

Annual Report 2009

2009 First Annual Report of the Constitutional Court of the Republic of Kosovo

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Mission Statement

The Constitutional Court of Kosovo is:

- a professional, competent and independent institution, establishing a new tradition of judicial impartiality and accountability - fully in the service of the citizens of Kosovo;
- a transparent institution, vindicating the rights and fundamental freedoms of the citizens and communities of Kosovo, adjudicating in a fair and transparent manner within its jurisdiction, balancing equality and overseeing justice in the exercise and use of powers vested on it by the Constitution; and
- the final authority of the constitutional order of the country ensuring and supporting the transition of Kosovo toward prosperity and the rule of law.

Foreword by the President of the Constitutional Court, Prof. Dr. Enver Hasani

The Constitutional Court is very pleased to publish its first Annual Report to the public. The Republic of Kosovo has adopted to itself a robust constitution that guarantees the highest standards for the protection of Human Rights and Fundamental Freedoms. The Constitutional Court is the final authority in Kosovo for the protection of those rights. Since its establishment and the commencement of its operations, the Court has committed itself to ensure the protection of those rights.

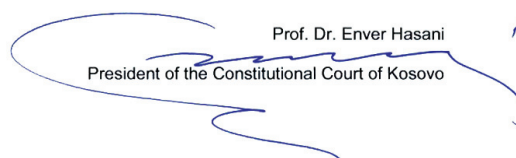
The inception and commencement of the work of the Court presented unique difficulties which would not have been possible to address without the commitment and dedication of the Judges and the staff of the Court and the Interim Secretariat. The Court acknowledges the excellent work done by the Interim Secretariat and that is being done by the permanent Secretariat, which became effective in September 2009. From its inception, the particular challenges faced by the Court staff in the early days of the establishment of the Court were difficult ones, but they were overcome with diligence, energy and enthusiasm. I commend the entire staff of the Constitutional Court for their professionalism and dedication in overcoming these difficulties in such a short time thus enabling the Court to function fully from September 2009.

Notwithstanding the subvention from the Kosovo budget, the Court would not have been able to achieve what it has done without the aid and assistance provided by donors who very generously contributed skills, expertise and resources at the start of the Court's work and who still provide continuing assistance. In particular, the Court expresses its thanks to the East West Management Institute, the Constitutional Court of the Republic of Turkey, the United Kingdom Department for International Development (DFID), the United States Agency for International Development (USAID), the German Agency for Technical Cooperation (GTZ) and the International Civilian Office. Details of the assistance these bodies provided to the Court are set out in the body of the Annual Report.

On 1 September 2009 the Court welcomed the appointment of the International Judges of the Constitutional Court pursuant to the provisions of Article 152 of the Constitution. Their appointment, by the International Civilian Representative, Pieter Feith, enabled the Court to commence work immediately on their taking their oath of office. The Court also welcomed the international legal advisors funded by the International Civilian Office.

These early stages of the establishment of the Court will lead ultimately to the development of the jurisprudence of the Constitutional Court of Kosovo and they will enable it to perform its main function as the final authority on the interpretation of the Constitution.

Prof. Dr. Enver Hasani
President of the Constitutional Court of Kosovo



Introduction by the Secretary General

Mr. sc. Arbëresha Raça-Shala

The Secretariat of the Constitutional Court is the mechanism that supports and ensures the efficient functioning of the Court, by supporting the Judges and Parties appearing before the Court. The fundamental principles influencing the work of the Secretariat are efficiency, professional integrity, transparency and accountability.

This reporting period was challenging in itself, not only because during this time the foundations of a new institution were laid, but also due to various difficulties and proceeding that paved the way for the establishment and consolidation process of the Court. Despite the fact that the work of the Secretariat was quite often “invisible” internally and externally during this reporting time, the personnel of the Court excelled in their work and were distinguished by high professionalism; with limited human resources, time pressure and public expectations, they ensured the successful implementation of the work in the Court.

During this reporting period, the Secretariat concentrated on the following strategic areas:

- Administrative leadership and guidance;
- Proceeding of cases;
- Professional support; and
- Management of the budget.

Despite all the other different obstacles encountered during this period, the Secretariat succeeded quite considerably in accomplishing all predetermined goals and objectives.

I take this opportunity to sincerely thank all the personnel of the Secretariat for achieving these results with their dedicated support in the work of the Court. I would also like to thank the East West Management Institute, and the British Government for their help, who have made exceptional and extraordinary contribution towards the consolidation of the work of the Court.

This report contains a comprehensive account and details of the complex work done by the Court in 2009 and the continuing programme of development that is underway in establishing the Court as one of the most important constitutional bodies in Kosovo.

Finally, on behalf of the Secretariat, I would like to thank the President of the Court and all the Judges for their continuing professional support, their cooperation and understanding of the circumstances, in which the Secretariat has been working, and above all and most importantly, their contribution in achieving results presented in this report.

Mr. sc. Arbëresha Raça-Shala

 Secretary General

Report of the Constitutional Court for 2009

Adoption of the Constitution of Kosovo and the establishment of the Constitutional Court

The Constitution of the Republic of Kosovo (the Constitution), adopted by the Assembly of Kosovo, entered into force on 15 June 2008. Article 112 of the Constitution provides for the establishment of a Constitutional Court which is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. The Constitutional Court is fully independent in the performance of its responsibilities.

The Law on the Constitutional Court (Law No. 03/L-121) was adopted on 16 December 2008 and it entered into force upon its publication in the Official Gazette of the Republic of Kosovo on 15 January 2009. Article 57 of the Law on the Constitutional Court established an Interim Secretariat until the permanent Secretariat became fully functional. This occurred in September 2009 with the employment of the permanent Secretary-General and her support staff in the Directorates which are set out in this report.

Structure and organization of the Court

The composition of the Court is determined by the Constitution of Kosovo. The Court is composed of nine Judges who are required to be distinguished jurists of the highest moral character. Six of the Judges of the Constitutional Court are appointed by the President of the Republic of Kosovo upon the proposal of the Assembly of Kosovo. Three International Judges, Snezhana Botusharova, Robert Carolan, and Almiro Rodrigues, were appointed by the International Civilian Representative after consultations with the President of the European Court of Human Rights. The full composition of the Court is:

Enver Hasani, President
 Kadri Kryeziu, Deputy-President
 Robert Carolan, Judge
 Altay Suroy, Judge
 Almiro Rodrigues, Judge
 Snezhana Botusharova, Judge
 Ivan Čukalović, Judge
 Gjyljeta Mushkolaj, Judge and
 Iliriana Islami, Judge



Judges of the Constitutional Court of Kosovo



Enver Hasani, President



Kadri Kryeziu, Deputy-President



Judge Robert Carolan



Judge Altay Suroy



Judge Almiro Rodrigues



Judge Snezhana Botusharova



Judge Ivan Čukalović



Judge Gjylieta Mushkolaj



Judge Iliriana Islami

The Court sits in Pristina but it may also sit outside Pristina if it decides to do so. The Court's permanent offices are at Perandori Justinian, Peyton, Prishtina.



Entrance to the Constitutional Court

The powers and functions of the President and the Deputy-President are determined by law. Pursuant to its powers, the Court adopted Rules of Procedure which govern the submission of applications to the Court and the internal work of the Court. These Rules of Procedure were adopted by the Court at its first administrative session on 26 June 2009 and they may be amended by the Court from time to time as it decides. The Rules of Procedure are available on the Court's website <http://www.gjk-ks.org>.

Administration of the Constitutional Court and the work of the Departments of the Court

An Interim Secretariat of the Court was established, pursuant to Article 57 of Law No. 03/L-121. It functioned until 31 August, when the Court's Secretariat became fully operational, particularly upon the appointment of the Secretary General, Ms Arbëresha Raça-Shala.

Because the Constitutional Court was commencing its work as an entirely new State Body, the Secretariat faced considerable difficulties arising from the lack of basic working conditions and the lack of administration staff. Nevertheless, the Provisional Secretariat and the permanent Secretariat overcame these difficulties and supported the work of the Court, and this has allowed the Judges to review all referrals filed with the Court during the reporting period.

The Interim Secretariat informed the public through public announcements on the commencement of the work of the Court and it established a case registration system, initiated some administrative rules, assisted in the preparation of the draft Rules of Procedure, drafted form relating to the receipt of Referrals to the Court and many other essential steps to enable the Court to commence functioning on behalf of the citizens of Kosovo. This included dealing with other state bodies in the interim period and advising on the recruitment requirements of the Court. This efficient and dedicated initial work led to a seamless and efficient handover to the Secretariat on 1 September 2009.

A monthly work plan was presented for the period of September - December 2009, dedicated to the achievement of three main objectives:

- Recruitment of management staff and other administrative staff;
- Provision of basic working conditions; and
- Establishment of new Departments and consolidation of functions of the Department for Registration of Cases, which during the period of the Provisional Secretariat functioned as the Registry Office of the Provisional Secretariat.

In early September 2009, the Secretariat prepared job descriptions for work positions and advertised the first competition for 26 vacancies for 21 different positions. Approximately 1,100 persons applied for vacancies with the Constitutional Court in the recruitment process. Work plans for September 2009 were completed for the full management of the referral processes, drafting lists of job applications and other activities related to administration services. Five Department heads and five other administrative staff were also selected during September to start work in October 2009.

In October 2009, Heads of Departments were delegated their responsibilities as per their job description, but in the absence of a full quota of administrative staff, much work was undertaken in cooperation, where staff members undertook multiple jobs at the same time.

I. Department of Administration and Human Resources

General administrative works
Undertaken activities consisted of:

- Analysis of the Court IT system installed (hardware, software, computer and telephone networks), and consolidation thereof;
- Compilation of a concept paper for the digitalization of work processes at all stages, from the admission of cases to the Court up to their archiving and online use;
- Organization and oversight of installation of security cameras and video/audio streaming equipment at the Media Office;
- Expansion and consolidation of telephone networks, including re-programming of the switchboard;
- Use of IT equipment and office supplies from the Ministry of Justice to fulfill basic working requirements for the administrative staff of the Court;
- Consolidation of storage facilities, and provision of office supplies and other goods;
- Organization and oversight of furnishing, and other supplies, for all facilities of the Court, implemented by the end of December; and
- Other activities including preparations related to the visit of the delegation of the Constitutional Court of Turkey; and hiring of a separate company for the maintenance of the Court.

Human Resources

The following is a brief overview of the activities undertaken by the Human Resources Division.

Preparation and implementation of recruitment procedures for other positions advertised in 2009 resulted in:

- Selection of 7 staff members of professional and support levels, in implementing non-discriminatory policies of gender representation and involvement of other communities, in compliance with administrative instructions on personnel procedures;
- Selection of the spokesperson and legal officer through a re-advertisement;
- Administration of the selection processes, and oversight of candidates's selection process for legal advisor positions;
- Preparation of job descriptions for 19 planned positions, advertisement and selection of the administrative support staff;
- Recording training needs of administrative staff - questionnaires;
- Analysis and assessment of requests to identify training areas for capacity building of Court officers for 2010;
- Drafting of Rules of Procedure on classification and grading of work positions, definition of rates and bonuses, aiming for an efficient human resource management policy; and
- Drafting of instructions on administrative issues for the efficient functioning of the Secretariat:
 - ✓ Administrative Instruction on utilization of official vehicles;
 - ✓ Administrative Instruction on telephone expenditures;
 - ✓ Administrative Instruction on representation;
 - ✓ Administrative Instruction on food rations;
 - ✓ Administrative Instruction on utilization of parking area; and
 - ✓ Administrative Instruction on storage facilities.

II. Department for Case Registration, Statistics and Archive

During the activities of the Provisional Secretariat, this Department functioned also as a Registry of the Provisional Secretariat. From 1 September 2009, it was named the Department for Case Registration, Statistics and Archive (DRCSA).

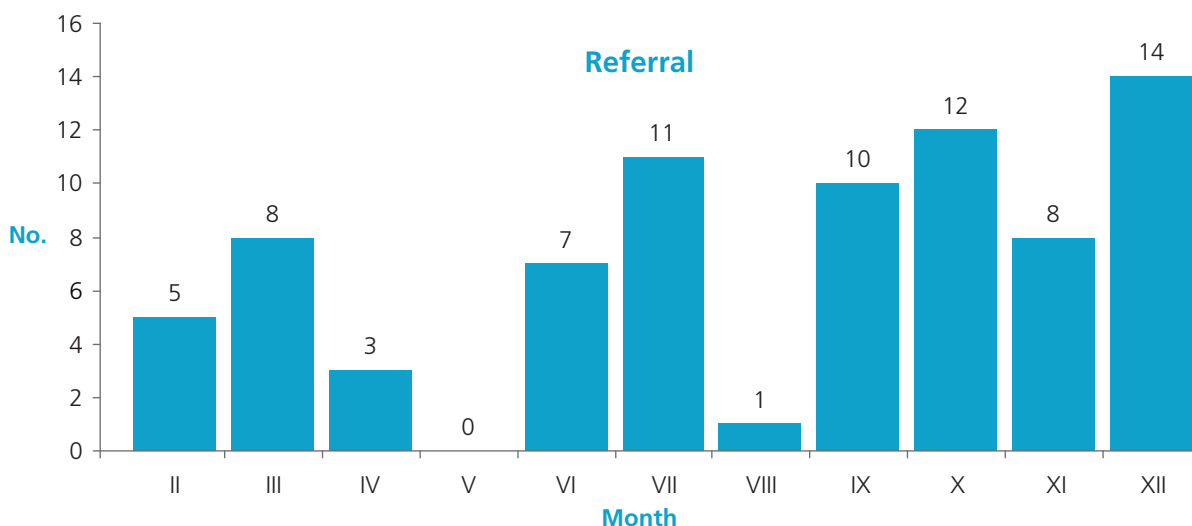
1. Number of Referrals

The first referral was registered on 2 February 2009. 35 referrals were registered up to 31 August 2009 and 44 referrals were registered from 1 September to 31 December 2009. A total of 79 referrals were registered in 2009.

The division of referrals received during the period of the functioning of the Provisional Secretariat and Secretariat of the Constitutional Court, as per time of arrival, is:

- ✓ 35 referrals were registered from 2 February – 31 August, 2009, of which:
 - 1 referral were filed by the Deputy Mayor of Municipality of Prizren; and
 - 34 referrals were filed by individuals who claim their rights guaranteed by the Constitution of the Republic of Kosovo have been violated.
- ✓ 44 referrals were registered from 1 September to 31 December 2009, all filed by individuals.

Monthly chart of referrals filed in 2009



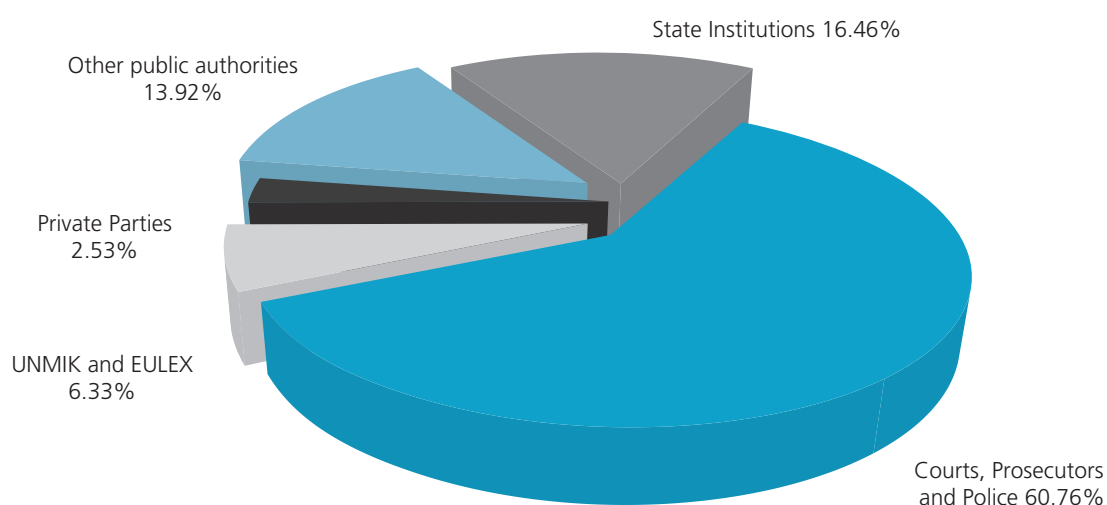
2. Alleged violators of rights

Referrals involving Courts, Prosecutors' Offices and Police comprised more than half of the referrals filed in 2009, or 60.76 % of the total. 39.24% of the Referrals were against other parties. The following is a specified division.

Alleged violations of rights:

- in 48 referrals, or 60.76%, applicants claim that Courts, Prosecutors' Offices and Kosovo Police Service have violated their rights;
- in 13 referrals, or 16.46 %, applicants claim that other state institutions have violated their rights;
- in 11 referrals, or 13.92%, applicants claim that other public authorities have violated their rights;
- in 5 referrals, or 6.33%, applicants claim that UNMIK and EULEX have violated their rights; and
- in 2 referrals, or 2.53%, applicants claim that private entities have violated their rights.

Graphic presentation of alleged violations of human rights, divided by percentage:



3. Subject of Referrals

Applicants' referrals requiring the assessment of the constitutionality and legality of court decisions relate to alleged violations of their rights for:

- ✓ a fair trial, in 18.99 % of cases;
- ✓ pension rights, in 21.52 % of cases;
- ✓ the right to work, in 6.33 % of cases;
- ✓ others, in 53.15% of cases.

4 Admission of Referrals and allocation of work

The Court Secretariat registered all the Referrals pursuant to Article 29 of the Rules of Procedure of the Constitutional Court. The allocation of Referrals was made as per Article 7 of the Rules of Procedure, and as per the date of submission to the Court. The requests for the imposition of interim measures were given priority, and were allocated promptly.

The Court issued the following Decisions in 2009:

- 4 referrals were rejected as inadmissible;
- 3 requests for temporary measures were rejected as inadmissible; and
- 2 requests for temporary measures were approved.

The Secretariat provided support services to Judges in Court deliberations and hearings as follows:

- 12 review panels;
- 4 plenary sessions; and
- 2 hearing sessions.

Decisions of the Court are published on the website of the Constitutional Court, <http://www.gjk-ks.org>, and in the Official Gazette, and they are served on each party to the Referral.

III. Department of Professional Support

The Department of Professional Support (DPS) commenced its work within the Constitutional Court Secretariat at the beginning of October 2009 on the appointment of the Director of the Department.

The DPS is responsible for providing professional services of translation, editing, proofreading and legal research. In spite of obstacles, not least related to the difficulties in the early stages of staff recruitment, DPS arranged for the translation and processing of approximately 2000 pages, or 33 pages per day, of letters and various documents in Albanian, Serbian, English and Turkish. It also arranged for interpretation in regular meetings and administrative sessions.

In coordination with the DCRSA, the DPS prepared the necessary documentation for hearing sessions.

To facilitate the volume of work, a professional translation company was hired, and through the Procurement Unit, professional software packages were procured as follows:

- Automatic translation software;
- Professional field terminology memory software;
- Optical character recognition software; and
- Automatic spell-checkers for Serbian and Turkish.

The Court processes a huge amount of information which needs to be well-administered by the Secretariat, with a view of serving judges and citizens, in time and quality. To enable this to be done, the DPS began scanning case files and documents for easier and faster access thereto. It is also instrumental in drafting a trilingual glossary for the use of the Court. It is also acting to create an electronic Case Management System to enable Judges and the Court staff easier access to the case information and provide quality services to applicants and citizens.

IV. Budget and Finance Department

The Budget and Finance Department of the Constitutional Court helps provide the financing and accounting information necessary for the Court to perform its obligations including, inter alia, preparation of the Income and Expenditure account, information on capital expenditure and advising on the preparation of the Annual Budget. In October 2009, the Budget and Finance Department took over all issues related to budget and finance, which were previously managed by the Ministry of Public Administration. A Summary of the Accounts of the Constitutional Court for the year 2009 is presented in Appendix I of this Report. Full accounts have been submitted to the Ministry of Economy and Finance/Department of Treasury. These accounts are subject to audit by the Auditor-General of the Republic of Kosovo.

V. Procurement Unit

During 2009, the Procurement Unit of the Constitutional Court of Kosovo initiated a total of 38 requests for the provision of goods and services. The following is an overview of the requests according to the various procurement procedures.

I. Procurement activities initiated by the Ministry of Public Administration (MPA)

Before the Court took over its procurement, the MAP initiated eleven (11) procurement activities for the initial supply of office material for the Interim Secretariat and furniture, such as: IT equipment, laptops, printers and tables. The total value of contracts completed by the MPA from the 2009 Budget for the Constitutional Court amounted to €116,595.20.

II. Open procedures

Three (3) requests have been completed through an open procedure for translation services, supply of office stationary, IT equipment, software and other additional equipment.

III. Price quoting procedures

Nine (9) requests have been completed through price quoting procedures for additional IT equipment and insurance of official vehicles.

IV. Minimal value procedures

Eleven (11) requests have been completed through a minimal value procedure for supply of metal lockers, office equipment and other materials (such as: stamps, business cards, toners, etc).

V. Negotiated procedures without the publication of the announcement for the contract

Two (2) requests have been completed through a negotiated procedure without the publication of the announcement for the contract for postal and media announcement services.

Following the establishment of initial procurement arrangements by MAP, the total value of contracts entered into by the Constitutional Court amounted to €74,176.87.

DESCRIPTION	AMOUNT OF SIGNED CONTRACTS	AMOUNT PAID
Purchase through a tender	€121,333.62	€105,408.22
Purchase through price quotation	€58,846.53	€58,358.53
Purchase through procedure with a minimal price value	€10,359.34	€10,359.34
Purchase through negotiated procedure without the publication of a Contract Notice		€40.30
Subtotal	€190,539.49	€174,166.39
Payments according to long term contract		€22,062.16
TOTAL	€190,539.49	€196,228.55

International involvement

The establishment of ties with other Constitutional Courts in the region and further afield is an important part of the development of the Court, not only to assist it in generating a jurisprudence that will be a vital part of the legal framework of Kosovo, but also to assist the Republic of Kosovo in taking its place among the community of nations. To assist in achieving these objectives, the Judges of the Court during 2009 paid the following official visits to, inter alia:

- The Constitutional Court of the Republic of Turkey;
- The Constitutional Court of the Republic of Macedonia;
- Regional Conference – Right to a trial within reasonable time – Skopje, Macedonia;
- International Congress “Europe and its Constitutions: 20 years later” - Regensburg/Germany;
- Institute for Folkloric Research in Ankara/Turkey; and
- Cooperation in the regional level with the aim of common advancement in the area of the rule of law, Skopje, Macedonia.

The Court will continue to develop its international relationships with Constitutional Courts and other institutions in 2010 and in the years to follow.

Donors and assistance to the Court

The Court as the new Constitutional Court in the Republic of Kosovo has had grateful assistance and help from many donors in the difficult task of commencing its work and establishing itself as the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.

The Court gratefully acknowledges the help and assistance of the following:

East-West Management Institute

East-West Management Institute, Inc. (EWMI) was founded in 1988 as an independent, not-for-profit organization, which helps to promote the rule of law, civil society and free market systems in many parts of the world. EWMI initially provided assistance to enable the functioning of the Interim Secretariat. It assisted by establishing a case management system, in recruitment, drafting the Rules of Procedure and in the provision of technical expertise for translation and other matters. EWMI has also been instrumental in the development of the strategic plan for the Constitutional Court. The Court is most grateful for this assistance.

Constitutional Court of the Republic of Turkey

The Constitutional Court of the Republic of Turkey has assisted the Constitutional Court of Kosovo in building and equipping the Courtroom at its premises in Pristina. This assistance was implemented through the Turkish International Cooperation and Development Agency (TICA). TICA provides economic, commercial, technical, social, cultural and educational cooperation to developing countries via projects aimed at assisting the development of these countries.

United Kingdom Department for International Development (DFID)

DFID provided assistance for the Constitutional Court initially in the provision of assistance for the Interim Secretariat at the commencement of its operations, pursuant to Article 57 of the Law on the Constitutional Court. In collaboration with the East West Management Institute (EWMI) assistance was provided for development of Court's work plans and future strategy through the organization of workshops and seminars held in October 2009 and continuous assistance and review of Court's internal organisation and development.

United States Agency for International Development (USAID)

USAID has worked closely with the Court in providing valuable assistance through the provision of renowned experts who have assisted the Court in revising the Rules of Procedure of the Court. After the establishment of the Constitutional Court in 2009, USAID designed a quick program in support of the Court focused mainly at offering technical assistance and expertise in specific areas including but not limited to Judicial Opinion Writing and Constitutional Interpretation. For this purpose, USAID engaged the United States Federal District Court Judge John R. Tunheim to support the Constitutional Court. USAID assistance consisted mainly of professional consultations and facilitated discussions between the Court and a US judicial team led by Judge Tunheim.

German Agency for Technical Cooperation GmbH (GTZ) Deutsche Gesellschaft für Technische Zusammenarbeit GmbH

GTZ has provided considerable assistance to the Constitutional Court in the provision of library and technical assistance particularly by purchasing a considerable number of legal texts without which any Court would face considerable difficulties. The first workshop was organized in September 2009, in GTZ and the Constitutional Court premises in Prishtina. The objective of the workshop was to present and exchange professional experiences in the constitutional judiciary, with special emphasis on fundamental human rights. The Court is most appreciative of the full and active engagement of GTZ in its development.

International Civilian Office/EU Special Representative (ICO/EUSR)

The International Civilian Representative appointed three International Judges to the Constitutional Court pursuant to constitutional provisions. The ICO has also provided assistance to the Court in providing translators and three international legal advisors and one advisor to the international Judges.

Appendix I

Summary of accounts of the Constitutional Court for 2009

Statement of cash receipts and payments				
2009				
Treasury Single Account				
		KCB	OSR	
		€ <000	€ <000	
		Notes		
RECEIPTS				
General Fund Appropriations	2	313,001.74		
Special Purpose Fund Appropriations				
Designated Donor Grants	3			
Other Receipts	4			
Total Receipts		313,001.74	-	
PAYMENTS				
Operations				
Wages and Salaries	5	100,258.09		
Goods and Services	6	121,133.01		
Utilities	7	1,076.04		
		222,467.14	-	
Transfers				
Transfers and Subsidies	8			
Capital Expenditures				
Property and equipment	9	90,534.60		
Other Payments	10			
Total Payments		90,534.60	-	

Budget Execution Report 2009

		Original Budget (Appropriations)	Final Budget (Appropriations)	Actual	Variance
		A	B	C	D=C-B
	Notes	€ '000	€ '000	€ '000	€ '000
Cash Inflows into Treasury Account					
Taxes	11				
Own Source Revenues	12				
Grants and Assistance	13				
Capital Receipts	14				
Privatization Fund	15				
Other	16				
Total KCB Receipts Collected			-	-	-
Cash Outflows from Treasury Account			-		
Wages and Salaries	17	520,000	520,000	100,258	-419,742
Goods and Services	18	330,000	283,050	121,133	-161,917
Utilities	19	67,000	56,950	1,076	-55,874
Transfers and Subsidies	20				
Capital Expenditures	21	183,000	240,000	90,535	-149,465
Privatization Fund	22				
Other	23				
Total Payments made through the KCB		1,100,000	1,100,000	313,002	-786,998

General Fund Appropriations 2009

	KCB	OSR	Total
Economic Classification	€ '000	€ '000	€ '000
Wages and Salaries	520,000		520,000
Goods and Services	283,050		283,050
Utilities	56,950		56,950
Subsidies and Transfers			
Capital Expenditures	240,000		240,000
	1,100,000	-	1,100,000