



Instituti i Kosovës për Drejtësi  
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### *Article 13. Participation of society*

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to such restrictions as are provided for in law.

## **CIVIL SOCIETY REPORT**

on the implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

## **UNITED NATIONS CONVENTION AGAINST CORRUPTION**

## **IN KOSOVO**

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by Kosovo Law Institute

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The findings in this report are those of the authors but do not necessarily reflect the views of the UNCAC Coalition and the donors who have made this report possible.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be 13 July 2024.

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The Kosovo Law Institute (KLI) is an independent non-governmental and non-profit organization specialized in legal analysis, policy research and advocacy in the fields of justice and advancement of the rule of law.

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## Abbreviations

AASCA	Agency for the Administration of Seized and Confiscated Assets
APC	Agency for the Prevention of Corruption
AJK	Kosovo Journalists Association
CCEP	Consultative Council of European Prosecutors
CCPRK	Code of Criminal Procedure of the Republic of Kosovo
CCRK	Criminal Code of the Republic of Kosovo
CEC	Central Election Commission
CoE	Council of Europe
CSPF	Commission for the Supervision of Public Finances
EC	European Commission
FATF	Financial Action Task Force
FIU-K	Financial Intelligence Unit
GRK	Government of Republic of Kosovo
IMC	Independent Media Commission
IOVCSK	Independent Oversight Board for the Civil Service of Kosovo
IPA	Information and Privacy Agency
KBRA	Kosovo Business Registration Agency
KCFR	Kosovo Council Financial Reporting
KIESA	Kosovo Investment and Enterprise Support Agency
KIPA	Kosovo Institute for Public Administration
KJC	Kosovo Judicial Council
KLI	Kosovo Law Institute
KPC	Kosovo Prosecutorial Council
KRPP	Regulatory Commission for Public Prosecution
LAFRA	Law on Accounting, Financial Reporting, and Auditing
LAGNAORK	Law on the Auditor General and the National Audit Office of the Republic of Kosovo
LAPC	Law on the Agency for Prevention of Corruption
LAPD	Law on Access to Public Documents
LBABRK	Law on Budgetary Appropriations for the Budget of the Republic of Kosovo
LBO	Law on Business Organizations
LC	Law on Courts
LDLJP	Law on Disciplinary Liability of Judges and Prosecutors
LDOCAG	Law on Declaration, Origin, and Control of Assets and Gifts
LEPCA	Law on Extended Powers for Confiscation of Assets
LFPE	Law on Financing of Political Entities

LGAP	Law on General Administrative Procedure
LGE	Law on General Elections
LILCCM	Law on International Legal Cooperation in Criminal Matters
LIMC	Law on the Independent Media Commission
LLI	Law on Legislative Initiatives
LMSCP	Law on the Management of Seized and Confiscated Property
LPCIEPF	Law on the Prevention of Conflict of Interest in the Exercise of Public Function
LPMLFT	Law on the Prevention of Money Laundering and Financing of Terrorism
LPO	Law on Public Officials
LPP	Law on Public Procurement
LPW	Law on the Protection of Whistleblowers
LSBVCUA	Draft Law on the State Bureau for the Verification and Confiscation of Unjustifiable Assets
LSBVCUA	Law on the State Bureau for the Verification and Confiscation of Unjustifiable Assets
LSP	Law on Special Prosecution
LSPO	Law on the State Prosecutor's Office
LSPS	Law on Salaries in the Public Sector
NAORK	National Audit Office of the Republic of Kosovo
PACE	The Parliamentary Assembly of the Council of Europe
PAOB	Public Audit Oversight Board
PAR	Public Administration Reform
PRB	Procurement Review Body
RRPGRK	Regulation (GRK) No. 17/2024 on Rules of Procedure of the Government of the Republic of Kosovo
SPRK	Special Prosecution of the Republic of Kosovo
SRL	Strategy for the Rule of Law
SSAC	State Strategy against Corruption
UNCAC	United Nations Convention against Corruption
UNMIK	United Nations Interim Administration Mission in Kosovo
UNODC	United Nations Office on Drugs and Crime

## List of Persons Consulted

<b>Name</b>	<b>Job title</b>	<b>Affiliation</b>	<b>Date of consultation</b>
Yll Buleshkaj	Director	Agency for the Prevention of Corruption	Interview on 28/06/2024
Ngadhujim Arni	Judge	Judiciary	Written Contributions on 28/06/2024
Armend Hamiti	Prosecutor	State Prosecutor	Written Contributions on 01/07/2024
Arbër Kabashi	Researcher	Initiative for Progress	Written Contributions on 01/07/2024
Eugen Cakolli	Senior Researcher	Kosovo Democratic Institute	Written Contributions on 30/07/2024

## **I. Introduction**

Kosovo has not yet signed the United Nations Convention against Corruption (UNCAC). Nevertheless, the Convention's prominence highlights the importance of complying with international standards in the formulation and enforcement of policies and approaches to fight corruption.

This parallel report reviews Kosovo's implementation of selected articles of Chapter II (Preventive measures) and Chapter V (Asset recovery) of the UNCAC. The report is intended as a contribution to the future UNCAC implementation review process covering these chapters.

### **1.1 Scope**

The UNCAC articles and topics that receive particular attention in this report are those covering preventive anti-corruption policies and practices (Article 5), preventive anti-corruption bodies (Article 6), public sector employment (Article 7.1), political financing (Article 7.3), codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12), reporting mechanisms and whistleblower protection (Articles 8.4 and 13.2), public procurement (Article 9.1), the management of public finances (Article 9), access to information and the participation of society (Articles 10 and 13.1), judiciary and prosecution service (Article 11), private sector transparency (Article 12), and measures to prevent money laundering (Art. 14) under Chapter II. Under Chapter V, the UNCAC articles and topics that receive particular attention in this report are those covering anti-money laundering (Articles 52 and 58), measures for direct recovery of property (Articles 53 and 56), confiscation tools (Article 54), international cooperation for the purpose of confiscation (Articles 51, 54, 55, 56 and 59) and the return and disposal of confiscated property (Article 57).

### **1.2 Structure**

The report begins with an executive summary, including the condensed findings, conclusions and recommendations about the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Kosovo as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. Then, recent developments are discussed and lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

### **1.3 Methodology**

The report was prepared by the Kosovo Law Institute with technical and financial support from the UNCAC Coalition. The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for use by civil society organizations (CSOs). These tools reflected but simplified the United Nations Office on Drugs and

Crime (UNODC)'s checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practices and areas in need of improvement in articles of UNCAC Chapter II on prevention and Chapter V on asset recovery.



## II. Executive Summary

The civil society parallel report examines Kosovo's implementation of Chapter II on preventive measures and Chapter V on asset recovery of the United Nations Convention against Corruption (UNCAC), in legislation and practice. The report intends to contribute to the future implementation of UNCAC, and therefore, future adherence to UNCAC principles.

### 2.1 Description of the Official Review Process

Not being a State Party to the United Nations Convention against Corruption (UNCAC), Kosovo does not participate in the Convention's review process. Nonetheless, the country has shown its unwavering commitment to combating corruption through legislative and implementation efforts aligned with UNCAC principles. Kosovo, in line with the contractual obligations with the European Union through the Stabilization and Association Agreement, has proactively pursued anti-corruption policies by integrating relevant provisions into its domestic legislation and policies. Various laws and regulations have been enacted to strengthen institutional frameworks, enhance transparency, and prosecute corruption offenses.

Kosovo's public institutions have not sought to avoid the implementation of UNCAC; on the contrary, systematic efforts and insistence have been put into the implementation of the provisions of this Convention. This proactive stance underscores Kosovo's dedication declaratively to strengthening governance, enhancing transparency, and fostering integrity in its public institutions and society as a whole, even if not legally bound by the UNCAC.

Despite the ongoing adoption of numerous anti-corruption laws, strategies, and policies, significant issues persist in their practical implementation. Concrete results in the fight against corruption remain elusive. Although Kosovo has consistently enacted legal changes to address the need for tangible outcomes, the desired results have yet to materialize.

In the last four years, the Kosovo government has faced new challenges in drafting legislation in relation to justice reform and anti-corruption efforts in line with its constitution and international standards that promote the rule of law principles and human rights practices. Many of the laws drafted by the Kosovo government and adopted by the Kosovo Assembly were ruled unconstitutional by the Kosovo Constitutional Court<sup>1</sup>. Additionally, what has characterized the current government and legislature is not the promised reforms but the ongoing public attacks on the justice system, including interference in specific cases.

### 2.2 Availability of Information

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<sup>1</sup> Notice of decision in case KO46/23 of the Constitutional Court, 2024, <https://gjk-ks.org/njoftim-per-vendim-ne-rastin-ko46-23/>; Judgment in cases no. KO100/22 and KO101/22 of Constitutional Court, [https://gjk-ks.org/wp-content/uploads/2023/04/ko\\_100\\_101\\_22\\_agj\\_shq.pdf](https://gjk-ks.org/wp-content/uploads/2023/04/ko_100_101_22_agj_shq.pdf), last accessed on July 2, 2024.

This report was written based on several sources. All national laws, bylaws, and regulations from the [Official Gazette](#) applicable to the relevant field were consulted. In cases where data were not published in searchable format, the working group in charge of researching and drafting this report sent requests for access to public documents. While institutions responded to some of the requests, for most of them no data have been provided yet. Other relevant sources include public institutions reports, media and civil society reports, international reports, desk research by the authors, public official's written contributions, and a direct interview with APC's director. The data and information included in this report were collected from January 2024 to July 2024.

## 2.3 Implementation in Law and in Practice

**On preventive anti-corruption policies and practices**, Kosovo has taken important steps to establish a comprehensive legal framework to prevent corruption. Both the Criminal Code (CCRK) and the Code for Criminal Procedure (CCPRK) in principle define specific forms of corruption offenses and provide a procedural framework that ensures fair and efficient criminal proceedings. However, effective implementation of the legal anti-corruption framework remains largely pending. Although there was political willingness to regulate legal infrastructure through basic laws for preventing and combating corruption, practice shows that law enforcement institutions failed in delivering the desired results. It should be mentioned that Kosovo is currently failing to offer a strategic and systematic approach to combating corruption also because there is no State Strategy against Corruption since 2019. According to the Kosovo Law Institute report published in January 2024, the Draft Strategy raises significant concerns related to fundamental rule of law principles. Notably, the strategy proposes establishing direct constitutional supervision of by-laws and decisions made by independent judicial institutions, which contradicts the Kosovo Constitution. The Constitutional Court, as an independent body, is designated solely for the final interpretation of the Constitution, not as a supervisory authority over other judicial entities. This approach undermines the separation of powers outlined in the Constitution. Furthermore, the Draft Strategy includes mixed and unclear concepts related to beneficial and media ownership and addresses issues that should be under the jurisdiction of the justice system institutions, not government mechanisms.<sup>2</sup> This Strategy has not yet been approved.

The recently adopted Law on the Agency for the Prevention of Corruption outlines the agency's role and authority. The APC is the main independent **preventive anti-corruption body** in Kosovo for the implementation of state policies for the prevention of corruption. APC's mandate covers the control and verification of asset declarations, conflict of interest prevention and supervision, a policy to deal with gift acceptance related to the performance of official duties, and also the protection of whistleblowers. Following the recent legislative changes, in areas that fall within its mandate, APC has a broader mandate that includes conducting administrative investigations and initiating preventive procedures after which it may impose fines and other sanctions for non-compliance. The Agency has been given new tools to prevent corruption, including corruption proofing of legislation, corruption risk assessments, and monitoring of

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<sup>2</sup> Kosovo Law Institute report: Kosovo without Anti-Corruption Strategy, 10 January 2024, [https://klics.org/wp-content/uploads/2024/01/KLI\\_Kosovo-without-a-strategy-against-corruption\\_final\\_english.pdf](https://klics.org/wp-content/uploads/2024/01/KLI_Kosovo-without-a-strategy-against-corruption_final_english.pdf).

integrity plans in public institutions, as detailed under 4.1.2. Thus, despite improvements in APC's performance, the anti-corruption preventive framework is not yet fully implemented, particularly in the adoption of integrity plans in public institutions<sup>3</sup>, legislation anti-corruption 'proofing,' and risk assessments.

**Public sector employment** is mainly regulated by the Law on Public Officials, which has recently faced constitutional issues, where the Constitutional Court annulled certain provisions as unconstitutional.<sup>4</sup> The government adopted a new strategy framework for public finance management and public administration reform, which however, failed to produce noticeable improvements so far. The Independent Oversight Board for the Civil Service of Kosovo (IOVCSK) supervises the implementation of the rules and principles established by civil service legislation. The Law on the Amendment and Supplementation of the Law on the IOVCSK was also subject to review by the Constitutional Court, which annulled several of its provisions, deeming them unconstitutional.<sup>5</sup> On the other hand, as for professional training of public officials, Kosovo has established the Kosovo Institute for Public Administration (KIPA). In practice, public administration in Kosovo has faced serious operating challenges for a long time. The tendency to politicize independent institutions remains a major issue of concern. Wages in the public sector are regulated through the Law on Salaries in the Public Sector, which was also found to have constitutional violations, with several of its provisions annulled by the Constitutional Court.<sup>6</sup>

As regards to **political financing**, the adoption of the Law on Financing of Political Entities was a significant achievement for Kosovo. Nevertheless, despite successive modifications, transparency and accountability of funding for political parties and campaigns remained to be ensured for years. An important change occurred with the last amendment, which relocated the competence for conducting audits of political entities from the Parliamentary Assembly to the newly created Office for the Registration, Certification, and Financial Control of Political Entities at the Central Election Commission (CEC). The legal changes have been in line with the Venice Commission's Opinion, although legislation needs to be enforced in practice to ensure more responsible, transparent, and mandatory financing for parties and campaigns.

The legal framework of Kosovo contains provisions regarding **codes of conduct, conflicts of interest, and asset declarations**. The APC is the central authority responsible for supervising the implementation of such provisions and can impose sanctions in case of violations. According to the law, public officials must avoid any conflict of interest regardless of whether it is real, potential, or apparent, and have to declare their assets in time. Although the APC is authorized to carry out a full investigation into the declaration of assets, in practice the agency has not produced

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<sup>3</sup> Fol Movement, 28 public institutions have not yet sent their Integrity Plans to the Agency for the Prevention of Corruption, <https://levizjafol.org/28-institucione-publike-nuk-i-kane-derguar-ende-planet-e-integritetit-ne-agiencine-per-parandalimin-e-korrupsionit>, last accessed on 8 August 2024.

<sup>4</sup> Constitutional Court, decision on the evaluation of the constitutionality of Articles 9, 12, 46 and 99 of Law No. 08/L-197 for Public Officials, [https://gjk-ks.org/wp-content/uploads/2023/09/ko\\_216\\_220\\_22\\_agj\\_shq\\_.pdf](https://gjk-ks.org/wp-content/uploads/2023/09/ko_216_220_22_agj_shq_.pdf), last accessed on July 2, 2024.

<sup>5</sup> Notice for decision on case KO232/23 dhe KO233/23, <https://gjk-ks.org/njoftim-per-vendim-ne-rastin-ko232-23-dhe-ko233-23/>, last accessed on July 2, 2024.

<sup>6</sup> Constitutional Court, Decision on the evaluation of the constitutionality of Law no. 08/L-196 on Salaries in the Public Sector, [https://gjk-ks.org/wp-content/uploads/2023/09/ko\\_216\\_220\\_22\\_agj\\_shq\\_.pdf](https://gjk-ks.org/wp-content/uploads/2023/09/ko_216_220_22_agj_shq_.pdf), last accessed on July 2, 2024.

sufficient results up to this point. The justice system has contributed to this issue by insufficiently addressing legal violations related to asset declarations and imposing inadequate penalties for cases of non-declaration, thereby creating a standard of impunity for offenders.

The Law on the Protection of Whistleblowers (LPW) of 2019 represents the basis for **reporting mechanisms and whistleblower protection** in the public and private sectors in Kosovo. The legislation defines three types of whistleblowing: internal, external, and public reporting. In addition, it sets out provisions for the protection of whistleblowers and the protection of the reporters' confidentiality, which has been challenged in practice. The improvement of the legal framework on whistleblowing has had a substantial impact on the protection of whistleblowers and has raised public awareness of this effective tool in the prevention of corruption. This positive change is also evident in the growing number of whistleblower reports to the APC since the LPW came into effect. However, no significant successes in uncovering corruption cases have been reported so far as a result of the LPW. Unfortunately, despite the existence of this law, there have been documented cases of whistleblowers facing retaliation from public institutions.

In the exercise of **public procurement** activities, contracting authorities in Kosovo are obliged to implement and respect the Law on Public Procurement. The legal framework on public procurement is partially in line with the EU's 2014 public procurement legislation<sup>7</sup>, but lacks provisions for e-procurement. The approval of the new draft law for public procurement has been postponed up to six times since 2020 when it began to be drafted. According to the Government's 2024 Legislative Program, this draft law was expected to be approved by the Government on March 20, 2024; however, it was not approved on that date. The deadlines for the approval of this draft law have been repeatedly changed by the government each year, without providing any clarification regarding the progress of the process or the reasons for the delay. Therefore, finalizing the draft is essential to establish legal guidelines addressing practical challenges in e-procurement and to resolve efficiency issues concerning the PRB.<sup>8</sup> The responsible agency for the general supervision of public procurement in Kosovo is the Regulatory Commission for Public Prosecution (KRPP), while the Procurement Review Body (PRB) receives complaints regarding allegations of violations of the law. There is a pressing need for a new law on public procurement in Kosovo and the adoption of measures to guarantee the full operation of the e-procurement platform and the more efficiency in the PRB's work.

**The management of public finances** and the legal framework for budget allocations is based on the Law on Public Financial Management and Accountability (LPFMA), approved in 2008 and modified six times since then. In general, Kosovo's classification system for public finances remains consistent with international standards. Kosovo has also approved the Law for the Auditor General and the National Audit Office of the Republic of Kosovo (LAGNAORK). However, in many cases the State Prosecutor has not adequately dealt with the findings of the National Audit Office of the Republic of Kosovo (NAORK). In a number of cases, the NAORK has exceeded its powers, undermining the independence of the justice system.

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<sup>7</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg. 71.

<sup>8</sup> Written Contributions by Arbër Kabashi, researcher at INPO. 01.07.2024.

The right to **access to information and participation of society** is foreseen under Kosovo's Constitution. In addition, a comprehensive legal framework was established with the enactment of special laws regulating these issues. The Law on Access to Public Documents outlines procedures for individuals to request access to specific types of public documents held by public institutions. It also establishes the Information and Privacy Agency (IPA) as the institution responsible for handling complaints and assisting with the accountability and transparency of public institutions. The legislation on access to information is widely in line with EU standards, but data on how much institutions are fulfilling their obligations are not satisfactory. When it comes to the participation of society, the Regulation of the Government of the Republic of Kosovo (GRK) from 2016 on Public Consultation sets forth minimum standards for public consultation and outlines clear guidelines for public authorities when engaging with citizens, stakeholders, and affected communities. This regulation was in force until June 29, 2024, when Regulation No. 17/2024 on Public Sector Recruitment of the Republic of Kosovo came into effect, incorporating provisions that had been subject to public consultations. However, in many cases, the obligations regarding public involvement in the legislative process have not been implemented. Furthermore, Kosovo's Constitution and the Law on Legislative Initiatives provide for the right of legislative initiative, but this method has seen very limited use in Kosovo.<sup>9</sup>

**Judiciary and prosecution services** are exercised by the courts and concretely by prosecutors as independent constitutional institutions. The judicial power is exercised by courts, with the Supreme Court as the highest judicial authority over the entire territory of the Republic of Kosovo.<sup>10</sup> The State Prosecutor is an independent institution with authority and the responsibility of prosecuting persons charged with committing criminal acts and other offenses specified by law. The Constitution provides for the establishment of the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council. Since April 2022, the State Prosecutor has been functioning with an Acting Chief State Prosecutor. In this regard, the KPC lacked the will to develop a merit-based appointment process with indisputable integrity.<sup>11</sup> As for accountability, the prosecutorial system is fully independent in relation to the legislative or executive branches. According to the law on KPC, the prosecutorial council is responsible for preparing annual reports on activities and expenditures of the State Prosecutor and the Council, reporting to the public on the implementation of its specific objectives and based on measurable indicators. Additionally, the Chairman of the KPC is obliged to annually submit a written report on the operation and expenditures of the prosecutorial system to the Kosovo Assembly. Regarding transparency and accountability, the Opinion of the Venice Commission emphasized that "The current KPC is almost entirely composed of prosecutors and is therefore prone to the risk of corporatism." In practice, the KPC has operated with this corporatist approach, showing a pronounced lack of transparency and accountability. During 2022, most disciplinary cases against prosecutors in the KPC ended with mild disciplinary measures, such as public and non-public written warnings, while the most serious measure imposed was the

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<sup>9</sup> Naim Jakaj, Handbook Legislative Initiatives of Citizens, 2023, <https://kli-ks.org/doracak-nismat-legjislativ-per-qytetare/>, last accessed on July.

<sup>10</sup> Ibid, Article 103, par. 2

<sup>11</sup> KLI, GLPS, FOL, the integrity of the selection process of the chief state prosecutor, Mars 2022, [https://kli-ks.org/wp-content/uploads/2022/03/KLI-GLPS-FOL\\_Raporti-Final\\_Procesi-per-Kryeprokuror-te-Shtetit-1.pdf](https://kli-ks.org/wp-content/uploads/2022/03/KLI-GLPS-FOL_Raporti-Final_Procesi-per-Kryeprokuror-te-Shtetit-1.pdf), last accessed on January, 10, 2024.

permanent transfer of a prosecutor to another Prosecutor's Office. During the monitoring of the KPC, KLI noted a significant lack of transparency in the Council<sup>12</sup>. An example of the lack of accountability within the prosecutorial system is KPC's failure to properly address the State Prosecutor's negligence in protecting a woman who was murdered by her ex-husband, who then killed himself. This case was only addressed by the KPC after the Constitutional Court found a violation of the right to life. However, the decision was almost an amnesty: KPC imposed on the prosecutor involved in the case only a 30% salary reduction for 12 months<sup>13</sup>.

Despite the challenges, a better situation is noted in the case of the KJC. Regarding accountability, out of 17 disciplinary decisions, the most severe measure imposed was the demotion and permanent transfer of two judges. During 2022, the court presidents submitted written reports and were invited to report before the Council members. Additionally, the KJC fulfilled over 98% of its legal obligation to assess the performance of judges. However, issues regarding accountability are also evident within the KJC. For instance, the KLI found that the KJC unlawfully amnestied sexist language contained in a decision by the Basic Court in Gjilan. As for transparency, reports indicate that the KJC has made significant progress in recent years. In this regard, the most prominent issues are in handling requests for access to public documents, which the KJC and the courts fail to respond to adequately<sup>14</sup>.

In terms of **private sector transparency**, Kosovo has made progress in improving the business environment. The basis is provided by the Law on Business Organizations, which specifies the various types of businesses as well as the requirements and processes for their registration and de-registration. Nevertheless, Kosovo needs to approve a new law on business organizations to further harmonize its legal system with the EU acquis, including the issue of corporate transparency and reporting. The private sector is subject to penalties deriving from the law in force and the Criminal Code, in cases of certain violations. The Commercial Court was established to improve the effectiveness of the legal system in resolving business disputes. The Court began to operate in August 2022 but numerous issues persist given the large backlog of cases it handles.

Regarding **measures to prevent money-laundering**, the main law in the field is the Law on the Prevention of Money Laundering and Financing of Terrorism (LPMLFT). This law establishes the Financial Intelligence Unit (FIU-K) as a central independent institution tasked with requesting to the relevant authorities, receiving, analyzing, and disclosing information data on potential money laundering and terrorist financing. The law also lists 10 categories of reporting entities and assigns them specific reporting obligations. In addition, Kosovo's legal framework includes the CCRK, and the National Strategy for the Prevention and Combating of the Informal Economy, Money Laundering, Financing of Terrorism, and Financial Crimes 2019-2023. Nevertheless,

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<sup>12</sup> KLI, Misadministration of the prosecutorial system, <https://kli-ks.org/wp-content/uploads/2023/04/Monitoring-of-the-KPC-report-for-2022-FINAL-12.04.2023-1.pdf>, last accessed on 12 August, 2024.

<sup>13</sup> Betimi për Drejtësi, KLI and the Morina family, KPC amnestied the prosecutor, whose negligence led to the death of Sebahate Morina, <https://betimiperdrejtesi.com/ikd-dhe-familja-morina-kpk-amnistoi-prokuroren-neglizhenca-e-te-ciles-vrau-sebahate-morinen/>, last accessed on 12 August, 2024.

<sup>14</sup> KLI, Challenges in judicial administration, <https://kli-ks.org/wp-content/uploads/2023/04/Monitoring-of-the-KJC-report-for-2022-FINAL.pdf>, last accessed on 12 August, 2024.

Kosovo needs further legal development to meet international standards. In practice, it also has a backlog in the field of money laundering prevention, investigation, and prosecution. The country's authorities still lack a comprehensive understanding of the dangers associated with money laundering and terrorism. A concrete example of this is that judges and prosecutors are unaware that money laundering cases can be prosecuted independently of other criminal conduct. Additionally, stronger inter-institutional cooperation and higher efficiency in handling cases of money laundering are required.

Kosovo has a satisfactory legal framework for **asset recovery** since the entry into force of the Code of Criminal Procedure (CCPRK) and the Law on Extended Powers for Confiscation of Assets (LEPCA). According to CCPRK and LEPCA, in addition to the confiscation of assets and property after being found guilty of a criminal offense, Kosovo intends to establish a system of confiscation without a criminal conviction. However, there is a wide debate connected with the Draft Law on the State Bureau for the Verification and Confiscation of Unjustifiable Assets (LSBVCUA) and the need to approve such a confiscation system. In the meantime, the Draft Law on the civil confiscation system is being reviewed by the Constitutional Court. In practice, the large imbalance between asset freezing, seizing, and confiscation presents a real problem.

**Table 1: Implementation and enforcement summary**

<b>UNCAC articles</b>	<b>Status of implementation in law</b>	<b>Status of implementation and enforcement in practice</b>
<b>Art. 5</b> – Preventive anti-corruption policies and practices	Largely implemented	Moderate
<b>Art. 6</b> – Preventive anti-corruption body or bodies	Fully implemented	Moderate
<b>Art. 7.1</b> – Public sector employment	Fully implemented	Poor
<b>Art. 7.3</b> – Political financing	Fully implemented	Poor
<b>Art. 7, 8 and 12</b> – Codes of conduct, conflicts of interest and asset declarations	Fully implemented	Poor
<b>Art. 8.4 and 13.2</b> – Reporting mechanism and whistleblower protection	Largely implemented	Poor
<b>Art. 9.1</b> – Public procurement	Partially implemented	Poor
<b>Art. 9.2</b> – Management of public finances	Largely implemented	Moderate
<b>Art. 10 and 13.1</b> – Access to information and the participation of society	Fully implemented	Moderate
<b>Art. 11</b> – Judiciary and prosecution services	Partially implemented	Poor

<b>Art. 12</b> – Private sector transparency	Partially implemented	Poor
<b>Art. 14</b> – Measures to prevent money-laundering	Partially implemented	Poor
<b>Art. 52 and 58</b> – Anti-money laundering	Partially implemented	Poor
<b>Art. 53 and 56</b> – Measures for direct recovery of property	Fully implemented	Poor
<b>Art. 54</b> – Confiscation tools	Fully implemented	Poor
<b>Art. 51, 54, 55, 56 and 59</b> – International cooperation for the purpose of confiscation	Fully implemented	Poor
<b>Art. 57</b> – The return and disposal of confiscated property	Fully implemented	Poor

**Table 2: Performance of selected key institutions**

<b>Name of institution</b>	<b>Performance in relation to responsibilities covered by the report</b>	<b>Brief comment on performance (for example, inadequate resources, lack of independence, strong expertise)</b>
Agency for the Prevention of Corruption	Moderate	Lack of human and financial resources to fulfill its mandate, and a selective approach to conflict of interest cases.
Procurement Review Body	Poor	A noticeable lack of independence, transparency, and objectivity in the handling of cases.
Information and Privacy Agency	Good	Strong expertise on the implementing the LAPD and ensuring institutional accountability.
Kosovo Judicial Council	Moderate	Providing moderate accountability in cases of disciplinary violations.
Kosovo Prosecutorial Council	Poor	Lack of independence and accountability, particularly in cases of disciplinary violations.
Agency for Administration of Seized or Confiscated Assets	Moderate	Challenges in effectively managing its portfolio on asset seizure and confiscation.
State Prosecutor	Poor	Lack of expertise in combating corruption through adequate measures.



Financial Intelligence Unit	Moderate	Insufficient capacities to address the phenomenon of money laundering.
National Audit Office of Republic of Kosovo	Moderate	Inadequate audit resulting in numerous financial irregularities and exceeding of its competencies.

## 2.4 Recommendations for Priority Actions

1. Finalize and approve the State Strategy against Corruption.
2. Adequately implement the Law on Declaration, Origin, and Control of Assets and Gifts.
3. Promote the implementation of Constitutional Court decisions.
4. Promote transparency in the drafting of laws and concept documents making active use of the public consultation process in policy making, in line with the Government Regulation No. NR. 17/2024.
5. Implement political finance legislation and raise awareness of campaign finance regulations.
6. Impose sanctions for the non-declaration of assets in compliance with Criminal Code of the Republic of Kosovo provisions.
7. Adopt and implement whistle-blower internal procedures in public and private institutions.
8. Approve the new law on public procurement to ensure the full operationalization of the e-procurement system and more efficient work by the Procurement Review Body.
9. Comply with public institutions' obligations arising from access to information legislation.
10. Stop political pressure on the media and non-governmental organizations.
11. Stop political interference in the independence of the judicial and prosecutorial system.
12. Approve the new law on business organizations to incorporate provisions on corporate transparency and reporting.
13. Strengthen audit oversight structures to ensure comprehensive execution of their mandate.
14. Revise and strengthen the Law on money laundering and terrorism financing to align it with international best practice.
15. Train judges and prosecutors on anti-money laundering to ensure they are equipped to manage complex cases effectively.
16. Apply the Law on Extended Powers for Confiscation of Assets systematically when dealing with corruption cases.

### III. Assessment of Implementation of Chapter II and Chapter V Provisions

This chapter analyzes the implementation of the provisions of UNCAC Chapter II on preventive measures and Chapter V on asset recovery in Kosovo through the application of laws, regulations and practices, highlighting both good practices and areas for improvement. Although Kosovo is not a signatory to the UNCAC, the Convention's prominence highlights the importance of complying with international standards in the formulation and enforcement of policies and approaches to fight corruption.

#### 3.1 Chapter II

##### 3.1.1 Article 5 – Preventive Anti-Corruption Policies and Practices

Kosovo has taken significant steps to establish a comprehensive legal framework aimed at preventing and combating corruption in line with Article 5 of UNCAC. One crucial aspect of Kosovo's anti-corruption efforts is the enactment of the Law on the Agency for Prevention of Corruption (LAPC).<sup>15</sup> This framework also includes the Law on Prevention of Conflict of Interest in Exercising Public Functions and the Law on Protection of Whistleblowers. These laws collectively aim to create a robust system that addresses various facets of corruption, ranging from conflicts of interest to the protection of those reporting wrongdoing. The Criminal Code<sup>16</sup> (CCRK) and the Code of Criminal Procedure of the Republic of Kosovo<sup>17</sup> (CCPRK) also play a crucial role, with specific provisions targeting corruption-related offenses, and strengthening criminal proceedings.

Alongside legislative efforts, the LAPC was adopted in July 2022, replacing a law from 2010.<sup>18</sup> It outlines the role and authority of the Agency for the Prevention of Corruption in the enforcement of regulations and sanctions aimed at enhancing institutional integrity and transparency in Kosovo. This Agency took over from the Anti-Corruption Agency. The LAPC has clarified the competencies of the APC and has consolidated the Agency's powers as stipulated in other laws, such as those related to conflicts of interest and whistleblower protection. Unlike the previous limited responsibility<sup>19</sup>, the current Agency has powers to initiate administrative investigations of corruption and impose sanctions. Furthermore, the Agency has been given new tools to prevent corruption, including corruption proofing of legislation, corruption risk assessments, and monitoring of integrity plans in public institutions, as detailed under 4.1.2.

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<sup>15</sup> Law No. 08/L-017 on the Agency for Prevention of Corruption, 2022, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=60591&langid=2>, last accessed on 27 February 2024.

<sup>16</sup> Criminal Code No. 06/L-074 of the Republic of Kosovo, 2019, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>, last accessed on 20 June, 2024.

<sup>17</sup> Criminal Procedure Code No. 08/L-032 of the Republic of Kosovo, 2022, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759>, last accessed on 20 June, 2024.

<sup>18</sup> Law NO. 03/L-159 on Anti-Corruption Agency, 2010, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=60591&langid=2>, last accessed on 27 February 2024.

<sup>19</sup> Article 5 of Law on Anti-Corruption Agency, 2010, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=60591&langid=2>, last accessed on 27 February, 2024.

The Agency for the Prevention of Corruption is also responsible for supervising the declaration of assets and the acceptance of gifts related to the performance of official duties, as provided by the Law on Declaration, Origin, and Control of Assets and Gifts (LDOCAG).<sup>20</sup> To fulfill its purpose of strengthening the integrity of public institutions and preventing corruption and conflict of interest, LDOCAG adds new categories of public officials obliged to declare assets, more complete asset information and data, and introduces an online system for asset declarations. However, its implementation remains largely pending.<sup>21</sup> Additionally, when the obligation to declare assets is not met, the responsible institutions often fail to hold individuals accountable. This issue is further explained under section 4.1.5.

Regarding the strategy against corruption, Kosovo had implemented several strategies aimed at preventing and combating corruption up until 2019. However, the desired results were not achieved in practice. As of 2019, Kosovo has no strategy against corruption in force. The Government of the Republic of Kosovo decided in February 2023 to establish a working group for the drafting of the State Strategy and Action Plan against Corruption. The working group consisted of state actors, independent agencies, and other relevant stakeholders, including civil society. KLI has participated in all the meetings it was invited to as part of this working group to draft the State Strategy against Corruption and Action Plan 2023-2026, and has also sent written comments, aiming to contribute to the drafting of a Strategy that effectively responds to the need to fight corruption. However, the process has not progressed further despite the supposed finalization of the strategy by December 1, 2023, and Kosovo still does not have a Strategy, leaving citizens without a clear governmental approach to combating corruption. The draft of the Strategy was presented to KLI and other stakeholders only at the last meeting on November 7, 2023, during which KLI considered that it should be revised to meet the required standards: The Strategy shall respect the Constitution and the basic concepts of the constitutional order; avoid the violation of the judicial and prosecutorial system's independence; not incorporate issues that are already regulated by law; be based on accurate analytical and substantive data, and be submitted to the process of public consultations.<sup>22</sup> To date, the working group has not received any draft of the Strategy.

In this sense, KLI submitted comments and recommendations in writing, for which it did not receive an answer from the government, and published them in the form of an analysis.<sup>23</sup> At the beginning of 2024, the working group undertook meetings to fully revise the State Strategy against Corruption and its Action Plan. KLI continued its involvement in the working groups and, with the working group's consent, even drafted one of the chapters of the Strategy. Nevertheless, the approval process for the Draft Strategy has not advanced any further. Hence, it can be concluded that over the past five years, Kosovo has failed to adopt a State Anti-Corruption Strategy, despite it being

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<sup>20</sup> Law No. 08/L-108 on Declaration, Origin and Control of Assets and Gifts, 2022, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=61304>, last accessed on 28 February 2024.

<sup>21</sup> Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, [https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3\\_en?filename=SWD\\_2023\\_692%20Kosovo%20report\\_0.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3_en?filename=SWD_2023_692%20Kosovo%20report_0.pdf), last accessed on 28 February 2024, pg.28.

<sup>22</sup> Gzim Shala, KLI, "Kosovo without a Strategy against Corruption", January 2024, <https://kli-ks.org/kosova-pa-strategji-kunder-korrupsion/>, last accessed on March 4, 2024, pg. 17.

<sup>23</sup> Ibid, pg. 7.

a legal requirement. As the current government of the Republic of Kosovo concludes its mandate, it still lacks a State Strategy for Combating Corruption.

The CCRK and CCPRK form a comprehensive legal framework designed to combat corruption. The CCRK delineates and defines offenses related to corruption. Provisions within Chapter XXXIII of CCRK criminalize several acts, including fraud in office, bribery, abuse of official position, and conflict of interest. At the same time, the CCPRK provides a procedural framework that ensures fair and efficient criminal proceedings. Recognizing the unique challenges posed by corruption investigations, the CCPRK incorporates specific provisions aimed at strengthening the investigative and prosecutorial processes.

While the country has indeed made strides in developing anti-corruption policies aligned with its legal principles and values of integrity, transparency, and accountability, it has faced challenges in fully establishing and promoting effective practices aimed at the prevention of corruption, as per the requirements of article 5 of UNCAC. Efforts to coordinate policies and involve society are evident, yet there is a gap in the effectiveness and reach of these preventive measures.

According to the Kosovo Law Institute report on Prosecution and Adjudication of Corruption during 2023<sup>24</sup>, the large number of unresolved corruption cases in the Prosecutor's Office and the courts continues to be an area of concern. During the period January-September 2023, the State Prosecutor managed to resolve cases involving 731 individuals accused of corruption, while during the same reporting period, receiving new corruption cases with 1,157 individuals involved. This means that the State Prosecutor has fallen short in resolving cases to the extent it committed to. Specifically, while the State Official has accepted the cases against 1,157 individuals, this institution has only managed to solve the cases against 731 individuals. For this reason, compared to the end of 2022, the number of unresolved cases has increased once again. This is because at the end of 2022 the State Prosecutor had cases pending against 1337 individuals, while on September 30, 2023 this number increased to 1763.<sup>25</sup>

KLI has identified a trend in handling high-profile corruption cases: Officials are often charged only after leaving office. The indictment of former officials as a characteristic of the criminal prosecution of high-profile corruption has been emphasized in 2023. This is because out of the 13 high-profile individuals, charges were brought against only three (3) of them during their tenure as officials.<sup>26</sup>

On the other hand, KLI found that out of 20 indictments analyzed for this report, filed in 2023, the State Prosecutor requested the seizure or confiscation of unlawfully acquired assets in only four cases. The evidence used to support the prosecution of corruption is also considered problematic in substantiating the raised indictments. KLI analyzed 20 indictments from the State Prosecutor randomly to identify the type of evidence used to argue the allegations in the indictments. The outcome of this analysis is that in none of the cases analyzed were covert investigative measures applied.

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<sup>24</sup> Lavdim Makshana, Prosecution and trial of corruption, 2023, <https://kli-ks.org/ndiekja-dhe-gjykimi-i-korrupsionit-2023/>, last accessed on June 30, 2024.

<sup>25</sup> Ibid, pg.10.

<sup>26</sup> Ibid, pg.10.

Therefore, KLI considers that the State Prosecutor should change the focus of the investigation in terms of the evidence sought and examined in each criminal procedure to ensure that the criminal investigation of corruption does not turn into an investigation of administrative nature.<sup>27</sup>

Despite legal deadlines for handling criminal cases, KLI's monitoring has identified corruption cases that remain active in the courts even though indictments were filed as early as 2008 (16 years ago). Specifically, there are nine corruption cases with indictments filed between 2008 and 2016 that have yet to reach a conclusion in court.<sup>28</sup>

Kosovo's sentencing policy remains lenient as well. Expressed as a percentage, over 65% of the sentences have been fines and suspended sentences.<sup>29</sup> The issue of the sentencing policy has also been addressed in the Progress Report for Kosovo for the year 2023, emphasizing, among other things, that the Guidelines of the Supreme Court for Sentencing Policy are not systematically applied by the courts and that the sentencing policy for organized crime and corruption remains inconsistent.<sup>30</sup>

The main challenge in corruption cases is ensuring prompt prosecution. A positive development in 2023 was that most indictments were related to suspected criminal acts of corruption committed relatively recently. This approach demonstrates the swift response of the State Prosecutor and adherence to the provisions of the CCPRK, specifically the pre-determined timeframes for taking necessary actions leading up to the issuance of an indictment.<sup>31</sup> Limited trial deadlines often result in prosecutors failing to meet them, increasing the risk of absolute statutory limitations of cases. KLI identified indictments for offenses suspected to have occurred nine years ago. For instance, a public procurement manager was accused of abusing his official position to gain € 220,000. This alleged crime from 2014 led to an indictment on October 26, 2023, with the risk of the statute of limitations ending on November 19, 2024.<sup>32</sup>

Regarding the implementation of the CCRK provisions, imposing supplementary penalties is one of the judiciary's strongest tools in the effective fight against corruption. It also serves as a powerful measure for preventing recidivism, since the main penalty for for such criminal offenses is insufficient to achieve the intended purpose of punishment.<sup>33</sup> Unfortunately, these penalties continue to be applied to corruption offenses as optional measures, despite the legislation mandating their compulsory application in convictions, not merely at the discretion of judges.<sup>34</sup>

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<sup>27</sup> Ibid, pg.15.

<sup>28</sup> Ibid, pg. 20.

<sup>29</sup> Ibid, pg. 22.

<sup>30</sup> See Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, [https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3\\_en?filename=SWD\\_2023\\_692%20Kosovo%20report\\_0.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3_en?filename=SWD_2023_692%20Kosovo%20report_0.pdf), last accessed on 22 June 2024, pg. 23.

<sup>31</sup> Lavdim Makshana, Prosecution and trial of corruption, 2023, <https://kli-ks.org/ndjekja-dhe-gjykimi-i-korrupsionit-2023/>, last accessed on June 30, 2024, pg.12.

<sup>32</sup> Ibid, 11. See also more Gzim Shala and Lavdim Makshana "the failure of Justice in the fight against corruption", 2023, <https://kli-ks.org/ndjekja-dhe-gjykimi-i-korrupsionit-2023/>, last accessed on June 30, 2024, pg.6

<sup>33</sup> Information obtained through written contributions of Judge Ngadhujim Arni. 28 June 2024.

<sup>34</sup> Ibid, pg. 24.

On the other hand, despite the CCRK clarifying the status of public officials<sup>35</sup>, prosecutors have failed to distinguish the identities of individuals accused of corruption offenses in some cases. According to KLI's monitoring efforts, there have been instances where indictments have been raised for official corruption offenses against individuals who were not public officials and had no public authority.<sup>36</sup> It is cause for concern that these indictments have also passed through court filters. This not only bypasses the CCPRK but also disregards UNCAC, which clearly defines "public officials".<sup>37</sup>

### **Good practices**

- Kosovo has put in place a comprehensive legal framework aimed at preventing and combating corruption.
- The Agency for the Prevention of Corruption has reinforced powers and new tools to prevent corruption, including corruption proofing, corruption risk assessments, and monitoring of integrity plans in the institutions.
- The new Law on Declaration, Origin, and Control of Assets and Gifts complies with European Union's acquis.
- Civil society directly collaborates with the Ministry of Justice and participates in law-making processes.

### **Deficiencies**

- The national anti-corruption strategy and action plan have not been finalized which impede a systematic approach to prevent corruption.
- The Law on Declaration, Origin, and Control of Assets and Gifts is not adequately implemented.
- There is a continuous trend of not dealing with civil society recommendations when drafting state strategies and legislation in general.
- There is a noted lack of efficiency in handling corruption cases.
- A characteristic of prosecuting high-profile corruption cases is that senior officials are charged only after their term has ended.
- Only in exceptional cases, do prosecutors request the seizure or confiscation of assets derived from the commission of a criminal offense.
- Investigations conducted by prosecutors in corruption cases resemble administrative investigations more than criminal ones.
- The sentencing policy is not in accordance with the Law and the Supreme Court's Guidelines on Sentencing Policy.
- The judiciary considers supplementary sentencing optional, even though the Law mandates it in cases of guilty verdicts.

### **3.1.2 Article 6 – Preventive Anti-Corruption Body or Bodies**

The Agency for the Prevention of Corruption (APC) is the main independent and specialized body for the implementation of state policies for the prevention of corruption in Kosovo. In particular, the APC is responsible for implementing LDOCAG and the Law for the Protection of Whistleblowers. The competencies of the APC

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<sup>35</sup> Article 113, par.2. of CCRK.

<sup>36</sup> See: Prosecution and trial of corruption, 2023, <https://kli-ks.org/ndjekja-dhe-gjykimi-i-korrupsionit-2023/>, last accessed on June 30, 2024, pg.12.

<sup>37</sup> Article 2.a of UNCAC.

include the verification and control of asset declaration, supervision and prevention of cases of conflict of interest, acceptance of gifts, opinions related to the conflict of interest, and supervision of gifts related to the performance of official duties. In addition, the APC supervises and takes the necessary measures for the protection of whistleblowers.

In accordance with the new law, APC now conducts administrative investigations in areas within its competence and initiates preventive procedures, from where it imposes fines and other measures. In case of administrative violation, the Agency forwards the case to the administrative body, whereas in the case of a criminal offense, it refers criminal complaints to the state prosecutor's office.

APC can impose fines, public and non-public reprimands, and publish opinions on natural and legal persons. Against such a decision, the parties have the right to appeal following the provisions of the legislation in force.<sup>38</sup> Additionally, the APC has the power to implement tools such as corruption proofing of legislation, corruption risk assessments, and monitoring integrity plans of public institutions.

As part of its responsibility on corruption proofing of legislation, APC provides professional and technical assistance in the form of recommendations and opinions on draft laws pertaining to the prevention of corruption to the Assembly and Government of the Republic of Kosovo. Additionally, to establish prerequisites for the removal of additional risks and to create an assessment of the risk of corruption, the Agency has started preparatory actions to ensure a comparative analysis of the existing laws and bylaws.

Hence, the anti-corruption body, aligned with its legal principles and tasked with implementing policies and raising awareness, was developed in accordance with Article 6 of UNCAC. However, despite improvements in the APC, Kosovo has struggled to fully establish and promote effective preventive practices. Key tools, such as integrity plans in public institutions, legislative proofing, and risk assessments, remain under-implemented.<sup>39</sup>

With the approval of the Methodology for Integrity Plans<sup>40</sup> on July 26, 2023, the obligation to approve integrity plans by Public Institutions has been strengthened. In accordance with Article 25 of LDOCAG, after the approval of the abovementioned methodology, public institutions have been obliged to approve Integrity Plans within six (6) months. However, despite the training provided by the APC, as well as continuous communications and recommendations, the institutions have not yet managed to finalize this procedure by approving their integrity plans. Out of 140 institutions required to approve integrity plans, 100 met the deadline by the end of 2023. According to the APC, some of these plans were inadequate, failing to identify

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<sup>38</sup> Article 23, of the Law No. 08/L-017 on the Agency for Prevention of Corruption, 2022, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=60591&langid=2>, last accessed on 27 February 2024.

<sup>39</sup> See Directorate-General for Neighborhood and Enlargement Negotiations, Kosovo Report 2023, pg.24.

<sup>40</sup> APC, Methodology for integrity plans, 2023, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=78702>, last accessed on July 10, 2024.

integrity vulnerabilities and merely fulfilling requirements as per the methodology. The Agency has sent revision comments to all institutions with insufficient plans.<sup>41</sup>

Under its new powers to assess corruption risk and legislation proofing, the Agency has undertaken preparatory actions to fulfill its legal responsibilities.<sup>42</sup> The APC introduced a sub-legal act outlining a methodology for assessing corruption potential in legislation. A specialized unit for Analysis and Risk Assessment within the APC will implement this methodology, analyzing legal and sub-legal acts to eliminate risk areas and legal loopholes. This unit has already addressed one legal act and is currently identifying the highest-risk corruption sectors for focused legislative review.<sup>43</sup>

The Agency is led by the Director, with a mandate of five years without the right to re-election. The Director of the Agency has several responsibilities and powers over the organization and supervision of work in the Agency.<sup>44</sup> The election of the director begins with the announcement of the competition by the Parliamentary Assembly. The evaluation of the candidates is done by the relevant Commission of the Assembly, which also conducts interviews with the candidates who fulfill the required conditions. As provided for by the law, the process is transparent and can be monitored by the interested parties, including civil society. The Assembly decides on the two candidates proposed by the Commission by a single majority of votes of all the deputies present.<sup>45</sup>

The director's mandate ends after a term of 5 years and in other situations defined by Article 13 of the LAPC, such as dismissal from the Assembly of the Republic of Kosovo which may result from failure to fulfill the legal mandate. Other situations in which the director's mandate can end include when he/she is punished by a final decision (with the exception of criminal offenses committed by negligence), in case of appointment or election of another position with the consent of the director, permanent loss of the ability to act to perform its function, etc.<sup>46</sup> In the event that an indictment is filed against the director, he/she will be suspended from duty pending the final decision.<sup>47</sup>

Apart from the director, the internal organization of APC includes departments and divisions under Regulation No. 01/2013 for the internal organization and systematization of workplaces in the Anti-Corruption Agency<sup>48</sup> and Regulation No. 01/2019 for the amendment and completion of Regulation No. 01/2013 for the internal organization and systematization of workplaces in the Anti-Corruption Agency.<sup>49</sup> The

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<sup>41</sup> Interview with the Director of APC Yll Buleshkaj. 28.06.2024.

<sup>42</sup> Annual Report of APC, 2023, [https://apk-rks.net/index.php/ova\\_doc/raporti-vjetor-2023-agjencia-per-parandalimin-e-korrupsionit/](https://apk-rks.net/index.php/ova_doc/raporti-vjetor-2023-agjencia-per-parandalimin-e-korrupsionit/), last accessed on June 28, 2024. pg. 36-37.

<sup>43</sup> Interview with the Director of APC Yll Buleshkaj. 28.06.2024.

<sup>44</sup> See Law No. 08/L-017 on the Agency for Prevention of Corruption, 2022, article 12.

<sup>45</sup> See Law No. 08/L-017 on the Agency for Prevention of Corruption, 2022, article 11.

<sup>46</sup> See Law No. 08/L-017 on the Agency for Prevention of Corruption, 2022, Article 13.

<sup>47</sup> See Law No. 08/L-017 on the Agency for Prevention of Corruption, 2022, Article 13.2.

<sup>48</sup> Anti-Corruption Agency, Regulation No. 01/2013 for the internal organization and systematization of workplaces in the Anti-Corruption Agency, 2013, [https://akk-ks.org/assets/cms/uploads/files/Agjencia/Leqjislacioni%20vendas/Rregullore\\_nr\\_01-2013\\_\(1\).pdf](https://akk-ks.org/assets/cms/uploads/files/Agjencia/Leqjislacioni%20vendas/Rregullore_nr_01-2013_(1).pdf), last accessed on July 10, 2024.

<sup>49</sup> Anti-Corruption Agency, Regulation no. 01/2019 for the change and supplement of regulation no. 01/2013 for the internal organization and systematization of workplaces in the anti-corruption agency, 2019, <https://akk-ks.org/assets/cms/uploads/files/Dokumente/ALB%20Rregullore%20Nr%2001%202019%20per%20ndryshimin%20dhe%20plotesimin%20e%20rregullores%2001....pdf>, last accessed on July 10, 2024.



departments of the Agency are divided into the following thematic areas: fighting corruption, prevention of corruption, prevention of conflict of interest, and finance and general work.

Within the administrative procedure of preliminary investigations, the Agency addressed a total of 66 cases during the reporting period from January to December 2023. Of these, 59 were submitted to the Prosecutor's Office for further processing, and 7 were concluded. In 2023, 65 cases were carried over from 2022.

It is not possible to compare the number of cases addressed in preliminary investigations with previous years due to the legal amendments. Specifically, the entry into force of LAPC terminated the Agency's role in developing preliminary investigations procedures, which previously allowed individuals suspecting corruption to report to the Agency. The cases addressed in 2023 under this procedure were carried over from the previous year, which the APC was obliged to process according to its mandate at the time the cases were initiated.

Within its mandate to prevent conflicts of interest, the Agency handled a total of 216 potential conflict of interest cases in 2023. In 102 cases, the Agency provided advice and opinions. Of them, 46 cases resulted in the avoidance of a conflict of interest, 40 cases showed that there was no conflict, three cases were forwarded to the competent court, and two cases were referred for preliminary investigation. Meanwhile, 23 cases that were not concluded during 2023 have been transferred to the year 2024.<sup>50</sup>

The Agency is also responsible for the supervision of the declaration of assets which takes place at the following moments: upon taking public office, if requested by the Agency; after termination or dismissal from office. The statistics on asset declarations, specifically compliance or non-compliance with this obligation, will be discussed below in section 4.1.5, while further details on whistleblowing cases can be found in section 4.1.6, where APC's work over the years in handling reporting rates has been analyzed.

Despite the increase in APC responsibilities, the legislative body has foreseen only a minimal increase in APC's budget. According to the Law on Budgetary Allocations for the Budget of the Republic of Kosovo for the year 2023, APC's budget was foreseen to be € 557,844.00, compared to the previous year's budget of € 545,778.00. It was implied that this would make it impossible for the APC to fulfill its obligations.<sup>51</sup> The same applies to the human capacities of APC, since it continues to work with the staff it had before the new legislative amendments and supplementations, i.e., 43 employees, whereas the request for additional staff continues to remain unapproved by the competent institutions.<sup>52</sup>

Furthermore, under its legal obligations, the APC provides professional assistance to the Government of the Republic of Kosovo in the drafting of the State Strategy against Corruption (SSAC). Once the SSAC is approved, the APC will be responsible for

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<sup>50</sup> APC's response to KLI's access to information request about data in the declaration of assets, conflict of interest, and whistleblowing cases, submitted on April 19, 2024.

<sup>51</sup> FOL Movement, "The Capacities of the Agency for the Prevention of Corruption in the Fulfillment of Legal Obligations", July 2023, <https://levizjafol.org/wp-content/uploads/2023/08/Agency-for-the-Prevention-of-Corruption-ENG-1.pdf>, pg. 13.

<sup>52</sup> Ibid, pg.17.

monitoring and including data on the implementation of the Strategy in its annual report. Due to the Strategy's non-approval by the time of writing this report, this data is absent from the APC's report for 2023.<sup>53</sup>

### **Good practices**

- APC is an independent body accountable to the Assembly (Parliament) with an expanded mandate in the field of corruption prevention.
- APC cooperates with other competent authorities for handling corruption cases.
- The annual reports published by APC contain statistical and substantive information on the cases handled, as well as priorities to be considered in the future.

### **Deficiencies**

- Despite the increase in APC responsibilities with the new law, its budget has experienced only a minimal increase.  
The request for additional staff and capacity development in APC continues to remain unapproved by competent institutions.

### **3.1.3 Article 7.1 – Public Sector Employment**

Employment in the public sector is mainly regulated by the Law on Public Officials<sup>54</sup> (LPO), which has recently had a pronounced instability. Initially, the public sector in Kosovo was regulated by the first approved law on the issue, Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, which entered into force in July 2010. In March 2019, this Law was repealed through Law No. 06/L-114 on Public Officials. In July 2020, the Constitutional Court found that the new law affected the independence of the institutions of the justice system and independent constitutional institutions and decided that this law would not apply to these institutions.<sup>55</sup> In September 2023, Law No. 08/L-197 on Public Officials was approved, replacing the previous law. While it had not yet entered into force, the new law was the subject of treatment by the Constitutional Court. In the issued judgment, the Court found some articles unconstitutional and did not allow the decree on those articles to be adopted, obliging the Assembly to take the necessary actions to complete and amend some articles of the draft law within six months from the entry into force of the judgment.

In March 2024, the Government of the Republic of Kosovo approved the Draft Law on Supplementing and Amending Law No. 08/L-197 on Public Officials. However, there was no transparency in the approval process. This Draft Law did not follow the Government Regulation on Minimum Standards in the Public Consultation Process and was not published for public consultation.<sup>56</sup> Moreover, the Draft Law violates the obligations imposed by the Constitutional Court regarding middle and lower managers.

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<sup>53</sup> Annual Report of APC, 2023, [https://apk-rks.net/index.php/ova\\_doc/raporti-vjetor-2023-ajencia-per-parandalimin-e-korrupsionit/](https://apk-rks.net/index.php/ova_doc/raporti-vjetor-2023-ajencia-per-parandalimin-e-korrupsionit/), last accessed on June 28, 2024.

<sup>54</sup> Law No.08/L-197 on Public Officials, 2023, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=81430>, last accessed on June 22, 2024.

<sup>55</sup> Judgment in Case No. KO203/19, Applicant Ombudsman Institution, Evaluation of the Constitutionality of Law No. 06/L-114 for public officials, July 2020, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=29923>, last accessed on 27 February 2024.

<sup>56</sup> Scanner Newspaper, Shala for the Draft Law on Public Officials: The government had to put it for public consultation, March 2024, <https://gazetascanner.com/shala-per-projektligjin-per-zyrtaret-publike-qeveria-eshte-dashur-qe-ta-vendose-ne-konsultim-publik/>, last accessed on 27 February 2024.

Under the previous Law, middle and lower managers had earned their positions with lifetime tenure. Meanwhile, the new draft law replaces the lifetime tenure with fixed-term mandates. The Constitutional Court emphasizes that limiting the mandate for persons who already have a permanent mandate is a violation of the Constitution. This is because it undermines their legitimate expectation of property rights, as guaranteed by their permanent tenure.<sup>57</sup> Currently, Law No. 08/L-197 on Public Officials (LPO) is in force and applies to all public officials, except for cases expressly provided otherwise.<sup>58</sup>

The categories of public officials according to the LPO are 1. Civil service employees; 2. Public service employees; 3. Creators and performers of art and culture; 4. Technical and support clerks; and 5. Cabinet officials. According to the law, for the first four categories, admission is based on the principle of merit, equal opportunities, professionalism and integrity, non-discrimination, and fair and equal representation of gender and communities, through an open and competitive procedure, except for the cabinet official appointed directly by the head of the relevant cabinet.<sup>59</sup> To be accepted as a public official in any category, each person must fulfill eight general conditions: citizenship, ability to act, knowledge of one of the official languages (Albanian or Serbian), ability to perform the relevant task, not be convicted of an intentional criminal offense, not have a disciplinary measure in force for a serious violation in a public institution, have the education, professional work experience and/or skills required for the relevant position, category, class or group, and successfully pass the admission procedures defined in the law.<sup>60</sup>

The Information System for Human Resources Management was established for the administration of public officials. It is the central electronic system that serves for human resources management for all public institutions of the Republic of Kosovo. Among other things, this system is used in the procedures of competition and appointment of public officials.<sup>61</sup>

Every institution that employs public officials prepares an annual personnel plan connected to the budget planning process. The annual personnel plan contains the need for competent and quality personnel to achieve the institution's mission and objectives.<sup>62</sup>

The evaluation of the results at work is a continuous process, which includes the evaluation of the realization of the predetermined objectives, the evaluation of the professional, methodological, personal, and social ability of the civil servant in the realization of the objectives and the general fulfillment of the responsibilities of the unit. The procedure of evaluation of work results includes two main stages: 1) the continuous supervision of results by the direct supervisor, and 2) the annual evaluation

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<sup>57</sup> Draft Law on Amendments and Supplements to Law No. 08/L-197 for Public Officials, Article 17.3.

<sup>58</sup> Article 2 of Law No.08/L-197 on Public Officials, September 2023, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=81430>, last accessed on 27 February 2024.

<sup>59</sup> Ibid, article 7.

<sup>60</sup> Ibid, article 9.

<sup>61</sup> Ibid, article 19; Human Resources Management Information System, <https://konkursi.rks-gov.net>.

<sup>62</sup> Ibid, article 17.

of results by the direct supervisor and the representative of the human resources unit.<sup>63</sup>

A change of the employment relationship within the civil service may come for various reasons such as imposition of a disciplinary measure, transfer, suspension or extinction of the employment relationship, or restructuring of the institution.<sup>64</sup> The termination of the employment relationship within the civil service can occur for various reasons such as loss of citizenship, a conviction for an intentional criminal offense, performance evaluations or retirement.<sup>65</sup> As for retirement, the law also recognizes early retirement, which can take place at the request of the civil servant or by decision of the institution in case of reduction of personnel, after a reorganization, merger with another institution, closure of the institution, or extinguishment of positions.<sup>66</sup>

In Kosovo, the Independent Oversight Board for the Civil Service of Kosovo (IOVCSK) functions as a constitutional institution.<sup>67</sup> To supervise the implementation of the rules and principles established by the civil service legislation, the IOVCSK has the following basic functions: 1) review and make decisions on complaints of civil servants and candidates for admission to the civil service; 2) supervise the selection procedure and decide whether the appointments of civil servants at the senior management level and the management level have been carried out following the rules and principles of the civil service legislation, and 3) monitor the public administration institutions that employ civil servants regarding the implementation of the rules and principles of the civil service legislation.

For professional training, Kosovo has established the Kosovo Institute for Public Administration (KIPA). This institute is responsible for the implementation of policies and strategies for training, professional development, and capacity development in the Civil Service.<sup>68</sup> KIPA offers both short-term and long-term training programs to improve the knowledge and abilities of public administration staff across various sectors, including management, administration, human resources, legal, among others. All categories of civil service employees are covered by the training programs, which are taught by public administration instructors, college professors, advisors from the private sector and civil society, and both domestic and foreign experts. In developing and implementing the training programs, KIPA collaborates with civil service institutions. Every month, training plans are published, detailing dates and courses.<sup>69</sup>

For a long time, the functioning of the public administration in Kosovo has faced serious challenges. Among others, weak inter-ministerial coordination, politicization in appointment processes, overburdened staff in institutions, and efforts for political involvement in senior civil service recruitment are some of the main problems that

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<sup>63</sup> Ibid, article 52.

<sup>64</sup> Ibid, chapter IV.

<sup>65</sup> Ibid, chapter V.

<sup>66</sup> Ibid, article 76.2.

<sup>67</sup> Article 101 of Constitution of the Republic of Kosovo, April 2008, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>, last accessed on 27 February 2024.

<sup>68</sup> Article 2.1 of Law No. 04/L - 221 on Kosovo Institute for Public Administration, April 2014, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=9446>, last accessed on 27 February 2024.

<sup>69</sup> See page, <https://ikap.rks-gov.net/news-category/18>, last accessed on June 22, 2024

have been identified in various local<sup>70</sup> and international reports.<sup>71</sup> While these difficulties have not significantly affected the provision of services to citizens and businesses, they also play a role in weakening the trust of citizens in public institutions and the government. From 2022 to the end of 2023, the perception of corruption in the central administration/government increased from 13.9% to 24.9%.<sup>72</sup>

In addition, the European Union has made continuous calls to reform the public administration sector in the European Commission's Country Reports dedicated to Kosovo.<sup>73</sup> In recent years, Kosovo's institutions have adopted several documents and strategies related to this reform. However, the implementation of these documents and the reform of public sector employment continues to be limited, and most of the issues remain unaddressed.<sup>74</sup>

A recently adopted Law, which was sponsored by the Prime Minister's Office, has opened the door to risks of politicization in the public sector. On October 12, 2023, the Assembly of the Republic of Kosovo approved in the second reading the Law on Supplementing and Amending the Law on IOVCSK. Through this law, the Assembly made irrelevant the role of a quasi-judicial institution such as IOVCSK, which, according to the Constitution, ensures respect for the rules and principles that regulate the civil service. The adoption of this law narrows the function of the IOVCSK, seriously violates the authority of this constitutional mechanism, and provokes legal uncertainty and arbitrariness toward public officials.<sup>75</sup> KLI highlighted the constitutional problems of the draft law approved by the Assembly in an analysis published in October 2022. The problems identified included violating the Constitution, the integrity and independence of the civil service, and the legal security of civil servants. KLI shared the analysis with all the deputies of the Assembly of Kosovo, but the institution did not address the issues raised.<sup>76</sup> This law was subjected to constitutional review by the

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<sup>70</sup> Pips and FOL Movement, Summary report on the reform of the public administration of Kosovo, 2021, see [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUK Ewj8kO-azuSFAXW4\\_7sIHcgPClqQFnoECBcQAQ&url=https%3A%2F%2Fpips-ks.org%2FDesktopModules%2FEasyDNNNews%2FDocumentDownload.ashx%3Fportalid%3D0%26moduleid%3D1446%26articleid%3D4197%26documentid%3D4091&usq=AOvVaw1dmBXKLInAvFbQ8MWBLN9&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUK Ewj8kO-azuSFAXW4_7sIHcgPClqQFnoECBcQAQ&url=https%3A%2F%2Fpips-ks.org%2FDesktopModules%2FEasyDNNNews%2FDocumentDownload.ashx%3Fportalid%3D0%26moduleid%3D1446%26articleid%3D4197%26documentid%3D4091&usq=AOvVaw1dmBXKLInAvFbQ8MWBLN9&opi=89978449), last accessed on April 1, 2024.

<sup>71</sup> Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, November 2023, [https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3\\_en?filename=SWD\\_2023\\_692%20Kosovo%20report\\_0.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3_en?filename=SWD_2023_692%20Kosovo%20report_0.pdf), last accessed on 27 April 2024, pg.11-14.

<sup>72</sup> UNDP, Public Pulse Brief XXV, 2023, [https://www.undp.org/sites/g/files/zskgke326/files/2024-02/Public%20Pulse\\_ENG\\_2024\\_final2.pdf](https://www.undp.org/sites/g/files/zskgke326/files/2024-02/Public%20Pulse_ENG_2024_final2.pdf), last accessed on July 10, 2024, f.21.

<sup>73</sup> Ibid, pg.11.

<sup>74</sup> Pips and FOL Movement, Summary report on the reform of the public administration of Kosovo, 2021, see [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUK Ewj8kO-azuSFAXW4\\_7sIHcgPClqQFnoECBcQAQ&url=https%3A%2F%2Fpips-ks.org%2FDesktopModules%2FEasyDNNNews%2FDocumentDownload.ashx%3Fportalid%3D0%26moduleid%3D1446%26articleid%3D4197%26documentid%3D4091&usq=AOvVaw1dmBXKLInAvFbQ8MWBLN9&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUK Ewj8kO-azuSFAXW4_7sIHcgPClqQFnoECBcQAQ&url=https%3A%2F%2Fpips-ks.org%2FDesktopModules%2FEasyDNNNews%2FDocumentDownload.ashx%3Fportalid%3D0%26moduleid%3D1446%26articleid%3D4197%26documentid%3D4091&usq=AOvVaw1dmBXKLInAvFbQ8MWBLN9&opi=89978449), last accessed on April 1, 2024. pg.6.

<sup>75</sup> KLI, "Approving the draft law on the IOVCSK, the Government and the Assembly violated the Constitution", October 2023, <https://kli-ks.org/ikd-miratimi-i-projektligjit-per-kpmsck-qeveria-dhe-kuvendi-shkelen-kushtetuten/>, last accessed on 27 February 2024.

<sup>76</sup> KLI, "Tendencies for politicization of IOVCSK", October 2022, [https://kli-ks.org/wp-content/uploads/2022/10/Draft-Raporti\\_Tendencat-per-nderhyrje-kunderkushtetuese-ne-KPMSCK-PDF.pdf](https://kli-ks.org/wp-content/uploads/2022/10/Draft-Raporti_Tendencat-per-nderhyrje-kunderkushtetuese-ne-KPMSCK-PDF.pdf), last accessed on 27 February 2024.

Constitutional Court, which confirmed the findings of KLI, annulling several articles of this draft law, deeming them unconstitutional.<sup>77</sup>

A new Public Administration Reform (PAR) strategy (2022-2027) and an implementation action plan were adopted by the Ministry of Internal Affairs, strengthening the strategic foundation for PAR. However, the implementation and oversight of the PAR legislative framework across line ministries remains inadequate. In general, PAR failed to produce noticeable improvements. As the main political oversight mechanism on public administration reform, the Ministerial Council is unable to effectively coordinate with key bodies to direct the PAR process. As the main oversight and coordination mechanism on public administration reform at the political level, the council generally meets only once a year to approve annual reports under the PAR strategic framework. This mechanism is ineffective in ensuring coordination among key bodies to steer the PAR process. Moreover, the Ministry of Internal Affairs (MIA), which leads technical reforms, and line ministries have limited capacities to effectively oversee, manage, and conduct evidence-based data analysis on the reform processes. Conversely, although it has been developed and tested, the internet-based platform for monitoring PAR is not yet operationally sound<sup>78</sup>.

Regarding salaries, Law No. 08/L-196 on Salaries in the Public Sector was approved in February 2023. This law had numerous constitutional problems, as analyzed by KLI.<sup>79</sup> After the approval of the law, KLI filed a request with the Ombudsman calling for the Constitutional Court to evaluate the constitutionality of Law No. 08/L-196.<sup>80</sup> Notably, KLI considered that the law violates the legal security of public sector employees by not determining the monetary value of the coefficients. In the absence of this determination, no public official has the possibility to know what their salary is. For this reason, in terms of respecting the principle of legal certainty, which includes the principle of predictability of the law, such a legal conclusion is inevitable. In addition, the law contains provisions that represent unequal treatment of public sector employees and provisions that violate the functional independence of the justice system.<sup>81</sup> Fortunately, after KLI's request and many other filed complaints, the Ombudsperson sent Law No. 08/L-196 on Salaries in the Public Sector for evaluation in the Constitutional Court.<sup>82</sup> The Constitutional Court issued a judgment abolishing

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<sup>77</sup> Notice for decision on case KO232/23 dhe KO233/23, <https://gjk-ks.org/njoftim-per-vendim-ne-rastin-ko232-23-dhe-ko233-23/>, last accessed on July 2, 2024.

<sup>78</sup> See Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, [https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3\\_en?filename=SWD\\_2023\\_692%20Kosovo%20report\\_0.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3_en?filename=SWD_2023_692%20Kosovo%20report_0.pdf), last accessed on 22 June 2024, pg.11-12.

<sup>79</sup> KLI, "Salaries in the Public Sector", December 2022, [https://kli-ks.org/wp-content/uploads/2022/12/IKD\\_Projektligjin-per-Pagat-ne-Sektorin-Publik-1.pdf](https://kli-ks.org/wp-content/uploads/2022/12/IKD_Projektligjin-per-Pagat-ne-Sektorin-Publik-1.pdf), last accessed on 27 February 2024.

<sup>80</sup> <https://kli-ks.org/ikd-ka-deponuar-kerkesen-tek-avokati-i-popullit-qe-ta-procedoje-liqjin-per-pagat-ne-sektorin-publik-ne-gjykatën-kushtetuese/>.

<sup>81</sup> KLI, "KLI has submitted the request to the Ombudsperson Institution to proceed with the Law on Salaries in the Public Sector to the Constitutional Court", December 2022, [https://kli-ks.org/wp-content/uploads/2022/12/IKD\\_Projektligjin-per-Pagat-ne-Sektorin-Publik-1.pdf](https://kli-ks.org/wp-content/uploads/2022/12/IKD_Projektligjin-per-Pagat-ne-Sektorin-Publik-1.pdf), last accessed on 27 February 2024.

<sup>82</sup> OathofJustice, The Ombudsperson Institution sends the Law on Salaries to the Constitutional Court, April 2023, <https://betimiperdrejtesi.com/avokati-i-popullit-e-dergon-ligjin-e-pagave-ne-gjykatën-kushtetuese/>, last accessed on 27 February 2024.

the unconstitutional provisions and obliging the Assembly to address the problems identified.<sup>83</sup>

The failure to fill positions in the government is another issue. In October 2022, Oath for Justice, a rule of law-focused TV show produced by the NGO Kosovo Institute for Justice, reported that the majority of high-level positions in the government and other independent executive and regulatory agencies continue to be held by acting officials or substitutes. Out of 58 high-level leadership positions, 47 are held by acting officials, which amounts to 81.03% of the positions. This situation indicates a lack of consolidation in the public administration, leading to the government being characterized as a "government of acting officials".<sup>84</sup>

### **Good practices**

- Kosovo has adopted comprehensive legislation regarding public officials.
- The Independent Oversight Board for the Civil Service of Kosovo functions as a Constitutional institution that ensures compliance with the rules and principles that regulate the civil service, which reflect the diversity of the people of the Republic of Kosovo.
- The Kosovo Institute for Public Administration offers professional training in support of public administration training needs which is based on short-term courses and long-term training programs. Training is focused on increasing the knowledge and skills of public administration employees in the areas of management, administration, legislation, human resources, budget and finance, information technology, local government and the European Union.
- The Constitutional Court deemed articles in the Law on Salaries unconstitutional after civil society organizations and others denounced them as such.

### **Deficiencies**

- Weak inter-ministerial coordination, potential risk of politicization in appointment processes, overburdened staff in institutions, and efforts for political involvement in senior civil service recruitments.
- The basic legislation for public sector employment has recently been unstable.
- A lack of transparency was evident in the case of the approval of the Draft Law on Supplementing and Amending the Law on Public Officials.
- The government has not implemented the decision of the Constitutional Court in the case of the approval of the Draft Law on Complementing and Amending the Law on Public Officials.
- Through the Draft Law on Supplementing and Amending the Law on IOVCSK, the Government and the Assembly undermine the role of this institution.
- The Government and the Assembly violated the Constitution when approving the Law on Salaries which contained provisions the Constitutional Court later abolished.

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<sup>83</sup> Judgment in Case No. KO79/23, Applicant the Ombudsperson, Constitutional review of Law no. 08/L-196 on Salaries in the Public Sector, January 2024, [https://gjk-ks.org/wp-content/uploads/2024/01/ko\\_79\\_23\\_agj\\_ang.pdf](https://gjk-ks.org/wp-content/uploads/2024/01/ko_79_23_agj_ang.pdf), last accessed on 27 February 2024.

<sup>84</sup> Oath for Justice, "Acting Government: Over 80% of Senior Positions Held by Substitutes", 2022, <https://betimiperdrejtesi.com/qeverisja-me-ushtrues-detyre-mbi-80-te-pozitave-te-larte-me-zevendesues/>, last accessed on July 10, 2024.

- There is a tendency of politicizing the public administration through violations of the Constitution in adopted draft laws.
- Over 80% of high-level leadership positions in the Government are not filled but are operated by acting officials.

### 3.1.4 Article 7.3 – Political Financing

The issue of party financing and the conditions under which a political party can accept donations were initially covered by the United Nations Interim Administration Mission in Kosovo (UNMIK) regulation.<sup>85</sup> The Office for Registration of Political Parties within UNMIK progressively handed over its competencies to the Kosovo institutions between 2006 and 2008 when the Law on General Elections<sup>86</sup> (LGE) was adopted. As regards to the financing of political parties, Kosovo made significant progress with the entry into force of Law No. 03/L-174 on Financing of Political Entities (LFPE) in 2010.<sup>87</sup>

LFPE regulates the conditions of financing, supervision, transparency, and reporting on property expenses and income of political subjects. According to this law, political entities are obliged to exercise internal financial control, in addition to the financial control exercised by the Central Election Commission (CEC). The latter is done according to the annual financial report which presents the preliminary results and the final audit report of the registered political party. Thus, in case of accepting financial means contrary to the provisions of the law, or not submitting the annual financial report, among other violations according to the legislation in force, political subjects may be fined under Article 21 of LFPE.

Taking into account the need for higher transparency, the Assembly of Kosovo approved in 2013 Law No. 04/I-212 for supplementing and amending Law No. 03/I-174 for the financing of political entities. According to the new changes, the annual financial reports and campaign financial reports submitted by political parties to CEC shall be audited by an auditor selected by the Assembly of Kosovo, through the Commission for the Supervision of Public Finances. With the acceptance of the control results by the CEC, the political entity shall submit the revised financial report, and explanations as regards to any error identified by auditors within five (5) business days.<sup>88</sup> In addition, the CEC sends the financial report of the campaigns carried out by the political entities together with the final audit report of the political entities to the Anti-Corruption Agency, for further examination.<sup>89</sup> This represented one of the most important changes since previously nobody verified the origin of donations in detail.

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<sup>85</sup> UNMIK Administrative Directive 2004/01, for the implementation of UNMIK Regulation 2000/16 on the Registration and Activity of Political Parties in Kosovo, [http://www.unmikonline.org/regulations/unmikgazette/03albanian/A2004regs/RA2004\\_11.pdf](http://www.unmikonline.org/regulations/unmikgazette/03albanian/A2004regs/RA2004_11.pdf), last accessed on 27 February 2024.

<sup>86</sup> Law no. 03/I-073 on general elections in the republic of kosovo, 2008, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544&langid=2>, last accessed on 22 June 2024.

<sup>87</sup> Law No. 03/L-174 on Financing Political Parties, October 2010, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2705>, last accessed on 27 February 2024.

<sup>88</sup> Article 19 of Law No. 04/I-212 for supplementing and amending law no. 03/I-174 for the financing of political entities, August 2013, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2705>, last accessed on 27 April 2024.

<sup>89</sup> Ibid, Article 19.11.



Despite the legal changes in 2013, independent audits of political parties' finances were not carried out. According to the European Commission's report on Kosovo from 2016, the Assembly was continuously failing to conduct an audit of the financing of political parties, while most political parties were not publishing their financial reports as required by law.<sup>90</sup> Hence, transparency and accountability of funding for political parties and campaign financing has remained insufficient for years.

Given the lack of application of certain legal obligations, the Assembly adopted new amendments to the legal framework on political parties and election campaign financing. Law No. 08/L-122 on amending and supplementing Law No. 03/L-174 on financing the political parties<sup>91</sup> was adopted in 2022, in line with the Venice Commission Opinion. According to the European Commission's Kosovo Progress Report in 2023, one remaining element missing from the law is the requirement for interim reporting of political candidates' income and expenses during the campaign period.<sup>92</sup> This is because, according to the legislation on political financing (including the new law), the obligation for financial reporting extends only to political entities and not to their candidates, despite the fact that candidates receive donations and spend significant amounts during election campaigns.<sup>93</sup>

The purpose of the law's amendment was to ensure full reporting, meaningful oversight, and accountability for any irregularities. Thus, important changes were achieved regarding the audit of political party finances (Annual Financial Reports and Campaign Financing Reports), as the competence for conducting audits moved from the Assembly to the newly created Office for the Registration, Certification, and Financial Control of Political Entities at the CEC. This Office is responsible for the register of political entities, the certification of all political entities that will be included in the ballot, and for limiting campaign expenses as well as monitoring and controlling the finances of political entities. The Office also investigates violations of the law, and when applicable reports these violations to the competent authorities. The Office also imposes fines, however, such imposition is without prejudice to any criminal sanction or other consequence that may apply.<sup>94</sup> It enjoys functional independence in the exercise of its powers, such as checking annual financial reports and campaign financing reports, hiring external auditors to perform audits, and issuing annual reports which constitute the basis for the allocation of public funds from Parliament for political subjects.

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<sup>90</sup> Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2016, November 2016, <https://dialogue-info.com/wp-content/uploads/2020/11/Kosovo-Report-2016.pdf>, last accessed on 27 April 2024, pg.18.

<sup>91</sup> Law no. 08/L-122 on amending and supplementing the law no. 03/L-174 on financing the political parties, amended and supplemented by the law no. 04/L-058 and law no. 04/L-122 and the law no. 03/L-073 on general elections in the republic of Kosovo, amended and supplemented by the law no. 03/L-256, 2022, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2705&langid=2>, last accessed on 22 June 2024.

<sup>92</sup> See Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, [https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3\\_en?filename=SWD\\_2023\\_692%20Kosovo%20report\\_0.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3_en?filename=SWD_2023_692%20Kosovo%20report_0.pdf), last accessed on 22 June 2024, pg. 29.

<sup>93</sup> Written Contributions by Eugen Cakolli, Senior Researcher at KDI, 30.07.2024.

<sup>94</sup> Article 3, The Law No. 08/L-122 on amending and supplementing the law no. 03/L-174 on financing the political parties adopts, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2705>, last accessed on April 14, 2024.

Consistent with the objectives of UNCAC, Kosovo has adopted appropriate legislative and administrative measures; however, there has been insufficient implementation of the legislation on political parties and campaign financing. The Assembly has not regularly conducted audits in recent years and the CEC applied selective sanctions, which resulted in incomplete oversight. The majority of political entities do not have internal financial control rules and many sources of income and expenses go unreported.<sup>95</sup> In consequence, there is an immediate need to comply with the law in practice, and article 7.3 of UNCAC in order to ensure more responsible, transparent, and mandatory financing of political parties and campaigns.

### **Good practices**

- The Law No. 08/L-122 on amending and supplementing Law no. 03/l-174 on financing the political parties is in line with the Venice Commission Opinion.
- The Office for the Registration, Certification, and Financial Control of Political Entities was established and has the competence to conduct audits.

### **Deficiencies**

- The general implementation of the legislation and awareness of campaign finance regulations are lacking.
- Political parties have not presented campaign financing reports in recent years.
- The selective sanctions of CEC have resulted in incomplete oversight of political parties and campaign financing.
- Internal financial control regulations have not been established by most political entities.

### **3.1.5 Articles 7, 8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations**

The Constitution of the Republic of Kosovo defines the powers of public institutions and, consequently, the election and mandate of public officials within the framework of these institutions. The Constitution considers the conditions for the dismissal of some of the categories of public officials<sup>96</sup>, but not for their appointment, which are determined by special laws of each public institution.

Thus, Kosovo's Constitution stipulates that Prosecutors and Judges may be dismissed from office due to a conviction for a serious criminal offense or serious non-compliance with their duties.<sup>97</sup> However, their appointment is defined by separate laws, respectively the Law on Courts (LC) and the Law on the State Prosecutor's Office (LSPO). Among others, candidates for these two positions must have a high professional reputation and personal integrity, not have been convicted of a criminal offense with the exception of criminal offenses committed by negligence, have at least three years of experience in the legal field and have passed the exams for judges and prosecutors.<sup>98</sup>

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<sup>95</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg. 26.

<sup>96</sup> See Article 104 and 109 of the Constitution of the Republic of Kosovo.

<sup>97</sup> Ibid.

<sup>98</sup> Article 24 of Law No. 08/L-167 on State Prosecutor, May 2023, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=74943>; Article 30 of Law No. 06/L-054 on Courts, December 2018, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>, last accessed on April 1, 2024.

The highest public officials, such as the President, Prime Minister, and Ministers, are not covered by the regulation on the Law on Public Officials. The appointment conditions for these positions are governed by the Constitution of the Republic of Kosovo, the Law on the President, the Law on the Government, and other relevant legislation.

For other public officials in Kosovo's public institutions subject to Law No. 08/L-197 on Public Officials (LPO), there are specific prerequisites for their appointment and dismissal. This law specifically defines rules and principles that regulate the acceptance, classification of positions, change, termination of the employment relationship, rights, and obligations in relation to the employment relationship of the public official. The general criteria that a person must fulfill in the recruitment procedure to be accepted as a public official in any category or level are predetermined in Article 9 of this law. Among eight general criteria, one is not being convicted for the commission of a criminal offense with intent, and another not having a disciplinary measure for a serious violation in a public institution.<sup>99</sup>

The LPO provides for the discipline of public officials, in cases where they violate their duties and responsibilities. Minor and serious violations are foreseen, which result in relevant disciplinary measures according to the specifics of the case, and which may end with dismissal from the civil service.<sup>100</sup>

As regards the prevention of conflict of interest, the LPO also determines the obligation to avoid conflict of interest, foreseeing that "the public official must avoid the conflict of interest regardless of whether it is real, potential or apparent."<sup>101</sup> Such provisions dedicated to the conflict of interest are present in all the specific laws that regulate these state institutions.

In 2018, a special law was approved to strengthen the integrity of the public sector and the exercise of public function in an objective, impartial, and transparent manner - Law no. 06/l -011 for the Prevention of Conflict of Interest in the Exercise of Public Function (LPCIEPF)-.<sup>102</sup> In addition to the general rule on the obligation to prevent and resolve potential conflicts of interest, LPCIEPF specifically establishes all the actions prohibited for public officials (Article 9), the prohibited works (Article 11), the limitation of senior officials in active duty (Article 12), the incompatibilities with the exercise of the public function (Article 13), and the limitations after the exercise of the public duty (Article 18).

Regarding conflicts of interest, their prevention corresponds in the first place to the official upon assuming the duty. For any situation of conflict between his/her public and private interests, the public official must resolve that situation in the most effective way possible, simultaneously informing their superior or the managing body of the

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<sup>99</sup> Article 9 of Law No. 08/L-197 on Public Officials, September 2023, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=81430>, last accessed on April 15, 2024.

<sup>100</sup> Ibid, article 57.2.2.7.

<sup>101</sup> Ibid, Article 32.

<sup>102</sup> Law No. 06/l -011 for the prevention of conflict of interest in the exercise of public function, April 2018, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=16314>, last accessed on April 1, 2024.

institution.<sup>103</sup> In situations where there is a suspicion of a conflict of interest but it cannot be verified by the corresponding institution, the institution addresses the Agency for the Prevention of Corruption (APC) for decision-making on the case. The APC is the central authority responsible for supervising the implementation of the provisions of this law, and therefore is responsible for the imposition of sanctions in case of conflict of interest. In cases where the violations of the law do not constitute a criminal offense according to the Criminal Code of the Republic of Kosovo, they represent a misdemeanor and the APC can impose fines from € 1,000 to € 2,000, and double that amount in case of repetition of the proven violation.<sup>104</sup> The APC may also impose the protective measure of banning the exercise of public function with a duration of six months to two years.<sup>105</sup>

As stated above, the existence of a conflict of interest can constitute a criminal offense. The Criminal Code of the Republic of Kosovo criminalizes actions of "the official person who takes part in any official matter personally knowing or having to know that they, their family members, or any other relevant legal person have a financial interest in it."<sup>106</sup> Such action is punished with a fine and imprisonment for up to three years. Whereas, in cases where the official case concerns a procurement action or a public auction, the perpetrator is punished with imprisonment of one to five years.

The legal framework for the prevention of conflicts of interest has been in place since 2018 but still needs to be fully implemented. The European Commission's Progress Report for Kosovo from 2023 states that APC continues to identify officials holding multiple positions against the law.<sup>107</sup>

In 2023, the number of requests from institutions submitted to the APC for opinions on conflicts of interest doubled compared to the year 2021, however, there is a slight decrease compared to the year 2022. The Agency handled a total of 216 cases of potential conflict of interest in 2023. In 102 cases, the Agency provided advice and opinions. In other cases, the results are as follows: 46 cases resulted in the avoidance of a conflict of interest, 40 cases resulted in no conflict of interest, three (3) cases were transferred to the competent court, and two (2) cases were referred for preliminary investigation. Meanwhile, 23 cases have been transferred to the year 2024.<sup>108</sup>

However, in practice, there have been situations when the provisions related to conflicts of interest have not been implemented. Contrary to LPCIEPF and to the principles of integrity which preserve meritocracy and public trust in the prosecutorial system, numerous promotions of prosecutors have been made. Many prosecutors have also benefited from allowances, and in some cases beyond the norms allowed by law.<sup>109</sup> Such advancements have been mostly highlighted in the Office of the Chief

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<sup>103</sup> Ibid, Article 8.

<sup>104</sup> Ibid, Article 23.1.

<sup>105</sup> Ibid, Article 23.2.

<sup>106</sup> Article 417 of CCRK, 2019, <https://qzk.rks-gov.net/ActDetail.aspx?ActID=18413>, last accessed on 24 June 2024.

<sup>107</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Progress Report 2023, pg.28.

<sup>108</sup> APC's response to KLI's access request.

<sup>109</sup> See Article 37 of Law on State Prosecutor.

Prosecutor of the State, while irregularities have also been evident in many other institutions within the justice system.<sup>110</sup>

The Chief Prosecutor of the Special Prosecution Office (SPRK) was elected regardless of the existence of a conflict of interest, while under identical circumstances, and for the same reasons, one of the candidates for Chief State Prosecutor did not continue the race. The latter's non-continuation of the race came as a result of the APC issuing an opinion on this matter in March of 2022. According to this opinion, the eventual appointment of former members of the KPC to the position of Chief Prosecutor of a prosecutor's office before the passing of a two-year period from the end of the mandate of the member of the KPK would conflict with the LPCIEPF and would therefore constitute a conflict of interest.<sup>111</sup> In the same situation, on the occasion of the appointment of the Chief Prosecutor of the SPRK, APC did not treat the case. It could arguably be considered that the APC took a selective approach, remaining silent in the first case, while it found the existence of a conflict of interest in the second case.<sup>112</sup>

In July 2022, Kosovo adopted the new Law on the Declaration, Origin, and Control of Assets and Gifts (LDOCAG).<sup>113</sup> This law adds new categories of public officials obliged to declare assets and includes more complete asset information and data to be declared by officials. In addition, an electronic declaration system was put into place, easing the declaration and submission procedure and enhancing accuracy and transparency in the monitoring and verification of assets.

By law, when performing public services from March 1 to March 31 of the following year, public officials submit their regular annual asset declaration to the APC. In addition to the supervision of the regular annual declaration, the APC is also responsible for the supervision of the declaration upon taking office, the declaration if requested by the Agency, and the declaration after termination or dismissal from office. Over three years, the responsibility of senior public officials to declare their assets within the legal deadline has increased. In 2021, out of 4,892 officials, 4,783 (97.77%) met the deadline, while 109 (2.23%) did not. In 2022, out of 4,748 officials, 4,687 (98.72%) declared on time, with 61 (1.28%) missing the deadline. By 2023, out of 4,709 officials, only 11 missed the deadline.<sup>114</sup>

While APC has the power to conduct a full investigation regarding the declaration of assets, until now this has not brought adequate results. One of the problems mentioned is the impossibility for the Kosovo Judicial Council (KJC) and the Kosovo

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<sup>110</sup> See: KLI, Legality of advancements and benefits in the office of the chief state prosecutor, 2021 <https://kli-ks.org/wp-content/uploads/2021/02/Liqishmeria-e-avancimeve-dhe-perfitimeve-ne-ZKPSH-13.02.2021.pdf>; KLI, Conflict of interest in advancements and benefits in the judicial and prosecutorial council, 2021, <https://kli-ks.org/wp-content/uploads/2021/04/Raporti-per-shtesat-ne-KGJK-KPK-1.pdf>, last accessed on July 10, 2024.

<sup>111</sup> Article 18 of LPCIEPF.

<sup>112</sup> OathforJustice, The contested integrity of the process of electing the Chief State Prosecutor, March 2022, <https://betimiperdrejtesi.com/betimi-per-drejtesi-272-integritetin-e-kontestuar-i-procesit-te-zgjedhjes-se-kryeprokurorit-te-shtetit/>, last accessed on April 1, 2024.

<sup>113</sup> Law No. 08/L-108 on Declaration, Origin, and Control of Assets and Gifts, August 2022, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=61304>, last accessed on April 1, 2024.

<sup>114</sup> Annual Report of APC, 2023, [https://apk-rks.net/index.php/ova\\_doc/raporti-vietor-2023-agiencia-per-parandalimin-e-korrupsionit/](https://apk-rks.net/index.php/ova_doc/raporti-vietor-2023-agiencia-per-parandalimin-e-korrupsionit/), last accessed on June 28, 2024.

Prosecutorial Council (KPC) to use the declaration and control of assets in the case of the appointment of new judges and prosecutors or the promotion of judges and prosecutors who are in the system. There are not sufficient legal mechanisms within these institutions to assess the candidates' declaration of assets and to control them.

Although the asset declaration system has been strengthened in compliance with the requirements of the Venice Commission<sup>115</sup>, the European Commission and international standards, effective implementation remains largely pending, especially by the Prosecutor's Office and the Courts when dealing with cases of this nature. The inadequate handling of cases of non-declaration of assets by prosecutors and Courts constantly creates a standard of impunity and amnesty for the perpetrators of this criminal offense.

In 2023, 25 fines, 6 decisions for public reprimands, and 5 decisions for non-public reprimands were imposed for wrongful or non-declaration of assets, while 59 cases have been referred to the prosecution.<sup>116</sup>

On the other hand, based on cases initiated by the APC and subsequently handled by the State Prosecutor, the courts issued 38 convictions, 2 acquittals, and 7 dismissed indictments. The convictions primarily resulted in fines.<sup>117</sup> Excluding the penalties issued by the courts, a smaller number of asset non-declaration cases were referred to the prosecution, indicating increased awareness among officials about the requirement for asset declarations. Compared to the previous year, in 2022, 178 cases were referred to the prosecution and police for further investigation, resulting in 37 convictions and one acquittal from 38 court rulings.<sup>118</sup>

Since the courts have predominantly imposed fines in cases of non-declaration of assets, in 2022 KLI analyzed the work of the prosecution and courts regarding the indictments filed and penalties imposed, specifically focusing on the punitive policy in these instances. According to the received data, the Prosecutor's Office was unable to solve the high number of cases it received of non-declaration of assets.<sup>119</sup> Out of 152 cases (100 newly accepted and 52 carried over from previous years), 94 cases were resolved. During 2022, the courts issued 37 guilty verdicts and one (1) acquittal. Upon analyzing the cases, KLI concluded that courts apply insufficient punitive measures, often opting for lenient standard sentences involving fines and suspended sentences. It is evident that sentencing falls within the discretion of the court; however, the significant number of aggravating circumstances being disregarded while mitigating circumstances are doubled gives the impression of an unjust benefit for the

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<sup>115</sup> Venice Commission, Draft Opinion on the concept paper on the vetting of judges and prosecutors and draft amendments to the constitution, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2022\)005](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2022)005), last accessed on 25 June 2024, par.44-50.

<sup>116</sup> APC's response to KLI's access to information request. April 25, 2024.

<sup>117</sup> Annual Report of APC, 2023, [https://apk-rks.net/index.php/ova\\_doc/raporti-vjetor-2023-agjencia-per-parandalimin-e-korrupsionit/](https://apk-rks.net/index.php/ova_doc/raporti-vjetor-2023-agjencia-per-parandalimin-e-korrupsionit/), last accessed on June 28, 2024, pg. 20.

<sup>118</sup> APC's response to KLI's access to information request. April 25, 2024.

<sup>119</sup> KLI, Non-declaration of assets, crime on paper, a misdemeanor in practice, December 2023, <https://kli-ks.org/mos-deklarimi-i-pasurise-krim-ne-leter-kundervaitje-ne-praktike/>, last accessed on April 1, 2024, pg. 7.

defendant. This is further justified by the absence of any custodial sentences from the 37 guilty verdicts.<sup>120</sup>

According to paragraph 1 of article 430 of the Criminal Code, the criminal offense of not declaring assets occurs when the official does not declare such assets at all or declares them after the expiration of the legal term for declaration. In such cases, the LPCIEPF provides for sanctions, such as a fine or imprisonment. In the case of false or incomplete data (not all the necessary information is presented according to paragraph 2 of Article 430), a cumulative penalty is foreseen, including a fine and imprisonment. However, in judicial practice, such a sentence has been usually converted into a suspended sentence. This has been the case in all cases monitored by KLI, when the criminal offense was qualified, according to paragraph 2 of Article 430, as false or incomplete asset declarations and the courts imposed conditional sentences.<sup>121</sup> KLI also noted that some cases related to failing to provide the information required were qualified according to paragraph 1 of Article 430 of the Criminal Code (which establishes a lenient sentence), instead of paragraph 2 which entails a more severe penalty.<sup>122</sup> Finally, the court imposed only a fine in some cases when the offense of failing to declare had been committed three times in a row, which seemed an insufficient penalty.<sup>123</sup>

The fact that the sentences issued by the Court have not achieved their intended effect and have not been treated with the required seriousness can be illustrated with practical examples. For instance, a public official was fined € 800 by the Court for the criminal offense of failing to declare assets. Despite this, only a few months later, the Governing Council of a public university elected the same individual as the rector of the university.<sup>124</sup>

In summary, Kosovo has passed legislation aligned with UNCAC Articles 7, 8, and 12, addressing asset declarations, conflict of interest management, and codes of conduct. However, improving accountability mechanisms and sentencing policy is vital to successfully combat corruption and uphold integrity.

### **Good practices**

- The asset declaration system has been strengthened in compliance with the requirements of the Venice Commission and the European Commission and international standards.
- An electronic asset declaration system was established, easing the declaration and submission procedure and further increasing access to them publicly.
- From 2021 to 2023, the percentage of senior public officials declaring their assets within the legal deadline has steadily increased.
- There is legislation in force for the declaration of assets and conflicts of interest, which provides for sanctions in cases of violations.

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<sup>120</sup> Ibid, pg. 15.

<sup>121</sup> Ibid, pg.9.

<sup>122</sup> Ibid, pg.15.

<sup>123</sup> Ibid.

<sup>124</sup> Oath of Justice 358: "Smuggling" of the rector at the University of Mitrovica, 2024, <https://betimiperdrejtesi.com/betimi-per-drejtesi-358-kontrabandimi-i-rektores-ne-universitetin-e-mitrovices/>, last accessed on July 10, 2024.

## Deficiencies

- APC conducts a full investigation into the declaration of assets in a small number of cases.
- The inadequate handling by the courts and prosecutors in cases of non-declaration of assets, including lenient sanctions for recidivists, creates a culture of impunity and amnesty.
- The Kosovo Judicial Council and the Kosovo Prosecutorial lack legal mechanisms to evaluate the declaration and control of assets of judges and prosecutors who are candidates for appointments or promotions.
- In many cases, contrary to the LPCIEPF, prosecutors were promoted while actors within the justice system received bonuses.
- The APC demonstrated a selective approach by remaining silent during the selection process for the Chief Prosecutor while, in identical circumstances, disallowing a candidate to run in another process.

### 3.1.6 Articles 8.4 and 13.2 – Reporting Mechanisms and Whistleblower Protection

Until 2011, Kosovo did not have legislation for the protection of persons who reported violations within public institutions. In September 2011, Law No. 04/L-043 on the Protection of Informants entered into force, creating a legal basis for encouraging officials to report unlawful actions and ensuring whistleblowers' protection from any other form of mistreatment.<sup>125</sup> It remained in force until January 2, 2019, when Law No. 06/L -085 for the Protection of Whistleblowers (LPW) was adopted and entered into effect. This law concerns the reporting of violations in the public and private sectors, as well as the protection of whistleblowers.<sup>126</sup> Special importance is also given to the private sector, for which corresponding provisions came into force in January 2020.<sup>127</sup>

With this law, Kosovo has built a system for reporting violations in public or private institutions in accordance with Article 8.4 of UNCAC. The law defines the areas of what can be reported, the addresses where a whistleblower should be directed to, the procedures for whistleblowing, the rights of whistleblowers, including other persons associated with the whistleblower, the judicial protection of the whistleblowers, among other issues.

According to the LPW, whistleblowing can take the form of a report or a disclosure of information in the public interest. In addition, whistleblowing can take place in three relevant periods: when the violation has occurred, when it is occurring, or when it is likely to occur. In addition to criminal offenses and misdemeanors, other suitable areas for whistleblowing are maladministration of justice, mismanagement of the institution, and violation of health and the environment. A person who seeks to report or disclose information has three channels for whistleblowing: to the employer (known as internal reporting), to the competent authority, or external and public reporting (through the Internet, to the media, NGOs, etc).

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<sup>125</sup> Law no.04/L-043 on Protection of Informants, September 2011, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2763>, last accessed on April 1, 2024, Article 1.

<sup>126</sup> Law no.06/L-085 on Protection of Whistleblowers, December 2018, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18303>, last accessed on April 1, 2024, Article 1.

<sup>127</sup> Ibid, article 32.



Employers are obliged to designate the official responsible for whistleblower cases. Public entities have to appoint an official if they have more than 15 employees, while private entities have to appoint an official if they have more than 50 employees.<sup>128</sup> In cases where the employer does not have a responsible official or has not defined and published internal procedures for receiving and handling whistleblowing reports and disclosures, the whistleblower can address the employer directly. He/she can do so as well in a situation where there is reasonable doubt that the responsible official may be involved in the case, or when the investigation is ineffective.<sup>129</sup> In practice, according to APC statistics, all public sector institutions have appointed an officer for internal whistleblowing cases. The only issue arises when officers are dismissed before a new one is appointed, but this problem has generally been resolved in public institutions.<sup>130</sup>

If the whistleblowing concerns the employer's leader, is of an urgent nature, involves suspicions of harmful actions against the whistleblower, or concerns the potential concealment of evidence, the whistleblower may report the matter externally.<sup>131</sup> Public sector whistleblowers can report externally to the APC, while private sector whistleblowers should report to the regulators of the corresponding areas.<sup>132</sup> In cases where the reporting person reasonably believes that he/she will be subject to retaliation if they make an internal or external report, the reporting person can disclose the information to the public, thus blowing the whistle publicly. Public whistleblowing can also be done if the whistleblower suspects that their evidence can be concealed or destroyed, perceives threats to life, public health, safety, or the environment, or if there is extensive or irreparable harm. Additionally, it is allowed if the authorities responsible for internal and external reporting have failed to take appropriate actions.<sup>133</sup>

The procedure for handling reported cases is carried out through an administrative investigation, as defined by the LPW. If, after examining and validating the claims raised by the whistleblower, a legal violation is recognized, the employer informs the competent body and takes immediate measures to prevent the continuation of harmful actions.<sup>134</sup>

The other part of the procedure not regulated by the LPW, is covered by the Law on General Administrative Procedure.<sup>135</sup>

The LPW sets out provisions for the protection of the legitimate interests of whistleblowers. For instance, the whistleblower has the right to protect his/her identity during the process, to preserve the secrecy of the information's source, and to be protected against retaliation and harmful actions. In this regard, whistleblowing is also protected by misdemeanor and criminal provisions. Article 27 of the LPW determines

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<sup>128</sup> Ibid, Article 17.

<sup>129</sup> Ibid, Article 17.4.

<sup>130</sup> Interview with the Director of APC Yil Buleshkaj. 28.06.2024.

<sup>131</sup> Article 18 of LPW.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid, Article 20.

<sup>134</sup> Ibid, Article 16.

<sup>135</sup> Ibid, Article 16.11.

the level of penalties for misdemeanors in case of harmful actions against the whistleblower and the whistleblowing process itself, with fines of up to € 20,000.<sup>136</sup>

The LPW requests from the Government the approval of a by-law to determine the procedure for accepting and handling whistleblowing cases. According to Article 30.1, sub-legal acts for the implementation of LPW must be issued within six months from the day of entry into force of LPW. This legal deadline was not respected by the Minister of Justice, who did not send a draft regulation on this matter to the Government until 2021. This legal obligation was only fulfilled on April 30, 2021, when the Government approved Regulation (GRK) - No. 03/2021 for determining the procedure for accepting and handling whistleblowing cases.<sup>137</sup> This Regulation applies to all persons in the context of the working relationship, as well as to public institutions, for determining the procedures for accepting and handling whistleblowing cases. Furthermore, it contains provisions on the rights and responsibilities of the officials responsible for receiving and managing the reports in each institution.

At the same time, the protection of whistleblowers has been incorporated into the Criminal Code of the Republic of Kosovo, being protected by criminal provisions. Retaliation is sanctioned. Understood as a harmful action against a person reporting or disclosing information about actions and omissions that pose a threat or violation of the public interest, it is sanctioned with a fine or up to two years of imprisonment.<sup>138</sup>

As per article 13.2 of UNCAC, Kosovo has ensured legal provisions that protect the confidentiality of whistleblowers. The country has taken measures to make anti-corruption bodies known to the public and provides accessible channels for reporting, including anonymous reporting of any incidents that may constitute offenses under this Convention.

However, preserving the confidentiality of whistleblowing and the whistleblower has faced practical challenges for technical reasons. In particular, the lack of special offices for handling these cases and securing storage for whistleblowing files risk violating the principle of confidentiality. Additionally, shared offices by multiple employees and the access to email addresses of whistleblowers by information technology staff further makes it impossible to ensure confidentiality.<sup>139</sup>

Civil society is continuously engaged in improving the legal framework and its practical implementation. In this regard, the publication of manuals is an effective tool for understanding legislation. With this purpose, the non-governmental organization FOL Movement has published a manual for whistleblowing in the private sector<sup>140</sup>. This manual contains concrete references for female employees in the private sector on

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<sup>136</sup> Ibid, Article 27.

<sup>137</sup> Regulation (GRK) - No. 03/2021 on Determining the Procedure for Receiving and Handling the Cases of Whistleblowing, approved with the decision of the Government of Kosovo, no. 01/10 on date 30.04.2021, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18303>, last accessed on April 1, 2024.

<sup>138</sup> Criminal Code No.06/L-074 of the Republic of Kosovo, January 2019, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>, last accessed on April 1, 2024, article 388, par.2.

<sup>139</sup> FOL Movement, Law for Protection of Whistleblowers, challenges of implementation in practice, 2020, <https://levizjafol.org/wp-content/uploads/2020/06/Raport-Liqji-per-Mbrojtjen-e-Sinjalizuesve-1.pdf>, last accessed on July 10, 2024, f.18.

<sup>140</sup> FOL Movement, Manual for the whistleblowing in the private sector, <https://levizjafol.org/wp-content/uploads/2020/11/Udh%C3%ABzues-p%C3%ABr-sinjalizimin-n%C3%AB-sektorin-privat.pdf>

how to assert their rights as whistleblowers. Such manuals, in addition to helping in the understanding of LPW, also serve as guidelines for the drafting of internal policies for the implementation of the law.

The improvement of the legal framework that was brought about by the LPW has significantly influenced the protection of whistleblowers, including by raising awareness with citizens about this effective tool in the prevention of corruption. This improvement is reflected in the positive trend of increasing whistleblowing cases reported to the APC since the entry into force of the LPW. From 2020 to 2023, a total of 53 cases of whistleblowing were reported, with a rise from 5 cases per year to 18 cases handled in 2023.

According to APC, in 2023 a total of 20 cases were received and recorded, 18 of which were completed and the other 2 went over into the investigation procedure for 2024. Of these 18 reported cases in 2023, 11 were rejected, three were closed, two were forwarded to the State Prosecutor's Office and two were forwarded as requests for further proceedings to the competent body.<sup>141</sup>

**Table 3: Number of whistleblowing cases reported to the Agency for the Prevention of Corruption during the years 2020-2023**

2020	2021	2022	2023
5 cases	13 cases	17 cases	18 cases

However, so far, there have been no significant success cases stemming from the whistleblowing process. On the contrary, instances of retaliation against whistleblowers have been documented. For example, a public official was dismissed for reporting his suspicions of irregularities in the Ministry of Industry, Entrepreneurship, and Trade regarding the procedures for purchasing state reserves<sup>142</sup>.

### Good practices

- The Law for the Protection of Whistleblowers (LPW) determines the procedure for receiving and handling whistleblowing cases and is aligned with the European Union acquis.
- Civil society improves and facilitates the implementation of the legal framework through the publication of Manuals/Guidelines for the protection of whistleblowers.
- The development of the legal framework has raised society's awareness about whistleblowing in the public interest and the need to protect whistleblowers.
- Whistleblowing case submissions increased along with the Agency's trend in handling more reporting cases.

### Deficiencies

- Relevant institutions (including the private sector) have not adequately adopted and implemented internal whistleblowing procedures and integrity plans.

<sup>141</sup> APC response to KLI's access request.

<sup>142</sup> OathforJustice, MINT whistleblower fired, says this is retaliation for state reserves issue, <https://betimiperdrejtesi.com/largohet-nga-puna-sinjalizuesi-i-mint-it-thote-se-kjo-eshte-hakmarrije-per-ceshtien-e-rezervave-shteterore/>, last accessed on August 12, 2024.

- Technical constraints of institutions have challenged the preservation of confidentiality in whistleblowing.
- There have been no significant success cases uncovering corruption resulting from whistleblowing.
- Instances of retaliation against whistleblowers have been documented.

### 3.1.7 Article 9.1 – Public Procurement

In the legal order of the Republic of Kosovo, the use of public funds is regulated by Law no. 04/L-042 for Public Procurement in the Republic of Kosovo<sup>143</sup> (LPPRK). This law serves as the basis for the use of public funds in all procurement activities of public authorities, and the corresponding criteria and procedures are detailed in secondary legislation. Consequently, during the exercise of procurement activities, public sector contracting authorities and concessionaires are obliged to implement and respect the procedural and substantive requirements of this law.

The LPPRK is based on the general principles of transparency, efficiency, and fairness in the allocation of public funds. Hence, all contracting authorities are obligated to select offers that are cost-effective and efficient and that respect equality of treatment and transparency principles when allocating public funds and public resources.<sup>144</sup>

The LPPRK includes rules governing technical specifications and tender dossiers that provide all relevant information on the concerned contract. These rules require the inclusion of all material conditions, applicable procurement procedures, eligibility requirements or selection criteria, complaint procedures, and other information following the law. In addition, the relevant technical specifications, performance standards, the scope for variations, and information about subcontracting must be included in the tender dossier.<sup>145</sup>

During the procurement process aimed at awarding a public contract, an open or a limited procurement procedure may be exercised.<sup>146</sup> In special cases, negotiated procedures may be used after the publication of the contract notice related to the procurement activity.<sup>147</sup> In situations where negotiated procedures can be developed without the publication of the contract notice, the contracting authority must provide an explanation and justification for using this procedure.<sup>148</sup> Regarding the purpose of exercising the procurement activity, the contracting authority can also use price quotation procedures<sup>149</sup> and procedures for minimal value contracts.<sup>150</sup>

The LPPRK defines the rules and procedures for the selection of tenderers and the award of contracts.<sup>151</sup> Following Article 56 of LPPRK, all public contracts shall be awarded firstly by assessing tenderers and candidates according to the eligibility and

<sup>143</sup> Law No. 04/L-042 for Public Procurement in the Republic of Kosovo, September 2011, <https://qzk.rks-gov.net/ActDetail.aspx?ActID=2772>, last accessed on March 13, 2024.

<sup>144</sup> Ibid, Article 6 and 7.

<sup>145</sup> Ibid, Article 27.

<sup>146</sup> Ibid, Article 33.

<sup>147</sup> Ibid, Article 34.

<sup>148</sup> Ibid, Article 35.

<sup>149</sup> Ibid, Article 36.

<sup>150</sup> Ibid, Article 37.

<sup>151</sup> Ibid, Article 1.

technical requirements specified in the contract notice and the tender dossier, and secondly, by evaluating the tenders according to the contract award criteria. These criteria can be the lowest price only or the economically most advantageous tender.<sup>152</sup> After the public contract using open, restricted, or negotiated procedures, or price quotation procedures is awarded, the contracting authority shall prepare a contract award notice.<sup>153</sup>

The Regulatory Commission for Public Procurement (KRPP) is an independent regulatory agency, according to the law, responsible for the operation and general supervision of public procurement in Kosovo. During the year 2023, KRPP reported that 10,183 contracts were signed with a value of € 810,438,403. According to the procurement procedures, the open procedure prevails, followed by the negotiated procedure without publication of the contract notice. The value of the contracts awarded according to the open procedure in 2023 reached the value of € 665,768,974, and € 117,258,922 for the negotiated procedure without publication of the contract notice, followed by other procurement procedures. The criterion of the lowest price prevailed in 85.81% of the cases over the criterion of the economically most advantageous tender.<sup>154</sup> The European Commission's Progress Report for Kosovo in 2023 did, however, stress the importance of promoting the use of best-price-quality ratios in accordance with the EU directives for public procurement.<sup>155</sup>

**Table 4: Number and value of contracts signed in 2023**

<b>Contracts signed during 2023</b>	<b>Value of contracts</b>	<b>Value of contracts according to procurement procedures</b>	
10,183 contracts	€ 810,438,403	Open procedure € 665,768,974	Negotiated procedure € 117,258,922

*Source: Public Procurement Regulatory Commission - ANNUAL REPORT 2023.*<sup>156</sup>

The LPPRK regulates matters regarding personnel responsible for procurement activities, such as their training. As regards the avoidance of conflict-of-interest situations, the law foresees the development of a code of ethics.<sup>157</sup> However, there is no monitoring of compliance with the code of ethics for public procurement. Besides, the issue of conflicts of interest is also regulated in the Law on the Prevention of Conflict of Interest in the Discharge of a Public Function.<sup>158</sup>

<sup>152</sup> Ibid, Article 60.

<sup>153</sup> Ibid, Article 41.

<sup>154</sup> Public Procurement Regulatory Commission, Annual Report 2023, March 2024, <https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Raportet%20Vjetore/shq/Raporti%20Vjetor%202023.pdf>, last accessed on 18 March 2024, pg.88 and 95.

<sup>155</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg. 72.

<sup>156</sup> Public Procurement Regulatory Commission, Annual Report 2023, March 2024, <https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Raportet%20Vjetore/shq/Raporti%20Vjetor%202023.pdf>, last accessed on 18 March 2024, pg.88.

<sup>157</sup> Public Procurement Regulatory Commission, Procurement Code of Ethics, December 2016.

<sup>158</sup> See Law No. 06/L-011 for the prevention of conflict of interest in the discharge of a public function.

Complaint procedures concern data that should be included in the tender file. In accordance with the law, the Procurement Review Body (PRB) within the framework of its authority and powers, also handles the complaints of the parties regarding the allegations of violations of the law. Chapter III of the Procurement Law foresees the initiation and initial implementation of review procedures, including the deadline for submitting the complaint, the initial review by the review expert, and the deadlines for decision-making. In case of withdrawal of the complaints submitted, the PRB has the authority to continue in its name the examination based in the assumptions presented in the complaints. If a complainant believes that a final decision or determination by a review panel or the PRB is contrary to the facts or the current Law, the complainant may request the Basic Court to review such a decision. The request must be filed within (30) days from the publication of the PRB decision, in accordance with paragraph 2 of Article 117 of this Law.<sup>159</sup>

When it comes to the work of PRB, the government applies selective measures against PRB members, particularly in the decision-making on its reviews. One notable instance is the selective decision to propose the dismissal of Kimete Gashi, Chairwoman of the Procurement Review Body's (PRB) Review Panel, in the insulin tender case, which was criticized by CSOs. This decision absolves other PRB members who voted similarly to her. CSOs emphasize that voting in procurement reviews follows the principle of "one member, one vote," as per Kosovo's Law on Public Procurement and PRB Rules of Procedure. Kimete Gashi's role as chair of the review panels in the insulin tender case is primarily administrative, based on the PRB regulation. Consequently, decisions made by panels chaired by her cannot be attributed solely to her, considering that decision-making in these reviews is collegial. Therefore, all members of the review panels who voted similarly to Kimete Gashi should be proposed for dismissal, and they should be held institutionally accountable rather than being granted amnesty. The Assembly of the Republic of Kosovo, based on the Government's proposal, dismissed a member of the PRB Board. However, in June 2024, the Constitutional Court assessed this decision and found it to be inconsistent with the Constitution.<sup>160</sup>

The Kosovo Government shall avoid selective actions against PRB members and reconsider or amend the dismissal proposal to include all members involved in approving the unauthorized insulin imports.

Regarding Kosovo's legislation on the right to legal remedy, it generally follows the European Union's standards. It should be noted that the e-procurement platform allows for appeals to be filed to challenge procurement awards. Nevertheless, it is necessary to update this platform to guarantee its complete functionality.<sup>161</sup> This platform generally ensures that procurement procedures are transparent and

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<sup>159</sup> Article 66 of Law no. 05/l -068 on amending and supplementing the law no. 04/l-042 on public procurement of the Republic of Kosovo, amended and supplemented with the law no. 04/l-237, amends article 119 of the Basic Law by rewording it and therefore, allowing the final decision to be reviewed by the Basic Court.

<sup>160</sup> Constitutional Court, Notice of decision in case KO157/23, [https://gjk-ks.org/njoftim-per-vendim-ne-rastin-ko157-23/?fbclid=IwZXh0bgNhZW0CMTAAAR1EkdbgybrX9jzPUklo0JuBiUhgJ0-DQoIwV6wXMcaCOfzqNz674vAUz0\\_aem\\_vmjuPk1ksCq6h8jSuKAmvQ](https://gjk-ks.org/njoftim-per-vendim-ne-rastin-ko157-23/?fbclid=IwZXh0bgNhZW0CMTAAAR1EkdbgybrX9jzPUklo0JuBiUhgJ0-DQoIwV6wXMcaCOfzqNz674vAUz0_aem_vmjuPk1ksCq6h8jSuKAmvQ), last accessed on July 10, 2024.

<sup>161</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg. 72.

accessible to everyone. It offers comprehensive technical support, but not all of its modules, such as contract management, are fully utilized by contracting authorities. Another challenge is the use of e-invoices, which is hampered by a lack of infrastructure—a matter that needs to be addressed by the Ministry of Finance.<sup>162</sup>

As mentioned above, the PRB is an independent review body, which exercises its authority and functions according to the LPPRK and is responsible for the implementation of procurement review procedures. It is composed of five members who must fulfill their duties according to the principles defined by this law and the Procurement Code of Ethics. Although legally independent, PRB has faced numerous problems since its establishment in terms of constitution, functioning, and independence and impartiality. The main issue has been the regular attempt of politicization of this body, which has frequently resulted in a dysfunctional board.<sup>163</sup> The failure of the institutions to replace board members whose mandates ended resulted in the initial issues with maintaining PRB's functionality, which arose as early as 2012. Going forward to 2022, the same circumstances persisted.<sup>164</sup> The unjustified dismissal of PRB members, which created vacant positions on the Board, affects the legal terms of procurement management, in particular the handling of complaints.

Consequently, according to the analysis of non-governmental organization Initiative for Progress (INPO), until January 12, 2022, 607 complaints have remained unreviewed, with an estimated value of activities of € 317,806.55. In June 2022, the first PRB board was appointed in full composition. In this case, it was decided that all appeals for which the legal deadline for decision-making had passed would be dismissed as belated for review and decision, and the funds deposited in the name of the appeal fee were returned to the appellants.<sup>165</sup> However, with the resignation of a board member, the number was reduced to 4, and later on to 3. Besides the absence of the Board, PRB experienced other difficulties with the shortage of administrative staff and human and financial resources.<sup>166</sup>

During this period, 748 complaints were submitted to PRB, of which 632 were resolved. Out of 632 resolved complaints, only 143 (nearly 23%) were resolved within the legal deadline. Out of these, only 32 cases were resolved based on the judgment of the Review Panel on the merits, within the legal deadline. Over 77% of complaints were resolved after the deadline.<sup>167</sup> Review panels are established for the organization of PRB work, depending on the issue raised, which in the current case has the purpose of deciding on the submitted complaints.

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162 Written Contributions by Arbër Kabashi, researcher at INPO. 01.07.2024.

163 INPO, "PRB hostage to politics", February 2021, <https://inpo-ks.org/wp-content/uploads/2022/02/Raport-OSHP-peng-i-politikës-1.pdf>.

164 Ibid. "These several government actions demonstrate that no government has ever adhered to the timelines pertaining to the PRB board or member constitution. These issues with voting and the PRB board's operation demonstrate that government and assembly, respectively political subjects are the source."

165 The annual report of the work of the PSO for the year 2022, <https://oshp.rks-gov.net/sq/Pages/Details?id=18>, last accessed on June 28, 2024.

166 INPO, Review of corruption in public procurement, 2023, [https://inpo-ks.org/wp-content/uploads/2023/12/Raporti-i-monitorimit-te-OSHP-se\\_06.12.2023-INPO.pdf](https://inpo-ks.org/wp-content/uploads/2023/12/Raporti-i-monitorimit-te-OSHP-se_06.12.2023-INPO.pdf), pg. 9-10.

167 Ibid, pg.10.

As the Board was overloaded, the PRB completed and amended the PRB Work Regulation No. 01/2020 twice with the aim of increasing work efficiency. According to the changes in this regulation, for complaint cases worth up to € 300,000.00, a review panel composed of one member is to be established. For complaint cases valued between € 300,000.00 and € 1,000,000.00, the review panel should be composed of three members.<sup>168</sup>

INPO's research findings indicate that, notwithstanding the regulatory amendment, the Public Procurement Office has not improved the efficiency of review panels in processing complaints. Between August 10, 2023, and September 30, 2023, following the regulation's amendment, 53 complaints were resolved. However, the individual panels did not meet the legal deadlines for any of the 53 complaints.

Simultaneously, from January to September 2023, the time required to resolve complaints has increased, with a rise in the use of double standards in the reviewing of complaints and discriminatory approaches towards economic operators. The impartiality and nature of the PRB's collegial decision-making process have also been questioned.<sup>169</sup> Above all, the changes to the regulation were made contrary to the LPPRK and without transparency or involvement of the interested parties.<sup>170</sup>

The lack of professionalism within the justice system in handling procurement cases, particularly in terms of fighting and preventing corruption, is constantly criticized by civil society.<sup>171</sup> Addressing how corruption-related crimes, especially those related to misuse public procurement, requires specialized knowledge beyond the Criminal Code of the Republic. A thorough understanding of the LPPRK is needed, as it directly impacts the quality of follow-up on cases and judgments.

Regarding the training of prosecutors in the field of public procurement, it can be noted that even though there is an increase in the number of trained prosecutors, it is still not sufficient to handle such complex cases.<sup>172</sup> In addition to the lack of adequate training of prosecutors, there is also a marked lack of public procurement experts in the prosecutorial system. In 2021, only six experts were engaged within the Special Prosecutor's Office of the Republic of Kosovo, while other instances of the prosecutorial system do not have such experts.<sup>173</sup> The same situation occurs with judges, regarding their public procurement training. KLI found that for four years (from 2017 to 2020), the judicial system had failed to train all competent judges dealing with corruption cases in the field of public procurement.

In sum, the legal framework on public procurement partially aligns with the European Union's 2014 public procurement directives.<sup>174</sup> The approval of the new draft law for

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<sup>168</sup> Regulation for the amendment of Regulation No. 01/2020 for the work of the Procurement Review Body, <https://oshp.rks-gov.net/sq/Pages/Details?id=6>.

<sup>169</sup> INPO, assessment of corruption in public procurement, December 2023, [https://inpo-ks.org/wp-content/uploads/2023/12/Raporti-i-monitorimit-te-OShP-se\\_06.12.2023-INPO.pdf](https://inpo-ks.org/wp-content/uploads/2023/12/Raporti-i-monitorimit-te-OShP-se_06.12.2023-INPO.pdf), pg. 10.

<sup>170</sup> Ibid, pg. 6.

<sup>171</sup> KLI, "The pursuit, and trial of corruption in public procurement", December 2021, <https://kli-ks.org/ndjekja-dhe-gjykimi-i-korrupsionit-ne-prokurimin-publik/>, last accessed on April 1, 2024.

<sup>172</sup> Ibid, pg. 10.

<sup>173</sup> Ibid, pg.11.

<sup>174</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg. 71.



public procurement has been postponed up to six times since 2020 when it began to be drafted. According to the Government's 2024 Legislative Program, this draft law was expected to be approved by the Government on March 20, 2024; however, it was not approved on that date. The deadlines for the approval of this draft law have been repeatedly changed by the government each year, without providing any clarification regarding the progress of the process or the reasons for the delay. Therefore, finalizing the draft is essential to establish legal guidelines addressing practical challenges in e-procurement and to resolve efficiency issues concerning the PRB.<sup>175</sup>

### **Good practices**

- The e-procurement platform offers the possibility to file appeals to challenge procurement awards.

### **Deficiencies**

- A new law on public procurement that meets international standards and is in line with the EU *acquis* has failed to be approved.
- The instability caused by unfilled vacancies in the PRB significantly affects its independence and transparency.
- The PRB has reduced capacity to review and handle complaints in time.
- The PRB lacks efficiency in the handling of the majority of cases through individual review panels.
- There is a lack of regular training for competent judges who deal with corruption cases in the field of public procurement.
- The e-procurement system offers comprehensive technical support, although not all of its modules are fully utilized by contracting authorities.

### **3.1.8 Article 9.2 – Management of Public Finances**

The management of public finances and the preparation of the legal framework for budget allocations is based on Law no. 03/I-048 on Public Financial Management and Accountability (LPFMA), approved in 2008 and amended six times until now.<sup>176</sup> The LPFMA foresees the collection and storage of all public funds, the rules for budget allocations, budget responsibilities, and the financial reporting system for public authorities, as well as the description of powers for these authorities related to financial matters. This law is grounded in the Constitution of the Republic of Kosovo, which stipulates that public expenditures and the collection of public revenues must be based on the principles of accountability, effectiveness, efficiency, and transparency.<sup>177</sup>

The LPFMA has defined in detail the procedures for preparation and contents of the proposed Kosovo consolidated budget. Its provisions summarize holistically the entire

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<sup>175</sup> Written Contributions by Arbër Kabashi, researcher at INPO. 01.07.2024.

<sup>176</sup> Law No. 05/L - 007 on amendmning and supplementing the law no. 03/I-048 on public financial management and accountability, amended and supplemented with the laws No.03/L-221, No.04/L-116, No.04/L-194 AND No.05/L-063, 2016, <https://qzk.rks-gov.net/ActDetail.aspx?ActID=2524&langid=2>, last accessed on June 27, 2023.

<sup>177</sup> See Article 120 of the Constitution of the Republic of Kosovo.

budget process, starting from the collection of requests, the approval of the budget proposal by local-level institutions up to the final approval of the Budget Law.<sup>178</sup>

In the case of the approval of the municipal budget, the LPFMA has determined the obligation of the Municipal Assembly to hold budget hearings.<sup>179</sup> Administrative Instruction (MAPL) No. 04/2023 for Open Administration in the Municipality has defined specific rules regarding the transparency obligations that municipalities have during the municipal budgeting process.

The Law on Budgetary Appropriations serves as a roadmap through which the government delineates its revenue targets, expenditure priorities, and fiscal policies for a specified period. The Law on Budgetary Appropriations is typically prepared during the latter part of the fiscal year for the upcoming year, and it is published after its approval by the Assembly in the official newspaper of the Republic of Kosovo.<sup>180</sup>

In general, Kosovo's budget classification system for public finances remains consistent with international standards.<sup>181</sup> One aspect that needs improvement is the way multi-year public investments are executed by all public entities, and the way costs and benefits are transparently evaluated before making investment decisions to enhance capital expenditure planning and spending. In addition, budget systems ought to incorporate targets for gender equality as well as gender-disaggregated data indicators.<sup>182</sup>

As far as transparency is concerned, the LPFMA has determined that financial data such as invoices, expenses, and financing, as well as other documentation presented in the proposal for the Consolidated Budget of Kosovo, must be publicly available.<sup>183</sup> On the other hand, transparency of public funds was also emphasized in the Law on Access to Public Documents, which specifically stipulated that "Access to public documents is always allowed, if: 3.1. the requested public document is related to the expenditure of public money".

The budget process occurs throughout the current year. Before being finalized as a draft budget law and presented to the Assembly for approval, it involves collaboration between the Ministry of Finance and budgetary organizations. These organizations submit their budget proposals based on guidelines and objectives set by the Ministry of Finance.

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<sup>178</sup> See Law no. 03/I-048 on Public Financial Management and Accountability, June 2008, <https://qzk.rks-gov.net/ActDetail.aspx?ActID=2524&langid=2>, last accessed on April 1, 2024, part IV and XIII.

<sup>179</sup> See Law no. 03/I-048 on Public Financial Management and Accountability, article 61.2.

<sup>180</sup> Law No. 08/L-260 on Budget Appropriations for the Budget of Kosovo for the year 2024, December 2023, <https://qzk.rks-gov.net/ActDetail.aspx?ActID=85052>, last accessed on April 1, 2024.

<sup>181</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.13.

<sup>182</sup> Ibid, pg.12-13.

<sup>183</sup> See Law no. 03/I-048 on Public Financial Management and Accountability, Article 21.1.

While the information provided in budget allocations is accessible and can be analyzed broadly, it lacks transparency on details.<sup>184</sup> The budget process in Kosovo is consistently characterized by a lack of transparency. The Ministry of Finance, which coordinates the budget process, and individual budgetary organizations are not transparent in publishing detailed budget data, even after expenditures. For instance, while the total cost of a capital investment project may be disclosed, it is not accompanied by sufficient documentation for thorough analysis. Similarly, while the total amount allocated for salaries in the justice system is known, there is no breakdown of how much goes to the Judicial Council, the Serious Crimes Department, or the Domestic Violence Unit. Consequently, a complete and accurate analysis of budget details is not possible.

Regarding public money, the Government showed a marked lack of transparency about the so-called Security Fund, a voluntary fund created by the Government of the Republic of Kosovo to which citizens would have the opportunity to donate money to the army of the Republic of Kosovo. Through decision no. 12/2022, the former director of the Treasury of Kosovo, Ahmet Ismajli, had classified as "Confidential" all the information related to the "Security Fund".<sup>185</sup> The classification of this document was made based on the now repealed Law on Classification of information and Security Clearances. This classification underlined that "unauthorized disclosure of these data, especially the total amount collected and the number of contributors, could damage the security interests of the Republic of Kosovo, at the regional level and beyond"<sup>186</sup>, which was not based on facts. Such a broad interpretation of the violation of "regional security and beyond" through information about the amount collected from a voluntary fund is unfounded, from KLI's perspective. Furthermore, such a statement is also paradoxical since all laws on Budgetary Allocations for the Budget of the Republic of Kosovo provide detailed data on the overall budget for the Kosovo Security Force. Thus, it is paradoxical that the basic budget of the Kosovo Security Force is published in detail while the amount of a voluntary fund remains confidential.<sup>187</sup>

As far as financial control is concerned, the National Audit Office (NAORK) operates in Kosovo as an independent constitutional institution. The Auditor General of the Republic of Kosovo is the highest institution of economic and financial control.<sup>188</sup> Regarding the operation of this institution, Kosovo has approved Law No. 05/L-055 for the Auditor General and the National Audit Office of the Republic of Kosovo (LAGNAORK). The purpose of this law is to regulate the organization, activity, and powers of the Auditor General, as well as the establishment, organization, and

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<sup>184</sup> Laws for Budget Appropriations for the budget of the Republic of Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2769>, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=68589>, last accessed on July 10, 2024.

<sup>185</sup> KLI, INPO, FOL, and YIHR-KS: The government should open the data of the Security Fund, January 2024, <https://kli-ks.org/ikd-inpo-fol-dhe-yihr-ks-qeveria-te-hap-te-dhenat-e-fondit-te-sigurise/>, last accessed on April 1, 2024.

<sup>186</sup> Article 6.1.3. Law No.03/L –178 ON CLASSIFICATION OF INFORMATION AND SECURITY CLEARANCES, 2010, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2690>, last accessed on June 28, 2023.

<sup>187</sup> Ibid.

<sup>188</sup> See Article 136.1 of the Constitution of the Republic of Kosovo.

operation of the National Audit Office of the Republic of Kosovo.<sup>189</sup> The National Audit Office continuously publishes its audit reports on the work of the public institutions of the Republic of Kosovo.<sup>190</sup>

In the annual reports published by NAORK after the audit of public institutions, numerous financial irregularities have been reported, including in the field of public procurement. These irregularities concern, for instance, the conclusion of contracts bypassing the procurement procedures, the reward of contracts to economic operators who have not met the requirements of suitability foreseen in the tender file, payments for unfinished work without sufficient evidence, etc. However, KLI found that these findings of the National Audit Office were not adequately followed up on by the State Prosecutor,<sup>191</sup> thereby failing to ensure accountability within public institutions.

Another problem identified by KLI was that NAORK has frequently exceeded its competencies. For instance, NAORK has conducted audits on the handling of domestic violence cases by relevant institutions, as detailed in its report “Effectiveness of institutions in dealing with cases of domestic violence”. Such performance audit, which falls outside NOARK’s financial audit scope, exceeds its competences and represents interference in the work of KJC and KPC.<sup>192</sup>

Additionally, NOARK’s access to the regional offices of Pristina and Peja, which provide protection and assistance to victims, as well as its request for access to domestic abuse cases from the Basic Prosecutor’s Office in Pristina and Peja, has jeopardized the investigations and violated the Code of Criminal Procedure.<sup>193</sup> Therefore, by engaging in activities beyond the audit of financial statements, this auditing office has exceeded its constitutional and legal mandates.

### **Good practices**

- In general, Kosovo’s budget classification system for public finances remains consistent with international standards.
- Kosovar legislation has given great importance to the transparency of public finances.
- An independent constitutional institution, the National Audit Office of the Republic of Kosovo (NAORK), conducts the financial audit of public institutions.

### **Deficiencies**

- LPFMA has been amended a total of six times and there is no consolidated version.
- The State Prosecutor has not dealt adequately with the findings of the NAORK.

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<sup>189</sup> Law No. 05/L-055 for the Auditor General and the National Audit Office of the Republic of Kosovo, June 2016, <https://qzk.rks-qov.net/ActDetail.aspx?ActID=12517&langid=2>, last accessed on April 1, 2024, Article 1.

<sup>191</sup> KLI, The pursuit, and trial of corruption in public procurement, December 2021, <https://kli-ks.org/ndjekja-dhe-gjykimi-i-korrupsionit-ne-prokurimin-publik/>, last accessed on April 1, 2024, pg. 14

<sup>192</sup> KLI, Non-financial audit by NAORK, December 2023, <https://kli-ks.org/wp-content/uploads/2023/12/Raporti-Auditimi-jofianciar-nga-ZKA-1.pdf>, last accessed on April 1, 2024, pg.1.

<sup>193</sup> Ibid.

- There have been cases where the NAORK has exceeded its powers, undermining the independence of the justice system.
- The government has unlawfully classified information related to the "Security Fund."

### 3.1.9 Articles 10 and 13.1 – Access to Information and the Participation of Society

The right of access to information is enshrined in the Constitution of the Republic of Kosovo as article 41 and specifically guarantees the right of every individual to access information held by public institutions, subject to limitations prescribed by law.<sup>194</sup> This right is further regulated according to specific legislation, notably Law No. 06/L-081 on Access to Public Documents (LAPD).<sup>195</sup> Building upon the constitutional guarantee, the LAPD was enacted in 2019 to provide a comprehensive legal framework for accessing public documents held by government institutions, agencies, and other public bodies. This law manifests the constitutional right to access information, detailing the procedures, rights, and obligations related to accessing information held by public institutions.

LAPD defines "public documents" as any information recorded in any format, regardless of its physical or digital form, that is created or held by a public institution in the course of its official duties. Hence, it outlines procedures for individuals to request access to specific public documents held by public institutions.

When receiving information requests, public institutions are required to respond on time, typically within a specified timeframe prescribed by law. As a matter of fact, the public institution is obliged to issue a decision to allow access or deny access to public documents within seven days. A decision to justify the rejection to provide information can be full or partial.<sup>196</sup> This term can be extended for a maximum of 15 additional days if a large number of documents are required, or the requested document is found outside of the public institution.<sup>197</sup>

Furthermore, public institutions are obligated to proactively disclose certain categories of information, including their organizational structure, functions, budgets, and decision-making processes. This proactive disclosure enhances transparency and enables citizens to have a better understanding of public administration and management of public funds. In this regard, institutions must appoint the responsible official, who, in addition to ensuring access, also serves as a liaison officer for the publication of open data.<sup>198</sup>

While the law upholds the principle of transparency, it also recognizes certain exceptions and limitations to the right of access to information. The limitation of the right to access public documents is exercised following the principle of proportionality.

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<sup>194</sup> Article 41 of the Constitution of Republic of Kosovo.

<sup>195</sup> Law No. 06/L-081 on Access to Public Documents, 2019, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20505&langid=2>, last accessed on June 28, 2024.

<sup>196</sup> Law No. 06/L-081 on Access to Public Documents, July 2019, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20505>, last accessed on April 1, 2024, Article 12.1.

<sup>197</sup> Ibid, Article 12.3.

<sup>198</sup> Ibid, Article 9.5.

Information may be withheld if its disclosure would pose a risk to national security, life, health, public security, compromise ongoing investigations, or infringe upon individuals' privacy rights, commercial confidentiality, infringe third parties' intellectual property rights, state economic, monetary, and exchange policies, and if it is a classified document.<sup>199</sup>

The Information and Privacy Agency (IPA) is the responsible institution for supervising the implementation of the LAPD and handling complaints, including assisting with the accountability and transparency of public institutions. By law, as an independent agency, the IPA operates freely from outside influence. It takes measures and imposes fines following the LAPD.

In this sense, the Agency promotes the LAPD and assists public institutions in understanding and properly implementing the law. This includes providing trainings, information sessions, and conferences for public institutions, as well as offering direct support through advisory opinions to ensure compliance. Additionally, the Agency facilitates public access to these public institutions.<sup>200</sup>

Regarding the appeals mechanism, the applicant who has not obtained the requested information can appeal to the Agency within fifteen days from the receipt of the decision to reject or the decision to partially approve the request for access to information, or the public institution's silence.<sup>201</sup> In case of complete or partial rejection of the complaint by the Agency, the applicant may file a lawsuit with the competent court for administrative matters within thirty days from the day of acceptance of the final decision by the Agency.<sup>202</sup>

In principle and notwithstanding financial and personnel constraints, the Agency is demonstrating its independence and capacity-building efforts by handling complaints on access to public documents impartially and effectively. The legislation on access to information is broadly in line with both UNCAC requirements for public reporting under article 10 and EU standards. Challenges remain concerning the capacity to monitor transparency levels among public institutions.<sup>203</sup> In addition, the data reported by public institutions continue to be unsatisfactory as a result of not fulfilling their official obligation to report but also of the lack of a binding mechanism that would oblige them to report to IPA.<sup>204</sup>

Therefore, concerning the reporting process of public institutions to the IPA, a total of 4,465 requests for access to public documents were registered in 2023.<sup>205</sup> In that year, IPA, as the appeals authority, received 552 complaints from citizens, civil society, and the media. After reviewing these complaints, IPA issued 394 final decisions, 11 decisions on administrative fines, 52 rejection decisions, and 95 approval decisions.<sup>206</sup>

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<sup>199</sup> Ibid, Article 17.2.

<sup>200</sup> Article 10 and 13.1 (b) of UNCAC.

<sup>201</sup> See Article 20 of Law No. 06/L-081 on Access to Public Documents.

<sup>202</sup> See Article 22 of Law No. 06/L-081 on Access to Public Documents.

<sup>203</sup> Ibid.

<sup>204</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.28.

<sup>205</sup> IPA response to KLI's access request.

<sup>206</sup> IPA response to KLI's access request.

When it comes to the participation of society, Regulation (GRK) No. 17/2024 on Rules of Procedure of the Government of the Republic of Kosovo<sup>207</sup> sets forth standards for public consultation, ensuring transparency, inclusivity, and accountability in the process of drafting policies and legislation. This regulation outlines clear guidelines for public authorities to follow when engaging with citizens, stakeholders, and affected communities. It emphasizes the importance of providing timely and accessible information, offering diverse consultation methods, and considering public feedback in decision-making. The provisions of this regulation apply to all public bodies, obliging them to submit to public consultation the adoption of important documents (putting the documents on the online platform for at least 15 working days or, in the case of more important documents, up to 30 days). The proposing body can extend the comment submission deadline or reopen public consultation under the following conditions: If additional time is needed for thorough consultation due to the nature of the material; the quality of received comments is unsatisfactory to the proposing body; new significant issues are raised that were not part of the initial consultation.<sup>208</sup>

The online platform was launched as the main tool for implementing the minimum approved standards in the policy-making process. This platform serves as the access point for all public consultations conducted by public bodies on draft laws, concept documents, strategic documents, and other acts that are subject to public consultations, in accordance with the Regulation.<sup>209</sup> When a specific legal act is the subject of public consultation, the institution posts the act on the platform for public consultation and establishes a deadline to receive comments. Consideration of input received varies depending on the case; comments are sometimes accepted, although they are frequently turned down without justification. As a result, it is quite usual that public consultations are not held since there are no legal consequences.

The public consultation system was established in 2016, thereby advancing and stabilizing the policy-making and legislative drafting process within the Government of Kosovo. These standards were further advanced, particularly with Regulation No. 05/2016 on Minimum Standards for Public Consultation, which has since been repealed by Regulation (GRK) No. 17/2024 on Rules of Procedure of the Government of the Republic of Kosovo<sup>210</sup>.

The Online Platform for Public Consultations provides a space for the public and NGOs to contribute through comments and recommendations on policies and legislation drafted by public institutions. Despite this opportunity, in most cases, comments submitted on proposed draft laws are not addressed or accepted by the respective ministries. KLI has submitted comments on several important laws that were part of the main reforms in the VIII Legislature, but these comments were not

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<sup>207</sup> Regulation (GRK) No. 17/2024 on Rules of Procedure of the Government of the Republic of Kosovo, 2024, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15036>, last accessed on July 10, 2024.

<sup>208</sup> Ibid, Article 52.

<sup>209</sup> <https://konsultimet.rks-gov.net/>, last accessed on April 1, 2024.

<sup>210</sup> Regulation (GRK) No. 05/2016 on Minimum Standards for Public Consultation Process, 2016, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15036>, last accessed on August 12, 2024. Note: This Regulation was in force until June 28, 2024, when the Regulation NO.17/2024 ON RULES OF PROCEDURE OF THE GOVERNMENT OF THE REPUBLIC OF KOSOVO entered into force, in which regulation the provisions related to public consultations are incorporated. See Regulation No.17/2024 on Rules of Procedure of the Government of the Republic of Kosovo, 2024, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=92322>, last accessed on August 12, 2024.

accepted when certain laws were sent for approval to the government. This includes comments regarding the Draft Law on Public Sector Salaries<sup>211</sup>, the Draft Law on Public Officials, and the Draft Law on the State Bureau for Verification and Confiscation of Unjustifiable Assets. In many cases, CSOs publish these comments and recommendations for changes in the form of public reports<sup>212</sup> and public reactions.<sup>213</sup>

Of the 54 draft laws that required public consultations in 2023, the government carried out this requirement in 43 of them, while in 11 it did not. In percentage terms, the government complied with its commitment to involve the public in 80% of cases of draft legislation. Thus, there is a disregard for the implementation of the obligations related to the involvement of the public in the legislative process.<sup>214</sup> Overlooking required public consultation processes violates Kosovo's regulations and good governance standards. However, if compared to last year, KLI's monitoring indicates an increase in public participation in public consultations. This improvement is also attributed to numerous publications by civil society that promote transparency in the legislative process.<sup>215</sup>

The Constitution of Kosovo guarantees mechanisms that, in addition to central institutions such as the Government, the President, and the Assembly, enable citizens to initiate policies and engage in politics for the benefit of the country. The Constitution, in Article 79 ["Legislative Initiative"] provides for the right of legislative initiative. Among others, this right can be exercised by a group of at least 10,000 citizens. The realization of this right is further regulated by Law No. 04/L-025 on Legislative Initiatives (LLI), which dedicates a special chapter to legislative initiatives by citizens.

According to LLI, [articles 10-19], there are three phases for the implementation of a legislative initiative, each of them comprising a set of measures: initiation of the legislative initiative, development, and actions following the legislative initiative's submission to the Assembly of Kosovo.<sup>216</sup> In practice, such initiatives are uncommon for many reasons. The lack of explanation and public information about the procedure, approach, and method that must be followed to guarantee the direct participation of

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<sup>211</sup> Public Consultations, Draft law on Salaries in the Public Sector, 2022, <https://konsultimet.rks.gov.net/viewConsult.php?ConsultationID=41547>, last accessed on July 10, 2024.

<sup>212</sup> KLI, Unjustifiable asset confiscation: the legal problems of the current draftlaw, <https://kli-ks.org/konfiskimi-i-pasurise-se-pajustificueshme-problemet-juridike-te-projektligjit-aktual/>; KLI, Draft Law for Salaries in the Public Sector, <https://kli-ks.org/27585/>; KLI, Analysis of Draft Law for amending and supplementing the Criminal Code and Code of Criminal Procedure, <https://kli-ks.org/masat-represive-per-mbrojtjen-e-grave/>, last accessed on July 10, 2024.

<sup>213</sup> KLI and FOL: New draft law, objective politicization of the Kosovo Prosecutorial Council, <https://kli-ks.org/ikd-dhe-fol-projektligji-i-ri-politizim-objektiv-i-keshillit-prokurorial-te-kosoves/>, last accessed on July 10, 2024.

<sup>214</sup> KLI, Priorities that continue not to be achieved, March 2024, <https://kli-ks.org/prioritetet-qe-vazhdojne-te-mos-arrihen/>, last accessed on April 1, 2024, pg. 19.

<sup>215</sup> KLI, the lack of minimal transparency, in the face of the promise of radical transparency, 2023, [https://kli-ks.org/wp-content/uploads/2023/12/Mungesa-e-transparences-minimale-perballe-premtimit-per-transparence-radikale.pdf?fbclid=IwZXh0bG9hZWM0CMTAAAR1tX\\_3QWcU0kHm-E\\_qVYYnqAl\\_icbV-w9BM7MWyRGqF6\\_SqybTeX-8OVI\\_aem\\_bbsNvgyjN7Q1\\_0Jimwvr3Q](https://kli-ks.org/wp-content/uploads/2023/12/Mungesa-e-transparences-minimale-perballe-premtimit-per-transparence-radikale.pdf?fbclid=IwZXh0bG9hZWM0CMTAAAR1tX_3QWcU0kHm-E_qVYYnqAl_icbV-w9BM7MWyRGqF6_SqybTeX-8OVI_aem_bbsNvgyjN7Q1_0Jimwvr3Q), last accessed on July 10, 2024, pg. 13.

<sup>216</sup> Law No. 04/L-025 for Legislative Initiatives, 2010, <https://gzk.rks.gov.net/ActDetail.aspx?ActID=2776>, last accessed on April 1, 2024, Article 20, par 1.



citizens in policy-making is one of them.<sup>217</sup> In this regard, the Kosovo Law Institute, in cooperation with the Forum for Parliamentary Transparency of the Assembly of the Republic of Kosovo, has published the Manual for citizens' legislative initiatives, which explains step by step the way these initiatives are developed.<sup>218</sup>

Non-governmental organizations (NGOs) consistently contribute to the improvement of legislation during its drafting phase. Despite participating in working groups and providing input through comments or recommendations, including in the Anti-Corruption Strategy, the Government often disregards this assistance. This is evident from the high number of laws struck down by the Constitutional Court, despite preliminary analyses by KLI and other organizations. In addition to the continuous disregard, NGOs are sometimes subjected to direct attacks and accusations from political actors.<sup>219</sup>

Concerning the media, Kosovo's media industry is vulnerable to both financial and political pressure due to its lack of financial self-sustainability and lack of ownership and financing transparency. The financing of public broadcasters relies on the public budget, while private media rely on advertising, or support from donors in the case of media registered as NGOs. Such pressure was also present in different forms with regard to the Independent Media Commission (IMC). IMC is in theory an independent body that licenses public and private broadcasters, defines and implements the broadcasting policy, and regulates the rights, obligations, and responsibilities of natural and legal persons who provide audio and audiovisual media services, but has encountered many problems in the exercise of its functions. For instance, IMC was largely non-functional from October 16, 2022, until May 24, 2023, due to the Assembly of Kosovo's inability to appoint a new board member due to a lack of quorum.

The independence of IMC is provided under the Constitution and Law Nr. 04/L-44 on Independent Media Commission (LIMC), which further regulates the powers of this body. The LIMC entered into force in 2012 to promote the development of a viable market of audiovisual media services. However, the law does not fit the needs of the media market and needs further updating. The European Commission's report on Kosovo from 2023 also emphasizes the need to adopt the new Law on IMC, in a process that should be comprehensive and transparent, with meaningful consultations with the main stakeholders, and looking at adapting the law to the European Union's Audiovisual Media Service Directive.<sup>220</sup> Notwithstanding the independence status of this institution in guaranteeing media diversity in Kosovo, there are circumstances that could potentially impact its media pluralism.<sup>221</sup> With the withdrawal of the business license to a major private broadcaster, serious concerns were recently raised by

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<sup>217</sup> Ibid.

<sup>218</sup> Handbook - Citizens' Legislative Initiatives, September 2023, <https://kli-ks.org/doracak-nismat-legjislativ-per-qytetare/>, last accessed on April 1, 2024.

<sup>219</sup> Koha, Civil society organizations condemn Minister Murati's statement, 2024, <https://www.koha.net/arberi/418487/organizata-te-shogerise-civile-denojne-deklaraten-e-ministrir-murati>, last accessed on July 10, 2024.

<sup>220</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg. 96.

<sup>221</sup> OathforJustice, Eventually Klan Kosova's business certificate is suspended, it can be appealed to the court, <https://betimiperdrejtesi.com/perfundimisht-klan-kosoves-i-pezullohet-certifikata-e-biznesit-mund-te-ankohet-ne-gjykate/>, last accessed on June 28, 2024.

international<sup>222</sup> and local organization and reports<sup>223</sup>, diplomatic representatives<sup>224</sup> and the media.<sup>225</sup> Since the legal procedures have been followed, the Court has decided on a temporary measure in favor of the private broadcaster and is expected to decide on the merits.<sup>226</sup> Currently, on July 11, 2024, the Law on IMC was approved despite objections from civil society, the media, and the Council of Europe's expert report, which found that most of the law does not meet European standards. Furthermore, the adoption of this law by the Kosovo Journalists Association is considered to be a blow to the freedom of the media and an attempt to discipline and control them.<sup>227</sup>

From the analysis of this Law, KLI has found that the constitutionally guaranteed independence of an institution like the IMC is being undermined by its dependence on the ruling party. This approach is dangerous and directly undermines the values and principles of democracy enshrined in the Constitution of Kosovo. The process surrounding the adoption of the Law on the IMC indicates that its approval was clearly a unilateral will of the ruling party, as the opposition, international partners, media, and civil society did not support this Law. Furthermore, there was a failure to respect the obligations related to the implementation of minimum standards for public consultation on such a crucial draft law for democracy and media freedom in Kosovo. The Law on the IMC was preceded by an unacceptable attack by the Assembly against the IMC, including an unprecedented campaign since the declaration of independence, where figures from the ruling party initiated an orchestrated campaign against the Chair and members of the IMC, accusing them of treason and using other inappropriate language against an independent constitutional mechanism.

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<sup>222</sup> International organizations such as: ARTICLE 19 Europe, European Center for Press and Media Freedom (ECPMF), European Federation of Journalists (EFJ), International Press Institute (IPI), OBC Transeuropa (OBCT), SafeJournalists Network, Reporters Without Borders (RSF), see links for more: <https://sinjali.com/cpj-per-rastin-e-klanit-hegja-e-certifikates-se-biznesit-eshte-mase-eksteme-ky-lloj-kercenimi-duhet-te-shmanget/>; <https://www.ecpmf.eu/klan-kosova-media-freedom-threat/>; [https://twitter.com/EUKosovo/status/1669628563635445760?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1669628563635445760%7Ctwgr%5Efed10f955c45b9daf4ed2445ef4c0d1628964947%7Ctwcon%5Es1\\_c10&ref\\_url=https%3A%2F%2Fbetimiperdrejtesi.com%2Fkpm-klan-kosova-ne-afat-prej-30-ditesh-te-plotesoje-dokumentacionin-e-nevojshem-per-mbajtjen-e-licences-se-transmetimit-2%2F](https://twitter.com/EUKosovo/status/1669628563635445760?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1669628563635445760%7Ctwgr%5Efed10f955c45b9daf4ed2445ef4c0d1628964947%7Ctwcon%5Es1_c10&ref_url=https%3A%2F%2Fbetimiperdrejtesi.com%2Fkpm-klan-kosova-ne-afat-prej-30-ditesh-te-plotesoje-dokumentacionin-e-nevojshem-per-mbajtjen-e-licences-se-transmetimit-2%2F); <https://klankosova.tv/organizatat-nderkombetare-per-lirine-e-medias-pershendesin-vendimin-e-komerciales-per-klan-kosoven/>, last accessed on June 28, 2024.

<sup>223</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg. 33;

<sup>224</sup> See link:

[https://twitter.com/GermanAmbKOS/status/1669615626011254786?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1669615626011254786%7Ctwgr%5Efed10f955c45b9daf4ed2445ef4c0d1628964947%7Ctwcon%5Es1\\_c10&ref\\_url=https%3A%2F%2Fbetimiperdrejtesi.com%2Fkpm-klan-kosova-ne-afat-prej-30-ditesh-te-plotesoje-dokumentacionin-e-nevojshem-per-mbajtjen-e-licences-se-transmetimit-2%2F](https://twitter.com/GermanAmbKOS/status/1669615626011254786?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1669615626011254786%7Ctwgr%5Efed10f955c45b9daf4ed2445ef4c0d1628964947%7Ctwcon%5Es1_c10&ref_url=https%3A%2F%2Fbetimiperdrejtesi.com%2Fkpm-klan-kosova-ne-afat-prej-30-ditesh-te-plotesoje-dokumentacionin-e-nevojshem-per-mbajtjen-e-licences-se-transmetimit-2%2F), last accessed on June 28, 2024.

<sup>225</sup> See link: <https://www.gazetaexpress.com/hegja-e-licences-per-klan-kosoven-nxjerr-gazetaret-ne-shesh/>, last accessed on June 28, 2024.

<sup>226</sup> OathforJustice, The second instance of Commercial rejects the appeal of MINT, the decision of the first instance in the "Klan Kosova" case is confirmed, 2023, <https://betimiperdrejtesi.com/shkalla-e-dyte-e-komerciales-refuzon-ankesen-e-mint-vertetohet-vendimi-i-shkalles-se-pare-ne-rastin-klan-kosova/>, last accessed on June 28, 2024.

<sup>227</sup> AJK, the approval of the IMC law: a blow to media freedom and an attempt to discipline and control them, 2024, <https://www.agk-ks.org/lajmet/agk-miratimi-i-liqjit-per-kpm-ne-goditje-ndaj-lirise-se-medies-dhe-tentim-per-disiplinim-e-kontroll-te-tyre/>; see also key observations, <https://agk-ks.org/lajmet/kuvendi-te-permiresoje-projektliqjin-per-kpm-ne-pas-qortimit-te-ashper-nga-ana-e-keshillit-te-europes/>, last accessed on July 10, 2024.

The Law seems to continue this approach towards the IMC by completely politicizing this independent constitutional institution that holds significant importance for democracy and media freedom in Kosovo. To function adequately as an independent constitutional institution, the IMC must enjoy its legal and practical independence. The need to preserve this independence has been confirmed by the jurisprudence of the Constitutional Court and the European Union's Audiovisual Media Services Directive<sup>228</sup>.

The Law on the IMC completely undermines the constitutional independence of this institution, turning it into a dependent body of the Assembly and easily influenced by the Government. According to the Law, members of the IMC are selected through a procedure led by a Parliamentary Commission, with their appointment requiring only a simple majority of deputies present and voting. These provisions facilitate the politicization of IMC's composition by the party that holds the majority in the Assembly. Additionally, the Law also allows the Assembly to dismiss IMC members whenever the Parliamentary Commission loses confidence in them. These criteria enable the parliamentary majority to change the composition of the IMC at any time. This creates continuous pressure on all IMC members.

The Assembly's role extends to selecting IMC's Chair, a process not applied to other collegial institutions and contrary to the natural competencies of such institutions. This new approach in the law completely devalues the constitutional guarantee of IMC's functional independence by shifting its competencies and delegating them to the deputies of the ruling party or coalition with the majority in the Assembly of Kosovo. This method of regulation makes the IMC easily vulnerable and susceptible to political influence<sup>229</sup>.

Investigative journalism plays a very important role in the fight against corruption. Only during 2023, a member of the Kosovo Prosecutorial Council (KPC), and the executive director of the Kosovo Bar Association were dismissed in corruption-related cases<sup>230</sup>, and investigations were opened against a former state prosecutor<sup>231</sup> due to the suspicion of a criminal offense of bribery. Despite their positive contribution to the prevention of corruption, investigative journalists are subject to numerous attacks and threats, which come from the subjects of investigative journalism.<sup>232</sup> Ongoing concerns also include the continuous attacks by officials on the media, using inflammatory

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<sup>228</sup> See KLI, "Politicization of IMC", July 2024, <https://kli-ks.org/wp-content/uploads/2024/07/Raporti-Politizimi-i-KPM-se-Analize-e-Liqjit-per-Komisionin-e-Pavarur-te-Mediave-1.pdf>, last accessed on August 12, 2024.

<sup>229</sup> Ibid.

<sup>230</sup> See the investigative show: <https://www.youtube.com/watch?v=zbGdZdQTkoA>, last accessed on June 28, 2024.

<sup>231</sup> OathforJustice, The prosecution is investigating former prosecutor Biraj for bribery, based on the paragraph that foresees a lower sentence, <https://betimiperdrejtesi.com/prokuroria-po-e-heton-ish-prokurorin-biraj-per-ryshfet-bazuar-ne-paragrafin-qe-parasheh-denim-me-te-ulet/>, last accessed on June 28, 2024.

<sup>232</sup> OathforJustice, "The suspect who threatened to kill the journalist and cameraman of "Oath for Justice" is arrested", July 2023, <https://betimiperdrejtesi.com/arrestohet-i-dyshuari-se-kercenoi-me-lete-gazetaren-dhe-kameramanin-e-betimit-per-drejtesi/>, last accessed on April 1, 2024.

language that incites hatred and promotes assaults against journalists and media outlets in Kosovo.<sup>233</sup>

Through research and active participation in public consultations and monitoring processes, civil society plays a key role in identifying problems, bad practices, and non-compliance with rules, and raises awareness of the general public. Through specific programs for justice and anti-corruption, these activities are integrated into a comprehensive strategy aimed at advancing justice in Kosovo. This includes strengthening the rule of law and improving citizens' access to justice. The involvement of civil society and the enhancement of cooperation and coordination were key objectives for the Government when adopting the Strategy on the Rule of Law 2021-2026. This strategy provided for a constructive approach and effective participation of civil society in the monitoring of public institutions. The Government established the Council for Cooperation of the Government with Civil Society<sup>234</sup> as a joint Council for effective monitoring of the implementation of the strategy for cooperation between government and civil society.<sup>235</sup> The primary goal of the establishment of this institutional, legal, and budgetary framework is to enable a more capable and engaged civil society to participate in the development of better legislation, improved public services, and more efficient monitoring of the implementation of political reforms. Besides some progress on the public consultation process, there have been no significant developments in implementing the Government Strategy for Cooperation with Civil Society 2019-2023. The Council for Government-Civil Society Cooperation is responsible for this lack of progress since it has not convened since 2022.<sup>236</sup>

Generally, efforts by public authorities to involve the public in decision-making processes are needed and should be further increased, following UNCAC's article 13.1 requirements. Moreover, political actors should demonstrate a more constructive approach toward non-governmental organizations which exercise a watchdog role.

### **Good practices**

- The legislation on access to information is broadly in line with EU standards and international best practice.
- An appeal authority for reviewing complaints in the field of access to public documents has been established.
- Current legislation provides citizens with equal rights to engage in politics through the initiation of legislative initiatives.

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<sup>233</sup> AJK: Minister Sveçla's dangerous language towards journalists, 2023, <https://www.evropaelire.org/a/agk-denon-reagimin-e-ministrit-svecla-ndaj-mediave/32504880.html>; AJK, unacceptable language to the media of the president's advisor, Blerim Vela, 2021, <https://agk-ks.org/lajmet/agk-e-papranueshme-gjuha-ndaj-mediave-e-keshilltarit-te-presidentes-blerim-vela/>; <https://frontonline.net/agk-gjuha-e-sami-kurteshit-ndaj-gazetareve-shume-e-rrezikshme-dhe-e-papranueshme/>, last accessed on July 10, 2024.

<sup>234</sup> Council for Cooperation of the Government with Civil Society, <https://kryeministri.rks-gov.net/en/the-office-of-prime-minister/council-for-cooperation-of-the-government-with-civil-society/>, last accessed on June 28, 2024.

<sup>235</sup> Government Strategy for Cooperation with Civil Society 2019-2023, <https://zqm.rks-gov.net/assets/cms/uploads/files/Strategjia%20ne%20tri%20qjuhe.pdf>, last accessed on June 28, 2024.

<sup>236</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.11.

- Civil society is mostly actively involved in monitoring and policy-making processes of public institutions.

### **Deficiencies**

- Public institutions are failing to comply with their obligations arising from the legislation for access to public documents.
- There is a disregard for the implementation of the obligations to carry out public consultations in the legislative process.
- Financial and political pressure on the media industry and non-governmental organizations has been noted.
- The Independent Media Commission has encountered numerous functional problems that have influenced decision-making.
- Political actors attack the media by using inflammatory language that incites hatred and promotes assaults against journalists, media outlets, and NGOs.
- The government disregards the recommendations of NGOs during the drafting process of domestic legislation.

### **3.1.10 Article 11 – Judiciary and Prosecution Services**

The separation of powers is an essential principle of the highest constitutional level, embodied in the country's Constitution, and as such, is indisputable. The Constitution of the Republic of Kosovo has a dedicated chapter to the three branches of power: executive, legislative, and judicial.<sup>237</sup> The principles, duties, and responsibilities are defined in the Constitution, which includes control and balance mechanisms to avoid "interference", "dependency" and "subordination" that would affect the independence of one of the three branches of power.

As a result, the judicial power is “unique, independent, and exercised by the courts.”<sup>238</sup> This definition prohibits non-judicial entities from performing the judicial function, thus ensuring legal certainty and allowing final interpretation by the courts, outside the influence of other powers. The Constitution of the Republic of Kosovo has also defined the Prosecution Council of Kosovo and the State Prosecutor as independent constitutional institutions.<sup>239</sup>

The judicial power is exercised by courts, with the Supreme Court as the highest judicial authority over the entire territory of the Republic of Kosovo.<sup>240</sup> The State Prosecutor is an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts and other acts specified by law. The Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC) are, therefore, constitutional institutions whose organization and functioning are stipulated by the Constitution and their respective governing laws. The Law on the

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<sup>237</sup> Article 4 of the Constitution of the Republic of Kosovo.

<sup>238</sup> Ibid.

<sup>239</sup> See Article 109 of the Constitution of the Republic of Kosovo.

<sup>240</sup> Ibid, Article 103, par. 2

Kosovo Prosecutorial Council was adopted in 2010<sup>241</sup> and amended and supplemented twice: once in 2012<sup>242</sup> and in 2015.<sup>243</sup>

The Law on Courts<sup>244</sup> and Law on State Prosecutor<sup>245</sup>, which entered into force in January 2013 (now abolished by Law No. 08/L-167 on State Prosecutor)<sup>246</sup>, substantially restructured and reformed the court system of Kosovo which now consists of the basic courts/prosecution offices, the Court of Appeals and Appeals Prosecution, the Special Prosecution Office of the Republic of Kosovo and the Supreme Court/Office of the Chief State Prosecutor, as well as branches within the area of jurisdiction of basic courts.

The prosecutorial system in Kosovo is composed of the Office of the Chief State Prosecutor in Pristina as the supreme instance of the institution of the State Prosecutor, with competence over the entire territory of the Republic of Kosovo; Appellate Prosecution Office, which consists of the General Department, Juvenile Department, and Serious Crimes Prosecution Department; Special Prosecutor's Office of the Republic of Kosovo (SPRK), as a specialized prosecutorial body with jurisdiction in the entire territory of the Republic of Kosovo; and Basic Prosecution Offices consisting of the same abovementioned departments. However, for handling cases of corruption, two levels of prosecution are considered: the Special Prosecutor's Office of the Republic of Kosovo, which has territorial jurisdiction throughout the Republic of Kosovo, and the Serious Crimes Departments of the seven Basic Prosecutor's Offices.

Law No. 08/L-168 on Special Prosecution entered into force in December 2023. This Law defines high-level corruption<sup>247</sup> and determines that a special department will operate for the investigation of corruption and financial crime.<sup>248</sup> The law has also determined the special jurisdiction of this prosecutor's office for dealing with high-profile corruption crimes<sup>249</sup>, including the jurisdiction on cases of criminal offenses of corruption, which do not meet the elements of high-level corruption.<sup>250</sup> Meanwhile, other cases, are handled by the Departments for Serious Crimes of the seven Basic Prosecutor's Offices. These Departments function as general departments and thus do not have any special units for handling corruption cases. An exception to this is the

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<sup>241</sup> Law No.03/L-224 on the Kosovo Prosecutorial Council, published in the Official Gazette of the Republic of Kosovo (No.83/2010) on 29.10.2010.

<sup>242</sup> Law no. 04/l-115 on Amending and Supplementing the Laws related to the ending of International Supervision of Independence of Kosovo, published in the Official Gazette of the Republic of Kosovo (No.25/2012) on 07.09.2012.

<sup>243</sup> Law no. 05/l -035 on Amending and Supplementing the law no. 03/l-224 on Kosovo Prosecutorial Council, published in the Official Gazette of the Republic of Kosovo (No.17/2015) on 30.06.2015.

<sup>244</sup> Law No. 06/L-054 on Courts, 2018, <https://qzk.rks-gov.net/ActDetail.aspx?ActID=18302>, last accessed on June 28, 2024.

<sup>245</sup> Law No.03/L-225 on State Prosecutor, 2010, <https://qzk.rks-gov.net/ActDetail.aspx?ActID=2710>, last accessed on June 28, 2024.

<sup>246</sup> Ibid.

<sup>247</sup> Law No. 08/L-168 on Special Prosecution, May 2023, <https://md.rks-gov.net/desk/inc/media/8897DAD4-3E5E-460D-A1DC-87A6C9100765.pdf>, last accessed on April 1, 2024, Article 3.1.1.4.

<sup>248</sup> Ibid, article 4.3.3.4.

<sup>249</sup> Ibid, article 9.1.1.14.

<sup>250</sup> Ibid, article 10.

Basic Prosecutor's Office in Pristina, within which operates the Unit for Economic Crimes and Corruption.<sup>251</sup>

Despite adopted legal measures to uphold the independence of its judiciary and prosecution service, aligning with international standards, particularly article 11 of UNCAC, Kosovo continues to face challenges in effectively implementing these measures. These challenges are particularly evident in efforts to enhance integrity and accountability in preventing corruption in the judiciary and prosecution service.

The State Prosecutor currently functions with an Acting Chief State Prosecutor. After the end of the Chief State Prosecutor's mandate in April 2022, the KPC initiated the process of selecting the candidate for proposal to the President for decree as Chief State Prosecutor. KPC concluded the selection process with procedural violations and defects identified by civil society during the monitoring of this process.<sup>252</sup> The process's notable lack of integrity has been one of the primary reasons that civil society<sup>253</sup> and international partners, such as the European Union, the United States of America, and Germany,<sup>254</sup> have called for the process to be brought back to its starting point.

During this process, unequal treatment of candidates was encountered, namely a preferential approach for some candidates. The lack of a structured interview was also a contributing factor. As for the candidates' integrity, it was surprising that the evaluation panel posed only general questions, allowing candidates to determine and address situations that they believed compromised their integrity at their own discretion. In the case of the candidate elected chief prosecutor through this competition, the evaluation panel did not address his previous selection as the head of the special prosecutor's office, despite a potential conflict of interest. Also, he has not been challenged for the criminal complaint submitted by the APC or the prosecution's accusations against him for interfering in the veterans' case. This leads to the conclusion that the panel failed to obtain appropriate clarifications from the candidates regarding the doubts raised publicly<sup>255</sup>.

The President of the Republic of Kosovo did not decree the candidate selected by the KPC.<sup>256</sup> However, KPC is showing a lack of will for a meritorious process with indisputable integrity for selecting the next candidate, as it has not yet taken the necessary steps. Meanwhile, the candidate rejected by the President for Chief State

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<sup>251</sup> Unit for Economic Crimes and Corruption, <https://prokuroria-rks.org/psh/prokurorit-themelore/60/njsiti-pr-kcrime-ekonomike-dhe-korrupsion>.

<sup>252</sup> KLI, GLPS, FOL, "The integrity of the selection process of the chief state prosecutor", March 2022, [https://kli-ks.org/wp-content/uploads/2022/03/KLI-GLPS-FOL\\_Raporti-Final\\_Procesi-per-Kryeprokuror-te-Shtetit-1.pdf](https://kli-ks.org/wp-content/uploads/2022/03/KLI-GLPS-FOL_Raporti-Final_Procesi-per-Kryeprokuror-te-Shtetit-1.pdf), last accessed on March 10, 2024.

<sup>253</sup> Ibid, pg. 17.

<sup>254</sup> OathforJustice, Ambassador Hovenier again demands a fair, transparent and meritorious process in the selection of the new Chief Prosecutor, 2024, <https://betimiperdrejtesi.com/ambasadori-hovenier-serish-kerkon-proces-te-drejte-transparent-dhe-meritor-ne-perzgjedhjen-e-kryeprokurorit-te-ri/>, last accessed on June 28, 2024.

<sup>255</sup> KLI, GLPS, FOL, "The integrity of the selection process of the chief state prosecutor", 2022, [https://kli-ks.org/wp-content/uploads/2022/03/KLI-GLPS-FOL\\_Raporti-Final\\_Procesi-per-Kryeprokuror-te-Shtetit-1.pdf](https://kli-ks.org/wp-content/uploads/2022/03/KLI-GLPS-FOL_Raporti-Final_Procesi-per-Kryeprokuror-te-Shtetit-1.pdf), last accessed on August 12, 2024.

<sup>256</sup> Radio Evropa e lirë, "Osmani does not appoint Isufaj to the position of Chief State Prosecutor", October, 17, 2023, <https://www.evropaelire.org/a/vjosa-osmani-kryeprokurori-i-shtetit-/32640852.html>, last accessed on March 10, 2024.

Prosecutor was appointed by the KPC for a second term as head of the Special Prosecutor's Office of the Republic of Kosovo.<sup>257</sup> Civil society and international partners are critical of such actions, claiming that the process itself does not correspond to the expected integrity of the prosecutorial system.<sup>258</sup>

Regarding accountability, the prosecutors' and judges' accountability system is currently regulated by Law No. 06/L-057 on Disciplinary Liability of Judges and Prosecutors. According to this law, complaints against judges are first examined by the President of the respective court, while those against prosecutors are first examined by Chief Prosecutors. Approved complaints then go to investigative panels established by the KPC and the KJC until the final verdict is given by these two councils. The parties have the right to appeal these decisions with the Supreme Court of the Republic of Kosovo.<sup>259</sup>

The new code of ethics and professional conduct for Prosecutors has recently entered into force.<sup>260</sup> The Code is based on the United Nations Basic Principles on the Independence of the Judiciary(1985).<sup>261</sup> The United Nations Guide to the Role of Prosecutors<sup>262</sup> and the European Commission Recommendation on the role of the public prosecutor in the field of criminal justice.<sup>263</sup> Also, it is in line with the recommendations of the Consultative Council of European Prosecutors (CCEP) which emphasize that codes of conduct and professional ethics should be approved and made public, based on international standards developed by the United Nations.<sup>264</sup> The Code of Ethics and Professional Conduct for Prosecutors also took into account several other expert opinions and recommendations<sup>265</sup> and was harmonized with the

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<sup>257</sup> Lavdim Makshana, OathofJustice, "Blerim Isufaj also for a term at the head of the Special Prosecutor's Office", October 2023, <https://betimiperdrejtesi.com/blerim-isufaj-edhe-per-nje-mandat-ne-krye-te-prokurorise-speciale/>, last accessed on March 10, 2024.

<sup>258</sup> Bekim Bislimi, Radio Evropa e lire, "The two paths of the KPC for the selection of the Chief State Prosecutor", October 19, 2023, <https://www.evropaelire.org/a/kpk-zgjedhja-e-kryeprokurorit-shtetit-/32644797.html>, last accessed on March 10, 2024.

<sup>259</sup> Law No.06/L-057 on Disciplinary Liability of Judges and Prosecutors, supplemented and amended with Law No.08/L-003, December 2018, <https://qzk.rks-qov.net/ActDetail.aspx?ActID=49994&langid=2>, last accessed on March 10, 2024.

<sup>260</sup> Kosovo Prosecutorial Council (KPC), Code of Ethics and Professional Conduct for Prosecutors (there is no public information available regarding the approval document of the Code).

<sup>261</sup> Office of the United Nations High Commissioner for Human Rights, "Basic Principles for the Independence of the Judiciary", adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Criminals held in Milan from August 26 to 6 September 1985 and adopted by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

<sup>262</sup> Office of the United Nations High Commissioner for Human Rights, "United Nations Guide to the Role of Prosecutors", adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Criminals, Havana, Cuba, by August 27 to September 7, 1990.

<sup>263</sup> Recommendation Rec. (2000) 19 of the Committee of Ministers for the member states on the role of the public prosecution in the criminal justice system, approved by the Committee of Ministers on October 6, 2000 at the meeting of 724 Ministerial Deputies.

<sup>264</sup> CCEP, Opinion no. 9 (2014) on European Norms and Principles regarding Prosecutors, 17 December 2014.

<sup>265</sup> EU Twinning Project "Strengthening the efficiency, accountability and transparency of the judicial and prosecutorial system in Kosovo", (KS 14 IB JH 05 R), minutes of the meeting of the Steering Committee No. 9, January 2019.



KJC Code of Professional Ethics for Judges<sup>266</sup> as well as the Bangalore Principles.<sup>267</sup> With the support of donors<sup>268</sup>, the KPC has approved the Commentary on the Code of Ethics for the State Prosecutor, which has been published on the website of the KPC.<sup>269</sup> Concerning judges, the rules of conduct for them are based on the basic principles of professional ethics and in the Code of Professional Ethics for Judges issued by the KJC in August 2016.<sup>270</sup>

However, in practice, these mechanisms have not yielded the expected results in what is perceived as a lack of will within the prosecutorial system for accountability.<sup>271</sup> All disciplinary cases against prosecutors have resulted in the imposition of mild disciplinary sanctions. In 2023, KPC accepted eight requests to initiate disciplinary procedures. Of these, five disciplinary measures were imposed, including two public warnings, two non-public warnings, and one reduction in salary for one year.<sup>272</sup> Similarly, in 2022, disciplinary procedures against prosecutors ended with mild disciplinary measures, such as public and non-public written warnings. In 2022, out of eight disciplinary decisions by the KPC, only one decision involved the permanent transfer of a prosecutor to another Prosecution Office. The remaining seven decisions comprised measures of public and non-public written warnings.<sup>273</sup>

In terms of upholding accountability, KJC presents a better picture. During 2023, the KJC received 7 requests for the initiation of disciplinary procedures from Competent Authorities. The most serious measure imposed was the dismissal of two judges, while other measures have been made; one decision for temporary reduction of payment for four months, two written public warnings, and one decision for transfer from the general department-criminal division to the misdemeanor division.<sup>274</sup> A higher number of requests for the initiation of disciplinary procedures in the KJC was present in 2022,

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<sup>266</sup> KJC, Code of Professional Ethics for Judges, 2016, <https://www.gjygesori-rks.org/wp-content/uploads/lqsl/Kodi%20Etikes%20Profesionale%20per%20qjyqtar.pdf>, last accessed on June 28, 2024.

<sup>267</sup> ECOSOC 2006/23, Strengthening Basic Principles of Judicial Conduct, 2006, <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>, last accessed on June 28, 2024.

<sup>268</sup> Project financed by the EU, "Support for the Judicial Council of Kosovo and the Prosecution Council of Kosovo", No. of the contract, 2011/271–244 & 2014/350–729, "Summary of the Final Report of the EU Project".

<sup>269</sup> See: <http://www.kpk-rks.org/assets/cms/uploads/files/Legjislacioni/Kodet/COMMENTARY%20OF%20THE%20CODE%20OF%20ETHICS%20FOR%20THE%20STATE%20PROSECUTOR.pdf>, last accessed on January 10, 2024.

<sup>270</sup> KJC, Consolidated version of the code of professional ethics for judges, August 2016, <https://w.gjygesori-rks.org/wp-content/uploads/lqsl/Kodi%20Etikes%20Profesionale%20per%20qjyqtar.pdf>, last accessed on January 10, 2024.

<sup>271</sup> Gzim Shala, KLI, Calculation without progress, analysis of non-application of the law on Disciplinary Liability of Judges and Prosecutors, November 2021, [https://kli-ks.org/wp-content/uploads/2021/11/KLI\\_Llogaridhenia-2021\\_Final.pdf](https://kli-ks.org/wp-content/uploads/2021/11/KLI_Llogaridhenia-2021_Final.pdf), last accessed on June 28, 2024, pg.12-13.

<sup>272</sup> KLI, Draft report on the monitoring of KPC, not published yet.

<sup>273</sup> Lavdim Makshana, Misadministration of the prosecution system, 2023, <https://kli-ks.org/kegadministrimi-i-sistemit-prokurorial/>, last accessed on June 28, 2024, pg.7.

<sup>274</sup> KLI, Draft report on the monitoring of KJC, not published yet.

where, out of 24 requests, the KJC issued 17 disciplinary decisions. The most severe measure imposed was the demotion and transfer of two judges.<sup>275</sup>

In this context, the KLI report on the LDLJP implementation highlights how the system operates while fostering a lack of accountability. The analysis reveals that in five disciplinary cases, the authorities violated the legal deadlines stipulated in Article 9.7 of LDLJP by failing to issue decisions on time, and in one case, no decision was made at all.<sup>276</sup> The KPC did not address these violations, effectively granting amnesty for them. This indicates that the KPC's lack of control over the decisions of competent authorities, coupled with insufficient involvement of the Ombudsman Institution in holding judges and prosecutors accountable, has resulted in these authorities exceeding their powers under the LDLJP, leading to a lack of accountability.

After the legal deadline for decisions passed, KLI submitted complaints to the Ombudsman Institution. On August 20, 2020, the Ombudsman requested the KPC to initiate disciplinary investigations, but the KPC found the request unsubstantial. In one instance, KPC excused a chief prosecutor for a technical email error and, in another case, accepted the chief prosecutor's claim of not having received a complaint, despite it having been sent to the usual email address. In three other cases, KPC blamed delays on the COVID-19 pandemic, even though the complaints were filed before the first cases of COVID-19 were recorded in Kosovo.<sup>277</sup>

The prosecutorial system is highly independent of other institutions in terms of accountability. Beyond the obligation of the Chairman of the KPC to report annually to the Assembly of the Republic of Kosovo, this system has no other obligation to other institutions.

It is mainly the composition of the Prosecutorial Council of Kosovo (KPC) and the way the system operates that creates a lack of accountability and not the legal framework, which is aligned with good international standards. In this sense, the Venice Commission concluded that the composition of the Prosecutorial Council of Kosovo, as determined by the law is corporatist.<sup>278</sup> As per law<sup>279</sup>, the KPC consists of 13 members, of which 10 are elected by the prosecutors, while the other 3 positions have never been filled in principle. This composition, rather than guaranteeing accountability of the prosecutorial system to the public, has turned it into an institution that protects prosecutors. A logic of recycling the same names has already been built, in such a

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<sup>275</sup> Lavdim Makshana, Challenges in judicial administration, 2023, <https://kli-ks.org/sfidat-ne-administrimin-e-gjygesorit/>, last accessed on June 28, 2024, pg. 6.

<sup>276</sup> Gzim Shala, KLI, Accountability of judges and prosecutors, October 2020, pg.6, [https://kli-ks.org/wp-content/uploads/2020/10/KLI-Llogaridh%C3%ABnia-e-gjykat%C3%ABsve-dhe-prokuror%C3%ABve-14.10.2020-1.pdf?fbclid=IwAR3k3\\_YMbBYGqZ\\_vSI2PQS4MgWw6ITiyIPEanCS903BoSMT9fUdMm0HhAHI](https://kli-ks.org/wp-content/uploads/2020/10/KLI-Llogaridh%C3%ABnia-e-gjykat%C3%ABsve-dhe-prokuror%C3%ABve-14.10.2020-1.pdf?fbclid=IwAR3k3_YMbBYGqZ_vSI2PQS4MgWw6ITiyIPEanCS903BoSMT9fUdMm0HhAHI), last accessed on January 10, 2024.

<sup>277</sup> Gzim Shala, KLI, Calculation without progress, analysis of non-application of the law on Disciplinary Liability of Judges and Prosecutors, November 2021, pg.12-13, [https://kli-ks.org/wp-content/uploads/2021/11/KLI\\_Llogaridhenia-2021\\_Final.pdf](https://kli-ks.org/wp-content/uploads/2021/11/KLI_Llogaridhenia-2021_Final.pdf), last accessed on June 28, 2024.

<sup>278</sup> European Commission for Democracy through law (Venice Commission) Kosovo opinion No. 1063/2021 on the draft amendments to the law on the prosecutorial council, December 2021, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)051-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)051-e), last accessed on January, 10, 2024, pg. 7.

<sup>279</sup> Law Nr. 06/L-056 on Kosovo Prosecutorial Council, 2019, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18920>, last accessed on July 10, 2024.

way that certain actors concentrate the leadership and move continuously through different positions within the prosecutorial system. This has happened even in cases such as the re-election of a prosecutor, former member of the KPC, as the head of this council, although it is expressly prohibited by law.<sup>280</sup> On July 11, 2024, the Assembly of the Republic of Kosovo approved the new law for the KPC. The opposition, however, has announced that it will send the law to the Constitutional Court to be reviewed for its constitutionality.<sup>281</sup>

The only way to increase the accountability of the prosecutorial system is to reform the KPC. The Ministry of Justice prepared a Draft Law on Supplementing and Amending the Law on the Prosecutorial Council of Kosovo with the idea of reforming such Council. However, this attempt was overturned by the Constitutional Court, which found that the Draft Law was not in accordance with the Constitution of the Republic of Kosovo.<sup>282</sup> Despite this, the Ministry has proceeded with sending the new Draft Law<sup>283</sup>, which did not receive the approval of the Venice Commission, to the Assembly of the Republic of Kosovo.<sup>284</sup>

The Venice Commission's June 2022 Opinion on the Concept Document on the Development of the Vetting Process within the Kosovo Justice System led the government to give the Assembly leadership of the process, to further finalize the relevant legislation towards integrity checks of senior positions within the justice system. In March 2023, the constitutional amendments were finalized and submitted to the Constitutional Court for review. In December 2023, the Constitutional Court paved the way for a vetting reform in the justice system and the drafting of a special law on the matter.<sup>285</sup> In addition, under LDOCAG, judges and prosecutors are required to declare their assets and gifts. In recent years, there have been no cases where judges and prosecutors failed to submit the annual asset declarations.<sup>286</sup>

As legal safeguards for the independence and impartiality of the judiciary and prosecution functions are enshrined in the Constitution and the legal framework, the Assembly and the Government have no competence to demand accountability from the justice or prosecution system. This independence also prohibits statements by

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<sup>280</sup> OathforJustice, "Recycling in the prosecution system", February 2022, <https://betimiperdrejtesi.com/betimi-per-drejtesi-268-riciklimi-ne-sistemin-prokurorial/>, last accessed on January, 10, 2024.

<sup>281</sup> KDP, we will sent in the Constitutional Court the law for KPC and IMC, 2024, <https://kallxo.com/lajm/pdk-do-ti-dergojme-ne-kushtetuese-liqjin-per-kpk-ne-dhe-ate-per-kpm-ne/>, last accessed on July 10, 2024.

<sup>282</sup> Constitutional Court cases no. KO101/22 and KO 101/22, judgment of April 5, 2023, [https://gjk-ks.org/wp-content/uploads/2023/04/ko\\_100\\_101\\_22\\_agj\\_shq.pdf](https://gjk-ks.org/wp-content/uploads/2023/04/ko_100_101_22_agj_shq.pdf), last accessed on March 10, 2024.

<sup>283</sup> Draft Law on amending and supplementing the Law No. 06/L-56 on Kosovo Prosecutorial Council, [https://www.kuvendikosoves.org/Uploads/Data/Documents/PLperndrysheliqjitperKeshillinProkurorialteKosoves\\_eeT2NHAJce.pdf](https://www.kuvendikosoves.org/Uploads/Data/Documents/PLperndrysheliqjitperKeshillinProkurorialteKosoves_eeT2NHAJce.pdf), last accessed on March 10, 2024.

<sup>284</sup> European Commission for Democracy through law (Venice Commission) Kosovo follow-up opinion No. 1149/2023 to the previous opinions concerning amendments to the law on the Kosovo prosecutorial council, December 15-16 2023, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)043-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)043-e), last accessed on March 10, 2024.

<sup>285</sup> Constitutional Court, Notice of decision in case KO 55/23, December 2023, <https://gjk-ks.org/njoftim-per-vendim-ne-rastin-ko-55-23/>, last accessed on March 10, 2024.

<sup>286</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.18.

public authorities that may encourage the public to believe the opposite of the judicial decision or prejudice the evaluation of the facts by the judicial authority.<sup>287</sup> Despite the separation of powers, the Prime Minister, ministers, and deputy ministers have directly or indirectly interfered in the justice and prosecutorial system through public statements for different cases, especially in the VIII Legislature.<sup>288</sup> In this regard, the government's decision to lower the salaries of judges and prosecutors and the subsequent Law on salaries raised concerns about the independence of the judiciary.<sup>289</sup> This decision was annulled as unlawful by the Basic Court in Pristina, and was confirmed by the Court of Appeal.<sup>290</sup> Moreover, the decrease in salaries also impacts the Constitutional Court's ability to rule on the constitutionality of the Law for Salaries in the Public Sector. According to clarifications provided in practice and international standards, any potential salary reduction, including under conditions permitted by Article 10 of the Law, must be proportionate to the pursued objective. This includes establishing a "fair balance" between the state and individual rights and freedoms, and a proportional distribution of burdens between them, ensuring that disproportionate burdens are not placed solely on specific sectors.<sup>291</sup>

### Good practices

- The Constitution and the applicable legal framework are based on the principles of independence and impartiality.
- The judicial and prosecutorial system have been reformed to increase integrity checks of judges and prosecutors.
- The Venice Commission is consulted when adopting relevant legislation.

### Deficiencies

- Kosovo demonstrates significant weaknesses in ensuring the integrity, accountability, and independence of the justice system.
- Interference in the independence of the judicial and prosecutorial system from the political actors persists.
- The mechanisms within the prosecutorial system have not yielded the expected results for accountability.
- The reform in the KPC is continually stalled as a result of the inconsistency between the law and the constitution.
- There is an ongoing trend of salary decreases in the judiciary and specific sectors, despite court rulings that do not permit such actions.

### 3.1.11 Article 12 – Private Sector Transparency

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<sup>287</sup> KLI, "Interference in the justice system through public statements", December 2023, <https://kli-ks.org/nderhyrjet-ne-sistem-in-e-drejtise-permes-deklaratave-publike/>, last accessed on March 10, 2024.

<sup>288</sup> Ibid, pg.7.

<sup>289</sup> Decision no. 01/02 of the Government of Kosovo, February 2020, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=71845>, last accessed on March 10, 2024.

<sup>290</sup> OathforJustice, "The appeal confirms the decision of the Basic Court to annul the Government's decision to reduce the salaries of prosecutors and judges", December 2023, <https://betimiperdrejtesi.com/apeli-verteton-vendimin-e-themelo-res-per-anulimin-e-vendimit-te-geverise-per-uljen-e-paqave-te-prokuroreve-dhe-qjyqtareve/>, last accessed on March 10, 2024

<sup>291</sup> Constitutional Court, Judgment in case no. KO79/23, Evaluation of the Constitutionality of Law on Salaries in the Public Sector, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=85575>, last accessed on July 10, 2024, par. 386, pg.111.

*“Economic activity in Kosovo can only be carried out by Business Organizations registered in the Business Registration Agency unless stipulated otherwise by law.”<sup>292</sup>*

Kosovo’s legal framework of business organizations is primarily governed by the Law on Business Organizations (LBO). This law provides the foundation for the organization of commercial companies, including defining the types of commercial companies, conditions, and procedures for their registration and de-registration. According to this law, the Kosovo Business Registration Agency (KBRA) is authorized as the only institution that provides services to the public for the registration of companies and trade names and all other related functions for commercial companies.

KBRA operates within the framework of the Ministry of Industry, Enterprise, and Trade and is oriented towards achieving high-quality efficiency for all economic operators. For this purpose, KBRA prepares and publishes the necessary forms, authorizations, and procedures for registration of commercial companies, in physical and electronic form.

The initial registration of businesses or any change and completion of the existing data in the register is done in electronic form following Article 18 of the LBO. Registration requires opening an account and providing personal data for connection. Following identification, access is selected based on the relevant request. Applying for modifications can be done using the "representative" login, but applying for business registration requires using the "applicant" login. To make the entire procedure easier, KBRA issued in December 2018 a User Guide for the Register of Businesses in Kosovo.<sup>293</sup>

The accounting and financial reporting system of business organizations is regulated by the Law in Accounting, Financial Reporting, and Auditing (LAFRA). Following this law, business organizations shall prepare general-purpose financial statements implementing the international financial reporting standards for small and medium enterprises (IFRS for SMEs) and for large business organizations (IAS/IFRS). The reporting of micro-enterprises<sup>294</sup> shall be regulated through sub-legal acts adopted by the Kosovo Council for Financial Reporting (KCFR). KCFR is an independent professional body and competent authority that oversees LAFRA’s implementation, including sub-legal acts, oversight enforcement, and disciplinary measures for improper implementation. Furthermore, among other competencies, as this body licenses, maintains, and publishes the register of auditors, it also approves, oversees, and implements audit standards in accordance with applicable EU legislation.<sup>295</sup> Kosovo’s private sector is dominated by very small firms, while the proportion of larger companies (10-249 employees) is less than 1%.<sup>296</sup>

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<sup>292</sup> Article 4 of Law No.06/L-016 on Business Organizations, 2018, <https://mint.rks-gov.net/desk/inc/media/6A900B99-925A-4E08-A1E7-983D96DA977C.pdf>, last accessed on June 28, 2024.

<sup>293</sup> User guide of Register of Businesses in Kosovo, December 2018, <https://rbk.rks-gov.net/manuali-online.pdf>, last accessed on April 1, 2024.

<sup>294</sup> Law No. 06/L-032 on Accounting, Financing Reporting and Auditing, April 2018, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2755&langid=2>, last accessed on April 1, 2023, Article 5.2.

<sup>295</sup> Ibid, article 22.

<sup>296</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.69.

To document all transactions, businesses must maintain accounting records and account books. These accounting records are stored in the double accounting system.<sup>297</sup> In addition, businesses shall submit financial statements, including profit and loss accounts and additional information related to the previous calendar year to KFCR for statistical and other purposes such as publication, no later than 30 April of the following year.<sup>298</sup> The submitted financial statements are published on KFCR's website. However, insufficient coordination and data sharing between the Kosovo Business Registration Agency and the Kosovo Council for Financial Reporting still affects the timely reporting and publication of accounting documents.<sup>299</sup>

In addition, on company reporting, the LAFRA is only partially aligned with the EU acquis. The European Commission's latest Progress Report on Kosovo stated that Kosovo needs further compliance with the most recent EU regulations for corporate sustainability reporting.<sup>300</sup>

The financial statements of businesses shall include the audit report. All statutory audits, including those mandated by this law, as well as external independent audits, shall be completed in compliance with the International Standards of Auditing (ISAs) and any relevant pronouncements, interpretations, guidance, and by approved auditors to carry out statutory audits. However, Kosovo needs to ensure adequate and sustainable funding for the Public Oversight Board (POB), appointed by the KFCR to oversee the audit sector, since it has hindered the Board's ability to fully exercise its supervisory and enforcement powers.<sup>301</sup>

In terms of private sector legislation, Kosovo has made progress in improving the business environment.<sup>302</sup> In June 2021, the Kosovo Corporate Governance Code was adopted by the Kosovo Credit Guarantee Fund's Board of Directors, reflecting international standards of the OECD Principles on Corporate Governance.<sup>303</sup> This Code seeks to establish high ethical standards and corporate governance principles for the Kosovo Credit Guarantee Fund's appropriate and ongoing growth, as well as for its collaboration with other financial institutions, donors, and other parties. In July 2022, the government approved the concept document for the Register of Beneficial Owners, and in 2023 it approved Draft Law No. 08/L-265 for the Register of Beneficial Owners in the first review in the Assembly. The draft law has been scheduled for a second reading approval in a plenary session. However, during the session on July 11, 2024, it was withdrawn from the agenda to allow for further consultations. This decision was influenced by issues highlighted in the draft law, including the contentious matter of including NGOs as beneficiaries.<sup>304</sup>

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<sup>297</sup> See Article 11 of Law No. 06/L-032 on Accounting, Financing Reporting and Auditing, April 2018.

<sup>298</sup> See Article 17 of Law No. 06/L-032 on Accounting, Financing Reporting and Auditing, April 2018.

<sup>299</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.88.

<sup>300</sup> Ibid.

<sup>301</sup> Ibid.

<sup>302</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.64.

<sup>303</sup> Kosovo Corporate Governance Code, August 2021, <https://fondikgk.org/wp-content/uploads/2021/10/Code-of-Good-Corporate-Governance-and-the-Code-of-Ethics.pdf>, last accessed on 1 April 2024.

<sup>304</sup> Assembly of Republic of Kosovo, 2024, <https://www.kuvendikosoves.org/shq/punesimi/per-publikun/lajmi/kuvendi-vazhdoi-punimet-e-seances-plenare-35628/>, last accessed on July 10, 2024.

In addition, the government approved the concept document for business organizations and the secondary legislation for the Business Registration Agency. In 2023, Kosovo completed an assessment of the technical infrastructure required to ensure the interoperability of the Kosovo Business Registration Agency with the EU Business Register Interconnection System (BRIS) and now needs to ensure that the conditions for this connection are met.<sup>305</sup> A new draft law on business entities is being prepared by the Ministry of Justice to further harmonize Kosovo's legal system with the EU *acquis*.

The same occurred with the legislation regarding the Kosovo Investment and Enterprise Support Agency (KIESA). Since its restructuring and reform are long overdue, KIESA lacks the capacity and resources to carry out its mandate to promote and support both domestic and foreign businesses and SMEs, as well as to draw foreign direct investment. In this regard, the Law on Sustainable Investments was approved by the government and passed by the Assembly, but implementation has been delayed due to the evaluation of constitutionality carried out by the Constitutional Court. This law foresees the replacement of the KIESA by a new agency that will promote foreign investment and will report directly to the Prime Minister's office.<sup>306</sup>

KFCR licenses local and foreign auditors and audit firms, if they comply with the legislation in force on business organizations. In cases where obligations are violated as prescribed under article 36.3.10 and 36.3.11 of LAFRA, auditing associations, firms, and statutory auditors can be fined from € 500 to € 20,000, while legal auditors are fined from € 50 up to € 2,000. If the fine is paid within three days, the subject is exempt from paying 50% of the fine.<sup>307</sup> The dissatisfied party has the right to appeal to the KCFR within 30 days from the receipt of the decision.<sup>308</sup>

Punitive measures are also imposed on businesses, as legal entities and natural persons. These measures can be misdemeanor in nature, economic offenses and criminal offences. In case of violations of provisions foreseen under the LAFRA, a range of fines is established by Article 36. In the case of criminal offenses against the economy, the Criminal Code of the Republic of Kosovo foresees specific offenses for which the sentence imposed may be a fine or imprisonment. Accordingly, the responsible person who intentionally violates the provision of business in the case of "Unconscionable economic activity"<sup>309</sup>, "misuse of economic authorizations"<sup>310</sup>, "entering into harmful contracts"<sup>311</sup>, "tax evasion and false tax-related documents"<sup>312</sup>, "accepting and giving bribes in the private sector"<sup>313</sup>, among others, may be sanctioned with a fine and/or imprisonment penalty, according to the criminal offense. The Criminal Code also provides a legal basis to sanction various crimes that may be

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<sup>305</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.88.

<sup>306</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.64.

<sup>307</sup> See Article 36.5 of Law No. 06/L-032 on Accounting, Financing Reporting and Auditing, April 2018.

<sup>308</sup> See Article 36.6 of Law No. 06/L-032 on Accounting, Financing Reporting and Auditing, April 2018.

<sup>309</sup> See Article 279 of the Criminal Code of Republic of Kosovo.

<sup>310</sup> *Ibid*, Article 284.

<sup>311</sup> *Ibid*, Article 285.

<sup>312</sup> *Ibid*, Article 307 and 308.

<sup>313</sup> *Ibid*, Article 309 and 310.

related to violations in the private sector, such as “fraud” and “forging of documents”, by a fine and/or imprisonment, depending on the qualification of the criminal offense. According to the Criminal Code, a legal entity can be held responsible for a criminal offense committed by a natural person acting on its behalf or for its benefit, even if the natural person is not personally sanctioned for the offense.

To increase the efficiency of the judicial system when handling commercial disputes, the Commercial Court was established. This court is operational since August 2022, but faces many problems due to the high backlog of cases.<sup>314</sup>

### **Good practices**

- Kosovo has made progress in improving integrity in the business environment.
- The Kosovo Corporate Governance Code reflects international standards of the OECD Principles on Corporate Governance.
- Legislation foresees adequate measures for sanctioning businesses and persons responsible for actions contrary to the law.
- The Commercial Court was created to deal with commercial disputes.

### **Deficiencies**

- Insufficient coordination and data sharing between the Kosovo Business Registration Agency and the Kosovo Council for Financial Reporting affect the timely reporting and publication of accounting documents.
- The Public Audit Oversight Board was unable to completely carry out its powers as a result of insufficient funding.
- The Kosovo Investment and Enterprise Support Agency lacks the capacity and resources to carry out its mandate.
- Insufficient funding has resulted in a fragile institutional structure for audit supervision.
- The new draft law on business organizations has not been adopted.
- The Commercial Court is not being efficient, as a result of the backlog of cases.

### **3.1.12 Article 14 – Measures to Prevent Money-Laundering**

The main law in the field of money laundering prevention is Law No. 05/L-096 on the Prevention of Money Laundering and Financing of Terrorism (LPMLFT). This Law entered into force on June 15, 2016. LPMLFT establishes measures, authorities, and procedures for identifying and preventing money laundering and countering terrorist financing.<sup>315</sup> Based on LPMLFT, the Central Bank of Kosovo has also approved the Regulation on the Prevention of Money Laundering and Financing of Terrorism.<sup>316</sup>

LPMLFT establishes the Financial Intelligence Unit (FIU-K) as a central independent national institution within the Ministry of Finance, tasked with requesting, receiving,

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<sup>314</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg. 64.

<sup>315</sup> Law No. 05/L-096 on The Prevention of Money Laundering and Combating Terrorist Financing, June 2016, <https://qzk.rks-gov.net/ActDetail.aspx?ActID=12540>, last accessed on March 1, 2024, article 1.

<sup>316</sup> Central Bank of the Republic of Kosovo, Regulations for the prevention of money laundering and the financing of terrorism, November 2016, [https://bqk-kos.org/repository/docs/korniza\\_ligjore/shqip/Rregullorja%20per%20parandalimin%20e%20pastrimit%20te%20parave.pdf](https://bqk-kos.org/repository/docs/korniza_ligjore/shqip/Rregullorja%20per%20parandalimin%20e%20pastrimit%20te%20parave.pdf).



analyzing, and disclosing information data on potential money laundering and terrorist financing to the relevant authorities laundering and terrorist financing and the oversight board of this Unit. The Board has no right to interfere in any way in FIU-K operations and ongoing cases.<sup>317</sup>

On the other hand, LPMLFT has determined that all reporting entities continuously determine the risk of money laundering and terrorist financing presented by their clients and any other person to whom they provide financial and professional services. There are a total of 10 categories of reporting entities, among which are banks, financial institutions, lawyers and notaries, and NGOs. All natural and legal persons who trade goods when they accept payments in cash in the amount of € 10,000 or more are qualified as reporting entities.<sup>318</sup>

To prevent money laundering, LPMLFT has determined specific measures that must be undertaken by all reporting entities. For instance, the reporting subjects shall issue internal written policies and procedures, establish controls to prevent and detect money laundering and terrorist financing, and effectively implement them. These should encompass various aspects such as customer due diligence procedures, including customer identification and verification, reporting to FIU-K, handling and responding to suspicious activities or transactions, and measures to prevent further involvement in such activities.<sup>319</sup>

According to the LPMLFT, the competent authorities of Kosovo commit to cooperate with the authorities of foreign jurisdictions for purposes of information exchange, investigations and court proceedings, temporary measures for securing property and orders for confiscation relating to instrumentalities of money laundering and proceeds of crime, and for purposes of prosecution of the perpetrators of money laundering and terrorist activity.<sup>320</sup>

Money laundering is also criminalized as a separate criminal offense, without the need to make any connection with another basic offense.<sup>321</sup> Within the Kosovo Police, there are special mechanisms that deal with money laundering.<sup>322</sup> The criminal prosecution of money laundering cases is carried out by the Special Prosecutor's Office of the Republic of Kosovo,<sup>323</sup> while the judgment of these cases is done by the Special Departments within the Basic Court in Pristina and the Court of Appeal.<sup>324</sup> LPMLFT has to be reformed to fully comply with the Fourth and Fifth EU Directives regarding anti-money laundering and combating the financing of terrorism, as well as with

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<sup>317</sup> Ibid, Article 4, 5 and 7.

<sup>318</sup> Ibid, Article 16 and 18.5.

<sup>319</sup> Ibid, Art. 17.2.2.3.

<sup>320</sup> See Article 62 of Law No. 05/L-096 on The Prevention of Money Laundering and Combating Terrorist Financing.

<sup>321</sup> See Article 302 of Criminal Code of the Republic of Kosovo; and article 56 of Law No. 05/L-096 on The Prevention of Money Laundering and Combating Terrorist Financing.

<sup>322</sup> Kosovo Police, the Strategic document "SOCTA 2019 – 2021, <https://www.kosovopolice.com/wp-content/uploads/2022/11/VLER%C3%8BSIMI-I-K%C3%8BRC%C3%8BNIMIT-NGA-KRIMI-I-ORGANIZUAR-DHE-KRIMET-E-R%C3%8BNDA.pdf> – pg.45.

<sup>323</sup> Law No. 08/L-168 for the Special Prosecutor, article 9.1.1.13.; Note: The only exceptions to this are cases where the amount is €50,000, which are prosecuted by the Basic Prosecutor's Office and judged by the Basic Courts.

<sup>324</sup> See Articles 13.1.1.1 and 24.1.1.3. of Law Nr. 06/L – 054 on Courts.

developing international standards.<sup>325</sup> Finally, besides legislation, the National Strategy of the Republic of Kosovo for the Prevention and Combating of the Informal Economy, Money Laundering, Financing of Terrorism and Financial Crimes 2019-2023 is another relevant policy document in that field.<sup>326</sup>

In practice, authorities still lack a comprehensive understanding of the dangers associated with money laundering and terrorism financing, despite the adoption of several methods at the national, sectoral, and operational levels to assess risks of money-laundering and terrorism financing.<sup>327</sup> For instance, the sectoral terrorist financing risk assessment process on non-profit organizations, initiated by the Government in 2022, was commented on by the European Commission's Report on Kosovo for 2023. This report suggests that such an evaluation becomes part of the law's revision in order to eliminate needless reporting requirements for civil society organizations (CSOs), lessen burdensome controls on low-risk CSOs, remove restrictions on cash donations, and remove obstacles to banking and financial services access. Furthermore, according to the baseline assessment included in EU's Technical Assistance to Civil Society Organisations (TACSO) 2021, the tax regime for CSOs was deemed to partially satisfy pertinent standards.<sup>328</sup> To help Kosovo authorities address the conclusions and recommendations from its AML/CTF Assessment Report of 2018, the Council of Europe is assisting by specifically addressing Financial Action Task Force (FATF) Recommendation 1 and Immediate Outcome 1 which pertain to specific requirements to identify, assess, and comprehend risks of money-laundering and terrorism financing.<sup>329</sup>

Regarding the capacities, 20 officials were employed in FIU-K in 2021, one less than in 2020. According to current information from the time of writing this report 2024, the number of staff dedicated full-time to combating money laundering in the FIU is 11.<sup>330</sup> It should be emphasized that increasing resources and staff capacity would be necessary to effectively combat money laundering.<sup>331</sup> In 2021, FIU-K referred 203 reports to other institutions, among which 83 to the Kosovo Police, 76 to the Tax Administration of Kosovo, 12 to the Special Prosecutor's Office of the Republic of

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<sup>325</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg. 28.

<sup>326</sup> Ministry of Finance, National strategy of the Republic of Kosovo for the prevention and combating of the informal economy, money laundering, terrorist financing and financial crimes 2019–2023, May 2019, <https://mf.rks-gov.net/desk/inc/media/0211B611-A5EB-45F5-BE19-45A408D1DFA8.pdf>, last accessed on June 28, 2024.

<sup>327</sup> Council of Europe, "Assessment Report on compliance of Kosovo with international anti-money laundering and combating the financing of terrorism standards", June 2018, <https://rm.coe.int/assessment-report-on-compliance-of-kosovo-with-international-anti-mone/16809381e1>, last accessed on April 1, 2024, pg. 7.

See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.11.

<sup>329</sup> Council of Europe Portal, "Council of Europe introduces the money laundering and terrorist financing risk assessment methodology (ML/TF NRA) to Kosovo\* authorities, March 2024, [https://www.coe.int/en/web/corruption/-/council-of-europe-introduces-the-money-laundering-and-terrorist-financing-risk-assessment-methodology-ml/tf-nra-to-kosovo\\*-authorities](https://www.coe.int/en/web/corruption/-/council-of-europe-introduces-the-money-laundering-and-terrorist-financing-risk-assessment-methodology-ml/tf-nra-to-kosovo*-authorities), last accessed on March 10, 2024.

<sup>330</sup> FIU-K's response, dated July 10, 2024, based on KLI's request for access to public documents dated May 11, 2024.

<sup>331</sup> Financial Intelligence Unit, Annual Report 2021, August 2022, [https://fiu.rks-gov.net/wp-content/uploads/2022/09/NJIF-K\\_Raporti\\_Vjetor\\_2021.pdf](https://fiu.rks-gov.net/wp-content/uploads/2022/09/NJIF-K_Raporti_Vjetor_2021.pdf), last accessed on April 1, 2024, pg.59.

Kosovo, and 16 to international anti-money laundering institutions.<sup>332</sup> During 2022, FIU-K referred 174 reports to other institutions, whereas in 2023, the number of reports sent to other institutions was 189<sup>333</sup>.

In practice, the legal framework for money laundering is still not sufficiently implemented. Although the law does not require proof of a predicate offense to retain a conviction, many prosecutors and judges continue to consider a predicate offense an essential part of money laundering offenses. As a result, many stand-alone money laundering cases are dismissed either by the prosecution or by the court.<sup>334</sup>

In terms of financial secrecy, according to the most recent update from the Financial Action Task Force (FATF) in February 2024, Kosovo is not currently included on either the 'blacklist' or 'greylist'<sup>335</sup>. Along that line, Kosovo was ranked 129th out of 141 countries in the Financial Secrecy Index 2022, which stated that 0.12% of global financial secrecy originated from Kosovo.<sup>336</sup>

### Good practices

- Kosovo has adopted special legislation in the field of money laundering and has criminalized money laundering.
- Kosovo has established a special Agency whose mandate is to prevent money laundering.
- In 2022, the government initiated the sectoral terrorist financing risk assessment process on non-profit organizations, involving civil society.
- The follow-up of money laundering cases is done by the Special Prosecutor's Office of the Republic of Kosovo and their judgment by the Special Department of the Basic Court in Pristina and the Special Department of the Court of Appeal.

### Deficiencies

- The Law for the Prevention of Money Laundering and Terrorism Financing has not been amended to bring it to full compliance with the 4th and 5th EU Directives on anti-money laundering and countering financing of terrorism, and with the current international standards.
- The legal framework for money laundering is still not sufficiently implemented.
- Although the law does not require proof of a predicate offense to retain a conviction, many prosecutors and judges continue to consider a predicate offense an essential part of money laundering offences.
- The Financial Intelligence Unit faces insufficient capacities to respond to the phenomenon of money laundering.

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<sup>332</sup> Financial Intelligence Unit, Statistical data 2021, [https://fiu.rks-gov.net/wp-content/uploads/2023/02/Statisitkat\\_2021.pdf](https://fiu.rks-gov.net/wp-content/uploads/2023/02/Statisitkat_2021.pdf), last accessed on April 1, 2024, pg. 16.

<sup>333</sup> FIU-K's response, dated July 10, 2024, based on KLI's request for access to public documents dated May 11, 2024.

<sup>334</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.28.

<sup>335</sup> FATF, High-Risk Jurisdictions subject to a Call for Action - February 2024, <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Call-for-action-february-2024.html>; Jurisdictions under Increased Monitoring - 23 February 2024, <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoring-february-2024.html>, last accessed on April 1, 2024.

<sup>336</sup> Tax Justice Network, Kosovo Rank, <https://fsi.taxjustice.net/country-detail/#country=XK&period=22>, last accessed on April 1, 2024.

## 3.2 Chapter V

### 3.2.1 Articles 52 and 58 – Anti-Money Laundering

In general, the legislation of the Republic of Kosovo in the field of money laundering prevention covers the requirements of Article 52 of the UNCAC. As stated in the previous section, the Law for the Prevention of Money Laundering and Financing of Terrorism (LPMLFT) is the main legislation in Kosovo regarding the prevention of money laundering. This Law lists 10 categories of reporting entities, assigning them specific obligations to prevent money laundering. Due diligence on the client, including the identification and verification of the client, is an obligation for reporting entities.<sup>337</sup>

Likewise, the LPMLFT has also determined provisions related to the beneficial owner. According to the LPMLFT, the beneficial owner is the natural person who holds ultimate ownership or control over the customer and/or the natural person on whose behalf a transaction or activity is being carried out, or the person who primarily exercises effective control over a legal entity or legal agreement. Furthermore, for specific subjects, LPMLFT has defined the rules related to the identification of the beneficial owner.<sup>338</sup> To implement these provisions, the Financial Intelligence Unit (FIU-K) has approved the Administrative Instruction for the Beneficial Owner for Reporting Entities. The purpose of this Administrative Instruction is to increase the transparency of the beneficial ownership and instruct the reporting entities for the identification and verification of the beneficial owners to effectively manage the risk of money laundering and financing of terrorism, which may appear during the implementation of legal provisions for beneficial owners.<sup>339</sup>

LPMLFT has also addressed the issue of politically exposed persons, defining the categories of officials, their family members, and associates who are considered politically exposed persons. Concerning politically exposed persons, all reporting entities are required to take measures to identify whether their clients fall within this category.<sup>340</sup> For such cases, FIU-K has approved the Administrative Instruction for Politically Exposed Persons, to guide reporting entities in effectively managing the increased risk of money laundering posed by politically exposed persons.<sup>341</sup> LPMLFT also establishes that the authorities of the Republic of Kosovo can cooperate with other states in actions aimed at preventing money laundering.<sup>342</sup>

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<sup>337</sup> See Law No. 05/L-096 on The Prevention of Money Laundering and Combating Terrorist Financing, articles 16 and 17.

<sup>338</sup> See Law No. 05/L-096 on The Prevention of Money Laundering and Combating Terrorist Financing, article 2.1.1.36.

<sup>339</sup> Financial Intelligence Unit, Administrative Instruction MoF (FIU-K) No. 01/2021 on Beneficial Ownership for Reporting Subjects, July 2021, [https://fiu.rks-gov.net/wp-content/uploads/2021/07/UDHEZIM\\_ADMINISTRATIV\\_MF\\_NjIF-K\\_Nr\\_01-2021.pdf](https://fiu.rks-gov.net/wp-content/uploads/2021/07/UDHEZIM_ADMINISTRATIV_MF_NjIF-K_Nr_01-2021.pdf), last accessed on April 1, 2024, article 1.

<sup>340</sup> See Law No. 05/L-096 on The Prevention of Money Laundering and Combating Terrorist Financing, article 2.1.1.33.

<sup>341</sup> Financial Intelligence Unit, Administrative Instruction MoF (FIU-K) No. 02/2018 on Politically Exposed Persons, September 2018, [https://fiu.rks-gov.net/wp-content/uploads/2018/09/UA\\_për\\_Personat\\_e\\_Ekspozuar\\_Politikisht\\_dt\\_03-09-2018.pdf](https://fiu.rks-gov.net/wp-content/uploads/2018/09/UA_për_Personat_e_Ekspozuar_Politikisht_dt_03-09-2018.pdf), last accessed on April 1, 2024, article 1.

<sup>342</sup> See Law No. 05/L-096 on The Prevention of Money Laundering and Combating Terrorist Financing, articles 4 and 62.

As for concrete results, Kosovo is delayed in the field of money laundering prevention, investigation, and prosecution. The European Union has expressed concern that Kosovo has not taken enough steps to combat this phenomenon. One of the key reasons is the lack of awareness among prosecutors and judges that money laundering cases can be tried without a connected conviction for any other criminal offense.<sup>343</sup>

The CUMA case, which involves the multibillion-dollar cryptocurrency fraud OneCoin, with millions of victims around the world, is the first successful stand-alone money laundering indictment and prosecution in Kosovo.<sup>344</sup> The outcome was the largest amount of assets ever confiscated, amounting to almost one million euros, upheld by the appellate court. It was initiated only two months after Kosovo was accepted to the Egmont Group of Financial Intelligence Units<sup>345</sup> and success was largely attributed to collaboration with 17 other members of the Egmont Group. In a record-breaking 18 months investigation and trial, the case was conducted swiftly, from the moment the suspicious transaction report (STR) was filed until the court ruling.<sup>346</sup> Upon more examination, it was discovered that many other States had issued warnings regarding OneCoin and OneLifeNetwork. As this cryptocurrency was a massive worldwide scam, the country of Kosovo was used for such activities precisely because of the perceived lack of bilateral collaboration with non-recognized states, and its non-membership in INTERPOL, the UN, and other multilateral organizations.<sup>347</sup> Only two people were indicted for this offense in 2022, compared to nine the previous year, while a total of three were convicted throughout that year.<sup>348</sup>

Other recent examples when the justice system was efficient in handling cases are, for instance, the guilty verdict issued on April 23, 2024 by the Basic Court in Pristina against nine persons accused of illegal gambling and money laundering, sentencing them to 5 years and 20 days in prison, and a € 46,100 joint fine after reaching of an agreement with the Special Prosecutor's Office of the Republic of Kosovo.<sup>349</sup> In contrast, some cases have taken many years. An example of this is an indictment filed by the Special Prosecution of the Republic of Kosovo (SPRK) for money laundering, which resulted in a guilty verdict after nearly nine years.<sup>350</sup>

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<sup>343</sup> Radio Evropa e Lire, "Kosovo is stuck in the fight against money laundering", January 2024, <https://www.evropaelire.org/a/kosova-ngec-lufta-pastrimi-parave/32783260.html>, last accessed on on April 1, 2024.

<sup>344</sup> Best Egmont cases-Financial analysis cases 2014-2020, [https://egmontgroup.org/wp-content/uploads/2022/01/2021-Financial.Analysis.Cases\\_.2014-2020-3.pdf](https://egmontgroup.org/wp-content/uploads/2022/01/2021-Financial.Analysis.Cases_.2014-2020-3.pdf), last accessed on June 28, 2024, pg. 30.

<sup>345</sup> <https://egmontgroup.org/>.

<sup>346</sup> Egmont Group of Financial Intelligence Units, Best Egmont Cases – Financial Analysis Cases 2014-2020, [https://egmontgroup.org/wp-content/uploads/2022/01/2021-Financial.Analysis.Cases\\_.2014-2020-3.pdf](https://egmontgroup.org/wp-content/uploads/2022/01/2021-Financial.Analysis.Cases_.2014-2020-3.pdf), last accessed on April 1, 2024, pg. 32.

<sup>347</sup> Ibid.

<sup>348</sup> Ibid.

<sup>349</sup> OathofJustice, "5 years and 20 days of imprisonment and over 46,000 euros in fines against nine accused for illegal gambling and money laundering", April 2024, <https://betimiperdrejtesi.com/5-vjet-e-20-dite-burgim-dhe-mbi-46-mije-euro-gjobe-ndaj-nente-te-akuzuarve-per-bixhoz-te-paligqshem-dhe-shpelarje-parash/>, last accessed on April 24, 2024.

<sup>350</sup> Decision of Basic Court of Prishtina on case PS.nr.8/2023, June 2023, [https://www.gjygesori-rks.org/wp-content/uploads/verdicts/PR\\_2019-088708\\_SQ.pdf](https://www.gjygesori-rks.org/wp-content/uploads/verdicts/PR_2019-088708_SQ.pdf), last accessed on April 1, 2024.

In sum, Kosovo should reform the legislation for the prevention of money laundering to bring it in line with international standards. Likewise, prosecutors and judges should be aware about the legal possibility to judge the criminal offense of money laundering without another basic offense. It would also be necessary to increase inter-institutional cooperation and efficiency in handling money laundering cases.

Kosovo broadly fulfills the obligations defined in paragraph 5 of Article 52 of the UNCAC. According to Law on Declaration, Origin, and Control of Assets and Gifts (LDOCAG), a wide list of public officials are obliged to declare their wealth and that of their family members on an annual basis. This declaration of wealth is made to the Agency for the Prevention of Corruption (APC), which also authorizes to verify the accuracy of the declaration of wealth.<sup>351</sup> Asset declaration by public officials and the criminalization of non-compliance or incomplete compliance in the Criminal Code, as well as the insufficient application of high penalties in practice, has been explained in detail in section 4.1.5.

### **Good practices**

- Kosovo has adopted special legislation in the field of money laundering prevention and established the Financial Intelligence Unit.
- Kosovo has adopted specific rules related to customer identity verification, beneficial ownership, and politically exposed persons, among others.
- The Financial Intelligence Unit has approved by-laws related to beneficial ownership and politically exposed persons.
- The law establishes the obligation for a wide range of public officials to declare their assets.
- There have been positive cases of money laundering prosecution that can serve as models globally.

### **Deficiencies**

- Anti-money laundering legislation is not fully compliant with the fourth and fifth EU directives and the recommendations of the Financial Action Task Force.
- Regarding concrete results, Kosovo has a backlog in the field of prevention, investigation, and judgment of money laundering.
- There is a conceptual misunderstanding regarding money laundering, and an assumption that this offense cannot stand alone without another related offense, contrary to the law in Kosovo.
- Some judicial cases drag on for extremely long.
- The punitive policy in cases of non-declaration of assets has not been adequate to the extent that no one has been sentenced to effective imprisonment for non-declaration of assets.

### **3.2.2 Articles 53 and 56 – Measures for Direct Recovery of Property; Art. 54 – Confiscation Tools; Articles 51, 54, 55, 56 and 59 – International Cooperation for the Purpose of Confiscation; Article 57 – The Return and Disposal of Confiscated Property**

These provisions are analyzed together, taking into account their interconnections and to provide a comprehensive analysis of this matter.

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<sup>351</sup> See article 6 of Law No. 08/L-108 on declaration, origin, and control of assets and gifts.

Concerning the legal framework, the Republic of Kosovo has always had a sufficient legal framework regarding the seizure and confiscation of property obtained through criminal offenses. The Code for Criminal Procedure (CCPRK) entered into force in February 2023. This Code contains detailed provisions regarding the seizure and confiscation of property obtained through criminal offenses. According to this Code, temporary seizure "is the legal status of specified evidence or property that has been stopped by the police and that is under the control or custody of the police either based on control or based on a temporary restraining order issued by the state prosecutor [...]", while confiscation is "the permanent confiscation of property, ordered by a final decision of the competent court under this Code".<sup>352</sup>

The State Prosecutor has unlimited investigative possibilities for the confiscation of property. According to CCPRK, "If the state prosecutor has a reasonable doubt that a request for confiscation can be made, the state prosecutor can start the investigation for confiscation: 1.1. at any stage of the criminal investigation; 1.2. after the filing of the indictment; 1.3. before the judicial review 1.4. during the judicial review; and 1.5. after the conclusion of the judicial review...".<sup>353</sup>

The object of confiscation in the framework of the criminal procedure is both the means of committing the criminal offense and the property benefit which derives from the commission of the criminal offense.<sup>354</sup> Some provisions determine how the confiscated property is returned to its owner if this property was taken from the same person through the commission of a criminal offense. In this case, if the court has determined that the defendant has received material benefit from the criminal offense or has made a tainted gift, and if the material benefit or the tainted gift in whole or in part is not available for confiscation for any reason, the court confiscates any other property of the defendant or a third party up to the monetary value of the tainted benefit or gift.<sup>355</sup>

On the other hand, the Law on Extended Powers for the Confiscation of Assets obtained by criminal offense was adopted in 2013. This law was replaced in January 2019 by Law No. 06/L-087 on Extended Powers for Confiscation of Assets (LEPCA). The confiscation system under the LEPCA is a mix of criminal and civil confiscation.

LEPCA has defined 16 categories of criminal offenses to which this law applies.<sup>356</sup> The (civil) confiscation system under the LEPCA can only be applied when a person is found guilty of one of these 16 categories of criminal offenses. After a defendant is found guilty of committing one of these criminal offenses, regardless of the sentence imposed, the State Prosecutor has the opportunity to submit a request to the Court for verification of assets within 5 years.

Regarding the burden of proof, the responsibility of the State Prosecutor during limitation proceedings is to prove reasonable suspicion. However, the burden of proof

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<sup>352</sup> Criminal Procedure Code No. 08/L-032 of Republic of Kosovo, August 2022, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>, last accessed on April 1, 2024, Article 19.1.1, par. 34 and 35.

<sup>353</sup> Ibid, article 278.

<sup>354</sup> Ibid, articles 270-271.

<sup>355</sup> Ibid, articles 263-273.

<sup>356</sup> Law No. 06/L-087 of Extended Powers on Confiscation of Assets, December 2018, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18337>, last accessed on April 1, 2024.

falls on the defendant to prove before the Court that each part of the property listed in the request for property assessment was acquired by him or her from the sufficient legitimate resources that he/she had at the time when he/she acquired such property.<sup>357</sup> If the defendant fails to do so, then the Court will confiscate the part of the defendant's property that was not proven to be acquired from legal sources.

On February 9, 2023, the Assembly of the Republic of Kosovo approved the Law on the Office for Confiscation of Unjustified Assets.<sup>358</sup> However, after approval, this law was processed for evaluation in the Constitutional Court<sup>359</sup> and cannot enter into force until the Constitutional Court issues a decision.<sup>360</sup>

According to the Draft Law on the State Bureau for the Verification and Confiscation of Unjustifiable Assets (LSBVCUA), "This law applies to property acquired unjustifiably, either directly or indirectly by official persons and third parties." Also, this law applies to the unjustified wealth acquired during the period of exercise of the function of the subjects from February 17, 2008 and within ten years from the moment when the subjects cease to exercise their function.<sup>361</sup>

With this law, the State Bureau for the Verification and Confiscation of Unjustified Assets is established as an independent and specialized body for the verification of unjustified assets.<sup>362</sup> Among other things, this Bureau is authorized to initiate and develop the property verification procedure, to submit the proposal to the Court for the confiscation of property, etc. According to the law, the Bureau is led by its Director, elected by a simple majority of the Assembly. Only if the Assembly fails to elect the Director twice in a row, then the Supervisory Commission, which serves as the supervisory body of the Bureau, will do so.<sup>363</sup>

According to the law, the Bureau will verify each case if the official's wealth is at least € 25,000 out of proportion with his income. If from the data collected by the verification procedure, the evidence and testimonies provided by the party in the procedure, the Bureau's official in charge notes that the civil standard of probability assessment is met and that there is a discrepancy between income and assets that exceeds the value of € 25,000, then the Bureau official proposes to send the case to the Court for confiscation. The reasoned proposal for sending the case to the Court for confiscation is submitted to the General Director, who eventually submits a proposal for confiscation.<sup>364</sup> The burden of proof accordingly belongs to the verified entity. After the

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<sup>357</sup> Ibid, articles 6.1.1.2 and 7.3.

<sup>358</sup> OathforJustice, "The Law on the Bureau of Unjustified Asset Confiscation is approved", February 2023, <https://betimiperdrejtesi.com/miratohet-ligji-per-byrone-e-konfiskimit-te-pasurise-se-pajustificueshme/>, last accessed on April 1, 2024.

<sup>359</sup> OathforJustice, "EXCLUSIVE: DPK sends the Draft Law on the Bureau to the Constitutional Court", February 2023, <https://betimiperdrejtesi.com/ekskluzive-pdk-dergon-projektligjin-per-byrone-ne-gjykatën-kushtetuese/>, last accessed on April 1, 2024.

<sup>360</sup> Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, January 2009, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2614>, last accessed on April 1, 2024, article 43.2.

<sup>361</sup> Assembly of the Republic of Kosovo, Report with recommendations for Draft Law no. 08/L-121 for the State Bureau for Verification and Confiscation of Unjustified Assets, 31.01.2023, article 2.

<sup>362</sup> Ibid, Article 4.

<sup>363</sup> Ibid, Article 10 and 14.

<sup>364</sup> Ibid, Article 23.8.



proposal has been submitted to the Court, the party accused must prove that the property that is the object of the proposal has a justifiable origin.<sup>365</sup>

Besides the existing system for confiscating property obtained through criminal offenses under the Code of Criminal Procedure and the Law on Extended Powers for Confiscation of Property, Kosovo intends to implement confiscation measures even in the absence of a criminal penalty.

As for the Draft Law on the State Bureau for the Verification and Confiscation of Unjustifiable Assets (LSBVCUA), it should be noted that there was a wide debate in Kosovo regarding the need to approve such a confiscation system, and about the content this law should have. The Government of the Republic of Kosovo had approved this Law without adequate public consultations, had ignored the recommendations of civil society and had received severe criticism from the Venice Commission. Finally, on December 29, 2021, the government approved the Draft of LSBVCUA. This Law was adopted without adequate public consultation. Faced with the provisions of the Government Regulation on Minimum Standards for the Public Consultation Process, the Ministry of Justice, reduced the deadline for public consultations to six working days, in order to still have it approved in 2021.

The reasoning of the Ministry in this case was not based on the law and the Regulation on Public Consultation. Thus, for a voluminous law that establishes a special institution, builds a new confiscation system and has implications on human rights, the Ministry asked the public to send comments within only six working days. Additionally, according to the Regulation, the received comments should have been handled by the working group on the Draft Law and, after reviewing the comments, a final report should have been published. None of these obligations were respected by the Ministry of Justice.<sup>366</sup> Initially, civil society and international donors reacted to the lack of adequate public consultation, and over time they also questioned certain aspects of the law itself.<sup>367</sup>

In January 2022, KLI published the analysis "Unjustifiable asset confiscation: legal problems of the current draft law". In this analysis, numerous problems of the draft law in question were identified and clarified.<sup>368</sup> The Government and the Assembly did not show the will to apply the recommendations from KLI's report. The LSBVCUA was submitted to the Venice Commission for evaluation, which confirmed almost all KLI's findings.<sup>369</sup> In its opinion, the Venice Commission concluded that the draft law had

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<sup>365</sup> Ibid, Article 34.

<sup>366</sup> KLI, "Unjustifiable asset confiscation: legal problems of the current draft law", January 2022, [https://kli-ks.org/wp-content/uploads/2022/01/ENGLISH\\_-JH\\_Draft-Raporti\\_Konfiskimi-i-pajustificueshem-004-2-1.pdf](https://kli-ks.org/wp-content/uploads/2022/01/ENGLISH_-JH_Draft-Raporti_Konfiskimi-i-pajustificueshem-004-2-1.pdf), last accessed on April 1, 2024, pg. 6-7.

<sup>367</sup> OathforJustice, draft law on the confiscation of unjustifiable assets, under minimum standards, 2022, <https://betimiperdrejtesi.com/projektligji-per-konfiskimin-e-pasurise-se-pajustificueshme-nen-standarde-minimale/>; KLI, "Unjustifiable asset confiscation: legal problems of the current draft law", January 2022, [https://kli-ks.org/wp-content/uploads/2022/01/ENGLISH\\_-JH\\_Draft-Raporti\\_Konfiskimi-i-pajustificueshem-004-2-1.pdf](https://kli-ks.org/wp-content/uploads/2022/01/ENGLISH_-JH_Draft-Raporti_Konfiskimi-i-pajustificueshem-004-2-1.pdf), last accessed on June 28, 2024.

<sup>368</sup> Ibid.

<sup>369</sup> Venice Commission, "Kosovo Opinion on the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets", June 2022, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)014-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)014-e), last accessed on April 1, 2024.

several issues as written and that its implementation would violate fundamental rights protected by the European Convention on Human Rights (ECHR) and the Constitution of Kosovo.<sup>370</sup> After the first opinion, the Venice Commission issued other opinions regarding this Draft Law, before it was approved by the Assembly of the Republic of Kosovo.<sup>371</sup>

This law, based on the request of the members of the Assembly, was sent to the Constitutional Court for evaluation of its constitutionality. On June 26, 2024, the Constitutional Court declared the Law on the State Bureau for the Verification and Confiscation of Unjustified Assets invalid in its entirety. According to the Constitutional Court, although the contested Law pursues the legitimate goal of public interest, it does not reflect a reasonable balance between the state and the individual. This constituted an interference in the property rights of the individual, a violation of Article 7 (Values) of the Constitution, and a violation of the principle of legal security and the fundamental rights and freedoms of individuals.<sup>372</sup>

Thus, the system of confiscation of property obtained by criminal offense, according to the Code of Criminal Procedure, and the system of confiscation after a criminal conviction, according to the Law on Extended Powers for Confiscation of Property, are already being applied in Kosovo. Meanwhile, the application of the civil confiscation system is postponed until the approval of a new law, in accordance with the Constitution, following the repeal of LSBVCUA by the Constitutional Court.

Regarding the administration of confiscated property, Kosovo has approved Law No. 05/L-049 for the Management of Seized and Confiscated Property (LMSCP). The seized and confiscated assets are administered by the Agency for the Administration of Seized and Confiscated Assets (AASCA), a central body of the state administration within the Ministry of Justice.<sup>373</sup>

The powers of AASCA include the administration of the seized and confiscated assets used for or profited from criminal offenses, and terrorism assets, with the exception of assets confiscated for the realization and collection of tax obligations.<sup>374</sup> The AASCA participates in the provision of international legal assistance for all cases involving seized and confiscated property, administering seized or confiscated property based on a request made by another state.<sup>375</sup>

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<sup>370</sup> Ibid, pg.18.

<sup>371</sup> Venice Commission, "Kosovo Follow-up Opinion on the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets", December 2022, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)052-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)052-e); Information on the follow-up to Kosovo – Follow-up to the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets, March 2023, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2023\)008-bil](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2023)008-bil), last accessed on April 1, 2024.

<sup>372</sup> Notice of decision in case KO46/23 of the Constitutional Court, 2024, <https://gjk-ks.org/njoftim-per-vendim-ne-rastin-ko46-23/>, last accessed on June 28-, 2024.

<sup>373</sup> Law Nr. 05/L-049 on the Management of Sequestrated and Confiscated Assets, April 2016, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12360>, last accessed on April 1, 2024, article 5.1.

<sup>374</sup> Ibid, article 4.

<sup>375</sup> Ibid, article 4.1.1.7.

In cases where a request from another state is accepted by the courts in Kosovo and the assets that constitute the subject of the request have been transferred to AASCA for their administration, the Agency will have responsibility over those assets just as if the case had started in the Republic of Kosovo. International cooperation in the administration of seized and confiscated property is carried out based on international agreements. If the international agreement has not been concluded or some issues have not been regulated by the international agreement, international cooperation is carried out based on the relevant legislation of the Republic of Kosovo.<sup>376</sup>

In practice, AASCA is having trouble managing the assets in its portfolio, even though in 2022, it handled more than € 1.5 million in various sets of assets. This is partly due to the Agency's setup and partly because the courts have not permitted the planned sale of assets while legal actions are ongoing. The value of the assets sold in 2022 was approximately € 36,000, compared to around € 52,000 in 2021.<sup>377</sup> On June 22, 2022, the Government approved the concept document for the establishment of the confiscation fund. This fund will allocate a portion of the confiscated assets to law enforcement institutions and civil society. For the establishment of this fund, the approved Concept Document states that it is necessary to complete the amendment of the law on the management of sequestrated and confiscated assets<sup>378</sup>. So far, this law has not been amended.

In September 2013, Law No. 04/L-213 on International Legal Cooperation in Criminal Matters (LILCCM) entered into force. This Law regulates international legal cooperation regarding control, freezing, and confiscation. A state's request for control, freezing, and confiscation of assets must meet two conditions: the offense that caused the request has to be sanctionable under the law of the requesting state and local law, and the execution of the request has to be consistent with local law.<sup>379</sup>

When the request for confiscation concerns a specific item, the Court may order the confiscation of that item only if such confiscation for that criminal offense is permitted under local law or in cases where the law allows the imposition of a more severe penalty. If confiscation of a particular item is not possible, the Court may decide to confiscate a monetary value equivalent to the value of that item, if the requesting State agrees.<sup>380</sup>

LILCCM has also addressed the issue of handing over items to another country during the extradition procedure. At the request of this state and in accordance with the local law, the competent court will confiscate and hand over the items that can be used as evidence, or which were acquired as a result of the criminal offense or were used in the commission of the criminal offense. If these items and materials are subject to seizure or confiscation in the Republic of Kosovo, in connection with any pending

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<sup>376</sup> Ibid, article 15.

<sup>377</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.26.

<sup>378</sup> Government, "Concept Paper for Establishment of Confiscation Fund", June 2022, p.33, <https://kryeministri.rks-gov.net/wp-content/uploads/2023/01/12-Koncept-Dokumenti-per-themelimin-e-Fondit-te-Konfiskimit.pdf>, last accessed on April 1, 2024.

<sup>379</sup> Law No.04/L-213 on International Legal Cooperation in Criminal Matters, September 2013, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=57516>, last accessed on April 1, 2024, article 90.

<sup>380</sup> Ibid, article 74.2.

criminal proceedings, they may be temporarily held or surrendered on the condition that they be returned to the Republic of Kosovo.<sup>381</sup>

Despite an advanced legislative framework, in practice the Republic of Kosovo has not shown satisfactory results in the field of confiscation of property obtained through criminal offenses and the amount of criminal assets confiscated is still quite modest. The 2019 Law on Extended Powers of Confiscation is in place, but its application is not consistent. Hence, confiscation of criminal assets continues to be underused by prosecutors while it should be a top priority in the country's fight against terrorism, organized crime, and high-level corruption.<sup>382</sup>

In practice, the State Prosecutor does not have enough focus on asset confiscation as one of the most powerful ways of fighting crime. Punishment alone is insufficient without confiscation in cases where illicit financial gain is proven.<sup>383</sup>

A report by KLI found that prosecutors only requested the freeze, seize, and confiscation of property obtained through criminal acts in 20% of the cases analyzed.<sup>384</sup> According to the State Prosecutor's reports, the highest amount of confiscation of property obtained through criminal offenses was recorded in 2023, with a total of € 87,847,342.23 frozen and seized, and € 23,594,635.64 worth of property confiscated.<sup>385</sup> In 2022, € 20,728,965.42 were frozen and seized and € 669,765.14 of assets were confiscated<sup>386</sup>, while during 2021 € 14,238,163.89 were frozen and seized and € 772,819.42 assets were confiscated.<sup>387</sup>

**Table 5: Amount of Frozen, Seized and Confiscated property obtained through criminal offenses**

	2021	2022	2023
Frozen and seized	€ 14,238,163.89	€ 20,728,965.42	€ 87,847,342.23
Confiscated	€ 772,819.42	€ 669,765.14	€ 23,594,635.64

The data for 2021 and 2022 do not reflect adequate results. The significant imbalance between seizure and confiscation presents a problem. Although the situation is better in 2023, this imbalance is still large. While the standard for asset seizure is low, the Court does not always confiscate seized assets. In this situation, for all seized property for which confiscation is not established by the Court, we can establish that there was

<sup>381</sup> Ibid, article 25.

<sup>382</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg.26.

<sup>383</sup> Written contributions of prosecutor Armend Hamiti. 1 June 2024.

<sup>384</sup> KLI, "Prosecution and Trial of Corruption 2023", December 2023, <https://kli-ks.org/wp-content/uploads/2023/12/Ndjekja-dhe-Gjykimi-i-Korrupsionit-2023-Anglisht-pdf.pdf>, last accessed on April 1, 2024, pg.18.

<sup>385</sup> Office of the Chief State Prosecutor, State Prosecutor's Annual Work Report 2023, February 2024, p.17, see link <https://prokuroriaks.b-cdn.net/wp-content/uploads/2024/08/Raporti-vjetor-i-punes-se-Prokurorit-te-Shtetit-2023.pdf>, last accessed on August 12, 2024. 6

<sup>386</sup> State Prosecutor, Annual Report of State Prosecutor 2022, February 2023, <https://prokuroria-rks.org/wp-content/uploads/2024/08/Raporti-vjetor-i-punes-se-Prokurorit-te-Shtetit-2022.pdf>, last accessed on April 1, 2024, pg.15.

<sup>387</sup> State Prosecutor, Annual Report of State Prosecutor 2021, January 2022, <https://prokuroria-rks.org/wp-content/uploads/2024/02/93.pdf>, last accessed on April 1, 2024, pg.16.

damage caused to the owner, who in some cases is not able to use the property for years until the Court determines whether it will be or not confiscated.

### Good practices

- Legislation related to the confiscation of property used to commit a criminal offense and property derived from the commission of a criminal offense has been adopted.
- The possible confiscation of property is legally established after a sentence has been imposed for one of the criminal offenses defined by law.
- Legislation is in place regarding international legal assistance in criminal cases related to asset recovery.
- Kosovo has established the Agency for the Administration of Seized and Confiscated Assets.

### Deficiencies

- Except for 2023, the justice system has not shown concrete results in the confiscation of property obtained through criminal offences.
- The State Prosecutor does not focus on asset confiscation as one of the most powerful tools for fighting corruption.
- Prosecutors have applied the Law on Extended Powers for Confiscation of Assets only in exceptional cases.
- The Government and the Assembly have not followed an adequate process for the drafting and approval of the Bill for the Bureau for the Verification and Confiscation of Unjustified Assets, providing the public very limited time to provide comments.

## 3.3 Statistics<sup>388</sup>

### Money Laundering

Reporting/Intelligence Phase	Year: 2021	Year: 2022	Year: 2023
Number of Suspicious Transaction Reports (STRs) filed by each category of obliged entities: - Banks and financial institutions - Non-financial businesses and professions (NFBPs)	n/a	960	889
Number of postponement orders adopted on reported transactions	n/a	30	6
Number of money laundering investigations carried out independently by law enforcement agencies (without a prior STR)	n/a	n/a	n/a
Number of suspicious cash activities at the border reported to the FIU (including those based on	n/a	9	6

<sup>388</sup> The tables below follow the format in this Eurostat report: <http://ec.europa.eu/eurostat/documents/3888793/5856465/KS-TC-13-007-EN.PDF/69cde077-3bd9-4d0d-8c19-a6fe3608c2cd>.

declarations and smuggling)			
Number of STRs sent to law enforcement and on which further analysis was made	<i>n/a</i>	174	189
Number of staff dedicated full-time (or full-time equivalent) to money laundering in the FIU	<i>n/a</i>	<i>n/a</i>	11

<b>Investigation Phase</b>	<b>Year: 2021</b>	<b>Year: 2022</b>	<b>Year: 2023</b>
Number of cases initiated by law enforcement agencies on the basis of STRs sent by the FIU	<i>n/a</i>	2	8
Number of staff dedicated full-time (or full-time equivalent) to money laundering in law enforcement agencies	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
Number of cases brought to prosecution: originating from STRs, CTRs and independent law enforcement investigations	<i>n/a</i>	38	32

<b>Judicial Phase</b>	<b>Year: 2021</b>	<b>Year: 2022</b>	<b>Year: 2023</b>
Number of staff dedicated full-time (or full-time equivalent) to investigating money laundering in the judiciary	0	0	0
Number of persons/legal entities convicted for money laundering offences	<i>n/a</i>	<i>n/a</i>	2
Number of convictions for laundering proceeds of crimes committed abroad	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
Number of convictions for crimes other than money laundering originating from STRs	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
Number of sentences by type for money laundering offences	<i>n/a</i>	<i>n/a</i>	2
Number of unsuspended custodial sentences by length (as principal offence, as predicate offence)	<i>n/a</i>	<i>n/a</i>	1

### **Asset Recovery**

<b>Judicial Phase</b>	<b>Year: 2021</b>	<b>Year: 2022</b>	<b>Year: 2023</b>
Number of seizing procedures (based on a court order)	<i>n/a</i>	39	110
Number of confiscation procedures	<i>n/a</i>	64	58

Number of requests received for seizing orders from another country	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
Value of seized assets	€ 14,238,163.89	€ 279,482.31	€ 1,349,911.93
Number of requests received for confiscation orders from another country	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
Value of confiscated assets	€ 772,819.42	€ 1,014,450.49	€ 130,646.31
Amounts recovered from assets	<i>n/a</i>	€ 44,507.20	€ 46,954.00
Amounts returned	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>

### 3.3.1 Short analysis

The statistics and the findings presented above highlight a notable insufficiency in confiscating illegal assets. This underscores the importance of submitting requests for the seizure and confiscation of assets in cases where assets are acquired through criminal activities. Prosecutors should place greater emphasis on asset confiscation as a powerful tool for combating corruption. It is crucial for them to apply the Law on Extended Powers for Confiscation of Assets to its fullest extent.

### 3.4 Information on Asset Recovery Case

There are no asset recovery cases linked to Kosovo included in the StAR Asset Recovery Watch Database.<sup>389</sup>

<sup>389</sup> StAR Initiative: StAR Asset Recovery Watch, <https://star.worldbank.org/asset-recovery-watch-database>.

## IV. Recent Developments

The fight against corruption was one of the main promises with which the Vetëvendosje Movement came to power in 2021. During the electoral campaign, the main slogan of the party was “Justice and Employment”. However, after three years of Kurti II Government, major reforms such as the vetting in the Justice System, the reform in the prosecutorial system, and the reform in the civil justice through the adoption of the Civil Code have not yet been implemented.<sup>390</sup>

Significantly, Kosovo still does not have a national Strategy for the Fight against Corruption and the public does not clearly know what path the Government will take to tackle corruption systematically. The absence of an anti-corruption strategy and the failure of the working group to draft a document based on the applicable law in Kosovo gives reasons to believe that the working group and the government itself do not act according to their competences and do not fulfill their obligations under the Government Program for fighting corruption.<sup>391</sup>

Due to the lack of results in the fight against corruption and the risks of political influence in the justice system, the development of the vetting process in the justice system is deemed necessary, as the Kosovo Law Institute has long recommended. The current government has taken several actions in this direction. The draft constitutional amendments have been evaluated by the Constitutional Court, which in principle has given the green light for the approval of these constitutional amendments.<sup>392</sup> However, the process of establishing the vetting system has stalled and there have been no further developments.

The prosecutorial system, as the institution with the most comprehensive mandate in the fight against corruption, has thus far exhibited a profound lack of accountability. One of the main reasons for this is, as the Venice Commission<sup>393</sup> described, the corporatist composition of the Prosecutorial Council of Kosovo, which consists of a vast majority of members chosen by the prosecutors themselves. For this reason, the reform of the Prosecutorial Council of Kosovo is necessary. This reform failed in the first instance, as the Constitutional Court declared unconstitutional the Law on Supplementing and Amending the Law on the Prosecutorial Council of Kosovo.<sup>394</sup> The second draft in the process of being developed was opposed by the Venice

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<sup>390</sup> KLI: “Kosovo without a strategy against corruption”, January 2024, [https://kli-ks.org/wp-content/uploads/2024/01/KLI\\_Kosovo-without-a-strategy-against-corruption\\_final\\_english.pdf](https://kli-ks.org/wp-content/uploads/2024/01/KLI_Kosovo-without-a-strategy-against-corruption_final_english.pdf), last accessed on April 1, 2024, pg. 4.

<sup>391</sup> Ibid.

<sup>392</sup> Constitutional Court judgement, [https://gjk-ks.org/wp-content/uploads/2024/01/ko\\_55\\_23\\_agj\\_shq.pdf](https://gjk-ks.org/wp-content/uploads/2024/01/ko_55_23_agj_shq.pdf), last accessed on April 1, 2024.

<sup>393</sup> European Commission for Democracy through law (Venice Commission) Kosovo opinion No. 1063/2021 on the draft amendments to the law on the prosecutorial council, December 2021, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)051-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)051-e), last accessed on January, 10, 2024, pg. 7.

<sup>394</sup> Constitutional Court Judgement, [https://gjk-ks.org/wp-content/uploads/2023/04/ko\\_100\\_101\\_22\\_agj\\_ang.pdf?fbclid=IwZXh0bgNhZW0CMTAAAR22YINIEQz66FWtC0DtzWiPxUYBKj067XdNuI5yRfX1XNuuk5HG5mdNU4\\_aem\\_AfirVkmUoxiZkoALOb9XflesM\\_PM-d5lZx5dqCqgZOctw-EMAIrA-KPFdEV-rVYt1PskWUI52bv3VRMt\\_ZlmfBWGL](https://gjk-ks.org/wp-content/uploads/2023/04/ko_100_101_22_agj_ang.pdf?fbclid=IwZXh0bgNhZW0CMTAAAR22YINIEQz66FWtC0DtzWiPxUYBKj067XdNuI5yRfX1XNuuk5HG5mdNU4_aem_AfirVkmUoxiZkoALOb9XflesM_PM-d5lZx5dqCqgZOctw-EMAIrA-KPFdEV-rVYt1PskWUI52bv3VRMt_ZlmfBWGL), last accessed on April 1, 2024.



Commission.<sup>395</sup> In sum, the advancement of the vetting process in the justice system and reforms within the Prosecutorial Council of Kosovo are considered the most critical reforms for the justice system and none of them have been realized thus far.

Kosovo is in the process of accession to the Council of Europe (CoE). On 1 May 2022, Kosovo submitted an application for the accession of the Republic of Kosovo to the CoE.<sup>396</sup> During April 2024, The Parliamentary Assembly of the Council of Europe (PACE) recommended that Kosovo be invited to become a member of the Council of Europe – while deciding to monitor its fulfilment of an extensive list of commitments and obligations as from its accession.<sup>397</sup> However, during May 2024, Kosovo's membership was not on the agenda of the council's foreign ministers meeting after some members had required Kosovo to create an association of Serb-majority municipalities in the country's north before a vote could take place.

Regarding legislation, the new Criminal Procedure Code entered into force in February 2023. The possibility of challenging decisions to indict, extending the investigation period, and public access to indictments during the initial review are some of the innovations of the new Criminal Procedure Code.<sup>398</sup>

In June 2023, the Law on the State Prosecutor entered into force. This Law does not present fundamental changes in the institutional structure of the State Prosecutor. In December 2023, Law No. 08/L-168 on the Special Prosecutor's Office entered into force. According to this Law, the Department for the Investigation of Corruption and Financial Crime is one of the departments of the Special Prosecutor's Office of the Republic of Kosovo.<sup>399</sup>

According to the 2023 European Commission Report on Kosovo, the Kosovo Police's Special Investigation Unit continued to operate with the same chain of command as its predecessor, the Special Anti-Corruption Task Force, abolished in 2020, and under a temporary legal mandate. The government must make sure that this police unit has a strong organizational and legal foundation and that it works well with the Prosecution Service. The Special Investigation Unit should continue to have enough investigative capability to effectively carry out its duties as part of the continuing reform of the police organization. In 2023, the Head of the Unit was relieved of his duties to be assigned to a different role. This shift raises several red flags. Maintaining the integrity of current

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<sup>395</sup> European Commission for Democracy through law (Venice Commission) Kosovo follow-up opinion No. 1149/2023 to the previous opinions concerning amendments to the law on the Kosovo prosecutorial council, December 15-16 2023, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)043-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)043-e), last accessed on March 10, 2024.

<sup>396</sup> Euronews, Kosovo takes 'historic step' towards joining Council of Europe, April 2023, <https://www.euronews.com/2023/04/25/kosovo-takes-historic-step-towards-joining-council-of-europe>, last accessed on 25 of April 2023.

<sup>397</sup> Council of Europe, PACE recommends that Kosovo\* becomes a member of the Council of Europe, April 2024, [https://www.coe.int/en/web/portal/-/pace-recommends-that-kosovo\\*-becomes-a-member-of-the-council-of-europe](https://www.coe.int/en/web/portal/-/pace-recommends-that-kosovo*-becomes-a-member-of-the-council-of-europe), last accessed on August 12, 2023.

<sup>398</sup> OathforJustice, "What are the innovations of the new Criminal Procedure Code", July 2022, <https://betimiperdrejtesi.com/cilat-jane-risite-e-kodit-te-ri-te-procedures-penale/>, last accessed on April 1, 2024.

<sup>399</sup> See Law No. 08/L-168 on the Special Prosecution Office, article 4.3.3.4.

investigations and ensuring the independence and impartiality of Kosovo Police's anti-corruption investigative capabilities are crucial to the fight against corruption.<sup>400</sup>

The VIII Legislature of the Assembly of Kosovo has seen significant public debate about the role of the Constitutional Court regarding its decisions. The government has faced frequent criticism for constitutional violations during policy and law approvals, while it has accused the opposition of hindering its program implementation by referring laws to the Constitutional Court, even though constitutional review improves the legal framework by enabling the avoidance of constitutional violations. This includes government statements questioning the Constitutional Court's integrity in decision-making, representing interference. According to the Constitutional Court, certain laws proposed by the government and approved by the Assembly did not comply with the governance structure and separation of powers, nor with values like equality before the law and the right to legal remedies and judicial protection, resulting in constitutional violations.<sup>401</sup>

In this context, in June 2024, the Constitutional Court found that two passed laws were not in compliance with the Constitution of the Republic of Kosovo. On June 26, 2024, the Constitutional Court invalidated the Law on the State Bureau for the Verification and Confiscation of Unjustified Assets in its entirety. The Court acknowledged that while the Law aimed to serve the legitimate public interest, it failed to strike a reasonable balance between the state's powers and individual rights. The Law was found to interfere with property rights, violating Article 7 (Values) of the Constitution, and infringing upon the principles of legal security and fundamental individual rights and freedoms.<sup>402</sup> The Ministry of Justice must undertake all required actions to initiate the drafting of a new law. The new legislation should fully comply with the Constitutional Court's ruling and incorporate all necessary provisions to ensure alignment with the constitutional requirements. The aim is to address the shortcomings identified by the Court and create a law that upholds the principles and values enshrined in the Constitution.

On June 27, 2024, the Constitutional Court annulled several articles of Law No. 08/L-180, which amended and supplemented Law No. 06/L-048 regarding the Independent Oversight Board for the Civil Service of Kosovo (IOVCSK), following a constitutional review. The court's decision highlighted that the enactment of this law restricts the role of the IOVCSK, undermines its constitutional authority, and introduces legal uncertainty and potential arbitrariness toward public officials. Consequently, the court found that specific provisions of the challenged law do not align with the Constitution, thereby infringing upon the principles of legal equality, access to legal recourse, fair and impartial judicial proceedings, and civil service integrity.<sup>403</sup>

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<sup>400</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, P. 27.

<sup>401</sup> Naim Jakaj, Constitutionality in Governance, 2023, <https://kli-ks.org/kushtetutshmeria-ne-qeverisje/>, last accessed on July 10, 2024, pg. 9.

<sup>402</sup> Notice of the decision in the case KO46/23 of the Constitutional Court, 2024, <https://gjk-ks.org/njoftim-per-vendim-ne-rastin-ko46-23/>, last accessed on June 28-, 2024.

<sup>403</sup> Notice for decision on case KO232/23 dhe KO233/23, <https://gjk-ks.org/njoftim-per-vendim-ne-rastin-ko232-23-dhe-ko233-23/>, last accessed on July 2, 2024.

The most recent developments in the period covered by this report pertain to those resulting from the Parliamentary Assembly of July 11, 2024:

- The updated Law on the Independent Media Commission was approved despite objections from civil society, the media, and the Council of Europe's expert report, which found that most of the law does not meet European standards. Furthermore, the adoption of this law by Kosovo Journalists Association is considered to be a blow to the freedom of the media and an attempt to discipline and control them.<sup>404</sup> KLI's analytical report argues that the new Law on IMC destroys the constitutional independence of this institution by completely politicizing it.<sup>405</sup> The constitutionality of this Law is being addressed by the Constitutional Court.<sup>406</sup> This was preceded in 2023 by the withdrawal of the business license to a major private broadcaster, where serious concerns were recently raised by international<sup>407</sup> and local organization and reports<sup>408</sup>, diplomatic representatives<sup>409</sup> and the media.<sup>410</sup> Since the legal procedures have been followed, the Court has decided on a temporary measure in favor of the private broadcaster and is expected to decide on the merits.<sup>411</sup>
- Draft Law No. 08/L-265 for the Register of Beneficial Owners, which had been approved in its first review in the Assembly in 2023 and was scheduled for a second reading approval in a plenary session, was withdrawn from the agenda to allow for further consultations. This decision was influenced by issues

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<sup>404</sup> See AJK, the approval of the IMC law: a blow to media freedom and an attempt to discipline and control them, 2024.

<sup>405</sup> KLI, "Politicization of IMC", July 2024, <https://kli-ks.org/wp-content/uploads/2024/07/Raporti-Politizimi-i-KPM-se-Analize-e-Liqjit-per-Komisionin-e-Pavarur-te-Mediave-1.pdf>, last accessed on August 12, 2024.

<sup>406</sup> Oath for Justice, KDP sends the Law on KPC, IMC and and UP Statute to the Constitutional Court, July 2024, <https://betimiperdrejtesi.com/pdk-ja-i-dergon-ne-kushtetuese-liqjin-for-kpk-in-kpm-in-and-the-statute-of-up-se/>, last accessed on August 12, 2024; Oath for Justice, "Even the DLK requests an evaluation from the Constitutional Court on the Law of the IMC, KPC and the UP Statute, July 2024, <https://betimiperdrejtesi.com/pdk-ja-i-dergon-ne-constitutional-law-for-the-CPC-in-the-CPC-in-and-the-statute-of-up-se/>, last accessed on August 12, 2024.

<sup>407</sup> International organizations such as: ARTICLE 19 Europe, European Center for Press and Media Freedom (ECPMF), European Federation of Journalists (EFJ), International Press Institute (IPI), OBC Transeuropa (OBCT), SafeJournalists Network, Reporters Without Borders (RSF), see links for more: <https://sinjali.com/cpi-per-rastin-e-klanit-heqja-e-certifikates-se-biznesit-eshte-mase-eksteme-ky-lloj-kercenimi-duhet-te-shmanget/>; <https://www.ecpmf.eu/klan-kosova-media-freedom-threat/>; [https://twitter.com/EUKosovo/status/1669628563635445760?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1669628563635445760%7Ctwgr%5Efed10f955c45b9daf4ed2445ef4c0d1628964947%7Ctwcon%5Es1\\_c10&ref\\_url=https%3A%2F%2Fbetimiperdrejtesi.com%2Fkpm-klan-kosova-ne-afat-prej-30-ditesh-te-plotesoje-dokumentacionin-e-nevojshem-per-mbajtjen-e-licences-se-transmetimit-2%2F](https://twitter.com/EUKosovo/status/1669628563635445760?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1669628563635445760%7Ctwgr%5Efed10f955c45b9daf4ed2445ef4c0d1628964947%7Ctwcon%5Es1_c10&ref_url=https%3A%2F%2Fbetimiperdrejtesi.com%2Fkpm-klan-kosova-ne-afat-prej-30-ditesh-te-plotesoje-dokumentacionin-e-nevojshem-per-mbajtjen-e-licences-se-transmetimit-2%2F); <https://klankosova.tv/organizatat-nderkombetare-per-lirine-e-medias-pershendesin-vendimin-e-komerciales-per-klan-kosoven/>, last accessed on June 28, 2024.

<sup>408</sup> See European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Kosovo Report 2023, pg. 33.

<sup>409</sup> See link:

[https://twitter.com/GermanAmbKOS/status/1669615626011254786?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1669615626011254786%7Ctwgr%5Efed10f955c45b9daf4ed2445ef4c0d1628964947%7Ctwcon%5Es1\\_c10&ref\\_url=https%3A%2F%2Fbetimiperdrejtesi.com%2Fkpm-klan-kosova-ne-afat-prej-30-ditesh-te-plotesoje-dokumentacionin-e-nevojshem-per-mbajtjen-e-licences-se-transmetimit-2%2F](https://twitter.com/GermanAmbKOS/status/1669615626011254786?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1669615626011254786%7Ctwgr%5Efed10f955c45b9daf4ed2445ef4c0d1628964947%7Ctwcon%5Es1_c10&ref_url=https%3A%2F%2Fbetimiperdrejtesi.com%2Fkpm-klan-kosova-ne-afat-prej-30-ditesh-te-plotesoje-dokumentacionin-e-nevojshem-per-mbajtjen-e-licences-se-transmetimit-2%2F), last accessed on June 28, 2024.

<sup>410</sup> See link: <https://www.gazetaexpress.com/heqja-e-licences-per-klan-kosoven-nxjerr-gazetaret-ne-shesh/>, last accessed on June 28, 2024.

<sup>411</sup> See OathforJustice, The second instance of Commercial rejects the appeal of MINT, the decision of the first instance in the "Klan Kosova" case is confirmed, 2023.

highlighted in the draft law, including the contentious matter of including NGOs as beneficiaries.<sup>412</sup>

- The Assembly of the Republic of Kosovo approved the new law for the Prosecutorial Council of Kosovo (KPC), addressing criticism by the Venice Commission among others of the previous law being corporatist,<sup>413</sup> especially regarding the KPC's composition and lack of accountability. The opposition, however, has announced that it will send the law to the Constitutional Court to be reviewed for its constitutionality.<sup>414</sup>

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<sup>412</sup> Assembly of Republic of Kosovo, 2024, <https://www.kuvendikosoves.org/shq/punesimi/per-publikun/lajmi/kuvendi-vazhdoi-punimet-e-seances-plenare-35628/>, last accessed on July 10, 2024.

<sup>413</sup> See European Commission for Democracy through law (Venice Commission) Kosovo opinion No. 1063/2021 on the draft amendments to the law on the prosecutorial council, December 2021.

<sup>414</sup> See KDP, we will sent in the Constitutional Court the law for KPC and IMC, 2024.

## V. Recommendations

These are the recommendations for priority actions to improve the implementation of the UNCAC in Kosovo:

1. Immediately finalize the State Strategy against Corruption.
2. Adequately implement the Law on Declaration, Origin, and Control of Assets and Gifts.
3. Promote the implementation of Constitutional Court decisions.
4. Promote transparency in cases of draft law approval.
5. Immediately implement the legislation and awareness-raising of campaign finance regulations.
6. The Central Election Commission should ensure thorough oversight over political parties and campaign financing.
7. Courts shall impose sanctions for the non-declaration of asset cases in compliance with the Criminal Code of the Republic of Kosovo provisions.
8. Public and private institutions shall adopt and implement internal whistleblowing procedures and integrity plans.
9. The government and Assembly shall approve the new law on public procurement.
10. Contracting authorities should fully utilize all modules of e-procurement to maximize its effectiveness.
11. The National Audit Office of the Republic of Kosovo should strictly adhere to its designated powers to avoid interfering with the independence of the justice system.
12. Public institutions shall comply with their obligations arising from the legislation for access to public documents.
13. Political actors must stop using inflammatory language that incites hatred and promotes assaults on the media industry and non-governmental organizations.
14. Involve the public in the legislative processes in compliance with the Regulation on Rules of Procedure of the Government of the Republic of Kosovo.
15. The government should give due consideration to the recommendations of NGOs during the drafting process of domestic legislation.
16. Political actors shall stop interfering in the independence of the judicial and prosecutorial system.
17. Prioritize promptly charging senior officials for corruption offenses if suspected, regardless of their tenure status to enhance the effectiveness of prosecuting high-profile corruption cases.
18. The judiciary should consistently apply supplementary punishments mandated by the Law in cases where guilty verdicts are issued instead of treating them as discretionary.
19. The government and Assembly shall approve the new law on business organizations.
20. Further strengthen audit oversight structures to ensure comprehensive execution of their mandate.
21. Amend the Law on money laundering and terrorism financing.
22. Train prosecutors and judges regarding money laundering cases.
23. Prosecutors shall systematically apply the Law on Extended Powers for Confiscation of Assets when dealing with corruption cases.

24. Enhance the capacities of the Financial Intelligence Unit to effectively combat money laundering.
25. Carry out a financial analysis before the adoption of the relevant legislation, with the aim of allocating adequate budgets to the relevant institutions for the fulfillment of their duties.
26. Prosecutors handling corruption cases should conduct investigations that adhere more closely to criminal procedures rather than resembling administrative inquiries.

## VI. Annex

### 6.1 Table on Freedom of Information Requests

Identification number	Institution	Date of request	Date of answer	Information requested	Information provided
<b>RAPD-1/24</b>	Information and Privacy Agency	April 19, 2024	April 26, 2024	Statistical data on the decisions of the IPA on the access to public documents requests	<b>Complete Response</b> – Information provided through email
<b>RAPD-2/24</b>	Agency for the Prevention of Corruption	April 19, 2024	April 25, 2024	Data on the declaration of assets, conflict of interest and whistleblowing cases, and the handling of these cases by the APC	<b>Complete Response</b> – Information provided through email
<b>RAPD-3/24</b>	Financial Intelligence Unit	May 11, 2024	June 10, 2024	Data on money laundering investigations.	<b>Complete Response</b>
<b>RAPD-4/24</b>	Agency for Administration of Seized and Confiscated Property	May 11, 2024	May 20, 2024	Data on the value of seized and confiscated assets.	<b>Complete Response</b>
<b>RAPD-5/24</b>	Kosovo Prosecutorial Council	May 11, 2024	May 14, 2024	Criminal charges data on money laundering.	<b>Partial Response</b>
<b>RAPD-6/24</b>	Kosovo Judicial Council	May 11, 2024	May 13, 2024	Data on money laundering cases and sanctions imposed.	<b>Partial Response</b>

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