, and the fact that the complainant's consent was not taken into consideration, the Board has decided to return the case for review.

Decision A. No. 381/2018

The Independent Oversight Board, through this decision, annulled the decision of the Commission for Resolving Disputes and Complaints and returned the case for review.

In this case, the complainant B.I. filed a complaint against the Director of the Department of Large Taxpayers, who imposed the disciplinary measure of "Reprimand" due to delays in performing controls.

Dissatisfied with this decision, the complainant filed a complaint with the Commission for Resolution of Disputes and Complaints, which decided to reject the complaint.

Thereafter, B.I. turned to the Independent Oversight Board, which after the administration of the evidence considers that the Commission for Resolution of Disputes and Complaints did not fully take into consideration the claims of the complainant.

The Board has requested a review of the complaint in order to see whether the measure imposed by the Director of the Department of Large Taxpayers has been imposed within the deadline set by the law.

The reasoning of the Decision by the Department for Resolution of Disputes and Complaints was considered as insufficient, unclear, ambiguous and incomprehensible, so the Board decided to send the decision back for review.

Deciding on the complaints filed by TAK officials against decisions made by the Commission for Resolving Disputes and Complaints, the Independent Oversight Board has issued a decision to return the decision for review in four cases.

In three cases, the decision of the CRDC is annulled and the case is returned to the Commission for Review, in order to establish the factual situation, while in the other the decision of the CRDC is annulled and the case is returned to the commission for a re-evaluation of the transfer.

Annex 3

Table of reports and manner of case resolution, Source TAK

Regions	No. of online calls	No. of cases submitted to the responsible offices	No. of return activities	No. of fines issued by the regions for cases reported through online calls	Amount of fines	Amount of additional circulation
DBT	6	6	5	2	2,000	0
Prishtina 1	30	30	20	15	3,295	0
Prishtina 2	26	26	29	35	12,625	0
Prishtina 3	46	46	39	16	8,379	1681.4
Prizren	29	29	29	21	4,925	0
Peja	20	20	14	7	1625	0
Gjakova	7	7	10	9	1375	0
Ferizaj	18	18	11	6	1000	0
Gjilan	11	11	16	8	1375	0
Mitrovica	18	18	16	10	1,500	0
Lottery games	93	93	61	37	152,500	0
Total	315	315	257	166	190,599	1,681
TIU	5	5	2			
PSO	4	4	4			
Customs	1	1	1			
Education	1	1	1			

Katalogimi në botim – (CIP)
Biblioteka Kombëtare e Kosovës "Pjetër Bogdani"

336.2(496.51)"2018/2019"

Egzona Kozhani

Monitoring report on the integrity of the Kosovo tax
administration : september 2018 – february 2019
/ Egzona Kozhani, Kastriot Berisha. – Prishtina : Democracy Plus,
2019. – 38 f. : ilustr. ; 21 cm.

1. Berisha, Kastriot

ISBN 978-9951-758-16-1

september 2018 – february 2019



ISBN 978-9951-758-16-1



This research was conducted with support from the Embassy of the United Kingdom in Kosovo. The views expressed in the report do not represent the views of the British Embassy or Government.



British Embassy
Pristina



DEMOCRACY PLUS