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Is there hope for Kosovo's rule of law system? Three immediate actions needed

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Policy Recommendations

1. Strengthening the administration of judiciary should be given more attention and be considered as a crucial part of rule of law reforms, as justice needs to be delivered fairly and on time.
2. Reforming the disciplinary system for judges and prosecutors will derive as a mean for sustainability of the system.
3. Vetting is a very sensitive process that will need a strong commitment from the government to push it forward.

Abstract

Starting just after the war and for more than 20 years now, Kosovo has had international community as the strongest provider of support to strengthen the rule of law. Even though many reforms were undertaken, the country still faces persistent problems. Rule of law in Kosovo, being on top of the state reforms priority list like the European Reform Agenda as well as those requested by the European Union (EU), has not stopped Kosovo's judiciary system to continue being fragile and inefficient. Moreover, this has also not stopped the delay in delivering justice,

piling of the backlog of cases at courts, and corruption as a mean to mediate resolution of cases. As stated in many international reports, especially in the Kosovo Country Reports delivered by the European Commission over years, the current state of rule of law in Kosovo affects the country's democratic and economic development, the approximation with the EU and overall consolidation of the state. Thus, robust actions that are targeted to amend Kosovo's fragile judiciary system are needed immediately.



Is there hope for Kosovo's rule of law system? Three immediate actions needed

The European Commission in the 2021 Kosovo Country Report specifically states that “Kosovo is still at an early stage in developing a well-functioning judicial system, and has some level of preparation for applying the EU acquis and the European standards in the area of the judiciary and fundamental rights. During 2021, a limited progress regarding the judiciary and prosecution has been made”.

“Nevertheless, the reforms that are needed in Kosovo to uplift the rule of law and judiciary sector should have been done already in the past and be considered old by now.”

The past 20 years should have provided enough lessons for Kosovo's current state of rule of law. Each former government is responsible for it, as they have all been pushing the most fragile and sensitive matters to the next one, leaving Kosovo way behind with reforms. Having a new government on the scene always brings aspirations for a better future. Nevertheless, the reforms that are needed in Kosovo to uplift the rule of law and judiciary sector should have been done already in the past and be considered old by now.

The new Government of the Republic of Kosovo was voted on 22 March 2021. On 7 May 2021, the government has approved its programme for 2021-2025. This programme as well as Vetëvendosje's¹ 2021 electoral campaign for Kurti II government² and the eighth legislature of Kosovo's parliament, stated that its vision for rule of law is an independent, impartial, efficient, and professional justice, which they aim to achieve by strengthening the judiciary system and increasing trust of citizens. Moreover, they said that the government will demonstrate commitment in the fight against organised crime

and corruption and in this regard will increase human and professional capacity in the special department within the Basic Court in Pristina and the Court of Appeals, and in the departments for organised crime, corruption and financial crimes within the Special Prosecution³.

The Functional Review of the Rule of Law Sector was launched on 26 September 2018. It started as a flagship initiative led by Kosovo's Minister of Justice at that time, in cooperation with the Chairs of the Kosovo Judicial Council and Prosecutorial Councils and supported by the European Union Special Representative/European Union Office in Kosovo, The European Union Rule of Law Mission in Kosovo (EULEX) as well as the U.S. and UK Embassies in Pristina.⁴ It was designed to analyse the judiciary, the prosecution, police, agencies and line ministries, or other independent bodies, and the rule of law processes, to identify key obstacles and measures to be taken to address them. This included main institutions but also the specific bodies within them, processes, legal and sub-legal framework, daily practices, daily followed protocols, human resources, etc.⁵ that should be a solid ground for reforming the judiciary. Moreover, the Country Report 2020 has encouraged the process of the review to be moved forward. The Functional Review of the Rule of Law Sector resulted in a Rule of Law Strategy and Action Plan, which outlines the main challenges in the rule of law system and was adopted in August 2021.⁶

1) Lëvizja Vetëvendosje (LVV; Self-determination Movement)
2) Second government of Prime Minister Albin Kurti

3) https://www.vetevendosje.org/alternativa_vv/prioritetet2021/#e-drejta-e-drejtësia

4) <https://www.eulex-kosovo.eu/?page=2,11,862>

5) Ministry of Justice of Kosovo. <https://md.rks-gov.net/page.aspx?id=1,144>

6) Kosovo Country Report 2021, page 4, https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en



In the latest meeting of Kosovo and the European Union (5th Stabilisation and Association Agreement Sub-committee on Justice, Freedom and Security) held on 9-10 June 2021, it was agreed from both sides that a full implementation of all rule of law related legislation remains crucial.⁷ Therefore, immediate action with targeted results is awaited from the government in the sector of rule of law in Kosovo. Acknowledging the importance, IPA III also provides its support for the rule of law, as it “presents a solid policy-driven approach, with strategic and dynamic deployment of assistance, putting the “fundamentals” at its core: focusing on rule of law and respect of fundamental values; strengthening democratic institutions and public administration reform; promoting economic governance and reforms towards competitiveness.”⁸

This Policy Brief provides recommendations that are some of the many needed actions to be implemented for strengthening the rule of law sector by reforming its functioning and administration.

1. Strengthening the administration of judiciary

The 2021 EC Kosovo's Country Report states that overall administration of justice continues to be slow, inefficient and vulnerable to undue political influence.⁹ On the other hand, Kosovo's courts continue to have an enormous number of backlogged cases. As an illustration for the Basic Court of Pristina in the 2020 report from the Kosovo Judicial Council, there were around 13,760 cases older than three years. From those, 35% were of backlogged criminal cases (in General Department),

44% of civil cases, 43% of cases in Serious Crimes Department.¹⁰ For some of these cases, due to the delay at the court's proceedings, their statute of limitation passes, and they remain without a chance to be brought before justice.

“As the administration of judiciary remains old, slow and inefficient, Kosovo's courts continue to have an enormous number of backlogged cases.”

To make a change for this situation, there were a number of U.S. and EU projects embedded at the courts throughout Kosovo and within Kosovo Judicial Council, whose main purpose was to provide directly on-the-job assistance in administration of cases. These projects have raised the awareness about the role of the supportive staff at the courts by proving directly and through concrete figures about the effect that they have for a well administered court. Engagement of external support staff consisted of direct support in daily assignments, job-coaching and capacity building for internal staff. These projects have also provided technical support, being with hardware and software for managing cases.

Despite all the external support through years now, the courts have failed to internalise all the experience, and advance its administration to a desirable level, and continue to benefit from international projects designed accordingly. Kosovo rolled-out an electronic case-management system and offset-up a central criminal records system, however challenges remain¹¹, as it is still common for some Kosovo's courts to have handwritten registries for managing cases and hardcopy documents and filing system, and judges to not have support staff. In many cases judges need to share the support

7) JOINT PRESS RELEASE 10 June 2021, EUROPEAN COMMISSION-DG FOR NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS, KOSOVO GOVERNMENT-OFFICE OF THE PRIME MINISTER, 5th Stabilisation and Association Agreement Sub-committee on Justice, Freedom and Security.

8) https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2810

9) Kosovo Country Report 2021, page 4, https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en

10) KJC annual report 2020. https://www.gjvqesori-rks.org/wp-content/uploads/reports/39897_KGJK_Raporti_Vjetor_2020_SHQ.pdf

11) Kosovo Country Report 2021, page 16, https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en



of one legal clerk/professional associate as the number of support staff in comparison to the number of judges continues to remain low. Thus, judges are being overburdened with administrative tasks, rather than focused with their engagement and energy in the matters of the case.

“Despite all the external support through years now, the courts have failed to internalise all the experience, and advance its administration to a desirable level, and continue to benefit from international projects designed accordingly.”

Taking all the above mentioned into consideration, administration of judiciary is of utmost importance for a delivery of justice. See below the main issues that need immediate attention and concrete action for administering the court cases and proceedings properly and efficiently:

- In order for the courts to provide better services and transparency for public, they should together with the Kosovo Judicial Council, as well as international project(s) that are involved in supporting administration of justice in Kosovo, ensure they have the necessary technical means and provide continuous support for capacity building of administrative and professional support staff to use modern technology in the administration of courts.
- The courts and the Kosovo Judicial Council should increase the number of judges, and appoint at least one professional support staff and one administrative support staff per judge. This increase should be done based on an analysis that responds to their needs and number of cases, so that judges would be given more time and energy to deal with merits of the case.
- The courts should be held responsible for the full implementation of electronic Case Management Information System followed

with capacity building of staff, so that data entered are correct and the system is used properly and sustainably.

- Public awareness programmes are needed to encourage the usage of mediation system and familiarity with alternative dispute resolution tools, as that would unload a number of cases from the courts. In this matter, courts and the Kosovo Judicial Council can also be supported by the Ministry of Justice.

2. Reforming the disciplinary system for judges and prosecutors

“Nevertheless, fundamental problems are still encountered in the judiciary and prosecution in Kosovo.”

The Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC), whose mandate is determined by the Constitution, Law 06/L-055 on the Kosovo Judicial Council and Law No. 06/L-056 on Kosovo Prosecutorial Council, respectively, are the main institutions responsible for the functioning of judiciary and the prosecution. Whereas the Law Nr. 06/L – 057 on disciplinary liability of judges and prosecutors is the main legal act that regulates the process and measures for the discipline of judges and prosecutors. Impartiality, integrity, professionalism, and independence are the main principles that should lead the work of judges and prosecutors, and these Councils are responsible to act and discipline judges and prosecutors once these principles are not being applied. The Country Report 2021 by European Commission states that the composition and appointment procedures of these institutions are broadly in line with European standards.¹²

12) KJC Report 2020, page 122, chapter 11, “Challenges”. https://www.gjvqesori-rks.org/wp-content/uploads/reports/39897_KGJK_Raporti_Vjetor_2020_SHQ.pdf Kosovo Country Report 2021, page 17. https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en



Nevertheless, fundamental problems are still encountered in the judiciary and prosecution in Kosovo. By now, Kosovo is well known for the phenomena of having political interference in the rule of law sector, poor performance of judges and prosecutors, low level of professionalism and competence, and corruption present among them.

When it comes to the application of law on disciplinary liability of judges and prosecutors, the proceedings and measures taken as per the law, the Kosovo civil society organisations that have been monitoring the process all agree about its lack of implementation thus resulting with inefficiency of the process¹³. More efforts are still needed to ensure more consistent and effective implementation of the law, procedures and disciplinary measures.

“As with many other laws in Kosovo, even though the legal framework is in place, they lack in implementation.”

Based on the Country Report 2021 findings, the law in force on disciplinary liability of judges and prosecutors has shown some initial implementation, nevertheless that is not sufficient. As with many other laws in Kosovo, even though the legal framework is in place, they lack in implementation. Moreover, the legal framework fails to provide a clear safeguard for the independence and impartiality of the judiciary from pressure and interference in practice. Codes of ethics that are already in force for judges and prosecutors have the same fate as the legal framework – its implementation is crucial and more than needed in practice.

“Moreover, the legal framework fails to provide a clear safeguard for the independence and impartiality of the judiciary from pressure and interference in practice.”

13) Levizja Fol and BIRN: <http://levizjafol.org/wp-content/uploads/2020/02/AL-Ankesat-Disiplinore-ndaj-Gjyqtar%C3%ABve-31.01.pdf>, GLPS: <http://www.rolpik.org/wp-content/uploads/2020/10/Template-Disciplinary-measures-against-judges-and-prosecutors--English.docx.pdf>, KLI: <https://kli-ks.org/llogaridhenia-e-gjykatesve-dhe-prokuroreve/>

Based on all explored above, the next step by step recommendations to be implemented by the Kosovo Judicial Council and the Kosovo Prosecutorial Council to reform the system are:

- Ex-post analysis of the system, taking into account the analysis by civil society organisations in Kosovo that have been monitoring the work of KJC and KPC;
- Full implementation of legislation in force;
- Monitoring together with civil society organisations that already were involved the implementation with clear indicators;
- To put emphasis on the quality of performance evaluations conducted by both Councils;
- Gap analysis of the implementation deriving from the monitoring;
- Action plan with concrete step to address the findings of the analysis.

3. Vetting

After the completion of the Functional Review of the Rule of Law, the vetting of judges and prosecutors is the next step needed. As there were cases of political interference in the judiciary identified¹⁴, vetting should provide an assessment for the integrity of judges and prosecutors to determine their suitability for engagement in their roles for delivering justice.

Some representatives of civil society organisation in Kosovo that monitor developments and institutions within the area of rule of law and judiciary are convinced that the situation in the justice system cannot change without a vetting process, which needs to be transparent, based on law and legal

14) Ibid.



procedures and to guarantee the integrity of this process.¹⁵

“After the completion of the Functional Review of the Rule of Law, the vetting of judges and prosecutors is the next step needed.”

On 6 May 2021 was held the first meeting of the Working Group for drafting the concept document for the vetting process. The Minister of Justice in the Government of Kosovo, Albulena Haxhiu said that the institution she leads has not yet decided on the scenario with which the vetting process will take place in the justice system. During a press conference, after the government meeting, Haxhiu stated that they are working intensively to do the vetting, because as she said, this process is a “social demand”.¹⁶

Up to date, the government has proceeded with its commitment to undergo the vetting process and the concept document is already finished by the Ministry of Justice.

On the other side, European Union has stated its scepticism about the vetting process, and has stated also its position in the Country Report 2021. The vetting is considered “only as an exceptional measure of last resort, once all existing tools and mechanisms to ensure integrity and fight corruption of judicial officeholders have been exhausted, and should be in line with European and international standards as well as Venice Commission advice”. The EU proposes to thoroughly utilize existing mechanisms, and after that to see for the need of improvement, including legislative changes.¹⁷

In favour of the vetting process, below are the needed steps. Firstly, key procedures for implementing the process should be designed addressing the lack of professionalism, inefficiency and political influence dominating the rule of law sector. Secondly, clear benchmarks for assessing concrete results, quality, effectiveness, independence, and impartiality should be established, and integrated into the vetting process. Concretely, officials should be vetted on key principles, such as ethical integrity, level of professionalism, proximity to criminal and/or political circles, and assets’ declaration. Thirdly, the key categories to undergo the vetting process should be the whole staff of the rule of law sector such as judges, prosecutors, the police, and other core agencies’ officials. One aspect that should continuously accompany the vetting process is inclusiveness of local and international experts from academia and civil society. Attention should be also put on the lessons learned from the Albanian experience of vetting process for previous mistakes to be omitted. The presence of the European Union through the International Monitoring Operation, composed of judges and prosecutors from EU member states, can be replicated in Kosovo as well.¹⁸

Conclusion

Kosovo’s rule of law sector has many loops that need to be straightened simultaneously. The common denominator for most of them is political will.

Strengthening the administration of judiciary should be given more attention and be considered as a crucial part of rule of law reforms, as justice needs to be delivered fairly and on time.

15) <https://www.koha.net/arberi/202398/viti-i-vetingut-edhe-ne-kosove-kerkohet-nisja-e-procesit-per-filtrimin-e-sistemit-te-drejtises/>

16) <https://top-channel.tv/video/top-news-vetingu-edhe-ne-kosove-ministria-e-drejtisesi-ende-nuk-e-dijme-skenarin/>

17) Kosovo Country Report 2021, page 16, https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en

18) “Five Integral Questions about the Vetting Process”, GLPS, Rreze Hoxha Zhuja, April 21, 2021. <http://www.legalpoliticalstudies.org/five-integral-questions-about-the-vetting-process/>



Reforming the disciplinary system for judges and prosecutors will derive as a mean for sustainability of the system. Throughout the process of amending the rule of law in Kosovo, judges and prosecutors need to be held continuously accountable for their engagement in delivering justice.

Vetting, even though a highly controversial topic between the government on one side and the EU on the other side, is a very sensitive process that will need a strong commitment to push it forward. What is certain until now is the support of Kosovo's citizens to get the vetting done once and for all. In the meantime, Kosovo will continue to rely on international support for the rule of law reforms for another period of time in the future.

References

- National Programme for Implementation of the SAA (NPISAA) 2021-2025
- Draft National Programme for Implementation of the SAA (NPISAA) 2022-2026
- European Reform Agenda / European Reform Agenda 2
- "Five Integral Questions about the Vetting Process", GLPS, Rreze Hoxha Zhuja, April 21, 2021, <http://www.legalpoliticalstudies.org/five-integral-questions-about-the-vetting-process/>
- Functional review of the rule of law - Ministry of Justice of Kosovo. <https://md.rks-gov.net/page.aspx?id=1,144>
- Group for Legal and Political Studies "Disciplinary measures against judges and prosecutors". <http://www.rolpik.org/wp-content/uploads/2020/10/Template-Disciplinary-measures-against-judges-and-prosecutors--English.docx.pdf>
- Hoxhaj, A. The EU Rule of Law Initiative Towards the Western Balkans. Hague J Rule Law 13, 143–172 (2021). <https://doi.org/10.1007/s40803-020-00148-w>
- IPA III
- JOINT PRESS RELEASE 10 June 2021, EUROPEAN COMMISSION-DG FOR NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS, KOSOVO GOVERNMENT-OFFICE OF THE PRIME MINISTER, 5th Stabilisation and Association Agreement Sub-committee on Justice, Freedom and Security. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2810
- Kosovo Country Report 2021. https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en
- Kosovo Government Strategy. <https://kryeministri.rks-gov.net/wp-content/uploads/2021/05/Programi-i-Qeverise-se-Kosoves-2021-2025.pdf>
- Kosovo's Draft Strategy on the rule of law. <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=41053>
- Levizja FOL and BIRN "Disciplinary Complaints of Judges". <http://levizjafol.org/wp-content/uploads/2020/02/AL-Ankesat-Disiplinore-ndaj-Gjyqtar%C3%ABve-31.01.pdf>
- Kosovo Law Institute "Accountability of judges and prosecutors. <https://kli-ks.org/llogaridhenia-e-gjykatesve-dhe-prokuroreve/>
- "Vettingu pa alternative". The week against corruption- 09-14 December 2018. <https://kli-ks.org/wp-content/uploads/2019/09/3.-Vetingu-pa-alternative.pdf>, IKD, GLPS, COHU, INPO, GAP, COLUMBUS, KIPRED, ACDC.



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