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# GOVERNMENT BETWEEN PLANNING AND IMPLEMENTATION

**Report on the level of implementation of the  
Annual Government Work Plan in the field  
of Good Governance and Rule of Law**



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#### ABOUT KLI,

Kosovo Law Institute, is a nongovernmental and non-profit organization of public policy, a think tank specialized in the justice sector.

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## I. EXECUTIVE SUMMARY

Kosovo Law for Justice (KLI), through the Good Governance Program, at the beginning of 2021 has started monitoring and evaluating the work of the Government of Kosovo, in terms of implementation of strategic and operational plans of the Ministries, as well as the legislative program and strategic plan of the Government. The assessment of the work of the executive is based on systematic and continuous monitoring according to the areas specified above, monitoring of decisions taken by the Government, adoption of laws and sub legal acts, as well as their alignment with the European program and agenda.

On March 22, 2021 the Assembly of Kosovo elected the new Government led by Albin Kurti, chairman of the Vetëvendosje Movement. The Kurti-led executive has three deputy prime ministers and 15 ministries, five of which are headed by women. The government has approved its program only on May 7, 2021 or a month and a half after its establishment. In the same meeting, the Government had approved the Strategic and Operational Plans of the Government of Kosovo 2021-2025, the Legislative Program for 2021 and the Strategic Plan for 2021.

**Implementation of the Strategic and Operational Plan: The Office of the Prime Minister**, as the central coordination mechanism of the Government, within its Strategic and Operational Plan had included five (5) strategic goals which are implemented with 30 operational objectives and 91 activities. From the monitoring of the fulfillment of the defined activities, **KLI finds that out of 91 planned activities, 56 of them or 61.5% have been implemented, while 35 or 38.5% of the activities planned for 2021 have not been implemented or carried over to the following year.**

**The Ministry of Justice** has five (5) strategic goals, divided into 26 operational objectives, which are implemented through about 80 planned activities, of which 61 of them are planned to be implemented in 2021. The KLI monitoring shows that **the Ministry of Justice has achieved the implementation of 34 or 54% of the planned activities, while 28 activities or 46% of them have not been implemented and have been carried over to subsequent years.** According to KLI, the Ministry of Justice can be considered one of the most active institutions in the implementation of its legislative program.

**The Ministry of Internal Affairs**, as a key mechanism for the rule of law and public safety within the Strategic and Operational Plan, has included four (4) Strategic Goals, with 40 operational objectives, and over 204 activities planned for implementation in 2021. According to KLI assessment, out of 204 planned activities, MIA has managed to implement 124 activities while 80 of them have not been implemented, which in percentage 60.8% of SOP activities have been implemented.

**Implementation of the European Agenda:** After approval by the Government on July 14, the Assembly of Kosovo on October 4, 2021 approved the National Plan for the Implementation of the Stabilization and Association Agreement (NPISAA), as a key document of the European agenda of Kosovo. On July 11, the Government approved the ERA II Action Plan, a plan which was approved by the Assembly of Kosovo on October 4, 2021, which in the perspective of the European Commission Country Report, represents a positive trend and focus of the Government in the implementation of reforms for European Agenda.

**OPM**, for the implementation of the SAA, out of 21 planned activities has implemented 17 or 81% of them, while four (4) activities or 19% have not been implemented during 2021. On the other hand, 14 activities of the SOP of the OPM have been linked to the implementation of the European Reform Agenda (ERA). Of these 14 activities, 12 of them have been implemented while only two (2) have remained unimplemented.

In principle, the implementation of over 80% of SoP activities related to the NPISAA and 12 of the 14 ERA activities can be assessed as a high level of implementation, but in the assessment of activities not included in the SoP and the approach where a number of activities (indicators according to ERA II) are in function of the implementation of an objective, where the implementation or fulfillment of some activities does not meet the objective as a whole, while the EU assesses implementation on the level of objectives. The OPM should commit to better planning and harmonized with the European agenda of activities within the SoP.

**The Ministry of Justice**, out of 23 planned activities related to the European Agenda, has implemented 17 during 2021, while six (6) of the activities stemming from the European Agenda have not been implemented.

**The Ministry of Internal Affairs** for 2021 had planned 29 activities related to the NPISAA and 23 related to the European Reform Agenda (ERA II). Out of 29 planned activities, MIA during 2021 has managed to implement 16 or 55% of the planned activities that are related to NPISAA, while 13 or 45% of them have not been implemented. Whereas, out of 23 activities related to ERA II, MIA has managed to implement 18 or 78% of them, while five (5) activities or 22% have not been implemented. Part of the European agenda of the MIA are also the activities related to the implementation of **Public Administration Reforms**. None of these activities have been implemented by the MIA in 2021 and as a result the financial support from the EU is threatened.

**Implementation of the Strategic Plan:** During 2021, the strategic plan of the Government of the Republic of Kosovo envisaged the approval of 36 strategic documents by the Government of the Republic of Kosovo which covers 16 priority areas as defined by the Strategic Planning Office. However, so far only five (5) strategic documents have been approved by the Government, or only 13.8% of the annual strategic document plan.

Among the main achievements of the Government for 2021, remains the adoption of the Rule of Law Strategy. One of the key shortcomings of this Strategy, as well as many other strategies approved by the Government of Kosovo, is the lack of financial alignment of planned activities. From the public information possessed by KLI, from the total planned value of 23 million Euros, over 18 million Euros are inseparable for the implementation of the Strategy.

**Implementation of the legislative program of the Government:** This program during the year has been supplemented and amended seven (7) times, and as a result with the decision of November 25, 2021, the legislative program included 188 draft laws for 2021. Government of the Republic of Kosovo since its establishment in March until the end of 2021 out of 188 proposed draft laws has approved 119 of them. Whereas, in the Assembly, the Government has managed to approve 36 out of 119 submitted draft laws or 32%. Of these, 90 draft laws or 80% of them are transferred from previous years or are amendments to the current laws in force, while only 24 or 20% of them are new laws.

Out of the 12 planned draft laws, the OPM has managed to approve in the Government eight (8) or 66.6% of them. While out of eight (8) draft laws approved by the Government, four (4) of them have passed the Assembly procedures and have been approved.

Out of 31 planned draft laws, the MoJ has managed to approve in the Government 19 or 61% of them. Whereas out of 19 draft laws approved by the Government from the legislative program of the MoJ, only two (2) of them were approved by the Assembly of the Republic of Kosovo.

Out of 13 planned draft laws, MIA has managed to approve in the Government only two (2) or 15.3% of them. While none of the draft laws planned and approved by the Government has been reviewed and approved by the Assembly of the Republic of Kosovo.

**Good governance and the rule of law:** The weak point of the Kurti government is undoubtedly the lack of transparency and communication with the public. Most of the official websites of the OPM and the Ministries lack basic data regarding the deputy ministers, advisors, biographies or even contact details.

Public Administration Reform (PAR) has been a priority for Kosovo and every government, since its inception, has placed it high on the list of priorities. These reforms are essential in the implementation of the reforms for the European agenda, economic development, as well as proper planning of a country's financial resources. Even though a year has passed since the Kurti II Government started its work, the biggest setbacks that this Government has are related to PAR.

One of the most important activities of the Government has been the Rule of Law Strategy 2021-2026, approved in August 2021. The Strategy, defines as the main problems in this field, the prevention and fight against organized crime and corruption, lack of capacity, coordination and will in this regard as well as the inadequate functioning of the system of confiscation of property used or acquired through the criminal offense, problems in the execution of criminal sanctions, low level of use of alternative measures, the need to establish a probation system, etc.

KLI has also monitored the protection and promotion of human rights and fundamental freedoms in documents approved by this Government. In addition to these documents, KLI has identified a lack of Government planning to draft and adopt certain policies which are necessary to protect human rights and fundamental freedoms.

**Dialogue** is one of the most controversial points of this Government. Both before taking office on March 22, 2021 and after taking office, the ruling political party has had a minimizing approach to the importance of dialogue between Kosovo and Serbia facilitated by the European Union. It was also stated that there will be a new approach to dialogue in general and to the agreements reached so far in particular. The main goal of the Government in the dialogue is mutual recognition, succession, recognition by the five EU countries, as well as membership in the UN. The year 2021 can be considered a lost year in terms of dialogue and common goals of Kosovo and the international factor.



## II. INTRODUCTION

The Kosovo Law Institute, within its Good Governance program, has initiated a process of monitoring the implementation of the Government Program in specific areas. Due to the approach and focus of KLI, monitoring will initially be done only in the field of Good Governance and Rule of Law, applying a horizontal approach of the European agenda in the implementation of the Government program.

The monitoring will be done based on a methodology of evaluating the implementation of the Government program through the monitoring of the legislative program, the strategic plan, and the defined areas mentioned above of the strategic and operational plans of the Ministries. This will be done by evaluating on a daily basis the relevant institutions in the areas specified above, monitoring the decisions taken by the Government, the adoption of laws and sublegal acts, their alignment with the government program and the European Agenda.

The Government of the Republic of Kosovo, which emerged from February 14 elections, was formed in March 22, 2021. This government approved its program in May 7, 2021 in its 11<sup>th</sup> meeting. The Government program is the main document that enshrines the priorities offered as a vision which the Government presents to the citizens by committing to its implementation. The program presents the Government's major priorities, including a number of key commitments to be implemented during its governance.

The Government program is divided into 3 chapters with 18 priorities and according to civil society estimates 165 commitments. Three of the first five priorities are addressed in this paper and include:

- Good Governance;
- Rule of law; and
- Human rights

To functionalize the vision and commitments of the Government, the state administration, based on the Regulation of the Prime Minister's Office<sup>1</sup>, drafts the Annual Government Work Plan (AGWP) for the period of 1 year and indicative for the following 2 years. In the current government, this document is not called the Annual Work Plan of the Government, but has been renamed to Strategic and Operational Plans of the Ministries (SOPs), but in essence it remains the same document.<sup>2</sup>

The idea of this document is to implement the vision of the Government expressed in the Government Program and to link it to the state agenda stemming from international agreements, the European agenda and long-term government planning (such as sectoral strategies in force, Medium Term Expenditure Framework, National Plan for the Implementation of the Stabilization and Association Agreement, etc.).

As a practice so far, each incoming Government approves its program and for a very short period transfers the program from a document with major objectives to a functional and operational document with concrete actions in specified timeframes and budgeted.

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<sup>1</sup> See Article 37 point 1.8 of Regulation no.16 / 2013 on the organizational structure of the office of the Prime Minister supplemented and amended which is not yet harmonized with the legal changes of the State Administration / Civil Service. But, based on the functions of the Offices / Departments within the OPM, we consider that the Coordination Secretariat of the Government is the mechanism that coordinates the work in drafting and monitoring the annual work program of the Government.

<sup>2</sup> See Government decision no. 01/11 dated 7 May 2021.

### III. IMPLEMENTATION OF STRATEGIC AND OPERATIONAL PLANS OF THE GOVERNMENT OF KOSOVO 2021-2025

Pursuant to Regulation no. 09/2011 of the Government of the Republic of Kosovo,<sup>3</sup> the Government drafts and approves the Annual Government Work Plan, a practice followed since the entry into force of this regulation in 2011. In 2021, this process has changed the name to the Strategic and Operational Plans of the Government of Kosovo 2021-2025 (SOP), without changing the legal framework. In principle, it is the same document that presents the strategic goals, operational objectives and activities in implementation of the Government program and obligations arising from the European agenda, strategic documents, and financial framework for 2021 and indicators for subsequent years until 2025.

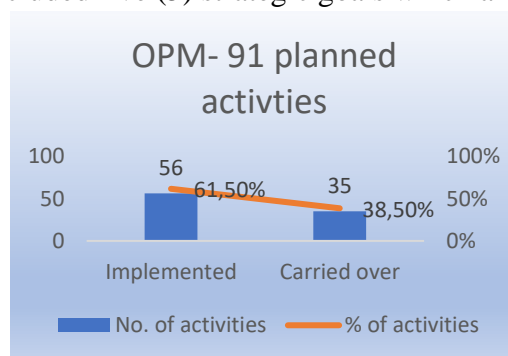
Strategic and Operational Plans 2021-2025 was approved at the Government meeting in May 2021 together with the Government Program 2021-2025, the Legislative Program for 2021 and the Strategic Plan for 2021.

The Kosovo Law Institute (KLI) has started to systematically monitor the implementation of the Government Program with a focus on several institutions related to good governance, rule of law, human rights, and will have a horizontal approach in these areas in line with the Kosovo's European agenda. Therefore, for the purposes of this report, KLI will submit reports regarding the implementation in practice of the obligations arising from:

1. Implementation of the Strategic and Operational Plan - Office of the Prime Minister
2. Implementation of the Strategic and Operational Plan - Ministry of Justice
1. Implementation of the Strategic and Operational Plan - Ministry of Internal Affairs

#### 1. Implementation of the Strategic and Operational Plan - Office of the Prime Minister

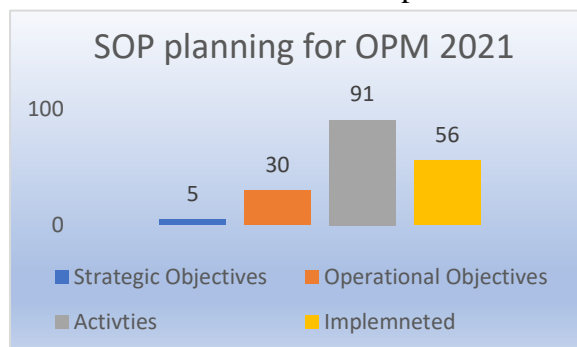
The Office of the Prime Minister as the central coordination mechanism of the Government's work, within its Strategic and Operational Plan has included five (5) strategic goals which are implemented with 30 operational objectives, and 91 activities. From these activities, among others, is expected the drafting and approval of 12 draft laws, two (2) strategies, and one (1) concept document. From KLI monitoring, access to publicly accessible documents, and requests for access to public documents and requests for information to the OPM, the Kosovo Law Institute has managed to assess the implementation of the SOP for the Office of the Prime Minister. From the available data, out of 91 planned activities, 56 of them or 61.5% have been implemented, while 35 or 38.5% of the activities planned for 2021 have not been implemented or carried over to the following year.



<sup>3</sup> Article 47 of the Rules of Procedure of the Government of the Republic of Kosovo no. 09/2011.



The first strategic goal of the OPM is related to the aims of the Government program 2021-2025 for Good Governance where it aims to achieve **Integrated Governance** through four (4) operational objectives, and 26 activities. The implementation of this strategic goal stands at the level of 61.5% or 16 out of 26 planned activities have been implemented while 10 activities or 38.5% have not been implemented.



The most important activity as part of this strategic goal is the drafting and approval of the National Development Strategy since this strategy expired in 2020. This strategy sets out the highest priorities of the Government for long-term sustainable development, enabling the implementation of key priorities including European Integration. OPM has failed to fulfill

such an obligation during 2021, while the working group has been established and is planned for this document to be drafted and approved during 2022.<sup>4</sup>

On the other hand, the OPM during 2021 has drafted the National Program for the Implementation of the Stabilization and Association Agreement (NPISAA), the Action Plan of the European Reform Agenda II (ERA).

The second strategic goal of the OPM, from the Government Program 2021-2025 for Good Governance is **Efficient Governance**. For the implementation of this strategic goal, eight (8) operational objectives have been planned, which will be implemented through 17 activities. The implementation of this strategic goal stands at the level of 58.8% or ten (10) out of 17 activities have been implemented while seven (7) or 41.1% have not been implemented or have been carried over to subsequent years.

Among the activities planned by the OPM that are part of this strategic goal was the drafting and approval of the draft law on the Government, where this law aims to regulate the organization, functioning, manner of work and decision-making procedures of the Government. This draft law was approved in December last year and it has not yet been reviewed and approved by the Assembly. Regarding this draft law, the Venice Commission in December 2020, had given a legal opinion according to the Government requests. Despite the fact that the Government has had a year to address the recommendations of the Venice Commission, and to treat this law with priority during 2021, it was approved only at the end of the year. As a result, the Rules of Procedure of the Government have not managed to be revised as it is related to the legal basis of the Law on Government, a law that is currently in the proceedings of the Assembly of Kosovo.

The third strategic goal of the OPM that is related to the goals of the Government Program 2021-2025 in the service of the citizens of Kosovo is the **promotion and protection of human rights and ensuring gender equality through the empowerment of women**. This strategic goal has the most planned activities, a total of 49 activities which implement ten (10)

OPM has failed to implement some of its key policy, under the SOP responsibilities

- National Development Strategy;
- Strategy for Roma, Ashkali, and Egyptian communities;
- Draft Law on Government;
- Draft Law on religious Freedom in Kosovo

<sup>4</sup> Based on the received answers on the questions sent to OPM for implementation of SOP's.

operational objectives. The implementation of the strategic goal stands at 65.3% or 32 implemented activities, while 17 activities or 34.6% have not been implemented.

Among the activities were the drafting and approval of the draft law on amending and supplementing the Law on Religious Freedom in Kosovo, an activity that has not been fulfilled. This draft law has been recommended by the Office of the Ombudsperson Institution to be reviewed. As such, the adoption of this draft law will enable the harmonization of the traditional approach of tolerance and inter-religious respect with a proper legal basis in Kosovo. The same draft law is being passed year after year in the last few years.

Also, during 2021 has been planned the drafting of the Strategy for the Roma, Ashkali and Egyptian communities. A strategy that enables the planning of the integration of these communities in the social system in Kosovo, and the fact that the previous strategy 2016-2020 has expired, the current government has failed to implement this activity during 2021.

The fourth strategic goal of the OPM that is related to the aims of the Government Program 2021-2025 in the field of security of Kosovo is to **increase the interoperability for the security of the country**. This strategic goal has 14 planned activities which implement seven (7) operational objectives. Kosovo Law Institute until the reporting date has received data for only 10 activities of this strategic goal, therefore the reporting was done based on the received data and information that KLI has managed to collect through public data. The implementation of the strategic goal stands at 10% or only one (1) activity has been implemented during 2021. While for other activities, KLI has not received data and also no data has been found from available public information such as Government decisions.

As part of this strategic goal the drafting and approval of the Kosovo Security Strategy. has been planned. According to Government data, despite the importance of this strategy for the security of the country, it was not approved in 2021 but a draft of it was placed in public consultation website at the end of November 2021. Also, part of this strategic goal has been also two legal acts, the one for the Security Council, and the Law on Accident Investigation. Similarly, these two draft laws were not approved by the Government in 2021.

The fifth strategic goal of the OPM, which is related to the goals of the Government Program 2021-2025 in transparent governance, is to **Achieve comprehensive communication with the public**. This strategic goal has 17 planned activities which implements four (4) operational objectives. The implementation of the strategic goal stands at 70% or 12 implemented activities, while five (5) activities or 30% have not been implemented.

The whole strategic goal is related to the government's approach to the public, transparency in government decisions, centralized approach to government communication with the public. While, various international reports have assessed an increase in public policy consultations<sup>5</sup>, but the same cannot be said about the quality of public consultations as well as the transparency and legality of Government decisions.<sup>6</sup> Therefore, despite the fact that this strategic goal contains the highest level of implementation within the OPM, the level of implementation has not improved the transparency, legitimacy, and quality of public access to policies and decision-making.

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<sup>5</sup> See SIGMA monitoring report for 2021 at: <https://www.sigmaweb.org/publications/Monitoring-Report-2021-Kosovo.pdf> (page 56)

<sup>6</sup> *Ibid* page 42

## 2. Implementation of the Strategic Operational Plan - Ministry of Justice

The Strategic and Operational Plan of the Ministry of Justice derives from the Government Program, the state obligations of Kosovo in the European agenda, and the long-term planning of the Ministry in various strategic documents such as the Rule of Law Strategy, etc. In this plan the Ministry of Justice has five (5) strategic goals, divided into 26 operational objectives, which are implemented through about 80 planned activities where only 61 of them are planned to be implemented in 2021. Kosovo Law Institute through access to publicly accessible documents, and questions and requests sent to the Ministry of Justice has assessed the implementation of 61 activities planned in 2021 by the MoJ.

In the SOP of the Ministry of Justice out of 61 planned activities 39 are legal acts, nine (9) concept documents, three (3) ex-post evaluations, and two (2) strategies. From the KLI monitoring, it appears that the Ministry of Justice has achieved the implementation of 34 or 54% of the planned activities, while 28 activities or 46% of them have not been implemented and have been carried over to subsequent years.

From the systematic monitoring that KLI has done to the implementation of the legislative



program of the Government, the Ministry of Justice can be considered one of the most active institutions in the implementation of its legislative program. By the end of the year, the Ministry of Justice had planned to draft and approve in the Government 31 draft laws, while it managed to have 19 of them approved by the

Government, but on the other hand only three (3) of them were reviewed and approved in Assembly of Kosovo.

The above activities of SOP's implement five (5) Strategic Goals, which are:

- Improving the integrity of justice institutions, through vetting and other mechanisms;
- Reforming the criminal, civil and administrative justice system;
- Addressing crimes against humanity and values protected by international law;
- Improving the services of the free legal professions and the digitalization of the justice system; and
- Prevention and addressing of domestic violence, violence against women and gender-based violence.

Within the strategic goal of **improving the integrity of justice institutions, through vetting and other mechanisms** are five (5) operational objectives which are implemented through 10 specific activities. However, only 3 operational objectives implemented by 3 specific activities are planned for 2021. These activities aim to implement one of the key objectives not only of the MoJ but also of the Government as a whole, such as improving the integrity of justice institutions, including the vetting process. From the information possessed by KLI, except for the concept document for the development of the vetting process, none of the planned activities have been implemented in 2021.



Within the strategic goal of the **reforms in the criminal, civil, and administrative justice system** in the strategic and operational plan were foreseen 10 operational objectives which are implemented through 50 specific activities, of which 43 of them were planned to be implemented in 2021. Of these 25 activities were conducted last year, while 18 were not implemented or were transferred for 2022, which in percentage falls to 58% of the plan of this strategic goal planned for 2021 has been implemented. It is worth mentioning that from the activities planned within this Strategic Goal 24 of them were planned draft laws and the rule of law strategy resulting from the process of functional review of the justice system.

The highlighted achievement of the Ministry of Justice in the implementation of this strategic goal is the adoption of the Rule of Law Strategy as one of the biggest reforms in the entire justice system, through which it aims to address key shortcomings in the justice system. Despite the fact that the implementation of this strategy lacks the budgetary, the drawback that remains to be elaborated below in this report, it still serves as a guide for the reforms that will and should be undertaken in the justice system in Kosovo.

Also, as a recommendation of the rule of law strategy is the need to reform the commercial justice through the drafting and approval of the draft law on the Commercial Court. This draft law has been approved by the Government and also by the Assembly of the Republic of Kosovo and as such has entered into force<sup>7</sup>. However, in this draft law are not taken into account a series of remarks, the main of them is the creation of a gap and unsureness in the treatment of economic cases until the establishment of this court. Within this law it is emphasized that all disputes related to economic issues and administrative disputes in economic disputes are within the jurisdiction of the Commercial Court. While in article 37 repealed a series of articles of law no. 06 / L - 054 on courts transferring the exclusive powers of the basic court in Prishtina to the Commercial Court<sup>8</sup>. However, these powers were transferred prematurely as this court has not yet become operational. Thus, in the middle of the period from the entry into force of the law until the functioning of the commercial court, commercial cases remain without a court address or only at the level of the general department. Consequently, during this period of time there may be consequences in addressing economic subjects for all businesses.

Within the strategic goals it is included also **addressing crimes against humanity and values protected by international law**, which included three (3) operational objectives which were implemented with four (4) specific activities where two (2) of them were planned to be

<sup>7</sup> See: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=53748>

<sup>8</sup> Article 3 of the Law on Commercial Court at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=53748>

implemented in 2021. At this point the Ministry of Justice had planned as activities two (2) draft laws, one (1) strategy, and one (1) concept document. Of the planned activities, except for the concept document for the Institute for Crimes Against Humanity and Values Protected by International Law which was planned for 2022, none of the activities planned for 2021 have been implemented during 2021.

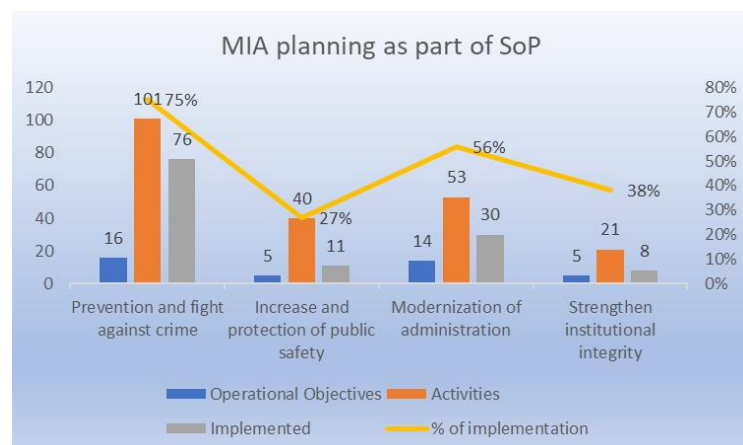
Regarding the strategic goal of improving the services of free legal professions and the digitalization of the justice system, within this strategic goal have been foreseen three (3) operational objectives which are implemented through 10 specific activities where seven (7) of them were planned to be implemented in 2021. Of these activities only three (3) were realized during 2021 while four (4) of them were transferred to subsequent years. In other words, 42.8% of the activities planned within this strategic goal have been implemented in 2021.

The fifth strategic goal of the Ministry of Justice within the SOP is to **prevent and address domestic violence, violence against women and gender-based violence**, a strategic goal that includes four (4) operational objectives implemented through eight (8) specific activities where six (6) of them were planned for 2021. According to the information available to KLI, four (4) of these activities have been completed while 2 of them have not been completed.

### 3. Implementation of the Strategic Operational Plan - Ministry of Internal Affairs

The Ministry of Internal Affairs as a key mechanism for the rule of law and public safety within the Strategic and Operational Plan has included four (4) Strategic Goals, with 40 operational objectives, and over 204 activities planned for implementation in 2021. Kosovo Law Institute through systematic monitoring of the work of the Government, research of public documents, and the request to the Ministry of Internal Affairs for access to documents has evaluated the implementation of the Strategic Operational Plan of the MIA. According to KLI estimates, during 2021 out of 204 activities planned by the MIA has managed to implement 124 activities while 80 of them have not been implemented and have been carried over to subsequent years, which expressed in percentage 60.8% of SOP activities have been implemented.

**Preventing and combating crime** is the first strategic goal of the MIA which includes 16 operational objectives and 101 planned activities. Kosovo Law Institute based on data received from the MIA and research conducted estimates that 76 of the planned activities have been implemented during the past year, while 25 activities have not been taken any action at all for their implementation. In other words, the level of implementation of the SOP so far in terms of this strategic goal by the MIA stands at 75.24% of the SOP planned for 2021.



As stated above, as the first objective within the strategic goal of preventing and combating crime, the Prevention of Organized Crime, Corruption and Terrorism is envisaged. In this objective are foreseen to be implemented a total of 14 activities and most of them were focused on combating the criminal offenses of organized crime, terrorism, cybercrime and other offenses related to organized

crime, 10 of them were implemented in 2021, while 4 were not implemented.



Regarding the **Advancement of the concept of intelligence-led police in the fight against organized crime**, according to the MIA, a total of 4 activities have been undertaken related to human and technical capacity building.

In the objective, the implementation of reforms in the Investigation Department, based on the recommendations arising from the assessment of the situation, an activity was implemented and although it was foreseen as an activity, the implementation of reforms in the Investigation Department based on the recommendations from the assessment of the situation (including the EU progress report and the EU Police Reform Project)) has not been implemented.

In the field of Strengthening human capacity in preventing and combating organized crime during 2021, a total of 7 activities have been carried out. Most of these activities were aimed at organizing various trainings against organized crime, economic and financial crimes.

In the objective, Intensification of the fight against crime through inter-institutional coordination and increase of international police cooperation, 10 activities have been planned, 7 of which were carried out in 2021.

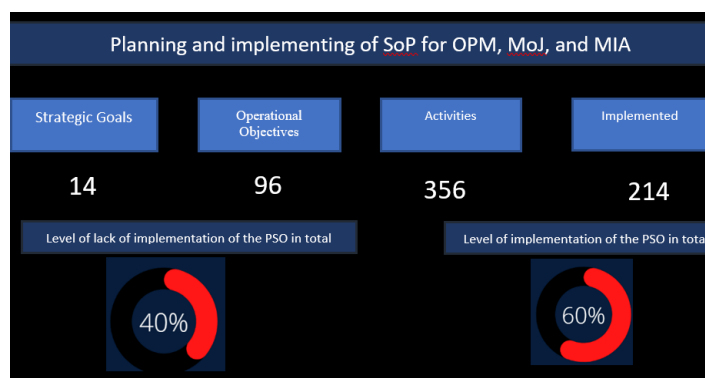
The second strategic goal is to **increase and maintain public safety** within which 5 operational objectives are planned, and 40 activities. The implementation of strategic goal activities is lower than the implementation of the first strategic goal. Out of 40 activities, 11 of them have been implemented, while 29 have not been implemented at all. Expressed in percentage, the realization of this strategic goal is 27.5%.

Third strategic goal **Modernization of public administration**, within which there are 14 operational objectives, and 53 activities for the implementation of the strategic goal. Of these activities, 30 of them have been implemented, while 23 of them have not been implemented. In other words, the level of implementation in percentage is 56.6% of the strategic goal.

The strategic goal of strengthening institutional integrity has five (5) operational objectives and 21 activities for 2021. Of the activities planned for the reporting period, only 8 of them have been implemented, while 13 have been carried over to 2022. Expressed in percentage of realization of this strategic goal turns out to be 38.1%.

At the end of this chapter, KLI estimates that the general shortcoming of the Strategic and Operational Plans of these institutions is the ambiguity in planning with special emphasis on not setting measuring indicators which makes it difficult to measure the implementation of activities with emphasis on those activities that are general. In addition, most of the planned activities are actions of the daily activities of these institutions that are immeasurable, or even a specific action can be easily reported in their implementation.

In addition to the above, based on the monitoring by the Kosovo Law Institute (KLI) within the SOP of the Office of the Prime Minister, the Ministry of Internal Affairs, and the Ministry of Justice, the three institutions subject to this report had a total 14 strategic goals, 96 operational objectives which were intended to be achieved through 356 activities. Out of 356 activities planned to be carried out, 214 of these activities have been implemented in 2021, or in other words 60% of them have been implemented.





#### IV. IMPLEMENTATION OF THE EUROPEAN AGENDA

The Government of the Republic of Kosovo emerged from the elections of February 14, 2021 has continued with the decision taken by the Hoti Government in 2020 to reformat government institutions and consequently reducing the number of ministries and merging mandates and responsibilities of these ministries in OPM and other ministries. As a result of this organization, the Office of the Prime Minister, the Ministry responsible for European Integration and the Ministry of Finance were most affected.

One thing that still remains a challenge in the process of restructuring the staff and the mandate of the former Ministry of Integration is their proper systematization within the Office of the Prime Minister by reviewing the internal regulations of the OPM and other actions that need to be taken for systematization and their incorporation within the OPM.

On the other hand, after approval by the Government on July 14, the Assembly of Kosovo on October 4, 2021 approved the National Plan for the Implementation of the Stabilization and

##### Challenges of implementing the European agenda

1. Low level of implementation;
2. Restructuring of host institutions without adequate planing;
3. Discrepancies between different documents.

Association Agreement (NPISAA), as a key document of the European Agenda of Kosovo. The NPISAA is a document for a period of four years that corresponds to the general goals as a guiding and binding document for Government institutions for the implementation of short and medium term measures aimed at the implementation of the Stabilization and Association Agreement. While on July 11, the Government approved the Action Plan of ERA II, a plan which the Assembly of Kosovo

approved on October 4, 2021, which in the perspective of the report on the country of the European Commission, represents a trend and a positive focus of the Government in implementation of European Agenda reforms<sup>9</sup>. While the NPISAA is the umbrella framework and represents short- and medium-term measures, the ERA is a high-level dialogue process between the Government of Kosovo and the European Commission that incorporates key Kosovo priorities set out in the SAA, and seeks faster implementation. of these reforms through high level support from both the Government of Kosovo and the European Commission.

As mentioned above, the Strategic Operational Plan is intended to be linked to key documents of the European Agenda, more specifically to the NPISAA and the ERA 2 Action Plan. According to international reports, such a link has not yet been fully achieved, and yes so there are discrepancies between activities, implementation deadlines, etc.

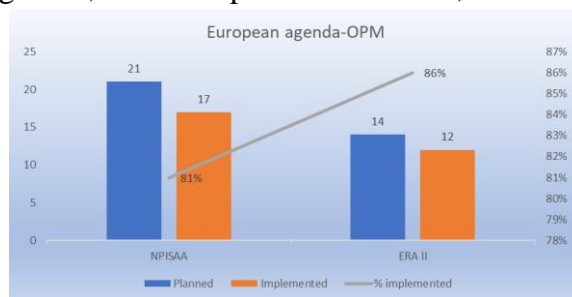
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<sup>9</sup> See European Commission Country Report - Kosovo 2021 Report at: [https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021\\_en](https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en)

## 1. Implementation of the European agenda- Office of the Prime Minister

Office of the Prime Minister of the Republic of Kosovo in the framework of the activities planned in the Strategic and Operational Plan during 2021, out of 91 planned activities, 21 of them have been related to the National Plan for the implementation of the Stabilization and Association Agreement. OPM, out of 21 planned activities has implemented 17 or 81% of them, while four (4) activities or 29% have not been implemented during 2021.

On the other hand, 14 activities of the OPM SOP have been related to the implementation of the European Reform Agenda. Of these 14 activities, 12 of them were implemented in 2021 while only two (2) remained unimplemented.



While within the SOP of the OPM most of the activities related to the NPISAA and the ERA II Action Plan are procedural activities in order to implement short-term measures, within this report it is worth specifying some activities that are structural reforms<sup>10</sup>. From these activities it is worth to specify the activity for the drafting and approval of PKZMSA 2021-2025, activity that has been implemented while on the other hand it is planned to review the same, activity that has not been implemented during 2021.

On the other hand, two (2) important activities for the advancement of human rights are the drafting and approval of the Strategy for the Roma, Ashkali, and Egyptian communities, as

Key actions that have not been implemented by the OPM as part of the European agenda are:

- Drafting and approval of the draft law on the Independent Media Commission;
- Concept document for the protection of journalists' resources.

well as the activity for drafting and approving bylaws deriving from the Law on the Protection of Children. None of these activities, despite the fact that they were related to the implementation of the NPISAA and the ERA II Action Plan, were not implemented by the OPM in 2021. Furthermore, there are other activities that are not included in the SOP- They are part of ERA or PKZMSA. It is worth mentioning the drafting and approval of the draft law on the

Independent Media Commission and the concept paper for the protection of journalists' resources. None of these activities have been implemented in 2021 by the Office of the Prime Minister.

In principle, the implementation of over 80% of SOP activities related to the NPISAA and 12 of the 14 ERA activities can be assessed as a high level of implementation, but in the evaluation of activities that are not included and the approach where a number of activities (indicators according to ERA II) are in function of the implementation of an objective, and the implementation or fulfillment of some activities does not meet the objective as a whole, while the EU evaluates the objectives. Therefore, the OPM should commit to a better, more realistic planning and harmonized with the European agenda of activities within the SOP.

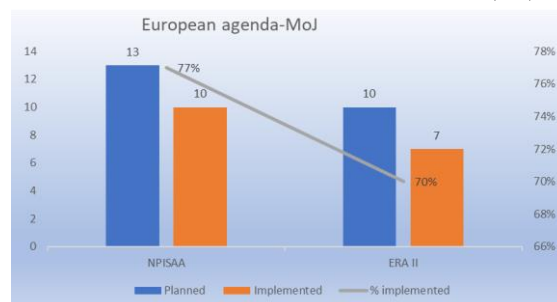
<sup>10</sup> Structural reform means a law, strategy or any action that changes the regulatory framework of an institution or field.

## 2. Implementation of the European Agenda - Ministry of Justice

Ministry of Justice in the framework of activities planned as part of the SOP, 13 of them related to the implementation of the NPISAA of which nine (9) are planned to be implemented in quarters 2, and 3, and four (4) in the quarter 4. In terms of implementation, ten (10) of the planned activities were implemented in the planned time while three (3) were not implemented during 2021.

While the Ministry of Justice in the framework of the Action Plan of ERA 2 has ten (10) planned activities, where seven (7) of them are planned to be implemented in the period of quarter 2 and 3 and three (3) activities in quarter 4. Out of these ten (10) activities, seven (7) or 70% of them have been implemented in time and in full, while three (3) of them have not been implemented.

In total, out of 23 activities planned by the Ministry of Justice related to the European Agenda, 17 were implemented during 2021 while six (6) of the activities stemming from the European Agenda were not implemented during 2021.



As part of the ERA II Action Plan during 2021, activities have been planned in order to implement the priorities from Pillar I:

- Advancing the fight against organized crime and corruption, and implementing key reforms in the field of judiciary and home affairs, and
- Improving the implementation of fundamental rights and freedoms

Within these priorities, as part of the SOP, the drafting and approval of the Rule of Law Strategy 2021-2026, a strategy resulting from the Functional Review of the Rule of Law Sector, have been included. Until it is approved on August 11, 2021 in the Government of the Republic

**The rule of law strategy**  
resulting from the Functional  
Rule of Law review process  
has been adopted without  
respecting the applicable  
regulations and without  
allocating sufficient budget for

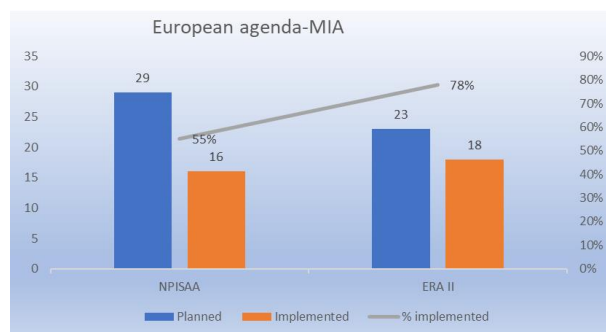
of Kosovo, approval without applying the procedures provided by government regulations in force does not guarantee its implementation. Based on Administrative Instruction no. 03/2015 on budgetary impact assessment for new government initiatives, Article 3 paragraph 1.2.4 provides that any new initiatives that include strategies must be subject to the budgetary impact assessment process. In case of new initiatives, read the strategies, lack of the budget impact assessment or the independent opinion of the ministry responsible for Finance is negative, such an initiative will not be approved by the Government<sup>11</sup>. Furthermore, the Office for Strategic Planning within the Office of the Prime Minister is responsible for issuing the final independent opinion prior to the approval of a strategy by the Government, which includes a set of criteria to be implemented by the institutions proposing a strategy. This includes the cost and budgeting of policy regarding applicable regulations. From KLI requests for access to public documents it has been noticed that the rule of law strategy 2021-2026 is not fully budgeted as it lacks more than 18 million out of 23 million € as the financial impact of this strategy is estimated.

<sup>11</sup> See for more article 4 paragraph 2 of Administrative Instruction no. 03/2015 on budgetary impact assessment for new government initiatives.

### 3. Implementation of the European Agenda - Ministry of Internal Affairs

The Ministry of Internal Affairs in the framework of the activities planned in the Strategic and Operational Plan for 2021 had planned 29 activities related to the National Plan for the implementation of the Stabilization and Association Agreement and 23 related to the European Reform Agenda (ERAII). Out of 29 planned activities, MIA during 2021 has managed to implement 16 or 55% of planned activities that are related to NPISAA, while 13 or 45% of them have not been implemented.

Whereas, out of 23 activities related to ERA II, MIA has managed to implement 18 or 78% of them, while five (5) activities or 22% have not been implemented.



Most of the MIA activities that have been implemented are actions of the daily activities of the Ministry that are immeasurable or can easily be reported as a specific action in the implementation of some activities. On the other hand, the MIA from its activities in the SOP that are related to the European Agenda and that are of special importance are:

- Drafting and approval of the State Strategy for Cyber Security;
- Draft Law on Cyber Security;
- Drafting and approval of the strategy for Public Administration Reform;
- Drafting and approval of the draft law on salaries
- Draft law amending the law no. 04 / L-114 for public official according to the judgment of the Constitutional Court.

None of these activities of particular importance for the functioning of the areas they cover have been implemented during 2021. While the Public

Part of the European agenda of the MIA are also the activities related to the implementation of Public Administration Reforms. None of these activities have been implemented by the MIA in 2021 and as a result the financial support from the EU is endangered.

Administration Reform (PAR) strategic framework, which includes several strategies<sup>12</sup>, has expired. This strategy which is planned to incorporate all PAR strategies has not been drafted during 2021.

While there is still no measurement of the level of implementation of the European agenda of both NPISAA and ERA II by the administration as well as by other mechanisms such as the country report of the European Commission or the monitoring report on the principles of SIGMA public administration, as

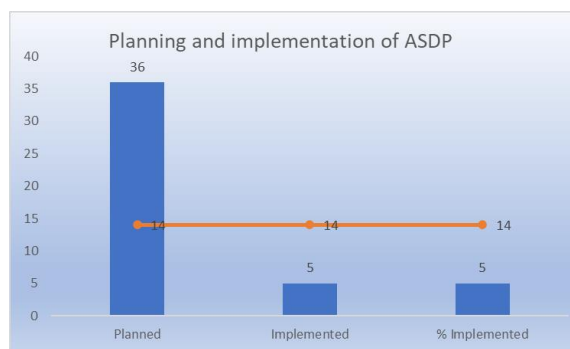
presented above, the level of implementation of activities arising from the NPISAA and ERA II is deficient.

<sup>12</sup> Part of the PAR Strategic Framework are: Strategy for Improving Planning and Policy Coordination, Strategy for Better Regulation, and Strategy for Modernization of Public Administration.

## V. IMPLEMENTATION OF THE STRATEGIC PLAN

The Strategic Documents Plan 2021-2023, as an integral part of the annual government plan, has been prepared based on the proposals of the ministries for the drafting of strategic documents for the next planning period. The Office for Strategic Planning (SPO) has evaluated these proposals based on the criteria set out in Administrative Instruction 07/2018 for planning and drafting strategic documents and plans for their implementation.

This list presents the proposal of which strategies should be developed by the line ministries, and as such excludes some proposed initiatives, while treating some others as external documents (obligations) that are not categorized as strategic documents. Consequently, the SPO is working on the analysis and evaluation of all strategic documents to address the relevance and avoid potential duplications that they have among themselves due to the very large number of strategic documents.



During 2021, the strategic plan of the Government of the Republic of Kosovo envisages the approval of 36 strategic documents by the Government of the Republic of Kosovo which cover 16 priority areas as defined by the Office for Strategic Planning<sup>13</sup>. However, so far only five (5) strategic documents have been drafted and approved by the Government, in other words, only 13.8% of the strategic documents plan has been implemented so far.

On August 11, 2021 with decision no. 04/24, the Government of the Republic of Kosovo has approved the Rule of Law Strategy, a strategy resulting from the process of Functional Review of the Rule of Law. This has been assessed as an achievement of the Government of Kosovo by internal and external mechanisms, despite the fact that it faces many shortcomings. One of the key shortcomings of this strategy, as well as many other strategies approved by the Government of Kosovo, is the financial coverage of the implementation of planned activities. From the public information possessed by KLI, from the total planned value of 23 million Euros, over 18 million Euros are unallocated for the implementation of the strategy.<sup>14</sup>

Also, on May 28, 2021 with Government decision no.04/14 a decision was taken for the approval of the Strategy (2021-2030) for Integrated Waste Management in Kosovo, as well as the State Strategy for Migration 2021-2025 and the Action Plan 2021- 2023. Both of these strategic documents have met the criteria set out in Administrative Instruction no. 07/2018 for planning and drafting strategic documents and action plans.

<sup>13</sup> See more the strategic documents plan as approved by the Government of Kosovo.

<sup>14</sup> The opinion issued by the Office for Strategic Planning also includes the independent opinion of the Ministry of Finance on the budget impact assessment according to administrative instruction no. 03/2015 on budget impact assessment for new government initiatives.



## VI. IMPLEMENTATION OF THE GOVERNMENT LEGISLATIVE PROGRAM

As mentioned above, with the approval of the Government Program 2021-2025, its annexes have been approved, as well as the legislative program for 2021. However, this program has been supplemented and changed seven (7) times during the year and as a conclusion with the decision of November 25, 2021 has been approved and includes 188 draft laws.

The legislative program for 2021 is largely the transfer of draft laws that have been returned for reconsideration to the sponsoring ministries by the Assembly, the amendment of current laws in force, and the transfer of laws from the legislative programs of previous years to this year where in most cases these laws are drafted.

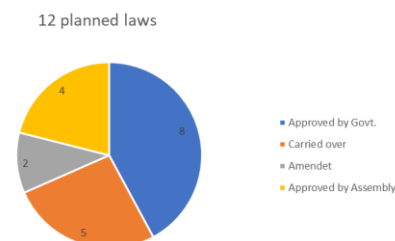
Government and Assembly efficiency in implementing legislative agenda 2021								
	Planned draft Laws	Approved draft Laws	% Laws approved	New Laws	Carried over Laws	Amended Laws	Laws approved in Assembly	% Laws approved in Assembly
OFFICE OF THE PRIME MINISTER	12	8	66%	0	5	3	4	33%
MINISTRY OF FOREIGN AFFAIRS AND DIASPORA	5	1	20%	0	1	0	0	0%
MINISTRY OF FINANCES, LABOR AND TRANSFERS	29	13	44%	8	4	1	9	31%
MINISTRY OF JUSTICE	31	19	61%	2	14	3	2	6%
MINISTRY OF DEFENSE	7	6	85%	5	1	0	2	28%
MINISTRY OF INTERNAL AFFAIRS AND PUBLIC ADMINISTRATION	13	2	15%	0	1	1	0	0%
MINISTRY OF HEALTH	18	16	88%	2	3	11	9	50%
MINISTRY OF EDUCATION, SCIENCES AND TECHNOLOGY	7	5	71%	2	3	0	1	14%
MINISTRY OF CULTURE, YOUTH AND SPORTS	3	1	33%	0	1	0	0	0%
MINISTRY OF LOCAL GOVERNMENT ADMINISTRATION	2	2	100%	1	0	1	0	0%
MINISTRY OF ENVIRONMENT, SPATIAL PLANNING AND INFRASTRUCTURE	15	8	53%	0	8	0	2	13%
MINISTRY OF AGRICULTURE, FORESTRY AND RURAL DEVELOPMENT	25	24	96%	2	11	11	0	0%
MINISTRY OF INDUSTRY, ENTREPRENEURSHIP AND TRADE	17	12	70%	2	10	0	5	29%
MINISTRY OF ECONOMY	3	2	66%	0	2	0	2	66%
MINISTRY OF REGIONAL DEVELOPMENT	12	0	0%	0	0	0	0	0%
<b>TOTAL</b>	<b>188</b>	<b>119</b>	<b>63.2%</b>	<b>24</b>	<b>64</b>	<b>31</b>	<b>36</b>	<b>30.2%</b>

In the framework of what was said above, the Government of the Republic of Kosovo since its establishment in March until the end of 2021 out of 188 proposed draft laws has approved 119 of them. While in the Assembly, the Government has managed to approve 36 of the 119 draft laws and procedures or 20% of the draft laws approved by the Government. Of these draft laws, 90 or 80% of them are laws that are carried over from previous years or are a supplement to the current laws in force, while only 24 or 20% of them are new laws.

### 1. Implementation of the legislative program by the Office of the Prime Minister

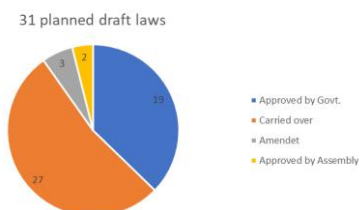
The Office of the Prime Minister (OPM) during 2021 has planned the drafting and approval of 12 draft laws. Of these draft laws, five (5) are carried over from previous years while seven (7) are amendments to the applicable laws.

Out of the 12 planned draft laws, the OPM has managed to approve in the Government eight (8) or 66.6% of them. While out of eight (8) draft laws approved by the Government, four (4) of them have passed the Assembly procedures and have been approved.





## 2. Implementation of the legislative program by the Ministry of Justice



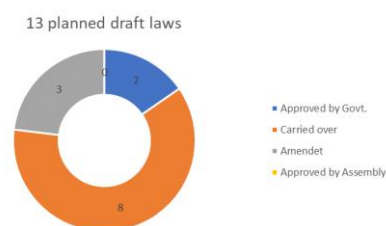
The Ministry of Justice (MoJ) during 2021 had planned the drafting and approval of 31 draft laws. Of these draft laws, 27 are carried over from previous years, three (3) are amendments to the laws in force, and only two (2) draft laws are new.

Out of 31 planned draft laws, the MoJ has managed to approve in the Government 19 or 61% of them. Whereas out of 19 draft laws approved by the Government from the legislative program of the MoJ, only two (2) of them were approved by the Assembly of the Republic of Kosovo.

## 3. Implementation of the legislative program by the Ministry of Internal Affairs

The Ministry of Internal Affairs (MIA) during 2021 had planned for drafting and approval 13 draft laws. Of these draft laws, eight (8) are carried over from previous years, three (3) are amendments to the laws in force, and only two (2) draft laws are new.

Out of 13 planned draft laws, MIA has managed to approve in the Government only two (2) or 15.3% of them. While none of the draft laws planned and approved by the Government has been reviewed and approved by the Assembly of the Republic of Kosovo.



From the above-mentioned activities, the Office of the Prime Minister, the Ministry of Justice, and the Ministry of Internal Affairs from the total legislative program of 187 draft laws, these institutions have planned a total of 56 draft laws, of which 28 have been approved and a percentage drops to 50% , until other draft laws have been transferred for 2022. On the other hand, out of 28 draft laws approved by the Government of the Republic of Kosovo, only 6 of them, four by the Office of the Prime Minister and two by the Ministry of Justice have been reviewed and approved by the Assembly of Kosovo.

From what can be seen above, despite the fact that a large number of the legislative program is a transfer from previous years or an amendment to the laws in force, the fact of including such a high figure in the legislative program is a determining factor of poor level of Government planning.

Despite the fact that 80% of the draft laws are amendments and/or carried over from previous years, the Government of Kosovo has not managed to implement its legislative program for 2021.

Add to this the fact that out of 119 draft laws approved by the Government, only 36 of them have been approved by the Assembly of the Republic of Kosovo by a government that leads with a solid majority in the Assembly of Kosovo.

For this reason, international reports, such as the European Commission Country Report and the SIGMA Country Report on Public Administration Principles of November 2021, have identified Kosovo's shortcomings in the planning process. One of the general drawbacks is also the fact that a large number of planned laws are carried

over into subsequent years. By 2020, 77 of the 105 laws had been passed by 2021, which presented into percentage is 73% of the planned legislative agenda being carried over to the following year.<sup>15</sup> From the KLI monitoring of the legislative program of 2021 it is noticed that the trend of carrying out the planned activities from year to year continues to be in force.

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<sup>15</sup> SIGMA page 36

## VII. GOOD GOVERNANCE AND RULE OF LAW

In the field of good governance and the rule of law, areas which are mainly covered by the projections made by the Ministry of Internal Affairs and the Ministry of Justice, the planning done by these institutions has been implemented at different levels which are presented higher. This section will examine the effects of some of the key reforms planned and not implemented by these institutions.

### 1. Transparency

One of the principles of the Government Program 2021-2025 is the development of policies with responsible, accountable approach and increased transparency,<sup>16</sup> and an open and transparent governance is promised to citizens, media, and civil society organizations, enabling access to all government initiatives and decisions.<sup>17</sup> From the systematic monitoring that KLI has done to the Government during 2021, it has noticed that the principles of governance presented in the Government program, apart from the fact that they are guaranteed by the regulations in force, are not being implemented in practice.

KLI since the establishment of the Government since the elections of February 14, 2021, has monitored the websites of government institutions to evaluate their content, regarding the placement of some basic information on the website. Based on this monitoring, KLI finds that on the websites of the Prime Minister and all ministries, in principle the data on the Prime Minister and Ministers are published while there is a lack of some data on deputy ministers in most ministries. Regarding the data for legal advisor and permanent secretary, in half of the ministries there is no data at all, while in some of them their contacts or biography are missing.

Also, the publication of decisions, documents, and other information materials for the public leaves a lot of space for improvement. From the compilation of this report, many of the materials had to be requested through access to public documents as such a thing has been impossible to do with access to the official websites of the Government. A good example is, despite the fact that the Government and the Assembly have adopted very important documents such as the National Plan for the Implementation of the Stabilization and Association Agreement and the ERA 2 Action Plan, these documents are not accessible to the public.

In the impossibility of easier access to information due to their non-publication on official websites, during 2021 the Kosovo Law Institute (KLI)/ *Betimi për Drejtësi* (BpD), has sent in total of 65 requests for information and requests for access in public documents in the institutions that are subject to this monitoring regarding Law no. 06 / L-051 on Access to Public Documents.

Number of requests for Access to public documents sent to each inst.			
Institution	No	Institution	Nr
Office of the Prime Minister	11	MEST	2
Assembly of Kosovo	2	Ministry of Environment	2
Ministry of Justice	18	Ministry of Economy	2
Ministry of Internal Affairs	4	Ministry of Defense	2
Ministry of Foreign Affairs	4	Ministry for Communities and Returns	2
Ministry of Finances	8	Ministry of Local Administration	1
Ministry of Health	2	Ministry for Regional Development	1
Ministry of Agriculture	2	Ministry of Culture, Youth and Sports	2

To a large extent, the Offices for Public Communication from the Ministries and the Office of the Prime Minister have responded positively to the addressed requests, but KLI notes that in some cases these institutions that are subject to monitoring have not been responsible in controlling the materials and as a result have sent partial response to the requested information where KLI has been forced to repeat the same question several times. Furthermore, there were

<sup>16</sup> Program of the Government of the Republic of Kosovo page 17

<sup>17</sup> *Ibid* page 20

institutions that, apart from the fact that they did not publish the information on the website, did not send any information at all to the requests addressed by KLI. Out of 65 requests for information and access to public documents, KLI did not receive any answer in eight cases from the following Ministries.

1. Ministry of Foreign Affairs and Diaspora;
2. Ministry of Finances, Labor and Transfers;
3. Ministry of Defense;
4. Ministry of Education, Science and Technology;
5. Ministry of Culture, Youth and Sports;
6. Ministry of Environment, Spatial Planning and Infrastructure.

Based on the Law No. 06 / L-081 on Access to Public Documents, Article 12 specifies that the Public Institution is obliged that within seven (7) days from the time of registration of the request, to issue a decision to allow access to the requested document or may extend the deadline for a maximum of fifteen (15) additional days if a large number of public documents are required by a request.

However, the Ministry of Foreign Affairs and Diaspora has not respected such a thing since on October 28, 2021, the Kosovo Law Institute (KLI)/Betimi për Drejtësi (BpD), had sent a request for information regarding the concrete steps taken in report on the activities planned in the second and third quarters within the Strategic and Operational Plan. While on November 5, 2021, MFA had announced that because the request is voluminous and the time limit of seven (7) days is not sufficient, we will answer all questions within 15 days. Further, after 20 days, the MFA sent another notice announcing that they will soon issue a decision on the questions posed, while the Kosovo Law Institute (KLI) on December 13 sent another reminder but again did not receive response during 2021.

Also, we have had negligence from the Ministry of Foreign Affairs in other cases where on September 30, 2021 the Kosovo Law Institute (KLI) sent a request for information to the Minister of Foreign Affairs, but KLI did not receive a response from this Ministry. It is worth mentioning that KLI in some cases has received partial responses to the request for information addressed to the Office of the Prime Minister, regarding the concrete steps taken in relation to the 78 activities planned in the fourth quarter within the Strategic and Operational Plan, KLI received partial answers to the requested information where as a result we were required to repeat the same questions for the unanswered activities.

Regulation on areas of administrative responsibility of the Office of the Prime Minister and Ministries no. 02/2021 obliges each Minister to appoint one of the political advisors to the position of spokesperson of the Ministry. Kosovo Law Institute based on law no. 06 / L-051 on Access to Public Documents has requested information from the Office of the Prime Minister and the Ministries of the Government of the Republic of Kosovo on the appointment of spokespersons and their contacts. Based on this request, KLI has received responses from 13 Ministers. From these Ministries, KLI was informed that the Office of the Prime Minister and 10 Ministries, respectively the Ministry of Justice, the Ministry of Economic Development, the Ministry of Health, the Ministry of Culture, Youth and Sports, the Ministry of Education, Science, Technology, the Ministry of Foreign Affairs and Diaspora, the Ministry of Local Government Administration, the Ministry of Environment, Spatial Planning and Infrastructure, the Ministry of Regional Development and the Ministry of Agriculture, Forestry and Rural Development have appointed political advisors to the position of spokesperson of the Ministry. The Ministry of Defense and the Ministry of Finance, Labor and Transfers have not yet done so. On the other hand, KLI has not received information from the Ministry of Internal Affairs and the Ministry of Communities and Returns.

In addition to the lack of transparency of Government institutions, during 2021 based on KLI monitoring there are dozens of lawsuits that have been initiated against journalists by state officials and politicians. Most of these cases are SLAPP lawsuits, and this shows that the government not only failed to implement the minimum standards of transparency, during 2021 the right to freedom of expression, public information and public participation in policy-making was suppressed.

## 2. Public administration reforms

Public Administration Reform (PAR) has been a priority for Kosovo, and every government since its inception has placed it high on the list of priorities, reforms which are essential in implementing European agenda reforms, economic development, and proper planning of country's financial resources.

Similarly, the Government that emerged from the elections of February 14, 2021 has set Public Administration Reforms as its priority, presented in the program of the Government of the Republic of Kosovo 2021-2025. These reforms are undertaken to have a more competent administration, aiming at better services for citizens and businesses as well as an administration capable of carrying out and concluding the European integration process.<sup>18</sup>

The European Commission estimates that the progress of the implementation of the reforms stemming from the Public Administration Reform has slowed down significantly as a result of political developments, elections and frequent changes of Government.<sup>19</sup> On the other hand SIGMA estimates that in all indicators either no progress has been made, or there are deteriorations in the last year.

In order to implement the aims presented in the Government Program, several actions are planned to be undertaken within the Strategic and Operational Plans of the Government. These actions coincide with the alignment between public administration reforms and the European integration process. Therefore, as such, they are planned in the framework of other documents, except PSO, such as the agreement for IPA 2016 between Kosovo and the European Union, PKZMSA, and ERA II.

However, despite the fact that the implementation of public administration reforms has been identified as a shortcoming, from the systematic monitoring of KLI for the implementation of the Government program, it is noticed that this approach has not changed. As noted in this document above, the implementation of the Strategic Goal of **Modernization of Public Administration**, within which there are 14 operational objectives, and 53 activities for the implementation of the strategic goal. Out of these activities 30 of them have been implemented, while 23 of them have not been implemented or 56.6% of the strategic goal has been implemented.

Part of this strategic goal have been activities related to substantial reforms such as the strategic framework of public administration, the implementation of which is also related to budget support from the European Union.<sup>20</sup> The strategic framework of these reforms consisted of three strategies<sup>21</sup> whose mandate expired in 2020 and 2021. In a coordination process with

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<sup>18</sup> See for more the Program of the Government of the Republic of Kosovo 2021-2025, page 20.

<sup>19</sup> See for more Report on Kosovo 2021 - Kosovo 2021 Report, Strasbourg 19.10.2021. page 12

<sup>20</sup> See the IPA 2016 agreement between Kosovo and the European Union in: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15707>

<sup>21</sup> Part of the PAR Strategic Framework are: Strategy for Improving Planning and Policy Coordination, Strategy for Better Regulation, and Strategy for Modernization of Public Administration.

SIGMA, the Ministry of Internal Affairs has merged these strategies into a strategy called the Strategy for Public Administration Reform.<sup>22</sup> However, MIA has not managed to draft and approve this strategy, and as a result Kosovo has not had a strategic framework for PAR for more than one year.

Also, part of the public administration reforms have been foreseen some draft laws. The main draft laws which are also related to the implementation of sectoral budget support provided in the IPA 2016 agreement. Part of PAR were also the legal package of the draft law on salaries of civil servants and amendments to the law on public officials. Both of these laws are also part of the sectoral budget support as part of the IPA 2016 Agreement.<sup>23</sup> Failure to implement these activities makes it impossible for the Government to use funds allocated by the EU for the implementation of these reforms which are provided by the IPA 2016 Agreement in between Kosovo and the European Union.

The draft law on public officials approved in February 2019 aimed to establish a unified system in the management of public officials employed in the state administration at all levels, repealing Law no. 03 / L-149 on the civil service of the Republic of Kosovo. And as a legal initiative it aimed to create a legal basis for the employment of public officials in the institutions of the Republic of Kosovo, based on merit, moral integrity, impartiality and sustainability.<sup>24</sup> However, based on various and numerous complaints received from the Office of the Ombudsperson, the latter addresses the Constitutional Court to assess the constitutionality of this law. Based on the judgment of the latter, specific articles of the Law on Public Officials are inconsistent with specific articles of some institutions, that this law does not apply in relation to some independent institutions such as the Kosovo Judicial Council, etc. And finds and requests from the Assembly of Kosovo that the law be amended and supplemented in accordance with the findings and regarding the judgment of the Constitutional Court.<sup>25</sup>

Despite the fact that the Judgment of the Constitutional Court was published in July 2020, the fact that legal uncertainty has affected the overall management of public administration, and the fact that the drafting and adoption of this law is also related to budget support from the European Union for Kosovo, this activity foreseen in the SOP of the MIA has not been completed in 2021.

Consequently, the state administration at all levels is functioning with two partially applicable laws, law no. 06 / L-114 on public officials and law no. 03 / L-149 on the civil service of the Republic of Kosovo. Furthermore, the disbursement of budget support by the European Union in relation to the IPA 2016 Agreement between Kosovo and the European Union is not possible until the drafting and approval of the draft law on public officials.

On the other hand, the Government of Kosovo has planned the drafting of the law on salaries by the Ministry of Internal Affairs. This law, as mentioned above is related to the budget support by the European Union as part of the IPA 2016 Agreement, comes as a result of the promulgation of Law no. 06 / L-111 on Salaries in the Public Sector invalidated in its entirety by the Constitutional Court.

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<sup>22</sup> See Strategic and Operational Plan of MIA at: <https://kryeministri.rks-gov.net/wp-content/uploads/2021/07/Plani-Strategjik-dhe-Operacional.pdf>

<sup>23</sup> See for more the Agreement at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=15707>

<sup>24</sup> See Article 1 of Law no. 06 / L - 114 for public officials in: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=25839>

<sup>25</sup> See for more judgment no. KO203 / 19, published: 13.07.2020 at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=29923>



The purpose of the law no. 06 / L-111 on salaries in the public sector was the harmonization of the system, the establishment of criteria for salaries, and the rules for the determination in the public sector for all officials paid from the state budget.<sup>26</sup> This would be a major reform as the current system is distributed in Law no. 03 / L-147 on salaries of civil servants, various regulations and decisions of the Government on salary supplements and increases. An anomaly identified by KLI is the decision of the Haradinaj Government no. 4/20 approved on December 20, 2017 where KLI had challenged the legitimacy and legality of the decision of the Haradinaj Government, which did not wait to regulate the issue of salaries through law, but was in a hurry to increase its own salary illegally, even being in a conflict of interest situation.<sup>27</sup> As a result of this Government decision, based on the law on courts and the law on the state prosecutor, the salaries of judges and prosecutors were automatically increased, which in addition to freedom, legitimacy, and conflict of interest this decision had caused a great burden on the budget of the state.<sup>28</sup>

Government Kurti I in February 2020 at the second meeting of the Government had annulled decision 4/20 of 20 December 2017 with decision 01/02. This approach of the Kurti I Government was also challenged for the legality of this decision as an illegal decision could not be annulled by another illegal decision, emphasizing the approach that this decision did not apply to the salary increase of judges and prosecutors caused by decision of the Haradinaj Government.<sup>29</sup> Furthermore, point four of the decision 01/02 of 12 February 2020 states that “The decision is valid until the decision is taken by the Constitutional Court regarding the case KO2019/19 for assessing the constitutionality of Law 06/L-111 on salaries in the public sector”.<sup>30</sup> Five months later on July 13, 2020, the Constitutional Court issued Judgment KO2019 / 19 declaring Law 06 / L-111 on salaries in public sector invalid, and the Government has not yet taken any decision to address this issue as such the decision is illegal and repealed as of July 2020.

Therefore, the Government of Kosovo to return the legality in the salary system in public administration should as soon as possible draft and approve the draft law on salaries in order to establish legality in this very important area for the administration and management of tens of thousands of officials paid by the consolidated state budget.

In conclusion, the Government of Kosovo has prioritized reforms in public administration, and has also incorporated these reforms in the Strategic and Operational Plans of the MIA, additionally some of them in international agreements. MIA in 2021 has managed to implement 53% of the activities foreseen in the strategic objective for public administration reform. While every activity included in this strategic objective has its own importance, the key activities that would enable substantial reforms in public administration have not been undertaken in the framework of 2021. As a result of not undertaking these reforms, today Kosovo does not have a unified mechanism of management of public officials, there is no legal mechanism for the management of salaries in the public sector, there is no long-term planning of reforms to be

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<sup>26</sup> See Law no. 06 / L-111 on public sector salaries at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18683>

<sup>27</sup> See for more KLI's response to: [https://kli-ks.org/ikd-reagon-ndaj-vendimit-te-qeverise-kurti-lidhur-me-pagat/?fbclid=IwAR1Kb5cGggCdDtAZgjUJDfFKjxqARMSvYwVCr4T\\_C8BZYQAPvseJJS52UM](https://kli-ks.org/ikd-reagon-ndaj-vendimit-te-qeverise-kurti-lidhur-me-pagat/?fbclid=IwAR1Kb5cGggCdDtAZgjUJDfFKjxqARMSvYwVCr4T_C8BZYQAPvseJJS52UM)

<sup>28</sup> Article 35 of LAW no. 06 / L - 054 ON THE COURTS presents the correlation between the salaries of judges and the salaries of the executive. For more see: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>

<sup>29</sup> See point 3 of decision 01/02 dated 12.02.2020 in: <https://kryeministri.rks-gov.net/wp-content/uploads/2020/02/Vendimet-e-mbledhjes-s%C3%AB-2-t%C3%AB-Qeveris%C3%AB.pdf>

<sup>30</sup> *Ibid* point 4.

undertaken in the future and what is even worse is the risk of losing budget support from the European Union.

### 3. Criminal Justice reforms

Criminal justice is undoubtedly one of the main areas for which states develop policies aimed at preventing and combating crime, with particular emphasis on organized crime and corruption or the fight against terrorism.

The Government of the Republic of Kosovo, in its strategic and operational plan in criminal justice, during 2021 has foreseen 13 activities which have a special emphasis on criminal justice reforms. Out of these 13 planned activities, seven (7) of them have been implemented, while the other six (6) have not. The Ministry of Justice has managed to carry out the following activities: Strategy for Rule of Law, Draft Code of Criminal Procedure, Draft Law on Compensation Victims of Crime, Draft Law on Declaration, Origin and Control of Assets of Senior Public Officials, Draft Law for confiscation of unjustifiable property, Draft Law on Amending and Supplementing Law no. 04/L-213 on International Legal Cooperation in Criminal Matters and Concept Document on Targeted Sanctions for Human Rights Violators.

As one of the most important activities of the Government's activities has been the Rule of Law Strategy 2021-2026, which was approved by the Government in August 2021. With this strategy it is determined that the main problems in this area are prevention and the fight against organized crime and corruption, lack of capacity, coordination and will in this regard, as well as the inadequate functioning of the system of confiscation of property used or acquired through criminal offenses, problems in the execution of criminal sanctions, low use of alternative measures, the need to increase the probation system, i.e. the capacities of the Kosovo Probation Service, in cooperation with the Kosovo Correctional Service.

In addition, the Government of Kosovo, respectively the Ministry of Justice has managed to send to the Assembly during 2021 the Draft Code of Criminal Procedure through which it aims to address the shortcomings identified in the criminal justice system, which during 2021 has passed in the Assembly only in the first reading. However, with this Code, judicial control is not included in prosecutorial acts.<sup>31</sup> During 2021, it was also achieved up to the level of the first reading to pass the Draft Law on Amending and Supplementing the Law no. 04 / L-213 on International Legal Cooperation in Criminal Matters, as well as the approval of amendments to the Draft Law on Disciplinary Responsibility of Judges and Prosecutors. However, the Ministry of Justice, when drafting the latter, ignored the real problems related to the implementation of this law, as well as the concerns raised by the Kosovo Law Institute, acting with unreasonable haste, in the proceeding of the Draft Law.<sup>32</sup>

On the other hand, it was planned to approve amendments to the law on the Kosovo Prosecutorial Council and the law on the State Prosecutor. These amendments are in line with the proposed reforms in the framework of the Functional Review of the Rule of Law Sector which aim at functionalization, capacity building and integrity, reduction of the number of members of the Kosovo Prosecutorial Council (KPC), methodology of selection of members of KPC, as well as gender balance and representation in KPC.

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<sup>31</sup> Note: The lack of judicial control in prosecutorial acts will be addressed in detail in the chapter "Human rights" of this report.

<sup>32</sup> KLI report dated 21.11.2021 in: <https://kli-ks.org/ikd-nuk-ka-progres-ne-llogaridhenien-e-gjyqtareve-dhe-prokuroreve/>

Despite the fact that they were planned for implementation in 2021, the lack of cooperation and clashes between the Ministry of Justice and the prosecutorial system have led to delays in agreeing on various provisions of these draft laws. For this reason, the Ministry of Justice in October 2021, addressed the Venice Commission with a request regarding the reform of the prosecutorial system. In December 2021, the Venice Commission published the opinion compiled based on the request of the Ministry of Justice, where in principle it deemed necessary to reform the prosecutorial system in Kosovo but also giving some recommendations for the approach to be followed in the implementation of these reforms.<sup>33</sup>

While the drafting and adoption of these draft laws represents a substantial reform of criminal justice in Kosovo, the Kosovo Law Institute through activities within the law-making program and liaison with the court monitoring program, has participated in the process of drafting these laws, and in addition to assisting in the analysis and drafting of these draft laws, it has also sent comments to every instance of the process of drafting and approving these laws.

Meanwhile, during 2021, six activities of the Government for criminal reforms have remained unfulfilled. Draft Law on Central Criminal Evidence System, Draft Law on Correctional Service, Draft Law on Probation Service, Draft Law on Execution of Criminal Sanctions, Draft Law on Supplementing / Amending Law no. 03 / L-052 on the Special Prosecution of the Republic of Kosovo, amended and supplemented by Law no. 04 / L-273 and law no. 05 / L-103 and the Concept Document for the establishment of the confiscation fund, are the objectives which have not been achieved by the Ministry of Justice.

#### 4. Advancing the legal framework against corruption

The Government of Kosovo planned to take a number of actions aimed at significantly reducing the level of corruption. Planned actions in this area were mainly part of the agenda of advancing the anti-corruption legal framework. In this regard, the Government had planned to issue a series of draft laws, starting with the Draft Law on the Agency for Prevention of Corruption, the Draft Law on Declaration, Origin and Control of Assets, the Regulation on Determining the Procedure for Receiving and Handling Signaling Cases, Draft- Concept Document on the Issue of Unjustifiably Acquired Property as well as the Draft Law on State Bureau for Verification and Confiscation of Unjustifiable Assets.

All the above commitments have been approved by the government. However, the implementation of these commitments in the KLI assessment has not been done based on a meritorious assessment in order to enable the drafting of sound policies that are applicable. Below we are listing some of the remarks presented by KLI, starting with the concept paper on the issue of unjustifiably acquired property.

Out of the eight (8) reasons mentioned in the Concept Document on the Issue of Unjustifiably Acquired Property, four (4) of them refer more to the inefficiency of the judicial system and a lack of inter-institutional cooperation. This shows that the Ministry of Justice tries to justify the draft law more as a need that arises from the problems with the implementation of legislation in force and not in the absence of the law. Such an assessment was made without following the government procedures for evaluating the implementation of the legislation in force, a procedure which is undertaken through the process of ex-post evaluation of the

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<sup>33</sup> See for more the opinion of the Venice Commission in: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)051-e&fbclid=IwAR3WZQj\\_ZQcYUw4zsUIHTCAjHOR-Yeqktm6G5NbOFZ9EbMBhc-X-AFAPjkg](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)051-e&fbclid=IwAR3WZQj_ZQcYUw4zsUIHTCAjHOR-Yeqktm6G5NbOFZ9EbMBhc-X-AFAPjkg)

legislation. Moreover, through the inclusion of a system of confiscation of property creates legal uncertainty in an overburdened institutional system of the fight against corruption.<sup>34</sup>

The Ministry of Justice claims that the laws in force have not been properly implemented, thus according to the MoJ, since the adoption of the Law on Extended Powers and so far, we have only one case of confiscation of property acquired through criminal offenses. On the other hand, the Draft Law on State Bureau for Verification and Confiscation of Unjustifiable Assets as such, builds the mechanism of civil confiscation in Kosovo, enabling the confiscation of unjustifiable property without the need for a criminal conviction.<sup>35</sup>

Although the main purpose of the Draft Law is legitimate, the confiscation of property resulting from illegal activities related to official corruption, property that for various reasons cannot be confiscated in criminal proceedings, still in some respects the Draft Law does not respect the constitution of the country and is not in full line with international standards in this area.<sup>36</sup>

In order to have a successful implementation of this law, the Bureau must have access to the financial data of the citizens who will be subject to treatment. But, according to the constitutional order which is based on the rule of law, article seven (7) of the Constitution guarantees, among other things, the right to property, access to such data must be legal, adequate and only under judicial control.<sup>37</sup>

When it comes to the way the Bureau functions, a special problem arises in the selection of the director. According to the draft law, the selection of the director is done by a simple majority, as provided by Article 12 point seven (7) of the draft law,<sup>38</sup> and regarding the manner of his dismissal, this is not specified at all. So, the selection with the simple majority gives the opportunity to the parliamentary majority to have control over this important institution.

An important part of the agenda for advancing the legal framework against corruption was the approval of the Draft Law on the Agency for Prevention of Corruption. This draft law was approved by the government in June 2021, in order to define the functioning of the Agency for Prevention of Corruption, as an independent and specialized body for the implementation of state policies for the prevention of corruption that fall within its scope. Also, this draft law has many ambiguities and unnecessary repetition of provisions, Article one (1) of the draft law is repeated in point 1 of Article 4.<sup>39</sup> The Kosovo Law Institute has provided comments which in most cases have not been taken into account by the Ministry of Justice.

This draft law has derived from the process of Functional Review of the Rule of Law Sector, and as such has an assessment of the implementation of policies related to the functioning of the ACA, but the recommendations of this process have not been fully implemented in the draft

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<sup>34</sup> Functional review process analysis has identified one of the biggest shortcomings of the fight against corruption are the large number of institutions that are responsible for this area, the overlap of their competencies and the ambiguity in the main competent mechanism in the fight against corruption. See for more materials in the field of Criminal Justice, Policy Paper on Assessing the Fight against Organized Crime and High-Level Corruption. These documents were not published by the Ministry of Justice, but KLI had access to them.

<sup>35</sup> Concept paper on the Issue of Unjustifiably Acquired Property: <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40883>

<sup>36</sup> Confiscation of unjustifiable property: legal problems of the current Draft Law <https://kli-ks.org/konfiskimi-i-pasurise-se-pajustifikueshme-problemet-juridike-te-projektligjit-aktual/>

<sup>37</sup> Constitution of the Republic of Kosovo: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

<sup>38</sup> Draft Law on State Bureau for Verification and Confiscation of Unjustifiable Property: <https://kryeministri.rks-gov.net/wp-content/uploads/2021/12/Projektligji-per-Byrone-Shtetore-per-Verifikimin-dhe-Konfiskimin-e-Pas....pdf>

<sup>39</sup> Draft Law on the Agency for Prevention of Corruption <https://kryeministri.rks-gov.net/wp-content/uploads/2021/07/PROJEKTLIGJI-PER-AGJENCINE-PER-PARANDALIMIN-E-KORRUPSIONIT.pdf>

law by MoJ. ACA had failed to properly implement legal provisions, especially those related to the declaration of assets and income.<sup>40</sup>

Regarding the issue of declaration of assets, it is worth noting that in 2021, the Government of Kosovo, with the sponsorship of the Ministry of Justice, has approved the Draft Law on Declaration, Origin and Control of Assets and Gifts. The adoption of this draft law should regulate the specification of the system of declaration of assets by senior officials. However, taking into consideration the problems that the Anti-Corruption Agency had in the past with the implementation of previous legislation, there is a possibility that the same problems will be repeated.

It is worth mentioning that although the law in force “Law on declaration of assets no. 04 / L-228 in article three (3) point two (2), specifically defined the manner of declaration of assets by the official, where the senior public official is obliged to state the amount, type and source of income,<sup>41</sup> however, according to the interpretation that was made to this provision by the ACA at that time, public officials were not obliged to declare revenues separately, but only for the calendar year as a whole, not taking into account the basic law no. 04/1-050 article five (5) point three (3), where this issue was regulated.<sup>42</sup>

The agenda for advancing the legal framework against corruption also includes the Regulation on determining the procedure for receiving and handling whistleblower cases. According to the Law on Protection of Signalers Article 17, based on the number of employees, employers are obliged to appoint the official responsible for signaling.<sup>43</sup> This provision regulates the minimum number of employees for the appointment of an official, but does not provide solutions for institutions with complex activities and have a large number of employees, as well as a wide territorial extension.

As noted above, the Government of Kosovo should be more engaged in regulating the legal infrastructure regarding the accountability of law enforcement institutions, which would have a greater impact on the implementation of existing legislation, and at the same time it would increase efficiency, inter-institutional cooperation and reduce the level of corruption in the country.

Moreover, the justifications given by the Ministry of Justice for initiating draft laws and deep reforms in the field of anti-corruption are based on political perceptions and not on analysis made based on the system established within the Government. The Ministry of Justice in its SOP had planned that in 2021 to draft, review and approve ex-post evaluations for some laws. Apart from the fact that the MoJ has not implemented these activities and none of the ex-post evaluations has been completed, none of the proposed legal initiatives is part of these initiatives. The statement that the law on extended powers for confiscation of property is not working is more of a presumptive statement than evidence-based.

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<sup>40</sup> KLI Report page 28-29

<https://kli-ks.org/wp-content/uploads/2021/03/Raporti-per-Supreme-Final-12.03.2021.pdf>

<sup>41</sup> Law on amending and supplementing law no. 04 / 1-050 on the declaration, origin and control of property of senior public officials and the declaration, origin and control of gifts for all officials  
<https://gzk.rks-gov.net/ActDetail.aspx?ActID=9445>

<sup>42</sup> Law no. 04 / 1-050 on the declaration, origin and control of property of senior public officials and the declaration, origin and control of gifts for all officials  
<https://gzk.rks-gov.net/ActDetail.aspx?ActID=9445>

<sup>43</sup> Law on protection of whistleblowers article 17: <https://md.rks-gov.net/desk/inc/media/C963FC32-6A32-4126-B36B-A1DEFBBA1495.pdf>



## 5. Human rights

In the framework of monitoring the work of the Government of the Republic of Kosovo, KLI has also monitored the protection and promotion of human rights and fundamental freedoms in documents approved by this government. In addition to these documents, KLI has identified a lack of Government planning to draft and adopt certain policies which are necessary to protect human rights and fundamental freedoms.

A challenge of this nature which the current Government has inherited is the lack of judicial control over prosecutorial acts. The Constitution of the Republic of Kosovo in Article 32 stipulates that "Every person has the right to use legal remedies against judicial and administrative decisions which violate his/her rights or interests in the manner prescribed by law." This constitutional right, which cannot be violated even through the constitutional amendment,<sup>44</sup> is inapplicable in cases when the State Prosecutor dismisses criminal charges or terminate investigations. This is because the Law no. 04 / L-123 of the Criminal Procedure Code has not determined a legal remedy against these decisions.<sup>45</sup> In the entire Kosovo legal order, only these decisions are excluded from judicial control. The Minister of Justice at the beginning of her term had committed to address this issue. In terms of contributing to this area, KLI through its members in the working group for drafting the Code of Criminal Procedure had done all the analysis and drafted the articles of this code that guaranteed the legal remedy, namely the implementation of a constitutional right, in these cases. Despite this, without any justification, the Government of the Republic of Kosovo has approved and submitted to the Assembly the Draft Code of Criminal Procedure, which draft code does not address the judicial control of the decisions of the State Prosecutor.

Decisions regarding appeals against judges and prosecutors have also been left out of the right to exercise legal remedies. First of all, it should be noted that the law in force defines the Institution of the Ombudsperson as a competent institution to handle complaints in relation to the decisions of the competent authorities (presidents of courts and chief prosecutors) regarding disciplinary complaints against judges and prosecutors.<sup>46</sup> This has been confirmed by the Supreme Court of the Republic of Kosovo.<sup>47</sup> Without any meritorious reasoning, the Institution of the Ombudsperson has consistently hesitated to exercise this legal obligation. However, within the reasoning of the Government, during the phase of supplementing/amending the Law on Disciplinary Responsibility of Judges and Prosecutors, KLI had proposed to the MoJ to address this issue, "specifying" the legal provision guaranteeing the right to a legal remedy in these cases. These proposals, contrary to the Regulation on Minimum Standards for the Public Consultation Process, were ignored by the MoJ and the Government approved and processed in the Assembly the Draft Law which does not address this issue.

The Law on the State Prosecutor<sup>48</sup> and the Law on Courts<sup>49</sup> stipulate that each judge will have a professional associate, in order to increase the efficiency of judges and to process citizens' cases within a reasonable time. Although several years have passed, this provision still remains on paper and unimplemented in practice, due to the lack of budget funds for its implementation.

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<sup>44</sup> Constitution of the Republic of Kosovo. Article 144.3.

<sup>45</sup> Ehat Miftaraj and Betim Musliu. "Fighting corruption without judicial control: Persecution and amnesty justified in the name of corruption." KLI. 2018.

<sup>46</sup> Gzim Shala. "Accountability of judges and prosecutors". KLI. 2020.

<sup>47</sup> Supreme Court. Ruling. Rasti AA.Nr.9 / 2020. October 15 2020.

<sup>48</sup> Law no. 06 / L -025 on Amending and Supplementing Law no. 03 / L-225 on the State Prosecutor Amended and Supplemented by Law no. 05 / I-034. article 1.

<sup>49</sup> Law no. 06 / L - 054 on Courts. Article 39.2.



Free legal aid is one of the crucial pieces in the mosaic of the rule of law. Free legal aid protects citizens from denial of their rights by the institutions of the Republic of Kosovo. The Free Legal Aid Agency has not been able to play sufficiently this role. One of the main reasons for this is the lack of budget funds.

A shortcoming in the Kosovo legal order in terms of the practical implementation of human rights and fundamental freedoms is the lack of a Law on State Legal Responsibility. The Government of the Republic of Kosovo has not listed this draft law in its legislative agenda.

In the field of human rights, the Assembly of the Republic of Kosovo has implemented the right of access to public documents, which right is defined by the Constitution and the Law. Despite the approval of Law No. 06 / L-081 on Access to Public Documents which provides also the right to appeal to the Commissioner of the Agency for Information and Privacy, this right had not been able to be implemented for several years, as the commissioner of this agency was not elected. On June 17, 2021, the Assembly of the Republic of Kosovo elected the Commissioner of the Information and Privacy Agency in a way that has unblocked this institution to handle citizens' complaints regarding their constitutional and legal right to access public documents.

Addressing the issue of the trial within a reasonable time is another positive aspect in this area. To address the trial within a reasonable time, as a constitutional and legal right, constantly violated in practice, the Ministry of Justice has established a working group to draft a Concept Document for the realization of civil rights, including the right of parties to trial within reasonable time. However, despite the fact that the first steps towards the establishment of this working group were taken in early August 2021, this working group for drafting this concept document has not yet begun work.

Another problematic area remains the challenge of religious freedom. Despite the fact that various international and local reports have stated that the current Law on Religious Freedom does not guarantee sufficient religious freedom and as a result it must be supplemented and amended, this has not happened yet.

## VIII. DIALOGUE

Dialogue is one of the most controversial points of this government. Both before taking office on March 22, 2021 and after taking office, the ruling political party has had a minimizing approach to the importance of dialogue between Kosovo and Serbia facilitated by the European Union.<sup>50</sup> It was also stated that there will be a new approach to dialogue in general and to the agreements reached so far in particular. The main goal of the Government in the dialogue is mutual recognition, succession, recognition by the five EU countries, as well as membership in the UN.<sup>51</sup>

On the other hand, with the establishment of the Government, the position of Deputy Prime Minister has been established as the bearer and coordinator of the dialogue with Serbia. Also, participation in the dialogue from the beginning has been of operational importance rather than declarative, but always trying to minimize what has been achieved so far in the dialogue with Serbia. That is why, since taking power of this government, the EU Special Representative has traveled to Kosovo a full 7 times in order to put the dialogue process back on track and to have more engagement of the parties in the dialogue. In most cases, representatives from the United States engaged in the dialogue were also part of these visits. This shows that there is a common and unified approach of the EU and the US regarding the start and end of the dialogue. The US supports the dialogue, but based on the European leadership of the process.

So far, two (2) meetings have been held in Brussels at the high level (Prime Minister of Kosovo and the President of Serbia) and four (4) meetings have been held at technical levels (DPM and technical staff of the Government of Kosovo with their counterparts from Serbia). This shows that there is no new approach to dialogue as previous Governments have had such institutional levels of dialogue, and that dialogue is one of the important priorities of the Government of Kosovo.

The dialogue was not conducted in a transparent process and as a result, in most cases, the discussions or actions taken within the dialogue were not disclosed. One of the points that during 2021 has been part of the developments as a result of the dialogue was the decision of the Prime Minister who on September 20 had established reciprocity in the implementation of the agreement on Freedom of Movement, an agreement reached in 2011 that in its essence had a several components while one of them was also allowing border crossings of citizens of each country.

Part of this agreement is the basic Agreement on Freedom of Movement of August 2011 with 11 points, which in principle establishes the regime of border crossings with identity cards (as a means of identification despite the passport), where the parties can issue an entry and exit document as a measure of non-recognition of reciprocal documents, as well as vehicle crossing procedures.

Serbia allows the entry of vehicles with KS registration in an unimpeded form, while vehicles with RKS registration will have to replace the registration plates at the border with temporary registrations (PROBA) of Serbia. On the other hand, Kosovo, despite the fact that in the agreement of August 2011 has reserved this right, has not reciprocated either in the entry-exit documents or in the obligation to remove the vehicle registration plates. Furthermore, during that time in order to facilitate the Serb community in Kosovo, Kosovo has continued to issue KS registration plates for another 5 years.

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<sup>50</sup> In public statements, Prime Minister Kurti has stated that dialogue is the sixth or seventh priority of his Government which the media have reported, i.e. [Kushtet e LVV-së për dialogun \(evropaelire.org\)](https://evropaelire.org/kushtet-e-lvv-se-per-dialogun/) (accessed on 13.10.2021)

<sup>51</sup> See for more Government program 2021-2025

Kosovo had announced the imposition of a reciprocity measure on license plates, during the last round of dialogue with Serbia, mediated by the European Union. Deputy Prime Minister Besnik Bislimi, who is leading the Kosovo delegation in Brussels, had said that the license plate agreement expires on September 15 and that Kosovo will not respect it unilaterally.<sup>52</sup>

As a result of establishing reciprocity at border crossings, the local population of the four northern municipalities set up barricades rejecting such an approach, while state institutions sent special units to protect border checkpoints and police.<sup>53</sup> As a result, the Serbian side increased the number of soldiers on the border with Kosovo with heavy weapons, there were also flights of Serbian army planes.<sup>54</sup>

To de-escalate the situation, on September 29, the parties were urgently invited to Brussels and as a result an agreement was reached to remove the barricades by the Serb population, to replace the special units of the Kosovo Police with KFOR units, and to commit reaching an agreement on freedom of movement in the coming days.

While the establishment of reciprocity was seen as an issue that had to happen as there was discrepancy in the method of border crossings of citizens of each country and Kosovo in good faith had maintained a constructive and facilitative approach, the issue of sending special units to the border without coordination with the international factor in Kosovo was seen as a thoughtless move.<sup>55</sup> As a result of the lack of coordination, Kosovo was forced to replace the special units of the Kosovo Police with KFOR, therefore experts in the field assessed it as a serious mistake of the Government. Taking over the border crossings points by KFOR does not coincide with its mandate<sup>56</sup> and through this action Kosovo has gone back to the first years of the protectorate.<sup>57</sup>

Kosovo's goal in the dialogue is the full normalization of relations and reaching a legally binding agreement for the parties and potentially mutual recognition between the two countries. This aim of Kosovo is strongly supported by the international community, both from the United States of America<sup>58</sup> and the EU. This was not aligned during 2021. Apart from the issue of Freedom of Movement, in 2021 there were no substantial developments in the dialogue leaving aside other important points of the dialogue which could align the process of reaching a final agreement and has also neglected aspects of the implementation of agreements in force. Therefore, even experts in the field have assessed 2021 as a lost year in terms of dialogue and common goals of Kosovo and the international factor for dialogue.

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<sup>52</sup> In the media, Mr. Bislimi had announced the establishment of reciprocity, and was reported in the media:

<https://www.dw.com/sq/kosova-vendos-reciprocitet-p%C3%ABr-targat-me-serbin%C3%AB/a-59238177>

(accessed on 27.09.2021)

<sup>53</sup> Statement by Prime Minister Kurti presented in almost all local media.

<sup>54</sup> The media reported that there were also regular Serbian army tanks sent near the border with Kosovo. See for more: <https://zeri.info/aktuale/186555/serbia-dergon-tanke-ne-kufi-me-kosoven/#:~:text=Ushtria%20e%20Serbis%C3%AB%20e%20ka%20nisur%20armatimin%20e,Muqibab%C3%AB%20n%C3%AB%20kufi%20me%20Gjilanin.%20%2F%20Z%C3%ABri%20%2F> (accessed on 02.10.2021)

<sup>55</sup> See the interview of the Executive Director of the Kosovo Law Institute: <https://gazetablic.com/miftaraj-dergimi-i-focave-speciale-ne-veri-pa-pelqimin-e-nderkombetareve-vendim-i-gabuar-i-qeverise-kurti/>

<sup>56</sup> See KFOR mandate in UN Security Council resolution

on: [https://peacemaker.un.org/sites/peacemaker.un.org/files/990610\\_SCR1244%281999%29.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/990610_SCR1244%281999%29.pdf) (accessed on 21.12.2021)

<sup>57</sup> Edita Tahiri had warned the Government that with such actions it could turn Kosovo into a Protectorate. See more: <https://indeksonline.net/ish-kryenegociatorja-thote-se-qeveria-i-ktheu-nga-pavaresia-ne-protektorat-dy-pikat-kufitare-ne-veri/> (accessed on 03.10.2021).

<sup>58</sup> See ongoing letters from top US officials including President Biden reiterating that dialogue should end in mutual recognition.

## IX. RECOMMENDATION

1. Address through the Rules of Procedure of the Government the issue of naming the Strategic and Operational Plan (SOP) as opposed to the Annual Government Work Plan (AGWP);
2. Planning activities within the Strategic and Operational Plans or the Annual Government Work Plan to be more realistic in order to have better implementation;
3. The planning of the SOP or AGWP should be harmonized with Kosovo's European agenda in order to have more efficient implementation, monitoring, and reporting;
4. The legislative program of the Government should be harmonized with the Assembly of Kosovo so that the approved draft laws are reviewed and approved by the Assembly;
5. The government should have a special focus on the implementation of some activities that are of special importance and are related to the major state priorities, the implementation of the European agenda, the implementation of international agreements, as well as the advancement of human rights;
6. Documents that are not classified according to the legislation in force, to be accessible to the public without the need to request the same through requests for access to public documents;
  - Government institutions should complete their official websites to present the necessary information with emphasis on political cabinets;
7. Legal amendments and changes with emphasis on areas of special importance such as the fight against corruption to be made based on adequate assessments of the situation and not with a political approach;
8. The Government should implement the commitments made under the Sectorial Reform Contract for Public Administration Reform in order to be able to receive budget support from the European Union;
9. The government should increase transparency in its approach to dialogue and be more coordinated with international partners in terms of engagement in the dialogue.