

16/2023



Instituti i Kosovës për Drejtësi
Kosovo Law Institute
Kosovski Institut Pravde

(Non) Implementation of the Rule of Law Strategy in Practice



October 2023

ANALYTICAL MONITORING REPORT

*of the Action Plan for the Implementation
of the Rule of Law Strategy*



Instituti i Kosovës për Drejtësi
Kosovo Law Institute
Kosovski Institut Pravde

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ABOUT KLI

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

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October, 2023

Prishtina, Republic of Kosovo

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G L O S S A R Y

KLI	Kosovo Law Institute
FRRLS	Functional Review of the Rule of Law Sector
RLS	Rule of Law Strategy
MoJ	Ministry of Justice
MIA	Ministry of Internal Affairs
KJC	Kosovo Judicial Council
KPC	Kosovo Prosecutorial Council
FLAA	Free Legal Aid Agency
KCS	Kosovo Correctional Service
KPS	Kosovo Probation Service
AL	Academy of Law
APC	Agency for the Prevention of Corruption
KBA	Kosovo Bar Association
IPA	Information and Privacy Agency
KP	Kosovo Police
CCPRK	Code of Criminal Procedure of Republic of Kosovo

1. Executive summary

The Functional Review of the Rule of Law Strategy (FRRLS) is one of the largest initiatives for advancing the rule of law in Kosovo. This was also found in the Progress Report for 2020, where the RFSSL was considered a sound basis for reforming the judicial system. The RFSSL process resulted in a strategy and action plan for the rule of law, documents which the Government of Kosovo approved on August 11, 2021. The RLS and Action Plan listed the activities to be implemented by the relevant institutions. Despite the statistics showing a satisfactory percentage of implementation of the activities, the activities undertaken have often deviated from the RLS. This report presents the level of respect for RLS in activities aimed at advancing the rule of law.

The implementation of the RLS in statistics according to the implementation report presented by the Steering Committee has been satisfactory, being fulfilled over 43% of the activities, while 45% of them have been partially implemented. However, KLI finds that statistical success does not represent the real implementation of RLS, and this is for two reasons: taking actions/activities that are contrary to RLS and inaccurate reporting on the implementation of activities listed in the RLS Action Plan.

The government has not respected the findings of the FRRLS and RLS when approving the draft law that deals with the reform of the KPC, as one of the most important reforms. The selected option is not an option provided by RLS.

The adoption of the RLS has been a hope for the elimination of the long-standing constitutional violation: the violation of the right to access the Court to prosecutorial decisions. This problem, identified by the FRRLS and RLS, was planned to be addressed in the Code of Criminal Procedure. The government ignored the findings and recommendations of the FRRLS and RLS when approving the new Code of Criminal Procedure, where access to the Court was still not guaranteed. Moreover, the Government and the Assembly were determined for the legal model which, according to the RLS, did not meet the requirements for access to the Court. Despite this, this activity was reported as fulfilled.

KLI has also found other problems with the implementation of the RLS, such as the transfer and advancement of prosecutors, the budget for the Academy of Law, "*adapted children and adoptive parents*" of asset declarants, the Anti-corruption Task Force, the Government's public statements against the system of justice, etc.

On the other hand, KLI has found that the reporting related to the implementation of the activities listed in the RLS Action Plan has often been inaccurate. This is because KLI has identified cases where unfulfilled activities were recorded as fulfilled in the RLS Implementation Report. Cameras in detention centers, public awareness of the Law on Disciplinary Responsibility, assessment of the capacities of KJC and KPC for access to public documents, and recruitment of 20 enforcement agents are some of the activities reported as (*partially*) fulfilled despite that have not been fulfilled.

2. Functional Review of the Rule of Law Sector

The Functional Review of the Rule of Law Sector (FRRLS) in Kosovo, launched by the Ministry of Justice in 2019, has been one of the most positive and largest initiatives in the field of the rule of law. This process had the purpose of scanning the situation in the justice system and identifying the problems in this system. In the Progress Report for Kosovo for 2020, the FRRLS is considered a sound basis for reforming and modernizing various aspects of the judiciary. Through the report, the European Commission has recommended to the Government of the Republic of Kosovo to proceed with such a process as soon as possible.[1]

The FRRLS process results in a strategy and action plan for the rule of law 2021-2026, documents which the Government of Kosovo approved on August 11, 2021.[2] The adoption of two strategic documents was preceded by a preliminary analysis of six pillars: judiciary, commercial justice, criminal justice, anti-corruption measures, mechanisms for access to justice, and inter-institutional cooperation and coordination. Further, in the second phase, the obstacles and needs of the institutions were identified in detail.

The Rule of Law Strategy (RLS) contains concrete measures aimed at increasing integrity, the performance of anti-corruption mechanisms in Kosovo, strengthening the judiciary and prosecution, improving access to justice for all, protecting human rights, etc.

According to the strategy, the rule of law problems have a very negative effect on the society of Kosovo. On this basis, to give these documents high importance and due seriousness, leadership, and coordination have been supported by the Ministry of Justice, the Kosovo Prosecutorial Council, and the Kosovo Judicial Council which together constitute the Steering Committee, that according to The Strategy should ensure continuous monitoring and follow-up of the progress in the implementation of the measures defined in the Strategy. The Steering Committee is the main steering body of the strategy and action plan. Major support to FRRLS and RLS has been provided by the American Embassy, European Union, British Embassy, USAID, UNDP, and Civil Society in Kosovo.

RLS has assessed the budget impact of the activities, which amount to 23,516,430 gross euros, the general part will be covered by the budget of the Government of Kosovo, and according to what is said in this document, potentially a significant part from donors, including the EU, US Embassy, USAID, UK Embassy and UNDP.

RLS is a five (5) year document while the Action Plan is a three (3) year document. Their implementation began in 2022 and according to the plans by the Steering Committee, it should be completed in the middle of 2026. The strategy will be subject to a mid-term review at the beginning of 2024 to assess the effectiveness and efficiency of its implementation.

[1] "Progress Report for Kosovo for 2020". European Commission, p. 18. (See link: https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/kosovo_report_2020.pdf). (Last accessed August 15, 2023).

[2] "Rule of Law Strategy 2021-2026". Decision No. 04/2021 of the Government of the Republic of Kosovo. (See link: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=45816>). (Last accessed 10 January 2023).

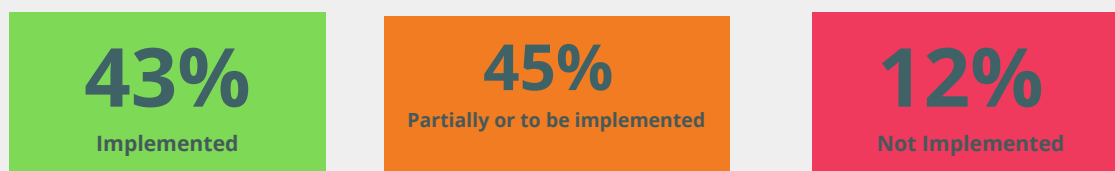
3. RLS Applicability in numbers

On April 4, 2023, after conducting public consultations, the Steering Committee presented the one-year Report on the implementation of the Rule of Law Strategy.[3] According to the published report, the RLS Action Plan has been implemented at 43%. According to this report, 50.97% of the activities defined by objective 1, for the strengthening of the judicial and prosecutorial system, have been fulfilled, while 50% of the activities according to objective 2, for the strengthening of criminal justice, 49.31% of objective 3, regarding the strengthening of access to justice have been fulfilled, and 59.68% of objective 4 – strengthening the anti-corruption fight.

According to the RLS Implementation Report, 45% of activities have been partially implemented or are being implemented. According to the evaluations of the Steering Committee, the reasons for the non-implementation or delays in the implementation of the activities were related to the deficiencies in planning by the institutions, the lack of coordination between the implementing institutions for joint activities, and the lack of financial and human capacities.

According to the RLS Implementation Report, the six (6) institutions that have the largest number of fully implemented activities about planning are Free Legal Aid Agency (62%), Kosovo Prosecutorial Council (57%), the Kosovo Judicial Council (51%), the Kosovo Correctional Service (50%), the Academy of Law (44%), the Ministry of Justice (43%), the Ministry of Internal Affairs and the Kosovo Police (43%). The institutions that have the lowest percentage of implementation of activities are: the Agency for the Prevention of Corruption with 28%, the Assembly of Kosovo with 20%, and the Kosovo Probation Service with 20%. On the other hand, the Report emphasizes that two institutions (KBA and OI) have not implemented any planned activity.

Strengthening the judicial and prosecutorial system, strengthening criminal justice, strengthening access to justice, and strengthening the anti-corruption fight are the four objectives of the action plan which are divided into fifteen (15) other specific objectives, with 440 activities to be implemented by 15 institutions of the Republic of Kosovo. The following graphic, presented in the RLS Implementation Report, contains statistical data regarding the level of RLS implementation, according to this report:



Indicator No. 1: The level of implementation of the Action Plan for the implementation of the Rule of Law Strategy.

[3] Meeting of the Steering Committee: Presentation of the 1-year Report on the Implementation of the Rule of Law Strategy". Ministry of Justice. April 2023. (See link: <https://md.rks-gov.net/page.aspx?id=1,15,2998>, (Last accessed April 10, 2023))

4. Findings on the implementation of RLS

The implementation of RLS in statistics according to the Implementation Report presented by the Steering Committee has been satisfactory, with over 43% of activities being fulfilled, while 45% of them have been partially implemented. However, KLI notes that statistical success does not mean equal advancement of the rule of law. This is for two reasons: undertaking actions that are not compliant with the RLS and inaccurate reporting on the applicability of the activities listed in the RLS Action Plan.

The government did not respect the findings of the FRRLS and RLS when approving the draft law that deals with the reform of the KPC. The way the Government has acted in this case reflects the Government's disregard for the Strategy it has adopted as a guide for the advancement of the rule of law. This happened in one of the most important reforms in the justice system.

The adoption of the RLS has been a hope for the elimination of the long-standing constitutional violation: the violation of the right to access the Court in the case of prosecutorial decisions. This problem identified by the FRRLS and RLS was planned to be addressed in the Code of Criminal Procedure. As such, this activity was listed in the Action Plan. The government ignored the findings and recommendations of the FRRLS and RLS when approving the new Code of Criminal Procedure, where access to the Court was still not guaranteed. Despite this, this activity was reported as fulfilled.

On the other hand, KLI has found that the reporting related to the implementation of the activities listed in the RLS Action Plan has often been inaccurate. This is because KLI has identified cases where unfulfilled activities were recorded as fulfilled in the RLS Implementation Report. This course of action shows a disregard for the RLS, as one of the most important documents for the advancement of the rule of law in Kosovo. Taking actions defined in the RLS, which are contrary to the findings of the FRRLS and the RLS, defeats the meaning of the FRRLS process itself and the RLS itself.

5. Reforma në KPK

On June 23, 2022, the Assembly approved Law no. 08/L-136 on the Amendment and Supplement to Law no. 06/L-056 on the KPC. According to this law, the composition of the KPC would be reduced to seven (7) members, four (4) of which are prosecutors. Two (2) others would be elected by the Assembly and another by the ombudsperson.[4] After the initiation of this Law in the Constitutional Court, the latter decided on April 5, 2023, that the Law in question does not pass the constitutionality test, declaring the Law invalid in its entirety.[5]

[4] "Article 6, Draft Law no. 08/L-249 on the amendment and supplement of Law no. 06/L-056 on the Kosovo Prosecutorial Council, Assembly of Kosovo", Legislative process. (See the link:

<https://www.kuvendikosoves.org/shq/projektligjet/projektligji/?draftlaw=490>). (Last accessed on August 24, 2023)

[5] "Judgment in case no. KO100/22 and KO101/22, Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo and Arben Gashi and 10 other deputies of the Assembly of the Republic of Kosovo". Constitutional Court of Kosovo, 2023. (See link: https://gjks.org/wpcontent/uploads/2023/04/ko_100_101_22_agj_shq.pdf). (Last accessed 24 August 2023).

After the publication of the judgment, the Ministry of Justice drafted the new Draft Law on Supplementing and Amending the Law on KPC. This Draft Law was approved by the Government on July 12, 2023, and is currently in the Assembly of the Republic of Kosovo.[6] Regarding this draft law, which also presents the reform in the KPC, KLI has found that it is in contradiction with the RLS and the findings of the FRRLS process.

5.1 Numri i anëtarëve

The FRRLS had found that the changes made in 2015 in the composition of the KPC, increasing the number of members of the prosecution from five (5) to 10, have been criticized by experts, who have emphasized that the simple majority of prosecutors in the Council is turned into an overwhelming majority. The FRRLS found that this makes **independent oversight impossible, concluding that the authorities should consider reducing the number of the current 10 prosecutor members of the KPC.**[7]

The first draft law, already annulled by the Constitutional Court, determined that the KPC would have seven (7) members. But, after the annulment by the Constitutional Court, the Government has changed the direction of the goal: from the initial goal of reducing the number of members of the KPC from 13 to seven (7) members, the MoJ has increased this number to 19 members until 2026.

According to the new amendments of the new Draft Law approved by the Government, the KPC would have 19 members until January 11, 2026. After this date, the KPC would have seven (7) members with this composition. According to the Draft Law [Article 21.1.] until January 11, 2026, eight (8) non-prosecutor members elected by a simple majority by the Assembly are added to the KPC, five (5) of whom are elected by the Assembly, two (2) of which are elected based on four (4) nominations accepted by the Ombudsman for representatives from among members of civil society organizations, while one (1) position is reserved for university professors of law. As for the quorum, until January 11, 2026, the Council is formed with half of the elected members of the Council [Article 21.3. of the Draft Law]. In case all the members of the Council are elected, the quorum is formed with twelve (12) members. This rule is valid until January 11, 2026 [Article 21.3. of the Draft Law].

The Ministry of Justice, states that the verdict of the Constitutional Court regarding the Draft Law on Supplementing and Amending the Law on the KPC has brought a new, unforeseen situation, in which case other options had to be considered to achieve the balance of the members of the KPC, as intended by the FRRLS. The same state that reducing the number of members of the KPC continues to remain a goal, according to the new Law on supplementing and amending the Law on the KPC, this will happen in January 2026.

The RLS and policy documents resulting from the FRRLS process highlighted the problem of the large number of prosecutorial members in the KPC. In this regard, even though the Ministry of Justice justifies the temporary increase in the number of KPC members by the judgment of the Constitutional Court, the increase in the number of members of the KPC in this way was not foreseen as an option. In this situation, the Draft law in question is contrary to the Rule of Law Strategy approved by the Government.

[6] "Draft Law no. 08/L-249 on the amending and supplementing of Law no. 06/L-056 on the Kosovo Prosecutorial Council". Assembly of Kosovo, Legislative Process. (See the link:

<https://www.kuvendikosoves.org/shq/projektligjet/projektligji/?draftlaw=490>). (Last accessed 24 August 2023).

[7] "Improving the accountability of judicial and prosecutorial systems". Policy Paper, p. 74, Ministry of Justice. 2019

In addition to non-compliance with RLS, the Draft law in question also contains other flaws, for which KLI and FOL have already reacted.[8] The latter has emphasized that the provisions in question are not in accordance with the Constitution of the Republic of Kosovo, RLS, and the Opinions of the Venice Commission. For this reason, KLI, after this draft law was put for public consultation by the Ministry of Justice, has sent comments, offering an adequate and suitable solution regarding the composition of the members of the KPC in the future, in harmony with the judgment of the Constitutional Court, where with the decision of the latter, the possibility of shortening the mandates of the current members has already been lost. According to KLI, to avoid the "corporatist" composition, but also to create a balance between the representatives of the prosecutors and the assembly, the KPC should have 7 members, where two (2) members are elected by the prosecutorial system and the Chief State Prosecutor ex officio and four (4) members elected by the Assembly, one of whom had to be a prosecutor. KLI had foreseen that the renewal of the composition of the KPC would be escalating. [9]

CONCLUSION

- *The proposed draft law for the reform of the Prosecutorial Council of Kosovo and the approach of the Ministry of Justice are not in accordance with the findings of the FRRLS and RLS.*
- *KLI recommends the MoJ to take seriously the opinions and recommendations of the Venice Commission, the requirements from the Rule of Law Strategy and ensure that **the new Law on the Prosecutorial Council is in full harmony with the judgment of the Constitutional Court and findings of FRRLS and RLS.***

5.2 Appointment of deputy chief prosecutors and heads of departments

FRRLS has emphasized that despite the fact that the position of deputy chief prosecutor and head of the department is not reflected in salary increases and may not entail additional managerial duties, this position is considered relevant experience in the case of promotion. However, the findings of the FRRLS have highlighted that the process of appointing deputy chief prosecutors and heads of departments lacks transparency. Regarding the appointment of deputy chief prosecutors and heads of departments, the FRRLS underlined that "*it should be treated the same as a promotion so that the successful candidate is selected through an open and competitive process based on **merit and ability***".

Amending and supplementing the Law on KPC so that the process for appointing deputy chief prosecutors and heads of departments is treated the same as promotion and the successful candidate is selected through an open competitive process based on merit and ability is one of the activities defined in the RLS Action Plan.

[8] "KLI and FOL: New draft law, objective politicization of the Kosovo Prosecutorial Council". Kosovo Law Institute 2023. (See link: <https://kli-ks.org/ikd-dhe-fol-projektligji-i-ri-politizim-objektiv-i-keshillit-prokurorial-te-kosoves/>). (Last accessed on August, 24 2023)

[9] Ibid.

Despite the fact that the implementation report described this activity as implemented, the Draft Law on KPC, which was approved by the Government, did not fully address this. This is because the Deputy Chief State Prosecutor will still be selected by the KPC, only with the recommendation of the Chief State Prosecutor.[10] So, in the same way as currently regulated by the regulations of the KPC.[11]

As for the deputy chief prosecutors of the Prosecutions and the heads of the departments, in the new Draft Law on the KPC, it is determined that *"The Council appoints the chief prosecutors for all other units of the State Prosecutor, as well as the deputy chief prosecutors and heads of departments when these positions are defined by special law. Every prosecutor who is subject to the qualifications defined by the Law on the State Prosecutor has the right to be nominated for these positions"*. [12]

Law No. 08/L-167 for the State Prosecutor entered into force on July 1, 2023. This law has determined that the Chief Prosecutors of the Prosecutions will recommend to the KPC the appointment of their Deputy Chief Prosecutor. Thus, the Council will appoint Deputy Chief Prosecutors of Prosecutions only with the recommendation of the Chief Prosecutor. The same situation is with the leaders of the Departments in SPRK and the Basic Prosecution in Pristina.[13]

Therefore, despite the fact that Law No. 08/L-167 on the State Prosecutor [articles 29 and 30] has defined the criteria for the appointment of Deputy Chief Prosecutors and heads of departments, the procedure has remained the same, in such a way that the appointment of these positions is not done through an open competition, but that the KPC is limited to the recommendations accepted by the Chief Prosecutors. In this case, the new Law on KPC approved by the Government and Law No. 08/L-167 on the State Prosecutor are not in harmony with the findings of FRRLS and RLS.

CONCLUSION

*The Draft Law on KPC and Law No. 08/L-167 on the State Prosecutor **are not in harmony** with the RLS regarding the appointment of Deputy Chief Prosecutors and heads of departments, as their appointment to these positions is not made by open competition but by recommendations from the Chief Prosecutors*

[10] "Article 16.2, Draft Law no. 08/L-249 on the amendment and completion of Law no. 06/L-056 on the Prosecutorial Council of Kosovo". Assembly of Kosovo, Legislative Process. (See the link:

<https://www.kuvendikosoves.org/shq/projektligjet/projektligji/?draftlaw=490>). (Last accessed 24 August 2023).

[11] "Article 6, Regulation No. 04/2023 to complete the amendment of Regulation No. 06./2019 for the appointment of the Chief State Prosecutor and the Chief Prosecutors of the Prosecution Offices of the Republic of Kosovo". Prosecutorial Council, 2023. (See the link:

<https://prokuroriarks.org/assets/cms/uploads/files/Regulation%20nr.04.2023%20for%20Completion%20and%20Amending%20e%20Regulation%20nr.06.2019%20for%20Appointment%20of%20Chief%20Prosecutor%20of%20State%20and%20Chief%20Prosecutors%20of%20Prosecution%2C%20no.1178.2023.pdf>) (Last accessed on August 24, 2023)

[12] "Article 16.3, Draft Law no. 08/L-249 on the amendment and completion of Law no. 06/L-056 on the Prosecutorial Council of Kosovo". Assembly of Kosovo, Legislative Process. (See the link

<https://www.kuvendikosoves.org/shq/projektligjet/projektligji/?draftlaw=490>). (Last accessed 24 August 2023).

[13] "Article 21.1.1.3., Article 21.2. and Article 28, Law No. 08/L-167 for the State Prosecutor". 2023. (See link:

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=74943>). (Last accessed 24 August 2023).

5.3 Hurried Reporting

On June 23, 2022, the Assembly approved Law no. 08/L-136 on the Amendment and Supplement to Law no. 06/L-056 on the Kosovo Prosecutorial Council. On July 1, 2022, this law was sent for constitutionality assessment to the Constitutional Court. In accordance with the Law on the Constitutional Court [Article 43], this law did not enter into force until the final decision of the Constitutional Court. On April 5, 2023, this Court decided that Law No. 08/L-136 was contrary to the Constitution. Thus, this law never entered into force.

Despite this, in the report on the implementation of the RLS, all activities related to the reform of the KPC according to the new Law were noted as implemented. The Ministry of Justice noted that the activities related to the reform of the KPC according to the new law have been fulfilled, despite the fact that Law no. 08/L-136 never entered into force.

In this regard, the Ministry of Justice declares that: "[The Law on the Kosovo Prosecutorial Council was approved in the second reading in the Assembly on June 23, 2022. For the Ministry of Justice, its final approval in the Assembly was considered as a completed RLS activity. It is important to mention that the law evaluation in the Constitutional Court is an unusual process whose epilogue could not be predicted or prejudged. In the next reports, the Judgment of the Constitutional Court and the new initiative on Amendments and Supplements to Law on the KPC will be ascertained".[14] Regarding this comment, KLI reminds the Ministry of Justice that according to the Constitution of the Republic of Kosovo [Article 80], the procedure for approving laws ends with the entry into force of the laws, after their publication in the Official Gazette. As for the fact that the decision of the Constitutional Court cannot be predicted or prejudged, in the case of the Draft law in question, is not relevant at all. This is because according to Article 43 of the Law on the Constitutional Court, **the draft law is not processed for decree to the president until the decision of the Constitutional Court**. Thus, the procedures for approving laws do not end until the decision-making of the Constitutional Court.

Therefore, KLI recommends to the Ministry of Justice that in the future, the activities related to the adoption of laws should be considered as implemented only at the moment when the Laws enter into force and not when the same are under consideration by the Assembly or have not entered in power.

CONCLUSION

*The reporting regarding the fulfillment of the activities regarding the reform of the KPC by the Ministry of Justice was a **hurried report**, since the new law on the KPC never entered into force.*

[14] Ministry of Justice, Comments for the report, September 22, 2023.

6. Legal remedies to prosecutorial decisions

On March 29, 2018, KLI published the report "Fighting corruption without judicial control: Persecution and amnesty justified in the name of corruption". In this report, KLI found that the fact that the Code of Criminal Procedure does not guarantee judicial control over the decisions of the State Prosecutor represents a violation of the Constitution and the European Convention on Human Rights.[15]

This finding was also confirmed during the FRRLS process: **"There is no judicial control over the prosecutor's decision for non-prosecution.** In this regard, it has been accepted at the European and global levels **that one of the biggest concerns related to the accountability of prosecutors** arises in cases of non-prosecution decisions.[16] **If victims of crimes are not provided with a legal remedy, then there is a high risk of non-accountability[17] and full discretion can potentially lead to abuse.** In the absence of judicial control over such prosecutorial decisions, there is also a violation of the principle provided in the Constitution related to the right of access to the court",[18] it is stated in one of the documents of the FRRLS. Commenting on the Draft Code of Criminal Procedure, FRRLS has found that the possibility of appeal to the Appeals Prosecution, and not to the Court, does not meet the standard for judicial review of prosecutorial decisions: **If the State Prosecutor rejects the criminal charge, the person who filed a criminal charge, the victim or the injured party can file a complaint with the Appeals Prosecution.**[19] Although the draft of the CCPRK has provided, through the proposed new provisions, the legal remedy at the level of the highest level of the prosecutorial system, it does not offer the possibility of compensation through a complaint to the court, **i.e. to ensure judicial control over the State Prosecutor's decisions on non-prosecution and thus the right to seek legal remedy in court.**[20]

"Drafting the Code of Criminal Procedure and accompanying legislation to allow legal remedies against the prosecutor's decision to suspend criminal prosecution" is one of the activities listed in the RLS Action Plan, which the report notes as fulfilled. The report states that this activity was implemented with the approval of the Code of Criminal Procedure. However, the Code of Criminal Procedure No. 08/L-032, which was drafted by the Ministry of Justice, approved by the Government, and then by the Assembly, applied exactly the solution that was opposed by the FRRLS: The right to appeal only to the Appeals Prosecution [21] without the possibility of addressing this in Court. Therefore, despite the findings of the FRRLS, the new Code of Criminal Procedure did not guarantee judicial review of prosecutorial decisions. Thus, even in this case, the Government and the Assembly did not respect the findings of the FRRLS and RLS.

[15] Ehat Miftaraj and Betim Musliu, "Fighting corruption without judicial control: Persecution and legalized amnesty in the name of corruption", pp. 10-26. ICT. March 2018. (See the link: <https://kli-ks.org/ep-content/uploads/2018/04/1.-IKD-Raporti-FINAL-29.03.2018.pdf>). (Last accessed 29 August 2023).

[16] Venice Commission - "Report on European standards regarding the Independence of the Judiciary", part II - prosecution service (CDL-AD(2010)040), December 2010.

[17] Venice Commission - "Report on European standards regarding the Independence of the Judicial System", part II - prosecution service (CDL-AD(2010)040), December 2010; The status and role of prosecutors - Guide of the United Nations Office on Drugs and Crime and the International Association of Prosecutors, 2014.

[18] "Access to Justice, Improving the effectiveness of legal remedies". Policy Documents. Pg. p. 27-28. Ministry of Justice, 2019.

[19] Article 84 of the Draft CCPRK.

[20] Ibid., p.29.

[21] Code, Article 84.

The MoJ stated that: "[a]ctivity in question, as it is presented in the official version of the approved Action Plan of the Strategy, emphasizes the amendment of the Code to allow a 'legal remedy' against the prosecutor's decision to dismiss the prosecution, which in fact is a tool addressed to the higher Prosecutor's Office, but not a legal tool of 'judicial control' as claimed in your Report".[22] Regarding this claim, KLI reminds the MoJ that the Action Plan is a derivative of the RLS, which is a derivative of the FRRLS. In the present case, as it was said, regarding the legal solution applied by Code No. 08/L-032 of Criminal Procedure, RFSSL found that **"...it does not offer the possibility of compensation through a complaint addressed to the court, i.e. to ensure judicial control over the State Prosecutor's decisions on non-prosecution and thus the right to request a legal remedy in court"**. [23] Thus, the fulfillment of the activities arising from the RLS Action Plan makes sense only if the fulfillment is done according to the findings of the FRRLS and the RLS and not if the activities listed in the Action Plan are addressed separately by the RLS and the FRRLS.

On August 24, 2023, the Minister of Justice, Albulena Haxhiu, published a video on her "Facebook" social network, where she criticized and accused the SPRK. In this case, Haxhiu complains about the dismissal of a criminal charge through which, as she says, a dangerous precedent has been built.[24] However, if the recommendations of the KLI and the findings of the FRRLS and RLS were correctly addressed in the Code of Criminal Procedure, the Ministry of Justice in this case would have the right to appeal to the Court. This would be more adequate than the reaction against an independent institution.

CONCLUSION

- *The FRRLS emphasized that there is **no judicial control over the prosecutor's decision not to prosecute***
- *Code no. 08/L-032 of the new Criminal Procedure, which entered into force on February 17, 2023, provides **only the right to appeal to the Appeals Prosecution**, not foreseeing control by the judiciary.*
- *The Government and the Assembly **did not take the findings of the FRRLS and RLS** as a basis for guaranteeing judicial control over prosecutorial decisions.*

7. Transfer and advancement of prosecutors

KLI had continuously found problems in the advancement of prosecutors and judges.[25] RLS through specific measures aims to increase meritocracy and professionalism in the transfer and advancement of judges and prosecutors.[26]

[22] Comments of the Ministry of Justice. September 22, 2023.

[23] Ibid., p.29.

[24] "For what and for whom is the Special Prosecution working? 2023. (See the link: <https://www.facebook.com/albulenaa.haxhiu/videos/605545918328162/>) . (Last accessed 29 August 2023).

[25] Thaqi M & Makshana L. "Administration of the justice system by the Councils". Pristina. June 2022. Pg. 21, 22. Bajraktari L & Gashi L. "Infringement of the integrity of Councils by Councils". Pristina. April 2021. Pg. 44 and 45.

[26] Rule of Law Strategy 2021 – 2026, Ministry of Justice, August 2021. Pg. 25–26. (See link: <https://md.rks-gov.net/desk/inc/media/6DCICBD5-0DF1-46AE-9D1A-78C96146C7D0.pdf>). (Last accessed 29 August 2023).

Specifically, among other things, the strategy requires that the KPC's decisions on the advancement of prosecutors be justified. This obligation has not been implemented by the KPC, even though the latter has documented this activity as fulfilled. During the monitoring of the KPC, KLI has found that some decisions of the KPC for the advancement of prosecutors do not contain any reasoning at all. What is really required from the Action Plan as a final product related to this objective is the justification of the decisions and not the justifications in the comprehensive reports of the Commission for the advancement and transfer of prosecutors.

In this regard, the KPC has been content only with the publication of decisions for advancement, but without their justification. Concrete examples that the decisions of the KPC on advancement do not contain the reasoning part are the decisions on the advancement of prosecutors, Shkelzen Ibrahim, Sheribane Selimi Muqaj, Naim Beka, and Sadri Alija.[27]

CONCLUSION

- SRL requests the **justification** of KPC's decisions on the advancement of prosecutors.
- KLI has found that the decisions of the KPC for the advancement of prosecutors do not contain the reasoning part at all. **This obligation derived from SRL has not been reflected in practice by the KPC.** However, the report found that this activity has been fulfilled.

8. Reporting as (partially) fulfilled of unfulfilled activities

In the Annual Report on the Implementation of RLS, for some of the activities that are considered fulfilled and some partially fulfilled, KLI has found that the reporting is not real. This is because the findings of the KLI, as will be elaborated below, prove that the activity in question has not been fulfilled (partially). This situation speaks to a false reporting of RLS implementation. Such reporting, above all, does not contribute to the implementation of the Strategy and risks that certain activities, which are evidenced as (partially) fulfilled, to be removed from the list and never be implemented.

For this reason, KLI recommends that in no case, the activities listed in the RLS Action Plan should be recorded as (partially) fulfilled if they have not actually been fulfilled.

CONCLUSION

- The following activities are reported as (partially) fulfilled even though they are **not actually fulfilled.**
- Cameras in detention centers, public awareness of the Law on Disciplinary Responsibility, Assessment of the capacities of the KJC and the KPC for access to public documents, Recruitment of 20 enforcement agents, and the FLAA by-law for systematization are some of **the activities reported as (partially) fulfilled even though they have not been fulfilled.**
- KLI recommends that the activities recorded as (partially) fulfilled in RLS should **not be recorded** as such if they have not actually been fulfilled yet.

[27] See 1). KPC Decision/No.175/2023, 2). KPC/No.174/2023, 3). KPC/No.173/2023, 4). KPC/No.1263/2022.

8.1 Cameras in detention centers

The prohibition of torture and ill-treatment was also covered by the FRRLS.[28] In line with the findings of the FRRLS, the Action Plan of the RLS has determined, among other things, the operationalization of cameras in all places of detention under the management of the Kosovo Police. The leading and supporting institution for this activity is the Kosovo Police.

In the report on the implementation of RLS, this activity is recorded as fulfilled. Despite this, the report itself states that **"Out of about 43 detention centers, 36 of them have security camera systems installed"**. Also, despite the fact that the activity specifies the operationalization of cameras in all places of detention and this has not been achieved, this activity has been recorded as fulfilled and not partially fulfilled.

8.2 Law on Disciplinary Responsibility of Judges and Prosecutors

Within the objective *"Sustainable disciplinary platform for ensuring accountability"* of RLS, among the planned activities is the undertaking of continuous media and information campaigns by KPC to increase public awareness of the new legal system of disciplinary responsibility of prosecutors. This activity in the Annual Strategy Implementation Report turns out to be fulfilled by KPC, however, from the analysis of KLI, it was found that this activity was also not fulfilled by the Council. In this regard, according to the KPC, several actions have been taken, among them videos related to the work of the prosecutorial system, as well as the schedules of the prosecutors' meetings to be held with citizens, where they may have the opportunity to present their needs and complaints that they may have. Moreover, according to the KPC, the law on disciplinary responsibility is published on the web portal of the prosecutorial system.

However, this activity cannot be considered completely fulfilled. Regarding Law publication, the Laws are published in the Official Gazette. In fact, the same does not enter into force without being published in this Gazette. Regarding the video, the publication of such related to the work of the prosecutorial system, in general, cannot be considered to have been carried out as an activity. The publication of only one video, which has nothing to do with the disciplinary responsibility of prosecutors, and is not a continuous activity, is not considered fulfillment of the activity in question by the KPC.

8.3 Vlerësimi i kapaciteteve nga KGJK dhe KPK për qasje në dokumente publike dhe mbrojtje të të dhënave personal

In the Report on the implementation of the RLS, several activities are foreseen in terms of strengthening efficient public information mechanisms that provide quick access to information. Although KPC and KJC have considered the activity of assessing internal capacities in handling

[28] "Access to Justice, Improving the effectiveness of legal remedies". Policy Paper. Pages 17-21. Ministry of Justice, 2019.

requests for access to public documents as fulfilled, through the appointment of responsible officials according to Law No. 06/L-081 on Access to Public Documents, a matter of such cannot be considered accurate.

This is because the appointment of officials responsible for access to public documents constitutes a legal obligation according to Law 06/L-081 on Access to Public Documents and only the appointment of officials in some courts and the prosecutor has not helped to create efficient mechanisms that provide quick access to information. In this particular case, the obligation consisted in evaluating the capacities to respond to requests and not fulfilling a legal condition: the appointment of communication officers.

RLS, requests the aim of building the practice within the KJC, KPC, courts, and prosecutors, in accordance with the Law on Access to Public Documents and the Law on Data Protection, when responding to requests for access to public information and documents, including regularly disclosing such data to all interested parties.[29].

Out of 138 requests for access to public information and documents addressed to the prosecutorial system during 2022, KLI received 68 positive responses (50%) and 16 negative responses (10%), while in 54 cases (40%) it did not receive responses. Only in KPC, during this period, KLI submitted 38 requests, of which, in 20 cases (52%) positive responses were received, in 4 cases (10%) negative ones, while in other 14 requests (36 %), KPC had not responded at all.[30] While, of the 417 requests for information and access to public documents addressed by the KLI to the KJC and the courts in Kosovo in 2022, 223 positive responses were received, or about 54%, 31 negative responses, and 163 requests remained unanswered. Only in KJC, during this period, KLI submitted 59 such requests, of which, in 23 cases (40%) positive responses were received, in 3 cases (5%) negative and 33 requests (55%) remained unanswered.[31]

KPC and KJC have failed to strengthen the existing mechanisms for addressing requests for access to public documents as required by RLS, this is because, from the aforementioned data of the KLI, it appears that more than 40% of requests have remained without any response. In this regard, KJC and KPC also did not make an adequate assessment when they assessed the capacities, since the Basic Court in Prishtina and the BP in Prishtina have been equated with other courts and prosecutions, knowing that in these two institutions, the requests for information and access to documents public are much larger compared to courts and other prosecutions, and the appointment of only one responsible official does not offer a solution in relation to the number of requests that these two institutions accept.

8.4 Recruiting enforcement agents

In the framework of specific objectives related to the strengthening of access to justice, RLS has listed the improvement of the provision of services by independent professions. In this line, the Action Plan has listed as an activity the decision to recruit 20 additional private enforcement agents with the aim of a better geographical distribution of enforcement services.

[29] "Strategy for the Rule of Law 2021 – 2026". Ministry of Justice, August 2021. (See link: <https://md.rks.gov.net/desk/inc/media/6DC1CBD5-0DF1-46AE-9D1A-78C96146C7D0.pdf>). (Last accessed 29 August 2023).

[30] Makshana L. "(Bad) Administration of the Prosecution System", p. 8. Pristina. April 2023. (See the link: <https://kli-ks.org/keqadministrimi-i-sistemit-prokurorial/>). (Last accessed August 29, 2023).

[31] Makshana L. "Challenges in the Administration of the Judiciary", p. 8, Pristina. April 2023. (See the link: <https://kli-ks.org/sfidat-ne-administriminim-e-jjyqesorit/>). (Last accessed August 29, 2023).

The report on the implementation of the RLS states that *"On 23.07.2022, 13 candidates passed the exam for private enforcement agents, of which 4 started exercising the activity of the bailiff in December 2022. 2 others are expected to start the activity in 2023. During the year 2023, a new announcement for appointment is planned"*.

Despite, the fact that the activity specifically emphasizes the recruitment of 20 enforcement agents and the report itself states that so far only 6 of them have been recruited, this activity has been recorded as fulfilled even though it has not been fulfilled.

8.5 Free Legal Aid Agency by-law of the for data systematization

Within the framework of Chapter 3.1 regarding the improvement of access to the courts and the prosecutor's office, it is foreseen **"the drafting of a by-law for the creation of a system for the collection of reliable statistics, which records requests, decisions to grant and refuse legal aid for free, reasons for refusal, in order to measure the criteria for providing free legal aid."**

In the RLS Implementation Report [page 56], this activity is considered fulfilled, while this clarification is given: *"FLAA has assessed this issue and finds that already possesses the system for collecting statistics as required by the activity and therefore has the database" LAIS³² that generates the necessary data for the Agency and the public. The database contains many other information such as gender, ethnicity, address, legal field, nature of legal problem, legal action, actions undertaken by lawyers, etc.* Even the MoJ has emphasized that because the practice of data collection is efficient, there is no need to approve this by-law, adding that *"The assessment of the implementation of the RLS is not made only by the formal reporting if a by-law is being drafted or not, but also from the evaluation of the achievement of the goal that by-law had"*.

However, as long as the product (*output*) of this activity is the **"approved by-law"**, the assessment that in this particular case, there is no need to approve this by-law act cannot be considered the implementation of this activity. In this case, the RLS Implementation Report, according to this reasoning, could delete this activity, as was done in the case of the activity *"Amending the Law on the KPC so that the CSP is not a member of the Council"* [32] and not for this activity to be considered fulfilled, and for this to be reflected in the overall percentage of fulfillment of the activities defined in the RLS Action Plan.

9. Other topics about RLS implementation

In the analysis of the Report on the implementation of the Rule of Law Strategy, KLI has also found other problems with the implementation of the RLS in practice, such as the Budget for the Academy of Law, *"Adapted children and adoptive parents"* of asset declarants, Anti-corruption Taskforce and the Government's public statements against the justice system. The implementation of RLS in relation to these issues is the subject of the following treatment.

[32] Annual report on the implementation of the Rule of Law Strategy, March 2023, p.47.

9.1 Budget for the Academy of Law

The one-year report of the implementation of the Action Plan for the Implementation of the RLS places the Academy of Law as one of the institutions that has carried out the most activities. AL is the institution that, in relation to the number of activities with the Ministry of Internal Affairs and the Kosovo Police, has almost the same percentage of implementation. However, AF has a larger number of activities compared to the administration, and the larger budget that the Ministry of Internal Affairs and the Kosovo Police have to implement the planned activities.

Despite the fact that with the RLS and the Action Plan, one of the actions that should be taken is the allocation of a larger budget for AL in order to enable the re-structuring and engagement of a higher number of permanent coaches. It can be seen that such an action is not planned and, moreover, it is not part of the projections of the Government of Kosovo.

The failure to address this activity by the Government is also seen in the approval of the Medium-Term Expenditure Framework 2024-2026. According to the budget table, despite the fact that the budget increase is not foreseen, it is clearly observed that this budget is planned to decrease by 127 thousand 518 euros.[33]

The same situation of non-addressing budget requests was also in the case of approving budget allocations for the year 2023. During the drafting of the budget for the year 2023, the Academy of Law asked the Ministry of Finance, the Government of Kosovo, and the Assembly of Kosovo to increase the budget for this institution. She had originally requested 1,493,000 euros from the Government, but the latter, with the approval of the draft law on budget allocations for 2023, had allocated only 892 thousand 367 euros.[34]

CONCLUSION

- RLS and Action Plan required **higher budget allocation** for AJ.
- The Government and the Assembly **did not increase** the AJ budget despite the demands of the RLS.

9.2 "Adapted children and adoptive parents" of asset declarants

Harmonization of the definition of '*family members*' in the Asset Declaration Law and the Criminal Code, with the aim of including adopted children and adoptive parents in the notion of '*family member*' is listed as an activity in the RLS Action Plan. The Report on the Implementation of RLS states that **"The Law on the Declaration, Origin and Control of Assets and Gifts was approved by the Assembly on 14.07.2022. This term has not been harmonized"**.

[33] See for more: Medium-Term Expenditure Framework 2024-2026, 2023, p. 91. (See link: <https://mf.rks-gov.net/desk/inc/media/8661A10E-0E0C-462C-8936-B7BD95705249.pdf>). (Last accessed August 15, 2023).

[34] See for more: Law No. 08/L-193 on Budget Allocations for the Budget of the Republic of Kosovo for the Year 2023, Official Gazette of the Republic of Kosovo, 2022, p. 85. (See link: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=68589>). (Last accessed August 15, 2023).

In this way, the Government and the Assembly have ignored this obligation defined in the RLS Action Plan, upon the adoption of Law no. 08/I-108 on Declaration, Origin, and Control of Assets and Gifts, by not implementing this activity in this law. For this, the Report on the Implementation of the Strategy did not provide any clarification, eg. as it did in the case of the activity related to the removal of the Chief Prosecutor from the position of a member of the KPC by official duty.[35]

In this situation, one of the findings of the FRRLS that has been materialized as an activity in the RLS Action Plan has, for no reason, has not been included in the already approved Law. The implementation of this activity brings the need to change the Law and as a result, creates a situation of instability of the laws, the amendment of which is constantly required.

In line with this, KLI recommends to the MoJ, the Government, and the Assembly that in each case they examine all the activities listed in the RLS Action Plan and apply the same to the approved laws. The opposite of this makes RLS to be considered only a formal document and not a real Strategy for the advancement of the rule of law in Kosovo.

CONCLUSION

- ***The harmonization of the definition of "family members" in the Law on the Declaration of Assets and the Criminal Code was not done in harmony with the RLS, as adopted children and adoptive parents were not included in this definition.***
- ***KLI recommends to the Government, the Assembly and the MoJ that in each law planned for approval, **the activities listed in the Action Plan and in the RLS should be applied.*****

9.3 "Amendment" of the RLS by the Committee on Legislation

The document issued by FRRLS in relation to accountability emphasizes the problem of BAK and civil society representation in the KJC. This in terms of the non-judge members of the KJC who are elected by the Assembly. However, this document concluded that *"the Assembly of Kosovo does not have procedures for the appointment of these two non-judge members"*. In line with this issue, the activity listed was *"Approval by the Assembly of Kosovo of the procedures for the election and appointment of non-judge/non-prosecutor members in the KJC and KPC"*. [36] This activity was also included in the RLS Action Plan.

In spite of this, the RLS Implementation Report underlined that *"the Commission for Legislation has evaluated this activity and finds that the Law on the KJC, the Rules of the Assembly and the practice established in the Commission and the Assembly are sufficient for the development of the procedures for the election of non-judicial and non-prosecutionary members in KJC and KPC"*.

[35] Annual Report on the Implementation of the Strategy for the Rule of Law, Office of the Prime Minister, 2023. (See the link: <https://kryeministri.rks-gov.net/wp-content/uploads/2023/04/Raporti-1-annual-FINAL.pdf>). (Last accessed August 15, 2023).

[36] "Improving the accountability of judicial and prosecutorial systems", Policy Paper, p. 41 – 42 – 113. Ministry of Justice, 2011

Thus, while the RLS was passed in August 2021, the RLS Implementation Report of March 2023 noted that the Legislation Committee had already "amended" the RLS. In this situation, it is not clear what has changed since then and what was the analysis of the Legislation Committee that went beyond the training done by the FRRLS and came to the conclusion that this activity defined in the RLS Action Plan should not to be implemented.

Surprisingly, this activity is recorded as accomplished in the RLS implementation report.

CONCLUSION

- ***The findings of the RLS were not taken as a basis for approving procedures for the selection and appointment of non-judge and non-prosecutor members in the KJC and KPC.***
- *Despite the fact that the procedures were not approved, this activity was evidenced as fulfilled in the Report on the implementation of the Strategy.*

9.4 Anti-Corruption Taskforce

The Anti-Corruption Task Force within the Kosovo Police (KP), was formed on February 26, 2010[37] and had the mission to prevent, investigate and detect criminal offenses against the economy and finance, as well as any case of corruption, including that of the high level. The need for such a Task Force was created in order to fight corruption away from political interference. It consisted of local and international special prosecutors, 30 police investigators and a financial expert.[38] The Task Force had initiated cases against the political figures of the main parties in the country as well as against the highest public officials. Most of the high-profile indictments were brought up by investigations conducted by the investigators of this police task force.

Despite its importance and results, the Anti-Corruption Task Force was extinguished on 18 October 2020 by the Hoti Government, prompting strong reactions from international partners, the opposition and civil society.[39] KLI was also against its abolition. According to KLI, the termination of the Task Force contradicted the process of the Functional Review of the Rule of Law Sector and that this action was considered retaliation against the investigators of the task force due to the cases it was handling at the time. [40]

[37] Decision 02/2010 dt. 26.02.2010. Available at: http://kryeministri-ks.net/ëp-content/uploads/docs/Vendimet_e_Mbledhjes_se_110_-te_te_Qeverise_2010.pdf

[38] "The War of Governments against the Anticorruption Task Force". Oath of Justice. July 15, 2023. (See the link: <https://betimiperdrejtesi.com/betimi-per-drejtesi-live-lufta-e-qeverive-kunder-task-forces-anticorruption/>). (Last accessed on 10.09.2023)

[39] "Why was the Anticorruption Task Force in the Police extinguished and who was against this decision?". Oath of Justice. July 15, 2023. (See the link: <https://betimiperdrejtesi.com/pse-u-shua-task-forca-antikorrupcion-ne-polici-dhe-kush-ishte-kunder-ketij-vendimi/>). (Last accessed on 10.09.2023)

[40] "KLI reacts to the Government of Kosovo regarding the proposal to abolish the Special Anti-Corruption Department in the Kosovo Police". Kosovo Law Institute (KLI). October 19, 2020. (See the link: <https://kli-ks.org/ikd-reagon-ndaj-goverise-se-kosoves-lidhur-me-propozimin-per-shuarjen-e-departamentit-special-anti-korrupcion-in-the-police-of-kosovo/>). (Last accessed on 10.09.2023).

The issue of abolishing the Task Force was also addressed by the Progress Report for Kosovo for 2021. In the Progress Report, published by the European Commission, it was stated that the previous government's decision to abolish the Special Anti-Corruption Task Force within The Kosovo Police has raised serious concerns regarding Kosovo's engagement in the fight against corruption and organized crime. According to this report, it is said that the Government should provide a legal sound, and organizational structure for the Special Investigative Unit as the successor of the abolished Task Force.[41] However, despite the termination of this Task Force by the Hoti Government, the recommendations of the FRRLS were completely different, that is, that the Task Force should be strengthened and not extinguished. Specifically, in the policy document "*Improving the Institutional Framework for Fighting Corruption*", the findings were to improve the legal basis in order to have better coordination between the SPRK and the Anti-Corruption Task Force.[42] So, in no case neither from the FRRLS nor from the international partners and the civil society was it requested to extinguish it, but it was requested to strengthen it. This had also been a request of the self-determination movement (LVV).

However, despite the criticisms made by the Kurti Government, all that the latter has managed to do is systematize it in the Draft Law on the Special Prosecution of the Republic of Kosovo, minimizing its role in the Special Investigation Unit and not creating legal conditions for the strengthening and re-establishment of the Task Force. The recommendations issued by the FRRLS have not been reflected in the Draft Law on SPRK, which is currently in the Assembly and has not yet passed a second review.

CONCLUSION

- **Progress Report 2021:** *The abolition of the Anti-Corruption Task Force raised serious concerns about Kosovo's commitment to the fight against corruption and organized crime.*
- **The Hoti government,** *contrary to the recommendations of the FRRLS, issued a decision to abolish the Anti-Corruption Task Force.*
- **The Kurti government did not take adequate actions** *to address the recommendations of FRRLS and RLS regarding the operation of the Anti-Corruption Task Force.*

9.5 The Government's public statements against the justice system

In recent years, public statements by high government officials against the judicial system have not been rare. Not a few officials of the current government have accused this system, criticizing it in many aspects of the way it works. Although in the Republic of Kosovo, powers are divided, this has not stopped government officials from throwing accusations at prosecutors and judges, not respecting this constitutional division. An illustrative case for this is the case of state reserves, where Prime Minister Kurti has said that there is no corruption or misuse of state reserves, saying that the biggest losers from such a situation are the old political elite "*You find the losers in the old and*

[41] "Progress Report: The abolition of the Anti-Corruption Task Force raised serious concerns about Kosovo's commitment to the fight against corruption and organized crime". Oath for Justice. October 20, 2021. (See the link: <https://betimiperdrejtesi.com/raporti-i-progresit-shfuqizimi-i-task-forces-anti-korrupcion-ngriti-shqetesime-serioze-ne-langen-me-angazhimin-e-Kosovo-in-the-war-against-corruption-and-organized-crime/>). (Last accessed on 10.09.2023).

[42] "Improving the Institutional Framework for Fighting Corruption". Policy document. Pg. 82. Ministry of Justice 2019

corrupt political elite, in the court and its prosecutors, in the misused media to support crime", he added.[43] Also, the Minister of Finance, Hekuran Murati continued as Albin Kurti to issue accusations towards the justice system that it is aiming to return the old criminal caste to power.[44] Public statements by senior government officials against the justice system were also made in other cases. [45]

It is very important to understand correctly that the judicial system in Kosovo is an independent power, that is founded on the principles of independence and integrity, and that any intervention by the government represents an unconstitutional and legal intervention of the executive power to the judiciary. In an independent and democratic state like the Republic of Kosovo, the independence of the judiciary and respect for its decisions are essential for the rule of law and for maintaining the integrity of the judicial system. In any form, the Government should not play the role of the media and civil society which monitor, report, and publish findings on the functioning of the justice system.

Even the findings and recommendations issued by the FRRLS have been such that there is no interference by the executive in the judicial system. FRRLS documents, as stated in the Venice Commission's rule of law checklist, have emphasized that it is important that: **"The judiciary must be independent. Independence means that the judiciary is free from outside pressure, and not subject to political influence or manipulation, particularly by the executive branch. This requirement is an integral part of the basic democratic principle of separation of powers. Judges should not be subject to political influence or manipulation"**. [46]

Despite this, the MoJ says that their statements are based on concrete facts and are aimed at transparency and informing citizens about the functioning of the justice system. Further, the MoJ says that *"...citizens have the right to know that these challenges are not being addressed and whether the prosecutors and judges are carrying out their duties independently and efficiently, for which they are appointed"*.

[43] *"Kurti says that there is no corruption and misuse of the reserves, he mentions the prosecutors of the old corrupt elite". Oath of Justice. August 18, 2023. (See the link: <https://betimiperdrejtesi.com/kurti-thote-se-ska-korrupcion-e-keqperdorime-rezerat-permend-prokuroret-e-elites-se-vjeter-te-korruptuar/>). (Last accessed September 15, 2023).*

[44] *"Murat says that the captured justice system is making spectacles, he mentions the prosecutor Milot Krasniq for not doing anything to investigate a former minister". Oath of Justice. August 19, 2023. (See the link: <https://betimiperdrejtesi.com/murati-thote-se-sistemi-i-kapur-i-drejtesise-po-ben-spektakle-permend-prokurorin-milot-krasniqin-se-nuk-did-nothing-to-investigate-a-former-minister/>). (Last accessed September 15, 2023).*

[45] *"For what and for whom is the Special Prosecution working? 2023. (See the link: <https://www.facebook.com/albulenaa.haxhiuu/videos/605545918328162/>). (Last accessed September 15, 2023).* "PSRK: Concerned about the continuous recycling of prejudicial and reckless statements of Minister Haxhiu". Oath of Justice. September 7, 2023. (See the link: <https://betimiperdrejtesi.com/psrk-te-xqetesuar-per-riciklimin-e-vazhdueshem-te-deklaratave-pregjykyese-te-pamatura-te-ministres-haxhiu/>). (Last accessed September 15, 2023). "Deputy Chief Prosecutor Qavolli reacts to Minister Peci: the Prosecutor's Office filed 20 indictments for constructions without permission". Oath of Justice. August 31, 2023. (See the link: <https://betimiperdrejtesi.com/zv-kryeprokurori-qavolli-i-reagon-ministrit-peci-prokuroria-ngriti-20-aktakuza-per-ndertime-pa-leje/>). (Last accessed September 15, 2023).

"Durmishi criticizes the SPRK: Over two years there has been no action on the subject of bridge maintenance". Oath of Justice. August 21, 2023. (See the link: <https://betimiperdrejtesi.com/durmishi-kritikon-psrk-ne-mbi-dy-vjet-ska-asnje-veprim-per-lenden-e-miremehandes-se-urave/>). (Last accessed on September 15, 2023)

[46] *"Improving the accountability of judicial and prosecutorial systems". Policy Paper. Page 5. Ministry of Justice 2019.*

Through these statements, which the MoJ does not consider as interference with the work of the justice system, the MoJ states that the aim is to address the problems in the system in accordance with the constitutional mandate and at the same time transparency and fair information which reflects the factual situation.[47]

Both from the actions and from this answer, it seems that the MoJ does not take into account the concept of the separation of powers. The independence of the justice system from other powers means that this system has its own regulatory institutions and it is this system from which citizens demand accountability and must give accountability. It is not the executive power that should play this role, to inform citizens about how the justice system works. The government is also neither a media nor an NGO. For these reasons, KLI recommends the MoJ and the Government in general to clarify the concept of separation of powers and stop attacks on the justice system, which represent interference in this system.

CONCLUSION

- *Attacking statements of high public officials towards the judicial system **were more frequent in the last two (2) years.***
- *Any public statement of the Government towards the judicial system **violates the principle of separation of powers** and violates the principles on which the rule of law in Kosovo should be built.*
- ***The government must respect the independence of the judiciary in every case.***
- *Public statements criticizing prosecutors and judges for concrete cases violate the independence and integrity of the latter and are **considered pure interference in the judicial power.***
- *KLI recommends to the MoJ and the Government in general to **clarify the concept of separation of powers and stop attacks on the justice system,** which represent interference in this system.*

[47] Ministry of Justice comments. 22 September 2023.

The Report (Not) Implementation of the Rule of Law Strategy in Practice was carried out by the Kosovo Law Institute with the support of the National Endowment for Democracy (NED).



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