



The failure of the Justice Reform

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1. Executive summary

“Justice and employment” was motto and closure of the actual ruling party Lëvizja Vetvendosje during the pre-election campaign. The promises and political orientation through which the ruling party ran in the 2021 elections, the governing program and the victory with more than 50% of the votes of the electorate during elections on February 14, 2021, increased the expectations of citizens for substantial justice reform.

Whereas Vetting process and fight against corruption were the main political promise through which actual government came into power, none of them happened into practice. Government failed to convince Venice Commission that full Vetting is necessary in Kosovo, as such the Venice Commission recommend partial vetting. However, neither the partial Vetting was not implemented. Additionally, the same process did not start although Constitutional Court (here in after CC) assessed that the constitutional amendment regarding the proposed Vetting process was in accordance with the Constitution. Regarding fight against corruption during its mandate the government did not achieve to adopt Anti-Corruption Strategy, by raising public question whether the Government itself knew or not the path through which it would build the political will to undertake actions to prevent and fight corruption within its powers and responsibilities.

The government promised and made efforts to extinguish corporatism within the Kosovo Prosecutorial Council (hereinafter: KPC), to reform this institution. However, the CC established that the Assembly violated the constitution in the case of the KPC reform. Likewise, the Venice Commission, through legal opinions, established that the government proposal to reform the prosecutorial system violated the principles of the rule of law and paved the way for the politicization of the KPC. There were not missing also public reactions from international partners expressing disagreement with the way the Ministry of Justice (hereafter: MOJ) managed this process. Numerous experiments and delays caused this reform to be prolonged. The government and the parliamentary majority the lack of results compensated through unprecedented attacks against CC, judicial and prosecutorial systems.

The draft law on the Bureau was characterized as a non-transparent process which did not meet the requirements for minimal consultation. The approval of this Draft Law for the second time, through a faster procedure, without public debate within two readings, raises the perception of the use of this Law for electoral purposes. The same law was considered unconstitutional several times by the CC and the Venice Commission because it did not meet the standards of the rule of law and the principles that ensure human rights and freedoms.

MOJ has also failed to finalize the process related to the draft laws that emerge from the joint declaration of commitments, leaving the judiciary without laws that are extremely necessary for the quality of justice and the accountability of the justice system.

The Government inherited a very important process of the Functional Review of the Rule of Law Sector. Based on this process, government adopted Rule of Law Strategy 2021-2026. However, the government failed also in this very important process by failing to review the same and without adopting the action plan of the said strategy for 2024.

As such the government during its four year mandate failed completely to reform justice system by not achieving any progress in this regard. In contrary, they risked regress in judicial reform through drafting unconstitutional policies and laws by causing serious concerns.

2. The Great Promise: Reform in justice

The years 2021-2024 based on domestic and international reports were characterized by a lack of results in the fight against high-profile corruption, limited progress in the fight against organized crime, negative assessments regarding the performance of the justice system, numerous scandals within the system of justice and the failure of the internal mechanisms of the justice system to increase accountability. The Republic of Kosovo it's functioning for more than two years with Acting Chief State Prosecutor and with the lack of will of the KPC to address this issue despite the recommendations of the European Commission (hereafter: EC) through country reports for Kosovo in two consecutive years. Over the years, it has been repeatedly emphasized that Kosovo has an adequate legal framework, but that the lack of implementation of laws is problematic. The ruling party that leads the government came to power with the big promise of deep reform in the justice system. The current Prime Minister summed up his pre-election campaign with two (2) words: Justice and employment.

The ruling party program through which competed during 2021 elections, promised deep reform in the justice system. This included full vetting in the justice system and vetting at the top levels of the Kosovo Police¹. Promising commitment in the fight against corruption, the program assured to increase the resources of the justice system.

"We will focus on fighting crime and corruption" stated the Program of the Government of the Republic of Kosovo 2021-2025. Additionally, through this program, the Government promised that it would continuously engage in the reform of criminal, civil and administrative justice, which we intend to achieve through the change of policies and the relevant legal framework. The vetting process was also part of the governmental program.²

Thus, justice was the main electoral campaign that the current Government came to power. Hence, based on the pre-election promises given and the highest election result achieved ever in Kosovo elections by one political party, the Government had built high expectations for substantial reforms in the justice system.

The promises remained on paper and were not fulfilled. Kosovo lost four years and reforms in the justice system have remained in the status quo. The much-promised vetting has stalled in the Assembly of Kosovo due to the lack of votes to pass this very important process, the reform

¹ The election program of LVV, "(Eng: Priorities for all citizens TOWARDS the future)"; pp. 27 and 35; February 2021: <https://www.vetevendosje.org/wp-content/uploads/2024/08/Prioritetet-per-KREJT-qytetaret-Drejt-se-ardhmes.pdf>, (Last accessed on 7 December 2024).

² "The Program of the Government of the Republic of Kosovo 2021 – 2025"; pp. 5 and 12; May 2021, (See link: <https://masht.rks-gov.net/wp-content/uploads/2022/06/Programi-i-Qeverise-se-Kosoves-2021-2025.pdf>), (Last accessed on December 7, 2024).

of the prosecutorial system also and the Civil Code has remained in the drawers same as the Anti-Corruption Strategy.

3. Great Failure: Justice reform

The actual government came into power not to address eventual legal problems. The same came into power with the promise for substantial reforms in justice. Exactly, what are the needs of the society.

Unfortunately, none of this was achieved. Through almost four-year mandate, the government functioned without Anti-Corruption Strategy, additionally, there were serious obstacles in implementing the Rule of Law Strategy. Vetting process was not initiated, KPC reform was not achieved, whereas the way how the Law on Bureau was addressed raised serious suspicions that the same was used for electoral purposes.

With regard, to the Vetting process, although it was promised that the same will happen during this mandate, the same did not even start. Additionally, the government failed to convince the Venice Commission to conclude the overall vetting process for all judges and prosecutors.

CC³ found that the Assembly violated the Constitution during the process of KPC reform. In two opinions, Venice Commission⁴ identified numerous issues. The experiments and continuous delays impacted that the reform to be prolonged. Government instead of self-reflection they started unprecedented attacks against CC and judicial and prosecutorial systems.

The draft law on the Bureau was characterized as a non-transparent process that did not meet the minimum public consultation requirements. The approval of this Draft Law for the second time, through a fast procedure and without proper public debate within two readings in Kosovo Assembly sessions, raises the public perception of the use of this Law for electoral purposes. The same law was contested several times both by the CC and the Venice Commission.⁵

The MOJ has also failed to complete the process regarding the Draft Laws that emerge from the joint declaration of commitments. Which had impact in the judiciary which was left without

³ Judgment in cases no. KO100/22 and KO101/22 - Assessment of the constitutionality of Law No.08/L-136 on Amending and Supplementing Law No.06/L-056 on the Prosecutorial Council of Kosovo; paras. 32–34; Prishtina, April 5, 2023. (See link: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=71948>). (Last accessed on December 7, 2024).

⁴ Venice Commission, “Opinion on the Draft Amendments to the Law on the Prosecutorial Council”; Approved by the Venice Commission at its 129th Plenary Session; Venice, December 10–11, 2021. (See link: [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 December 7, 2024).

Venice Commission, “Follow-Up Opinion to the Previous Opinions Concerning Amendments to the Law on the Kosovo Prosecutorial Council”; Approved by the Venice Commission at its 137th Plenary Session; Venice, December 15–16, 2023. (See link: [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 December 7, 2024).

⁵ Judgment of the Constitutional Court in case KO46/23 - Assessment of the constitutionality of Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustifiable Assets; Prishtina, July 29, 2024. (See link: https://gjk-ks.org/wp-content/uploads/2024/07/ko_46_23_agj_shq.pdf). (Last accessed on December 7, 2024).

extremely necessary laws, the absence of which has negative effects in relation to the quality of justice and the accountability of judges and prosecutors.

As never before, the Constitutional Court annulled a significant number of laws passed as unconstitutional, while in many draft laws, even KLI itself identified constitutional violations. Thus, contrary to the sense of certainty that justice should feel in its relationship with the Government, which came to power with promises of justice, the justice system itself has often been called into question. This has occurred through the adoption of laws that are not in compliance with the Constitution and laws that undermine legal certainty.

The government is finalizing its mandate without Anti-Corruption Strategy. It is paradox the approach of the government who came into power to fight corruption, whereas during the four year mandate did not achieve to adopt the said Strategy.

The same situation it is also with the RLS by not paying the attention that the same deserves, by failing to implement it into practice based on the objectives and aim that the same was adopted. We are speaking for very important document which was derived from the Functional Review of the Rule of Law Sector (here in after: FRRLS) which was inherited by current government.

During Anti-Corruption Week 2023, KLI stated that: “We have in power a government which based on our analysis on last three years it is evident that it had very ordinary policy making, nothing extraordinary. In no occasion we do not see that justice reform is functioning or any other reform in other fields”. However, new analysis a year later, when the current government its in the last months of its mandate we can conclude that the level of the reforms addressed are even under the evaluation of the “ordinary policymaking”⁶.

Other important laws adopted by the government and Kosovo Assembly during this mandate were legal initiatives inherited from the previous governments. Such as the Criminal Procedure Code, Law on Commercial Justice, Law on Anti-Corruption Agency, Law on Declaration, Origin and Control of Assets and Gifts of Senior Public Officials, etc. As such, with regard of the reform of the justice system, except the Law on Administrative Court, there was no major legal initiative that ended successfully by the current government.

The issue of justice reform was also criticized by the European Commission Report for Kosovo. According to the report, " the delays and struggle to jointly design justice reforms in line with the March 2023 joint commitment statement indicates a recurring lack of willingness to strengthen the justice system. Consultations on these reforms and on amendments to the law on the KPC were rushed and did not ensure a meaningful review. Despite strong EU advice, the Venice Commission was not consulted by the government and Assembly on the final

⁶ “Fillon “Java Kundër Korrupsion 2023”, diskutohet për reformën në sistemin e drejtësisë”; Instituti i Kosovës për Drejtësi; Prishtinë, 5 dhjetor 2023; (See link; <https://kli-ks.org/fillon-java-kunder-korrupsion-2023-diskutohet-per-reformen-ne-sistemin-e-drejtises/>); (Qasur për herë të fundit më 7 dhjetor 2024)..

amendments to the law on the KPC and on the other key reforms. This negatively affected the quality of legislation and its alignment with European standards.⁷

4. Vetting in Justice and Police

Based on the findings identified by KLI during the monitoring and research process, since 2012, KLI has requested the development of the vetting process in the justice system.

Except the Government's promise to fight corruption, the development of the vetting process was one of the main electoral promises of this government. The election program of the Levizje Vetvendosje, with which they ran in the 2021 elections, emphasized that "An integral and necessary part of the justice system is the independent, impartial, integrity and efficient judiciary. To achieve this, the highest hierarchical levels of the justice system, and not only, will be subject to the vetting process".⁸ This commitment was also given in the Program of the Government of the Republic of Kosovo 2021-2025.⁹

In October 2021, the Government of the Republic of Kosovo approved the Concept-Document for the Development of the vetting process in the justice system. This concept document was defined in the vetting model through constitutional changes that enables vetting by an ad-hoc body, whereas the continuous assessment of performance, integrity and assets of the judges and prosecutors within the KJC and KPC¹⁰.

With regard to the deadlines provided for the development of the Vetting process adopted by government from the time adopted until now, it was supposed that the same to be in very advanced phase. Based on the adopted plan by now Vetting process was supposed to be finalized for judges and prosecutors of the highest instances in judiciary, whereas currently was supposed to be in progress for judges and prosecutors in basic level.¹¹

While according to the Concept-Document by now we should have entered towards the end of the vetting process, whereas the reality in practice is diametrically opposite: Vetting has not started. In the constitutional and legal sense, this process did not start yet.

In October 2021, the head of the EU office at that time, Tomas Szunyog, also declared about the different points of view they had been addressed regarding the vetting process, stating that

⁷ "Raporti për Kosovën 2024"; fq. 26; Komisioni Evropian; Bruksel, 30.10.2024; (See link: https://neighbourhood-enlargement.ec.europa.eu/document/download/c790738e-4cf6-4a43-a8a9-43c1b6f01e10_en?filename=Kosovo%20Report%202024.pdf). (Qasur për herë të fundit më 7 dhjetor 2024).

⁸ Programi zgjedhor i LVV-së, "Prioritet për krejt qytetarët DREJT së ardhmes", fq. 27, shkurt 2021, (See link: <https://www.vetevendosje.org/wp-content/uploads/2024/08/Prioritetet-per-KREJT-qytetarët-Drejt-se-ardhmes.pdf>), (Qasur për herë të fundit më 7 dhjetor 2024).

⁹ "Programi i Qeverisë së Republikës së Kosovës 2021 – 2025", fq. 12, maj 2021, (See link: <https://masht.rks-gov.net/wp-content/uploads/2022/06/Programi-i-Qeverise-se-Kosoves-2021-2025.pdf>), (Qasur për herë të fundit më 7 dhjetor 2024).

¹⁰ "Koncept dokumenti për zhvillimin e procesit të Vetingut në systemin e drejtësisë", fq. 287, shtator 2021, (See link: <https://kryeministri.rks-gov.net/wp-content/uploads/2022/05/Koncept-dokument-per-Zhvillimin-e-procesite-vetingut-ne-sistemin-e-dre....pdf>). (Qasur për herë të fundit më 7 dhjetor 2024).

¹¹ Po aty, fq.257-286.

they have no problems with the Kosovo government in terms of the justice system. He had emphasized that they simply require coordination and consultation.¹²

Challenged with the failure to carry out vetting in practice, the Government of the Republic of Kosovo has even failed to convince the Venice Commission that in Kosovo there is a need to develop vetting for all actors of the justice system, as it had promised to do. In June 2022, the Venice Commission publishes the opinion regarding the concept document for the vetting of judges and prosecutors and draft constitutional amendments. According to the Venice Commission, "From the Concept Paper it is not sufficiently clear why a general vetting of all judges and prosecutors establishing ad hoc vetting bodies is needed if an important part of the problem is related to inefficient application of and gaps in the legislation on existing bodies." In this opinion, the Venice Commission emphasized that "the draft constitutional amendments prepared under Option 5, even in their revised and shortened version, go too far by proposing a vetting process for all judges and prosecutors; constitutional amendments, where necessary, should only provide for integrity checks for members of the Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC), court presidents, and chief prosecutors."¹³ Thus, the government failed to convince the Venice Commission that a vetting process for all judges and prosecutors is needed. Consequently, the Venice Commission emphasized that the vetting process should be limited to members of the KJC and KPC, court presidents, and chief prosecutors.

Despite the government's failure to convince the Venice Commission of what it had promised, a vetting process limited to institutional leaders cannot be considered useless. In fact, in certain aspects and cases, this type of vetting is seen as having significant advantages compared to a full-scale vetting of all judges and prosecutors.

A vetting process limited to the leaders of the justice system focuses on verifying members of the justice system who are mandated to enhance accountability within the rest of the system. Following this type of vetting, trust in the internal mechanisms of the justice system would be strengthened, ensuring accountability for the remaining judges and prosecutors.

A partial vetting process is more predictable and significantly easier to manage. This process requires the evaluation of fewer than 50 actors within the justice system, most of whom are not directly involved in handling specific cases. As a result, this process would proceed more quickly and would not impact the administration of justice.

In September 2022, the government submitted the vetting process file to the Assembly.¹⁴ On March 2, 2023, the Speaker of the Assembly referred the draft constitutional amendments to the Constitutional Court for review. In January 2024, the Court determined that, with one

¹² "Szunyog: BE s'ka probleme me Qeverinë, kërkjëm më shumë koordinim për reformën në drejtësi", Telegrafi; 29 tetor 2021; See link: <https://telegrafi.com/szunyog-ska-probleme-qeverine-por-kerkojme-shume-koordinim-per-reformen-ne-drejtési/>; (Qasur për herë të fundit më 7 dhjetor 2024)

¹³ Venice Commission, "Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and Draft Amendments to the Constitution: Kosovo," paras. 123–126, Venice, June 17–18, 2022, adopted at the 131st plenary session (See link: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)011-e)), (Qasur për herë të fundit më 7 dhjetor 2024).

¹⁴ https://gjk-ks.org/wp-content/uploads/2024/01/ko_55_23_agj_shq.pdf - par.42

exception, that the draft constitutional amendments do not infringe on the human rights guaranteed under Chapter II of the Constitution of the Republic of Kosovo.¹⁵

Thus, the Constitutional Court gave the green light for the adoption of the draft constitutional amendments, establishing the constitutional basis for implementing the vetting process within the justice system. However, this never happened: the draft amendments remained drafts and were never approved. So, the vetting process never even began.

a. Silence on the Police Vetting Process

In a report published in 2018, the Kosovo Law Institute (KLI) emphasized that "[i]n this dire situation, which appears hopeless, it is imperative for Kosovo to take concrete steps toward initiating the vetting process in the Police, Prosecutor's Office, and Courts."¹⁶ In this report, KLI highlighted the necessity of conducting a vetting process within the Kosovo Police as well.

This promise was also made by the ruling party, which, in its 2021 election program, emphasized that "the upper leadership levels of the police will undergo the vetting process"¹⁷ and "we will implement a vetting process for the justice system and institutions of public order and security."¹⁸ Regarding the development of the vetting process within the Kosovo Police, the Concept Document for Developing the Vetting Process in the Justice System stated: "Since "vetting" in the Kosovo Police, the Kosovo Police Inspectorate, the Kosovo Intelligence Agency (KIA), and other institutions falls outside the competence of the Ministry of Justice, the development of this process within these institutions is the responsibility of the relevant institutions."¹⁹

However, no relevant institution ever addressed this issue further. Despite the pressing need for vetting within the Kosovo Police and promises that it would occur, the Government of the Republic of Kosovo silently abandoned this initiative, failing to take any action to advance the vetting process in the Kosovo Police.

¹⁵ Judgment of the Constitutional Court in case KO55/23 - Assessment of the proposed constitutional amendments, referred by the Speaker of the Assembly of the Republic of Kosovo on March 2, 2023, para. 6; Pristina; January 25, 2024; (See link: https://gjk-ks.org/ep-content/uploads/2024/01/ko_55_23_agj_shq.pdf); (Last accessed on December 7, 2024).

¹⁶ "Vetting Without Alternative (Analysis of the 'Capture' of the Police, Prosecution, and Judiciary by Politics and Interest Groups in Kosovo)," Kosovo Law Institute and Columbus Institute; p. 45; Pristina; December 2018; (See link: <https://kli-ks.org/wp-content/uploads/2019/01/3.-Vetingu-pa-alternative.pdf>) (Last accessed on December 7, 2024).

¹⁷ The electoral program of The Self-determination Movement, "Priority for All Citizens: FORWARD to the Future," p. 35, February 2021, (See link: <https://www.vetevendosje.org/wp-content/uploads/2024/08/Prioritetet-per-KREJT-qytetaret-Drejt-se-ardhmes.pdf>), (Last accessed on December 7, 2024).

¹⁸ The "Program of the Government of the Republic of Kosovo 2021–2025," p. 18, May 2021, (See link: <https://masht.rks-gov.net/wp-content/uploads/2022/06/Programi-i-Qeverise-se-Kosoves-2021-2025.pdf>), (Last accessed on December 7, 2024).

¹⁹ "Concept Document for the Development of the Vetting Process in the Justice System," p. 52, September 2021, (See link: <https://kryeministri.rks-gov.net/wp-content/uploads/2022/05/Koncept-dokument-per-Zhvillimin-e-procesit-te-vetingut-ne-sistemin-e-dre....pdf>), (Last accessed on December 7, 2024).

5. The reform in KPC

Through its lack of transparency and accountability, KPC has entrenched a culture of impunity within its ranks. Despite its constitutional and legal role, this institution has failed to fulfill its responsibilities, contributing to a lack of transparency and accountability.

Operating with a corporatist mindset, the KPC's processes for recruiting and promoting prosecutors have been challenged for nearly a decade.²⁰ The KPC has equated violations of the right to life with a mere 30% salary reduction²¹, failed to ensure a merit-based process for selecting the new Chief State Prosecutor,²² etc.

In this context, reform in the KPC is essential for the justice system's institutions. For years, Kosovo's prosecutorial system has failed to meet the needs of Kosovar society, given its role. It has not produced tangible results in combating high-profile corruption and has often been embroiled in scandals to which it has not provided adequate responses.

Throughout its mandate, the Kurti II Government has sought to implement reform in Kosovo's prosecutorial system. Although, the Draft Law on Amending and Supplementing the Law on the KPC has been approved for the second time, it has yet to take effect due to its referral for review by the CC.²³

Under Law No. 03/L-224 on the Kosovo Prosecutorial Council, which was adopted in 2010 and is now repealed, the KPC consisted of nine (9) members, five (5) of whom were prosecutors.²⁴ This composition lasted until January 1, 2016, when the number of KPC members increased to 13, favoring prosecutors. According to the amended law, the KPC will now consist of 13 members, ten (10) of whom will be from the prosecutorial system.²⁵ The currently effective Law No. 06/L-056 on the Kosovo Prosecutorial Council has maintained this composition.²⁶

²⁰ "A Decade of Systematic Violations by the KPC", *Betimi për Drejtësi*, September 21, 2024. (See link: <https://betimiperdrejtesi.com/betimi-per-drejtesi-374-dekada-e-shkeljeve-sistematike-te-kpk-se/>). (Last accessed on December 7, 2024).

²¹ "The Constitutional Court Found That Sebahate Morina's Right to Life Was Violated, KPC Settles for a 30% Salary Reduction for Prosecutor Hava Krasniqi", *Betimi për Drejtësi*, January 30, 2024. (See link: <https://betimiperdrejtesi.com/kushtetuesja-konstatoi-se-i-ishte-shkelur-e-drejta-per-jete-sebahate-morines-kpk-mjaftohet-me-30-ulje-te-pages-per-prokuroren-hava-krasniqi/>). (Last accessed on December 8, 2024).

²² IKD, GLPS, and FOL, "The Integrity of the Selection Process for the Chief State Prosecutor", March 2022. (See link: https://kli-ks.org/wp-content/uploads/2022/03/IKD-GLPS-FOL_Raporti-Final_Procesi-per-Kryeprokuror-te-Shtetit1.pdf). (Last accessed on December 7, 2024).

"IKD, FOL, and INPO: KPC should urgently announce a new competition for the Chief State Prosecutor", March 4, 2024. (See link: <https://kli-ks.org/ikd-fol-dhe-inpo-kpk-te-shpalle-sa-me-pare-konkursin-e-ri-per-kryeprokuror-te-shtetit/>). (Last accessed on December 7, 2024).

²³ KDP Sends the Laws on KPC, IMC, and the Statute of UP to the Constitutional Court"; *Betimi për Drejtësi*; July 18, 2024; (See link: <https://betimiperdrejtesi.com/pdk-ja-i-dergon-ne-kushtetuese-ligjin-per-kpk-ne-kpm-ne-dhe-statutin-e-up-se/>). (Last accessed on 7 December 2024).

²⁴ Law No. 03/L-224 on the Kosovo Prosecutorial Council, article 5

²⁵ Law No. 05/L-035 on Amending and Supplementing Law No. 03/L-224 on the Prosecutorial Council of Kosovo; Article 3, para 1

²⁶ Law No. 03/L-224 on the Kosovo Prosecutorial Council, article 9, para 1

In relation to the current composition of the Kosovo Prosecutorial Council, the Venice Commission emphasized that: "The current KPC is almost entirely composed of prosecutors, and as such, it is prone to the risk of corporatism. Furthermore, in Kosovo, most of the prosecutorial members of the KPC come from lower-level prosecutorial offices. It is entirely natural that, even in the absence of a formal hierarchical connection, they may be perceived as voting together with their higher-level colleagues, particularly with the Chief State Prosecutor. As some NGOs have testified, this is how the KPC has functioned in the past." For this reason, the Venice Commission highlighted that reducing the percentage of prosecutorial members could help combat the corporatist tendency of this body, or the perception of such a tendency. However, this reform should not result in the subjugation of the KPC to the government majority of the Assembly of the Republic of Kosovo.²⁷ The issue of the corporatist composition of the KPC, although not explicitly named as such in this particular case, was also addressed during the Functional Review of the Rule of Law Sector process.²⁸

On October 26, 2021, after drafting the draft law for amending and supplementing the Basic Law, the Ministry of Justice submitted it to the Venice Commission. Following the first Opinion of the Venice Commission in February 2022, the government drafted and approved the second version of the draft law for amending and supplementing the Basic Law. On February 25, 2022, the government requested a second Opinion from the Venice Commission to ensure that the final draft of the draft law amending and supplementing the Basic Law had addressed the observations and recommendations of the first Opinion. On March 9, 2022, the government approved the draft law for amending and supplementing the Law on the KPC.²⁹ On March 22, 2022, the Venice Commission published its second opinion on the draft law.³⁰ On June 23, 2022, the Assembly approved the Law on Amending and Supplementing the Law on the KPC. According to this law, the KPC will consist of seven (7) members: four (4) prosecutors and three (3) non-prosecutors.³¹

On July 1, 2022, the Democratic Party of Kosovo (DPK) and Democratic League of Kosovo (DLK) submitted the Law on Amending and Supplementing the Law on the KPC to the Constitutional Court for review. Nine (9) months later, on April 5, 2023, the Constitutional

²⁷ Ibid, para 27

²⁸ Accountability Document, p. 41-42

²⁹ Judgment in cases no. KO100/22 and KO101/22 – Assessment of the constitutionality of Law No. 08/L-136 amending and supplementing Law No. 06/L-056 on the Prosecutorial Council of Kosovo; para. 32 – 34; Pristina, April 5, 2023; (See link: https://gjk-ks.org/ep-content/uploads/2023/04/ko_100_101_22_agj_shq.pdf); (Accessed last on December 7, 2024).

³⁰ Venice Commission, "*Opinion on the revised draft amendments to the Law on the Prosecutorial Council*"; Adopted by the Venice Commission at the 130th Plenary Session; Venice, March 18 – 19, 2022; (See link: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)006-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)006-e)) (Accessed last on December 7, 2024).

³¹ Judgment in cases no. KO100/22 and KO101/22 – Assessment of the constitutionality of Law No. 08/L-136 amending and supplementing Law No. 06/L-056 on the Prosecutorial Council of Kosovo; p. 34; Pristina, April 5, 2023; (See link: : https://gjk-ks.org/ep-content/uploads/2023/04/ko_100_101_22_agj_shq.pdf); (Accessed last on December 7, 2024).

Court determined that the law was not in compliance with the Constitution of the Republic of Kosovo, fully annulling the law.³²

Following the CC's decision, which completely rejected the Law on the Prosecutorial Council, the Minister of Justice, Albulena Haxhiu, held a press conference in which she stated that the Constitutional Court prioritized the individual interests of the KPC members over the public interest.³³ This statement was seen as an intervention in the work of the CC.³⁴

After the CC's decision, the Government entered into experiments that jeopardized the independence of the KPC. On July 12, 2024, the Government of Kosovo approved a new version of the Draft Law on the KPC, which increased the number of members to 19 by 2026, contrary to the initial goal of reducing their numbers. The new changes included the inclusion of members elected by the Assembly, which represented the politicization of the institution and a violation of the Constitution, the Rule of Law Strategy, and the opinions of the Venice Commission. The KLI and the FOL Movement criticized the draft law for undermining the independence of the KPC and for the risk of decision-making blockages, emphasizing that these solutions did not reflect a genuine reform and had neglected recommendations for a more balanced and independent structure.³⁵

In the opinion published on December 18, 2023, regarding the new Draft Law on the KPC,³⁶ the Venice Commission did not support the new changes regarding the temporary increase in the number of KPC members to 19 until January 2026. These changes were proposed in the new version of the Draft Law on the KPC after modifications made by the Ministry of Justice.³⁷ Following this opinion, the Government and the Assembly shifted their approach, opting for a model of gradually reducing the number of prosecutorial members in the KPC. The new Law on Amending and Supplementing the Law on the KPC was approved by the Assembly on July 11, 2024.³⁸

The approval of the Law on the KPC also sparked reactions from international partners. The German Ambassador to Kosovo, Jorn Rohde, stated that the Government of Kosovo had

³² Ibid, dispositive.

³³ "Minister of Justice: For the Constitutional Court, the interest of some members of the KPC is more important than the general interest"; Betimi për Drejtësi, March 25, 2023; (See link: <https://betimiperdrejtesi.com/ministrja-e-drejtisesise-per-gjykatën-kushtetuese-me-i-rendesishem-interesi-i-disa-aretareve-te-kpk-se-se-sa-interesi-i-pergjithshem/>); (Last accessed on 7 December 2024).

³⁴ "Interventions in the justice system through public statements," Kosovo Institute for Justice, Pristina; December 2023; (See link: <https://kli-ks.org/p-content/uploads/2023/12/Nderhyrjet-ne-sistemin-e-drejtisesise-permes-deklaratave-publike-1-1.pdf>); (Accessed last on December 7, 2024).

³⁵ <https://kli-ks.org/ikd-dhe-fol-projektligji-i-ri-politizim-objektiv-i-keshillit-prokurorial-te-kosoves/>

³⁶ Opinion

³⁷ "KLI and FOL: The new draft law, an objective politicization of the Prosecutorial Council of Kosovo"; Kosovo Institute for Justice; Pristina; July 17, 2023; (See link: <https://kli-ks.org/ikd-dhe-fol-komisioni-i-venecias-siperkrahu-ndryshimet-e-md-se-per-rritjen-e-perkohshme-te-aretareve-te-kpk-se-ne-19-deri-ne-janar-te-vitet-2026/>); (Last accessed on 7 December 2024).

³⁸ "The Assembly approves the draft law on the Prosecutorial Council, despite criticism from the EU"; Dukagjini, July 11, 2024; (See link: <https://www.dukagjini.com/kuvendi-miraton-projektligjin-per-kpk-ne-perkunder-kritikave-nga-be-ja/>); (Last accessed on 7 December 2024).

ignored the recommendations of the EU, the European Commission, and the OSCE regarding two draft laws, one of which was the law on the KPC.

The EU also expressed concerns, emphasizing that despite their ongoing advice and support provided to the government and relevant parliamentary committees, their comments had not been taken into account, including those related to increasing the pluralism and independence of the Election Commission to ensure alignment with European standards.³⁹

This issue is also highlighted in the 2024 Progress Report for Kosovo. The report states that the law failed to align with European standards and that the authorities failed to consult the Venice Commission on the final draft, despite the repeated advice from the EU.⁴⁰

Despite the withdrawal, the Government's experimentation with the reform of the KPC had its cost. While the Government intervened in the work of the Constitutional Court, which took nine months to issue a ruling on the Law on Amending and Supplementing the Law on the KPC, it took the Government and the Assembly more than 15 months to address the findings of the CC.

The new Law on the KPC, which aims to gradually reduce the number of KPC members, was also sent by the opposition for review by the CC.⁴¹ Currently, the CC is examining the constitutionality of this draft law, which will remain suspended until the court makes its decision.

Thus, although the Assembly has approved the Law on Amending and Supplementing the Law on the KPC for the second time, this law has not yet entered into force because its constitutionality is being examined for the second time by the Constitutional Court. Therefore, during this government's mandate, the KPC reform has still not been implemented.

6. Confiscation of unjustifiable assets

The establishment of mechanisms for the civil confiscation of unjustifiable assets was one of the objectives of the Government⁴². However, throughout its entire mandate, the Government has ultimately not managed to establish this system, which consists of the approval and entry

³⁹ <https://www.dukagjini.com/kuvendi-miratton-projektligjin-per-kpk-ne-perkunder-kritikave-nga-be-ja/>

⁴⁰ "Kosovo Report 2024"; p. 26; European Commission; Brussels, October 30, 2024; (See link: https://neighbourhood-enlargement.ec.europa.eu/document/download/c790738e-4cf6-4a43-a8a9-43c1b6f01e10_en?filename=Kosovo%20Report%202024.pdf). (Last accessed on 7 December 2024)..

⁴¹ "KDP sends laws on ICM, KPC, and UP Statute to the Constitutional Court"; Radio Evropa e Lirë; July 18, 2024; (See link: <https://www.evropaelire.org/a/pdk-kushtetuese-ligje-kpm-kpk-33041705.html>); (Last accessed on 7 December 2024). "DLK sends laws on ICM, KPC, KJC, and UP Statute to the Constitutional Court", Albanian Post; July 19, 2024; (See link: <https://albanianpost.com/ldk-ja-i-dergon-ne-kushtetuese-ligjet-per-kpm-ne-kpk-ne-dhe-statutin-e-up-se/>); (Last accessed on 7 December 2024).

⁴² The Program of the Government of the Republic of Kosovo 2021–2025", p. 13, May 2021, (See the link): <https://masht.rks-gov.net/wp-content/uploads/2022/06/Programi-i-Qeverise-se-Kosoves-2021-2025.pdf>, (Last accessed on 7 December 2024).

into force of the Law on the State Bureau for the Verification and Confiscation of Unjustifiable Assets (onward: the Law on the Bureau).

During its mandate, the need for the approval of this Law has been continuously contested, procedural rules have been violated, a myriad of problems have been identified by the Venice Commission, and it has been declared unconstitutional. While, the second approval by the Assembly raises suspicions about the use of this Law for electoral purposes.

Initially, it should be emphasized that in no instance has the Government managed to sufficiently justify the need for establishing a system of civil confiscation, as in the present case. The civil confiscation system refers to a system focused on the assets rather than the person. The Law on the Bureau aims to establish a special Bureau for the verification of the assets of public officials, which, in cases where it encounters suspicions of unjustifiable assets, refers the case to the Court.

The new confiscation system has been repeatedly stated to be, among other things, the result of the lack of adequate results in the field of confiscation of unjustifiable assets. In this context, the Government has never adequately clarified whether the existing mechanisms have failed, and what the guarantee is that a third mechanism will not fail as well.

Furthermore, according to the Law on the Bureau, cases initiated by the Bureau will be handled in court. The Government has never managed to prove the paradox of how it is possible to expect results from a judiciary that is considered to have so many shortcomings that a vetting process is needed. However, even in the absence of reasoning on these issues, the Government continued its efforts to pass the Law on the Bureau.

In December 2021, the Government approved the Draft Law on the Bureau. This approval was made by violating the minimum public consultation rules. These rules were violated with the justification that this law needed to be approved within 2021⁴³.

In March 2022, the Speaker of the Assembly sent this Draft Law for evaluation to the Venice Commission. In June of the same year, the Venice Commission issued its opinion regarding this matter the Draft Law found a myriad of problems⁴⁴. Despite this, the Draft Law was not withdrawn by the Ministry of Justice and it was stated that the findings of the Venice Commission would be addressed during the two readings in the Assembly⁴⁵. In December

⁴³ "Confiscation of Unjustified Wealth: Legal Issues of the Current Draft Law"; p. 6; Kosovo Law Institute; Pristina, January 2022; (See link: https://kli-ks.org/wp-content/uploads/2022/01/IKD_Raporti_Konfiskimi-i-Pasurise-se-pajustificueshme-problemet-juridike-te-projektligjit-aktual-19.01.2022.pdf). (Last accessed on 7 December 2024).

⁴⁴ Venice Commission, "Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and Draft Amendments to the Constitution: Kosovo," Venice, 17–18 June 2022, approved in the 131st Plenary Session, (See link): [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)011-e), (Last accessed on December 7th, 2024). (Last accessed on 7 December 2024).

⁴⁵ "Haxhiu: "We will not withdraw the Bureau from the Assembly, the reaction of the KPC is unprecedented"; Indeksonline; July 2, 2022; (See link: <https://indeksonline.net/%E2%80%8Bhaxhiu-byrone-nuk-e-terheqim-nga-kuvendi-i-paprecedente-reagimi-i-kpk-se/>); (Qasur për here të fundit më 7 dhjetor 2024). (Last accessed on 7 December 2024).

2022, the Venice Commission published a follow-up opinion, highlighting that the Assembly still had recommendations to address⁴⁶. After the work in the Assembly was developed, in March 2023, the Venice Commission published another follow-up opinion, stating that the recommendations given had been implemented⁴⁷.

February 9, 2023, the Assembly adopted the Law on the Bureau. This Law was subjected to a constitutional review by the Constitutional Court. After 17 months, the Constitutional Court found that the Law on the Bureau was not in accordance with the Constitution, ruling to annul it as unconstitutional⁴⁸.

In September 2024, the Government adopted the new Draft Law on the Bureau⁴⁹. Even in this case, the Government violated the minimum rules regarding the public consultation process, deciding not to conduct any public consultations for this Draft Law. This was also highlighted in the European Commission Report for Kosovo, which states, among other things, that the Assembly should ensure that consultations take place before the law's adoption, to ensure compliance with European standards⁵⁰.

Undoubtedly, this Law should have undergone public consultations. Initially, the Rules of Procedure of the Government of the Republic of Kosovo⁵¹ are mandatory in this case as well, and they do not contain any provision that exempts the Government from this obligation. On the other hand, although the CC found violations in only a few constitutional articles, it seems that the Government did not take this into account. the significance of these issues: These issues identified by the Constitutional Court were so problematic that the Court decided to annul the Law entirely because of them. For this reason, even in this case, the Government acted contrary to the minimum rules of public consultations, excluding the inclusivity in the drafting and adoption of this Draft Law.

The exclusion of relevant stakeholders and the public in relation to the Draft Law on the Bureau continued in the Assembly. For nearly three (3) months, this Draft Law was not reviewed by

⁴⁶ Venice Commission; "Kosovo follow-up opinion to the opinion on Draft Law No. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets (CDL-AD(2022)014)"; para. 34; Approved by the Venice Commission at its 133rd Plenary Session; Venice; December 16-17, 2022. (See link: [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)); (Last accessed on 7 December 2024).

⁴⁷ Venice Commission; "Kosovo follow-up opinion to the opinion on the Draft Law No. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets (CDL-AD(2022)052)"; Presented by the Venice Commission at the 134th Plenary Session; Venice; March 10-11, 2023; (See link: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2023\)008-bil](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2023)008-bil)); (Last accessed on 7 December 2024)..

⁴⁸ Judgment of the Constitutional Court in case KO46/23 - Assessment of the constitutionality of Law No. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets; Prishtina, July 29, 2024; (See link: https://gjk-ks.org/wp-content/uploads/2024/07/ko_46_23_agj_shq.pdf); (Last accessed on 7 December 2024)..

⁴⁹ "The Government approves the amended Draft Law for the Bureau for the Confiscation of Unjustified Assets; Pristina, September 11, 2024; (See link: <https://betimiperdrejtesi.com/qeveria-miraton-projektligjin-e-ndryshuar-per-byrone-per-konfiskimin-e-pasurise-se-pajustificueshme/>); (Accessed for the last time on December 7, 2024).

⁵⁰ Report on Kosovo 2024"; page 39; European Commission; Brussels, 30.10.2024; (See link: https://neighbourhood-enlargement.ec.europa.eu/document/download/c790738e-4cf6-4a43-a8a9-43c1b6f01e10_en?filename=Kosovo%20Report%202024.pdf) (Accessed for the last time on December 7, 2024).

⁵¹ Regulation

the Assembly. However, on December 5, 2024, it was decided that this Draft Law be adopted through an expedited procedure, without allowing work between the two readings, so that on the same day, the Assembly adopted the Law on the Bureau in both readings⁵².

This approach by the Assembly in relation to the Bureau shows an open tendency by the Government and the Assembly to exclude interested parties and the public from involvement in the drafting of this Law. In the case of the first Draft Law, the Government had violated provisions related to public consultations, while in the second case, these provisions were not applied at all. Meanwhile, the Assembly adopted the Law on the Bureau in both readings on the same day, without allowing space for interested parties and the public.

The actions of the Government and the Assembly concerning the Law on the Bureau, where the Draft Law in question was not discussed for nearly three months and then adopted in both readings on the same day, create the perception of using the Law on the Bureau as a tool for electoral purposes rather than an action aimed at advancing the rule of law in Kosovo.

Regarding the Law adopted by the Assembly on December 5, 2024, authorized parties have the opportunity to challenge this Law again in the CC.

7. Joint Declaration of Commitments

In order to continue the justice reform, the Ministry of Justice, the Kosovo Judicial Council, the Supreme Court, and the State Prosecutor signed the Joint Declaration of Commitments on March 14, 2023⁵³. Among other things, the declaration emphasized that these institutions are committed to continuing the justice reform through joint work for the assessment, conceptualization, and drafting of legal initiatives with the common goal of clarifying, complementing, amending, and strengthening the legal framework in several areas. The areas for which the heads of institutions had agreed to carry out reforms were related to performance assessment, the recruitment, appointment, and reappointment process, the disciplinary system, the verification process for judges and prosecutors, professional development, strengthening mechanisms for asset declaration for judges and prosecutors, the status of judges and prosecutors, drafting the law for civil servants in the judiciary administration, implementing recommendations from the TAIEX Mission for combating organized crime and corruption, etc.

Six (6) working groups were established for the scanning and evaluation of laws in the justice system. At the end of January 2024⁵⁴, a draft report summarizing the reports of the working

⁵² The draft law for the Bureau is also approved in the second reading, with 62 deputies voting in favor"; Betimi për Drejtësi; December 5, 2024; (See link (Shih linkun: <https://betimiperdrejtesi.com/miratohet-edhe-ne-lexim-te-dyte-projektiligji-per-byrone-votojne-pro-62-deputete/>); (Last accessed on 7 December 2024).

⁵³ The Working Group for Justice Reform held its next meeting." Ministry of Justice. January 31, 2024. (See the link:<https://www.facebook.com/MinistriaeDrejtësisë/posts/pfbid02CgNiWkntZHBYCFWHTECv9Q8cvASdXnkDSMT2XJq6hrvvyvynMZUxkRG4Prd1Pc8JUKI>). (Last accessed on 7 December 2024).

⁵⁴ "The Working Group for Justice Reform held its next meeting." Ministry of Justice. January 31, 2024. (See the link:<https://www.facebook.com/MinistriaeDrejtësisë/posts/pfbid02CgNiWkntZHBYCFWHTECv9Q8cvASdXnkDSMT2XJq6hrvvyvynMZUxkRG4Prd1Pc8JUKI>). (Last accessed on 7 December 2024).

groups was presented through a workshop⁵⁵. After this draft, another workshop was held on February 14, 2024, where discussions were held regarding the concept documents⁵⁶. The joint meetings between the signatories of the declaration continued until March 20, 2024, when representatives of the judicial and prosecutorial systems left the workshop, disagreeing with the drafts of the project laws and laws brought by the Ministry of Justice (MJ)⁵⁷. Moreover, the KPK issued a public statement criticizing the Ministry of Justice for a non-collaborative approach and failure to adhere to the Joint Declaration of Commitments. The KPK also reacted to the biased language used by the Deputy Minister of Justice⁵⁸.

Since the signing of the Joint Declaration of Commitments, approximately 21 months have passed. From the goal that the reform in justice would be carried out by the Ministry of Justice (MJ) together with the heads of the High Judicial(HJC), and Prosecutorial Council (PC) and the Kosovo Prosecutorial Council (PCK), the Ministry of Justice(MJ), has ended up alone in its attempt for justice reform. However, even on its own, it has not implemented this reform.

On the contrary, the draft laws published inadequately for public⁵⁹ consultations represented a myriad of constitutional violations. Regarding the Draft Law for the Amendments and Supplements to Law 06/L-057 on the Disciplinary Responsibility of Judges and Prosecutors, KLI found that the Ministry of Justice (MJ), only referred to the draft amendments, which were not approved and as a result, are not part of the Constitution, also mixed disciplinary responsibility with criminal responsibility, etc⁶⁰.

Constitutional violations were also identified in the Draft Law on Recruitment, Performance Evaluation, Integrity Control, Advancement, and the Status of Judges and Prosecutors. The

⁵⁵ Note: No representative from the prosecutorial system participated in this workshop held on January 31, 2024.

¹⁵ The work of the Working Group for Justice Reform continues." Ministry of Justice. February 14, 2024. (See the link:<https://www.facebook.com/MinistriaeDrejtisesise/posts/pfbid029vboUFccMMJjk8DQyAGA7rvVUGCmBupVdziGhGCqH5Y2MZik7TqdZLPakn4usrE11>). (Last accessed on 7 December 2024).

⁵⁶ The first drafts of the documents arising from the Joint Declaration of Commitments are discussed." Ministry of Justice. March 20, 2024. (See the link: <https://www.facebook.com/MinistriaeDrejtisesise/posts/pfbid0XbPgFn1BTi6G16SSLggCC8g1RFj6g815jZtKtwCxbN7z1XcSaPMBXp688VwLE8JDI>). (Accessed for the last time on June 29, 2024)

⁵⁷ The first drafts of the documents arising from the Joint Declaration of Commitments are discussed." Ministry of Justice. March 20, 2024. (See the link: <https://www.facebook.com/MinistriaeDrejtisesise/posts/pfbid0XbPgFn1BTi6G16SSLggCC8g1RFj6g815jZtKtwCxbN7z1XcSaPMBXp688VwLE8JDI>). (Last accessed on 7 December 2024).

⁵⁸ Response of the Kosovo Prosecutorial Council," Prosecutorial System. March 21, 2024. (See the link: <https://www.facebook.com/share/p/ut3fXgZkRMcqGYcB/>). (Accessed for the last time on June 29, 2024).

⁵⁹ "Problems of the Justice Reform – (Analysis of the Four Draft Laws Arising from the 'Joint Declaration of Commitments'); p. 12; Kosovo Justice Institute; Pristina, July 2024; (See the link: <https://kli-ks.org/wp-content/uploads/2024/07/PROBLEMET-E-REFORMES-NE-DREJTESI-Analize-e-kater-Projektligjeve-qe-dalin-nga-Deklarata-e-Perbashket-e-Zotimeve.pdf>); (Qasur për herë të fundit më 7 dhjetor 2024).

⁶⁰ Accountability (Constitutional and Legal Issues of the Current Draft Law)"; Kosovo Justice Institute; Pristina; July 2024; (See the link: <https://kli-ks.org/wp-content/uploads/2024/07/Llogaridhenia-Problemet-kushtetuesedhe-ligjore-te-Projektligjit-aktual-1-1.pdf>).

KLI found that this draft law also referred to constitutional amendment drafts, left prosecutors without immunity, contained discriminatory provisions, etc⁶¹.

There were also issues in other draft laws, some of which aimed at politicizing the process of verifying officials in the Integrity Verification Units for Judges and Prosecutors, politicizing the Academy of Justice, etc²¹.

After the public consultation phase, which ended on July 2, 2024, the Ministry of Justice did not proceed with the approval of these draft laws. However, the Ministry of Justice sent these draft laws for assessment to the Venice Commission.

Thus, despite the commitment to develop the reform together with the institutions of the justice system, the Ministry of Justice remained alone in this process. In fact, even alone, it failed to complete these extremely important draft laws related to the judiciary. Moreover, the drafts published for public consultation contained numerous constitutional violations and other issues.

Thus, despite the commitment to develop the reform together with the institutions of the justice system, the Ministry of Justice remained alone in this process. In fact, even alone, it failed to complete these extremely important draft laws related to the judiciary. Moreover, the drafts published for public consultation contained numerous constitutional violations and other issues.

Therefore, the Government of the Republic of Kosovo failed to approve six (6) extremely important draft laws for the justice system, leaving the justice system unreformed.

8. Strategic failure

"The character of planning reflects the character of governance," would state the head of the Government at an event⁶². According to this phrase used by the Prime Minister himself, in the field of the rule of law, the governance character turns out to be extremely problematic.

In terms of strategic planning, Kosovo does not have an Anti-Corruption Strategy, the adoption of which the Government has failed to implement. By inheriting the RFSSL Process, the Government has adopted the Rule of Law Strategy 2021-2026. However, the Government's inaction has rendered the Strategy unimplemented in practice. Due to poor planning, four (4) years later, legal issues that could have been addressed at the beginning of the mandate still

⁶¹ Integrity of Judges and Prosecutors (Constitutional and Legal Issues of the Current Draft Law); Kosovo Justice Institute; Pristina; July 2024; (See the link: <https://kli-ks.org/wp-content/uploads/2024/07/Integriteti-i-gjyqtareve-dhe-Prokuroreve-Problemet-kushtetuese-dhe-ligjore-te-Projektligjit-aktual-6.pdf>) (Last accessed on 7 December 2024).

⁶² Kurti: Social transformation cannot be achieved without careful planning"; Koha; October 25, 2021; (See link; <https://www.koha.net/arberi/kurti-transformimi-shoqeror-nuk-arrihet-pa-planifikim-te-kujdesshem>); (Last accessed on 7 December 2024).

persist. Working in two directions, simultaneously, on the same Law should not reflect good governance if assessed against the criterion of proper planning.

But, the Government's inaction has paralyzed this Strategy. Due to poor planning, four (4) years later, there are still legal issues that could have been addressed at the beginning of the mandate. Working in two directions simultaneously, for the same Law, should not indicate good governance, based on the criterion of planning character.

These issues will be addressed in the continuation of this report.

a. Kosovo without an Anti-Corruption Strategy

Fighting corruption has been one of the main promises with which the Self-Determination Movement came to power. "Justice and Employment" was the main slogan of this party during the electoral campaign. Despite the fact that the Kurti II Government proclaimed the fight against corruption as its main goal, at the end of its governing mandate, Kosovo still does not have an Anti-Corruption Strategy, and the public still does not know what path the Government will take in relation to fighting corruption within the competences and responsibilities that this government holds in preventing and combating corruption.

The absence of this Strategy during the governing mandate and the failure of the working group to draft a document based on applicable law in Kosovo, which does not interfere with the independence and integrity of independent institutions, builds the conviction that both the government and the working group have serious problems understanding their competences and fulfilling the obligations arising from the Government's Program for combating corruption. In fact, the absence of this Strategy shows that during the mandate, the Government itself was not clear on the path it should follow in fighting corruption.

The Law No. 08/L-017 on the Agency for Prevention of Corruption came into force in August 2022. The national strategy and action plan against corruption, in accordance with Article 24 of this Law, are drafted and approved by the Government of the Republic of Kosovo. Meanwhile, the implementation of the Anti-Corruption Strategy is monitored by the Agency for Prevention of Corruption.

The Government of the Republic of Kosovo, in the meeting held on February 22, 2023, made a decision to establish structures for drafting the National Anti-Corruption Strategy and the Action Plan. This structure consisted of the Ministerial Committee, the Coordinator, and the Working Group. The working group included key state actors, including independent agencies and other institutions as needed. According to this decision, the working group was to draft the Strategy by December 1, 2023.

During the drafting of the National Anti-Corruption Strategy and the 2023-2026 Action Plan (hereinafter: Draft Strategy), the KLI participated in all meetings to which it was invited and also submitted written comments, aiming to contribute to the development of a Strategy that addresses the need to combat corruption. Despite this, the narrative of the Draft Strategy

became known to the KLI only during the meeting on November 7, 2023. During that meeting, it was initially stated that it was the final meeting regarding this Draft Strategy. The KLI provided its comments at this meeting and also submitted them in writing. The KLI never received a response regarding how these comments were addressed.

The deadline for the approval of the Anti-Corruption Strategy, December 1, 2023, was not respected. Nevertheless, the working group continued its work, and the KLI participated in the meetings of this group whenever invited. In fact, the KLI expressed its support by drafting one of the chapters of this Strategy. Again, the KLI never received any response regarding how its comments and the drafted chapter were addressed.

Thus, the Government continued to remain silent in the face of its fundamental task: the approval of the Anti-Corruption Strategy. Although the approval of the Strategy remains a legal obligation, its approval now holds no meaning. The Strategy is supposed to be a strategic document that plans actions for a specific area. The approval of this document at a time when the Government is nearing the end of its mandate would clearly be seen as an action for electoral purposes. This is because such a Strategy would normally have no meaning if approved about two (2) months before the date of the general elections.

On the other hand, the drafts presented by the working group contained issues that could be considered unprecedented in the history of Kosovo. These drafts included problems related to the way certain conceptual issues were addressed. One such issue was related to the monitoring of the work of the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) by the Constitutional Court, or the mixing of concepts related to the beneficial owner and media ownership. Despite the fact that the Draft Strategy emphasized the need to focus only on those segments that could be addressed by government mechanisms and tools, the drafts contained issues that fall under the competence of the institutions within the justice system.

Furthermore, in many cases, the drafts contained factual inaccuracies. One example is when it is stated that there are no provisions requiring responses regarding the outcome of criminal complaints, or the absence of provisions related to the beneficial owner, etc. Another example is when it is stated that some issues will be addressed through the Criminal Records Law, which then includes issues that have nothing to do with this law. Additionally, although a strategic document is supposed to focus on the future in terms of the objectives it aims to achieve, the drafts presented included issues that were already concluded.⁶³

As mentioned, the absence of the Anti-Corruption Strategy highlights the fact that the Government itself was not aware of the path it needed to follow in this area, despite the fight against corruption being one of the main promises of the current Government. On the other hand, the issues expressed in the accepted Draft Strategies bring us inevitably to the need to assess the two (2) issues, neither of which should be considered acceptable: between the

⁶³ Kosovo without an Anti-Corruption Strategy (The Government's Failure to Approve the Anti-Corruption Strategy and the KLI's Comments on the Draft Anti-Corruption Strategy); Kosovo Institute for Justice; Pristina, January 2024; (See the link: https://kli-ks.org/wp-content/uploads/2024/01/IKD_Kosova-pa-Strategji-kunder-Korrupsion-final.pdf); (Last accessed on 7 December 2024).

problem of the lack of an Anti-Corruption Strategy and the problems contained in the presented drafts, unfortunately, it can be said that it is better for Kosovo to have no Strategy at all than to have, as presented, a Strategy that undermines the foundations of the construction of Kosovo's constitutional system.

b. Rule of Law Strategy

The current Government of the Republic of Kosovo inherited exceptionally good work from previous governments: the Functional Review Process of the Rule of Law Sector (hereinafter: FRPRL). FRPRL is one of the largest initiatives for advancing the rule of law in Kosovo. This was also noted in the 2020 Progress Report, where FRPRL was considered a solid foundation for the reform of the judicial system. The FRPRL process resulted in a strategy and action plan for the rule of law, documents which were approved by the Government of Kosovo on August 11, 2021. The Rule of Law Strategy and the Action Plan outlined the activities that should be implemented by the relevant institutions.⁶⁴

Thus, part of this strategy was also its Action Plan for the years 2021-2023. The Action Plan included specific activities, elaborated in detail the strategic and specific objectives, actions, responsible institutions, the financial cost for implementation, as well as the indicators.⁶⁵ However, this plan expired at the end of 2023.

Firstly, it should be emphasized that the Rule of Law Strategy (RLS) itself has determined that the mid-term review of the Action Plan should be done "...no later than the beginning of 2024...". In any interpretation, the beginning of the year could be considered no later than the end of March of the respective year, or the completion of the first quarter. According to this logic, the mid-term review of the Strategy should have been completed by March 31, 2024.⁶⁶

This obligation of the Strategy has not been fulfilled. As a result, the Rule of Law Strategy has been left without an Action Plan. The RLS, in the way it has been structured, is not automatically enforceable without an Action Plan that specifically lists the activities that institutions should carry out to implement the objectives set by the RLS. Thus, the failure to

⁶⁴ "(Non) Implementation of the Rule of Law Strategy in Practice"; p. 11; Kosovo Institute for Justice; October 2023; (See the link: <https://kli-ks.org/wp-content/uploads/2023/10/Mos-Zbatimi-i-Strategjise-se-Sundimit-te-Ligjit-ne-Praktike-1.pdf>); (Last accessed on 7 December 2024).

⁶⁵ Rule of Law Strategy, p. 41.

⁶⁶ "Strategy at a Crossroads (Monitoring Report on the Implementation of the Rule of Law Strategy and the Action Plan)"; pp. 11-12; Kosovo Institute for Justice; June 2024; (See the link: <https://kli-ks.org/wp-content/uploads/2024/06/STRATEGJIA-NE-UDHEKRYQ-Raporti-i-monitorimit-te-Strategjise-per-Sundimin-e-Ligjit-dhe-Planit-te-Veprimit.pdf>); (Last accessed on 7 December 2024).

conduct the mid-term review of the SSL and the failure to approve the new Action Plan has paralyzed the RLS, leaving it as a valid document with nothing to implement.⁶⁷

On October 1, 2024, the Ministry of Justice published for public consultation the Draft Mid-Term Review of the Rule of Law Strategy (RLS) 2021-2026. The public consultation process regarding this plan was closed on October 21, 2024. The KLI submitted its comments on this draft.⁶⁸

However, to date, the Government has not approved the new Action Plan. As a result, throughout 2024, the RLS has not been implementable. This approach by the Government has cost the RLS an entire year, which, in terms of time, represents a 20% loss of the period in which the RLS should be implemented. This approach fundamentally undermines the effectiveness of the RLS and even risks affecting the activities that should be determined in the following years.

This was also emphasized in the 2024 European Commission Report for Kosovo, which states that Kosovo has a Rule of Law Strategy for 2021-2026, but the Action Plan for 2024-2026 has been delayed.⁶⁹

Thus, in relation to the RLS, the Government failed strategically by not approving the document that brings the RLS to life—the Action Plan. In this way, throughout 2024, the Government's inaction paralyzed the RLS, a very important document emerging from the FRPRL.

On the other hand, even in terms of the implementation of the 2021-2023 Action Plan, the KLI identified numerous problems, including violations of the RLS, inaccurate reporting on the implementation of the RLS, etc.⁷⁰

c. Paradoxical Planning

In several cases, the lack of adequate planning by the Government led to actions that reflected paradoxical planning. One such case was when, while the draft law on amending and supplementing the Law on the Kosovo Prosecutorial Council (KPC) was being reviewed in the

⁶⁷ Ibid

⁶⁸ **Public Consultation "Mid-term Review of the Rule of Law Strategy 2021-2026"**; December 7, 2024; (See the link: <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=42621>); ((Last accessed on 7 December 2024).

⁶⁹ "Kosovo Report 2024"; p. 26; European Commission; Brussels, 30.10.2024; (See the link: https://neighbourhood-enlargement.ec.europa.eu/document/download/c790738e-4cf6-4a43-a8a943c1b6f01e10_en?filename=Kosovo%20Report%202024.pdf). (Last accessed on 7 December 2024).

⁷⁰ "(Non) Implementation of the Rule of Law Strategy in Practice"; Kosovo Institute for Justice; October 2023; (See the link: <https://kli-ks.org/wp-content/uploads/2023/10/Mos-Zbatimi-i-Strategjise-se-Sundimit-te-Ligjit-ne-Praktike->); (Accessed for the last time on December 7, 2024). "Strategy at a Crossroads (Monitoring Report on the Implementation of the Rule of Law Strategy and the Action Plan)"; Kosovo Institute for Justice; June 2024; (See the link: <https://kli-ks.org/wp-content/uploads/2024/06/STRATEGJIA-NE-UDHEKRYQ-Raporti-i-monitorimit-te-Strategjise-per-Sundimin-e-Ligjit-dhe-Planit-te-Vepimit.pdf>); (Last accessed on 7 December 2024).

Assembly, the amendment of the same law was also part of the treatment under the reform according to the joint declaration.⁷¹

The Ministry of Justice (MJ) had initiated amendments to the Law on the Kosovo Prosecutorial Council (LKPC). This draft law was published on October 26, 2020, on the Public Consultation Platform. According to this draft law, only one article of the LKPC would be amended. Welcoming the proposed amendment from the MJ, the KLI submitted a 12-page document outlining the needs for changes and additions to the LKPC. These comments came after the KLI identified practical challenges in the implementation of the LKPC, based on monitoring this draft law closely through the filing of disciplinary complaints. These needs for advancing the LKPC were ignored by the MJ, both under the leadership of Mr. Selimi and under the leadership of Mrs. Haxhiu. The latter sent the draft law with only one amendment for Government approval, ignoring all concerns raised by the KLI. The draft law, with just one amendment, was approved by the Government on April 21, 2021, and was subsequently passed by the Assembly and entered into force on November 5, 2021.

Thus, the need for reforming the accountability system for judges and prosecutors, through the amendment and supplementation of the LKPC, was evident even at that time. However, the Ministry of Justice (MJ) ignored all these needs, fulfilling only the Legislative Agenda in a formal manner, but not addressing the real issues of the Law on Disciplinary Accountability of Judges and Prosecutors. As a result, since the adoption of the Law on Amending and Supplementing the LKPC until today, more than three (3) years have passed, and the law in question has not been reformed. Throughout this time, the disciplinary system for judges and prosecutors has been incomplete due to the lack of reform in this law. For example, during all this time, there has been no mechanism for appealing decisions made by the competent authorities.⁷²

9. Non-prioritization of the Judiciary Budget

In the program through which the ruling party campaigned in the 2021 elections, it committed to providing financial support and strengthening the institutions of the justice system. Among other things, this document emphasizes: “Our government will demonstrate commitment in the fight against organized crime and corruption, and in this regard, human and professional capacities will be increased in the Special Department within the Basic Court in Pristina and the Court of Appeals. This will be made possible through financial support for the justice system in order to meet their needs... Along with assessing the needs within the judiciary system, considering its importance, the government will increase the capacity of the Special Prosecution... Similarly, human and professional capacities will also be increased in

⁷¹ "Problems of Justice Reform – (Analysis of Four Draft Laws Arising from the 'Joint Declaration of Commitments')"; p. 14; Kosovo Institute for Justice; Pristina, July 2024; (See the link: <https://kli-ks.org/wp-content/uploads/2024/07/PROBLEMET-E-REFORMES-NE-DREJTESI-Analize-e-kater-Projektligjeve-qe-dalin-nga-Deklarata-e-Perbashket-e-Zotimeve.pdf>); (Qasur për herë të fundit më 7 dhjetor 2024)

⁷² "Accountability (Constitutional and Legal Problems of the Current Draft Law)"; p. 10; Kosovo Institute for Justice; Pristina, July 2024; (See the link: <https://kli-ks.org/wp-content/uploads/2024/07/Llogaridhenia-Problemet-kushtetuese-dhe-ligjore-te-Projektligjit-aktual-1-1.pdf>); (Qasur për herë të fundit më 7 dhjetor 2024).

departments for organized crime, corruption, and financial crimes within the Special Prosecution... The number of prosecutors in the Special Prosecution and their professional collaborators, in relation to the cases handled by this prosecution, is very small.”⁷³

However, in terms of the budget, the government has not prioritized the judiciary. Despite the fact that, according to the law, each judge⁷⁴ and prosecutor⁷⁵ is supposed to have a professional collaborator, the justice system still lacks sufficient budgetary resources for this. The government has not responded to any of the budgetary requests from the Kosovo Judicial Council (KJC) regarding the draft budget for 2024, which included requests for additional budgetary resources for new judges, translators, etc. In many cases, the Parliament has been satisfied with the approval of these laws, but has not allocated sufficient funds to ensure their practical implementation. This is the case with the adoption of the new Criminal Procedure Code and the Law on the Commercial Court.⁷⁶

From 2021 to 2024, the budget for the justice system has steadily increased. Compared to 2021, the budget for 2024 is 6,612,318 euros higher. However, the overall increase in government spending according to the budget laws has not been reflected proportionally in the judiciary. In 2021 and 2022, the judiciary's share of the total government expenditures was 1.2%. On the other hand, this percentage decreased to 1.1% in 2023 and 2024. Similarly, when compared to budgetary expenditures for central institutions, the share of the judiciary's budget in 2024 is lower compared to 2022.⁷⁷

From 2021 to 2024, the budget for the Prosecutorial Council has increased by 2,824,339 euros. Despite the overall increase in expenditures, in 2021, the Prosecutorial Council's share of the total general budget expenditures did not exceed 0.7%, while this percentage has decreased to 0.5% for 2024.

Thus, alongside the failure to reform the justice system, the government and the parliament did not treat justice as a priority in their budget.

⁷³ "The electoral program of The Self-determination Movement, 'Priorities for all citizens TOWARDS the future,' p. 28-29, February 2021, (See the link: <https://www.vetevendosje.org/wp-content/uploads/2024/08/Prioritetet-per-KREJT-qytetaret-Drejt-se-ardhmes.pdf>), (Last accessed on 7 December 2024).

⁷⁴ article

⁷⁵ article

⁷⁶ 'Justice with the citizen at the center to scale up investment in what works to achieve SDG 16.3 in Kosovo'; p. 15-24; Kosovo Institute for Justice; September 2024; (See the link: <https://kli-ks.org/wp-content/uploads/2024/09/Drejtësia-me-qytetarin-ne-qender-%E2%80%93-per-te-shkallezuar-investimin-ne-ate-ge-funksionon-per-ta-realizuar-OZhQ-ne-16.3-ne-Kosove-AK-NJ-GZ.pdf>); (Last accessed on 7 December 2024).

⁷⁷ Ibid, p.12

