



The saga of the Anti - Corruption Strategy

(The Draft continues to have issues)

Author: Gzim Shala

Editors: Ehat Miftaraj and Betim Musliu

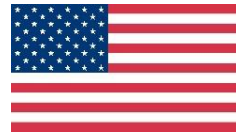
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ABOUT KLI:

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

KLI, Str. Ilaz Agushi

Pristina

E: info@kli-ks.org

www.kli-ks.org

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Acronyms

| | |
|--------------------------|---|
| Draft Strategy | - The Draft Anti-Corruption Strategy |
| KLI | - Kosovo Law Institute |
| CC | - Constitutional Court |
| KJC | - Kosovo Judicial Council |
| KPC | - Kosovo Prosecutorial Council |
| Draft Action Plan | - The Action Plan of the Anti-Corruption Strategy |

1. Executive summary

The process for approving the National Anti-Corruption Strategy and the Action Plan 2024–2027 represents an effort to fulfill a legal obligation under Law No. 08/L-017 for the Agency for the Prevention of Corruption. This process, which began in February 2023, was expected to address the prevention and fight against corruption through a clear framework of measures and objectives. However, the drafting and approval of the document has encountered delays and significant problems, including the failure to meet deadlines and the lack of proper public consultation processes.

Despite the decision to establish structures for the development of the Strategy, made on February 22, 2023, the deadline for its completion (December 1, 2023) was not respected. The draft Strategy was published for public consultation on December 12, 2024, offering only 9 working days for comments, in contradiction with the requirement of the Government's Rules of Procedure for a minimum of 15 days.

Within the given timeframe for public consultations, the Kosovo Law Institute (hereinafter: KLI) submitted its comments. However, due to the fact that the time provided was limited, KLI continued the analysis of the published documents even after the submission of comments on the Public Consultations Platform. This report presents the comments submitted during the public consultation phase and the findings resulting from the further analysis.

Regarding the Anti-Corruption Draft Strategy (hereinafter: the Draft Strategy), KLI finds that this document has substantial shortcomings in identifying the issues. The document does not provide a real and practical reflection of the problems in the field of preventing and combating corruption, in the way that even the necessary measures would be easily identified. KLI finds that the Draft Strategy and the Draft Action Plan have not been drafted in accordance with the Government's Manual for Planning, Drafting, and Monitoring Strategic Documents and their Action Plans.

On the other hand, the Draft Strategy includes measures that do not clearly constitute anti-corruption measures. While, the draft strategy lacks important measures in key areas of anti-corruption. Many of the crucial areas that present high potential for the prevention and fight against corruption are not part of the Draft Strategy.

The proposal to expand the powers of the Constitutional Court (hereinafter: CC), making it a supervisory institution for the Kosovo Judicial Council (hereinafter: KJC) and the Kosovo Prosecutorial Council (hereinafter: KPC), conflicts with the Constitution and the role of constitutional justice in Kosovo. These measures could limit the independence of justice institutions and create an imbalance in the separation of powers.

2. Anti-Corruption Strategy

Law No. 08/L-017 on the Agency for the Prevention of Corruption entered into force in August 2022. The national strategy and the 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 the Prevention of Corruption.

The Government of the Republic of Kosovo, in its meeting held on February 22, 2023, had taken the decision to establish structures for the development of the National Strategy and the Action Plan against Corruption. 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. This working group, according to this decision, was supposed to draft this Strategy by December 1, 2023.

During the time the Draft Strategy and Action Plan 2023-2026 were being drafted, KLI participated in all the meetings it was invited to and also submitted written comments. Additionally, it drafted a specific part of the Draft Strategy, aiming to contribute to the development of a Strategy that responds to the need for combating corruption.

Unfortunately, even after December 1, 2023, when, according to the Government's decision, the Strategy was supposed to be drafted, the public did not receive an answer as to why more than 9 months were not enough to draft and finalize this Strategy, despite the fact that the approval of this Strategy remains a legal obligation. Although the deadline for the working group was not extended by the Government, work on the Draft Strategy continued. On December 12, 2024, the National Anti-Corruption Draft Strategy 2024-2027 and the Action Plan were published on the public consultations platform. From the content of the Draft Strategy and Draft Action Plan, it is evident that not all comments raised during the work on these documents have been adequately addressed, and despite improvements, the documents still contain issues

3. Does the document present a real anti-corruption strategy?

The fight against corruption has been one of the main promises through which "Lëvizja Vetëvendosje" was brought to power. "Justice and Employment" was the main slogan of this party during the electoral campaign.

The government is concluding its mandate without substantial reforms in the justice system.¹ However, throughout its entire tenure, the Government of the Republic of Kosovo failed to approve a national strategy for the fight against corruption. The absence of such a strategy raises doubts about whether the Government had a clear vision and goal to pursue in the field of preventing and combating corruption.

The approval of a national anti-corruption strategy, although in principle a positive step and fulfillment of a legal obligation, at this stage of government mandate cannot be considered a real strategy for combating corruption. The goal of the Strategy is not achieved simply by the formal approval of a document, but through genuine political will, proper planning, sustainable implementation, the creation of effective mechanisms, and the generation of concrete results. When an effort is made to draft or even approve such a document at the end of the mandate, the impression is created that this document serves more to address public criticism rather than to build an adequate framework for preventing and combating corruption. The national anti-corruption strategy requires a certain period of time to be implemented, while its approval at this time limits the possibilities for its implementation, shifting the burden primarily to the next government.

4. Violation of the consultation's deadline

Regulation No. 17/2024 on the Work of the Government of the Republic of Kosovo [Article 52.2] stipulates that "The proposing body, whenever organizing written consultations, must provide the public and interested parties with sufficient time to submit their comments to the proposing body, but in any case: 2.1. No less than 15 (fifteen) working days from the date of the notification regarding the opening of written consultations."

The Draft Strategy was published for public consultation on December 12, 2024. According to the draft published on the Public Consultation Platform, the Draft Strategy was open for comments until December 25, 2024. Thus, the Office of the Prime Minister provided only 9 working days for public consultations, failing to adhere to its own Regulation.

Nevertheless, the Draft Strategy [Page 4] emphasizes that "by utilizing information from extensive consultations with relevant parties... it prioritizes targeted interventions in key areas." Based on the way this document has been handled since

¹ Shala, G. "The Failure of the Justice Reform". Kosovo Law Institute. December 2024. (See link: <https://klics.org/wp-content/uploads/2024/12/Raporti-Deshtime-e-reformes-ne-drejtesi-FINAL2-1.pdf>). (Accessed for the last time on January 14, 2025).

February 2023 and the shortened public consultation period, it can be said that the consultation for this document was not adequate.

5. Overall assessment

Work on drafting the Draft Strategy and Draft Action Plan began on February 22, 2023, when the Government decided to establish structures for the development of the National Strategy and Action Plan against Corruption. So far, several drafts have been presented, in which KLI has continuously provided comments, assessing that the drafts contained several issues that it considered should be avoided.

According to KLI, the draft published for public consultation has avoided a number of issues that were identified in previous drafts. Most importantly, in KLI's assessment, the Draft Strategy has, in principle, avoided the interventions in the justice system compared to earlier drafts, but in some cases, it still requires some adjustments to ensure this crucial aspect of the rule of law. The Draft Strategy and the Draft Action Plan focus on several adequate areas that enable the prevention of corruption.

However, while compared to previous drafts some issues have been avoided, the Draft Strategy and Draft Action Plan are not fully in compliance with the Government's Manual for Planning, Drafting, and Monitoring Strategic Documents and their Action Plans.² The analysis of the problem or the current situation, as will be elaborated further in this report, has not been done in accordance with this document, using outdated data that do not correspond to the current situation. According to the Manual, "the analysis should be concise and substantive and should only present analytical information, not descriptive."³ In many cases, the Draft Strategy contains only descriptions of certain resources and not an analytical approach and assessment of the data based on these resources. The document also lacks a SWOT analysis and a problem tree, as defined in the Government's Manual.⁴

According to the Manual for Planning, Drafting, and Monitoring Strategic Documents and their Action Plans, "In general, all objectives (strategic or specific) should be: directly linked to the identified problems and their causes and aim to address them; harmonized with each other; and serve as a basis for the defining of indicators."⁵ The Draft Strategy does not follow this approach. For example, the Draft Strategy [page

² "Manual for planning, drafting and monitoring of strategic documents and their action plans." Office of the Prime Minister - Office for Strategic Planning. January 2019, Prishtinë. (See link: <https://kryeministri.rks-gov.net/wp-content/uploads/2022/05/MANUAL-PER-PLANIFIKIMIN-HARTIMIN-DHE-MONITORIMIN-E-DOKUMENTEVE-STRATEGJIKE-DHE-PLANEVE-TE-TYRE-TE-VEPRIMIT.pdf>). (Accessed for the last time on January 14, 2025).

³ Id., page 35.

⁴ Id., pages 42-46.

⁵ Id., page 48.

15] emphasizes that "In public perception, the sectors most vulnerable to corruption include the judiciary, customs, public procurement, healthcare, the social sphere, and education." However, for the areas of customs, healthcare, and education, there is no action in the Draft Action Plan. In fact, beyond this perception, customs is not addressed at all in the Draft Strategy.

On the one hand, as will be elaborated further, KLI assesses that there are several areas the Draft Strategy focuses on which are not areas directly related to the prevention and fight against corruption, although indirect connections can be made. On the other hand, KLI assesses that there are several important areas of anti-corruption measures that have not been included in this Draft Strategy, which should be considered for inclusion. Reflection of the problems requires a more adequate approach. Meanwhile, the issue of constitutional justice continues to remain one of the problems of the Draft Strategy.

Regarding the Draft Strategy and the Draft Action Plan, KLI assesses that strict adherence to the standards set out in the Government's Manual for Planning, Drafting, and Monitoring Strategic Documents and their Action Plans would address all the issues contained in the Draft Strategy and the Draft Action Plan. Thus, the redrafting of these drafts should be done in full compliance with this document.

6. Digitalization and transparency

Most of the Draft Strategy discusses important reforms for the digitalization and transparency of public institutions. Essentially, the measures are supposed to be such that transparency reaches a level that automatically guarantees oversight by the public. This even in the absence of in-depth monitoring and research by NGOs or the media. Thus, the Draft Strategy builds the approach that digitalization and transparency are measures that, in and of themselves, produce results in the prevention and fight against corruption.

Such an approach is highly adequate in the prevention and combating of corruption. Digitalization and transparency are tools through which public institutions are more exposed regarding their way of operation and functioning. Therefore, with this approach, it can be considered a measure that prevents corruption and bad practices. Secrecy is the basis of corruption, abuse of powers, and mismanagement.⁶ For this reason, the plans to undertake measures in this area, to enable continuous monitoring of the work of public institutions by the public, are considered very positive. Regarding digitalization, not only will it ensure easier services and increase

⁶ European Parliament/General Directorate for Internal Policy, "National Practices with regard to the accessibility of courts documents: Study", 2013.

transparency, but it will also make it more difficult to commit corrupt criminal offences and facilitate the collection of evidence in cases where such offences occur. Thus, focusing on these measures, as the Draft Strategy has done, presents an opportunity to undertake the ideal measures for the prevention and combating of corruption.

However, for this to happen, further work is needed in specifying the actions in the Draft Action Plan. In some cases, it is not clear exactly which actions should be taken to implement digitalization. For example, Action 5.2 of the Draft Strategy highlights "Approval and implementation of digitalization of processes in the field of anti-money laundering." At the key steps, the action that will carry out digitalization in this area is not specified.

On the other hand, in order to increase the chances of achieving these objectives, it is important to also anticipate the challenges and risks during the digitalization phase, such as the risk of cybercrime, protection of personal data, etc.

7. Reflection of the issues

The development of a Strategy must necessarily be preceded by an adequate analysis of the identification of problems or the factual situation in a specific area. This ensures that the identification of problems automatically reflects the necessary measures to address those issues. Describing the factual situation is a crucial part of a strategic document. In this section, through an analytical approach, based on adequate sources, the problem in a specific area is described. The description of the problems should be specific enough so that the logical flow of the description generates the necessary action to resolve the problem. The factual description of the problem is also done by the Draft Strategy. However, in some parts, the description of the factual situation that aims to identify the problem has not been done adequately.

According to the Government's Manual for Planning, Drafting, and Monitoring Strategic Documents and their Action Plans, the analysis should be concise and to the point, presenting only analytical information, not descriptive.⁷ The description of the factual situation presented in the Draft Strategy does not seem to follow this guideline. The description of the problem does not follow a structured approach to presenting the issues, moving from one topic to another without a deep analytical presentation.

⁷ "Manual for planning, drafting and monitoring of strategic documents and their action plans." Page 35. Office of the Prime Minister - Office for Strategic Planning. January 2019, Prishtinë. (See link: <https://kryeministri.rks-gov.net/wp-content/uploads/2022/05/MANUAL-PER-PLANIFIKIMIN-HARTIMIN-DHE-MONITORIMIN-E-DOKUMENTEVE-STRATEGJIKE-DHE-PLANEVE-TE-TYRE-TE-VEPRIMIT.pdf>). (Accessed for the last time on January 14, 2025).

For the development of the Draft Strategy, the government's decision established a broad institutional structure. So far, the institutional actors that make up this structure were supposed to have completed an in-depth study in this field, and the findings of this study should have been included in the Draft Strategy. However, this has not happened. In many cases, the material is merely descriptive, in some cases, there are assessments that seem subjective, and in other cases, there are factual inaccuracies, which will be discussed further.

On page 12 of the Draft Strategy, the chapter "Factual situation" begins. In this section, it is mentioned that Kosovo has a Rule of Law Strategy. Given that this Strategy was approved in 2021, it would have been appropriate to reflect on the challenges and issues encountered in its implementation, including the fact that the Rule of Law Strategy itself did not have an approved Action Plan throughout 2024, which significantly impacted the fulfillment of activities and obligations of rule of law institutions in Kosovo. Furthermore, the Draft Strategy in this section refers to a "paper on the Combating of Corruption, drafted by an expert engaged through the EU." However, this paper is not cited, and the provided data does not allow the public to precisely identify which report is being referred to.

The Draft Strategy [page 13] continues to identify problems "[b]ased on the independent assessment by the EU for the purposes of the Rule of Law Strategy, during the years 2018-2019...". Reference in these reports may not reflect a current factual situation. Such reports are reports that belong to a period 6 or 7 years ago, and as such, they may not be entirely sufficient for identifying the problems of 2024. Since that time until now, significant developments have occurred in many areas, which these documents normally cannot reflect.

The Draft Strategy [page 14] emphasizes that "significant progress has been made in addressing systemic issues." In this section, one of the indicators mentioned as contributing to this progress is the reduction in unemployment. Considering that corruption also impacts the level of unemployment, what is required is the specification of anti-corruption measures that have directly influenced the reduction of unemployment

On page 15, the Draft Strategy lists data from the American Chamber of Commerce's Study on the Perception of Corruption. Given the significant importance of this study and the data presented regarding the business sector's perception of corruption, it should be noted that the data presented pertains to the year 2018. As a result, this data is not adequate for analyzing the factual situation for a Draft Strategy of 2024.

On page 16, it is emphasized that "the Anti-Corruption Agency has implemented an electronic system for asset declaration, increasing transparency and accountability.

However, gaps in the system, such as undeclared assets transferred to family members, highlight the need for continuous improvement." According to Law No. 08/L-108 on the Declaration, Origin, and Control of Assets and Gifts, asset declaration includes the declaration of assets of family members, specifically the spouse, parents, and children of the declarant. If another issue is meant here, it should be specified in this section.

The review of the Law on the Anti-Corruption Agency is listed as one of the actions to be undertaken [Draft Strategy, Page 16]. This law, with the exception of three articles, came into force in August 2022. While no specific issues have been identified in relation to this law, the exact problem that justifies the need for the review of this Law is not clear.

The Draft Strategy [page 14] states that "the links between political figures and private economic interests have contributed to widespread perceptions of institutional inefficiency and favoritism." However, the Draft Strategy does not provide any references. As such, this sentence appears more as a subjective belief rather than an analytical analysis based on adequate sources.

The Draft Strategy [page 31] emphasizes that "the implementation of SMIL remains unclear." It is not clear what kind of uncertainty is being referred to here, as information regarding the functioning and implementation of SMIL, including its challenges, are easily accessible. An adequate analysis should have analyzed this area and highlighted the identified problems, rather than referring to a lack of clarity.

In order to build an adequate Draft Strategy, in addition to developing an analytical study on the factual situation, the analysis should also include the effectiveness of previous programs undertaken in the field of corruption prevention and combating, recommending specific measures on how to act in the future.

In some sections, the aspect of nepotism is mentioned. Given the familiarity with this concept and its associated problems, in a document such as the Draft Strategy it is necessary for a more professional assessment of this concept to be made, addressing it through measures for managing conflicts of interest rather than using it as a general term. A conflict of interest, as a situation, is not inherently bad. It becomes problematic when it is not managed or avoided. Measures in this sense are expected to be provided by a Anti-Corruption Draft Strategy. The phenomenon of nepotism is addressed by regulations related to the prevention of conflicts of interest and it should also be treated as such.

The issue of overlapping institutional mandates is mentioned in several sections of the Draft Strategy. However, for the purposes of the Draft Strategy and the specification

of the measures to be taken, the Draft Strategy should clarify this overlap. On page 20, the Draft Strategy highlights the development of interinstitutional agreements as a strategic focus to facilitate information sharing and joint investigations. It is unclear what kind of agreements are being referred to, as institutional powers and roles are defined by laws.

Such issues are also evident in other parts of the document. In order to economize this document, each one will not be mentioned specifically. However, in the context of these comments, it is considered necessary for the Draft Strategy to be improved in other sections as well.

a. Inaccuracies of the Draft Strategy

In page 14 of the Draft Strategy, it states that "Recent assessments highlight significant improvements in Kosovo's efforts against corruption: Transparency International (2024): Kosovo has advanced 20 places in the Corruption Perception Index, reflecting successful reforms and stronger governance frameworks." However, the Transparency International Index for 2024 has not yet been published.

Regarding the Transparency International index, it is necessary to also present the number of points Kosovo has accumulated, not just the ranking. For example, in 2020, Kosovo with 36 points was ranked 104th, whereas with the same number of points in 2016 it was ranked 95th. This is because the ranking does not depend solely on the number of points a particular country has, but it is also evaluated in comparison to the points collected by other countries. In 2022, Kosovo had 41 points and was ranked 84th, while with the same number of points in 2023, it was ranked 83rd. In terms of points, compared to 2019, Kosovo has 5 more points and only 2 more points compared to 2017.

The Draft Strategy [page 33] refers to the Venice Commission as "the advisory body of the EU for constitutional law." However, the Venice Commission is not an EU body but an organ of the Council of Europe.⁸

b. Identification of practical challenges

When it comes to reflection of problems, the Draft Strategy should include in a clear and open way the entire situation of public institutions, in the context of issues which relate to the prevention and combating of corruption. The Draft Strategy should serve as a tool for identifying all institutional gaps and problems that present a corruption

⁸ Council of Europe - Venice Commission. (See link: https://www.venice.coe.int/WebForms/pages/?p=01_Presentation&lang=EN). (Accessed for the last time on January 14, 2025).

potential, including situations that create this perception among the public. Since it is a document that is meant to serve the citizens, it is essential that the issues raised over the years by the public are also presented.

In addition to the state of the justice system, the measures and actions, which, as mentioned, need to be refined in the text, the draft strategy should also include the practical problems raised by the public in recent years.

The problems identified in recent years reflect significant shortcomings in several key areas. Closed public procurement procedures have raised doubts about the transparency and legality of public fund spending, while reports of retaliation against whistleblowers indicate weaknesses in the system's ability to protect these individuals who play a crucial role in exposing abuses. Additionally, suspicions of misconduct in various ministries, the use of single-source contracts by the government and municipal levels, as well as alleged corruption in public enterprises, highlight the need to increase institutional oversight and independence from political influences.

Furthermore, suspicions regarding the involvement of senior state officials in unlawful actions and suspicions about issues in the allocation of subsidies emphasize the need for addressing these areas.⁹ These issues require a comprehensive approach in the draft strategy.

The Draft Strategy should serve as a comprehensive and practical document, oriented towards recognizing and addressing the real challenges faced by public institutions. It is essential for this document to present with accuracy and transparency the issues that have raised concerns among citizens, responding efficiently to societal needs. In this way, the Draft Strategy will contribute to strengthening the integrity and accountability of public institutions, while increasing public trust and support in governance processes, and becoming a key tool for promoting transparency and accountability in public affairs management.

8. Inclusion of the Gender Dimension

A missing aspect of the Draft Strategy is the gender approach in relation to preventing and combating corruption, which would emphasize the importance of including women in preventing and combating corruption. The gender dimension in corruption involves recognizing the role women can play as agents of change and understanding the specific impact corruption has on them. For instance, women often face forms of

⁹ Shala, G. and Smajli, F. "Clean hands governance and the investigation of government corruption". Kosovo Law Institute. December 2024. (See link: <https://kli-ks.org/wp-content/uploads/2024/12/Raporti-Qeverisja-me-duar-te-pastra-FINAL-1.pdf>). (Accessed for the last time on January 14, 2025).

corruption like "sextortion," where sexual favors are demanded in exchange for public services¹⁰.

The link between the gender dimension and anti-corruption measures should be emphasized as an element that can contribute to increasing the overall effectiveness of the anti-corruption strategy. If properly addressed, this inclusion can bring a profound change not only in the fight against corruption, but also in advancing gender equality and women's rights in Kosovo.

To address these issues, it is recommended that the Draft Strategy integrates a dedicated section dealing with specific measures for women's inclusion and the fight against gender-based forms of corruption. These measures may include:

- Training for public officials to recognize and combat gender-based corruption.
- Establishing protection mechanisms for women who report corruption, particularly "sextortion."
- Empowering women in decision-making positions in institutions that fight corruption.
- Involving civil society groups in monitoring the implementation of anti-corruption measures from a gender perspective.

9. Anti-corruption measures

In addition to anti-corruption objectives and measures, the Draft Strategy has also foreseen many other fields aimed at improving the quality of work in public institutions and advancing the rule of law in Kosovo. However, despite the indirect connection that these measures may have with anti-corruption measures, some of them are not considered anti-corruption measures and as such should not be addressed by this Draft Strategy.

For instance, the Draft Strategy [Page 29] foresees the creation of a public administration school. The purpose of creating this school is to enhance professionalism and capacity in the public administration sector. This measure, despite its importance, is not a pure anti-corruption measure. Of course, enhancing capacities and professionalism is supposed to increase the quality of services and may indirectly impact in the field of preventing and combating corruption. However, such measure is not an anti-corruption measure. Such a measure should be addressed

¹⁰ Rezniki, A. "The gender dimension of corruption". Kosovo Law Institute. December 2024. (See link: <https://kli-ks.org/wp-content/uploads/2024/12/ALB-Dimensioni-gjinor-i-korrupsionit-3.pdf>). (Accessed for the last time on January 14, 2025).

through the Public Administration Strategy and not within the framework of this Draft Strategy.

Furthermore, the Draft Strategy [Pages 36-40] addresses the issue of alternative dispute resolution. Regarding this issue, it should be emphasized that alternative dispute resolution has extremely large benefits in many areas, both for citizens and for the institutions of the justice system. On the other hand, increasing quality and accountability in this area, could also generate results in the field of preventing and combating corruption. However, reform and measures undertaken within this field are issues related to the rule of law. As such, they are also addressed in detail in the Rule of Law Strategy. Thus, reform and measures within this field are not anti-corruption measures.

It should be emphasized that measures to advance the rule of law are interrelated with anti-corruption measures. Generally, rule of law measures have a broader scope and aim to build an overall system that functions on the basis of law. Anti-corruption measures are a specific aspect and a narrower meaning than the rule of law. Regarding the rule of law, Kosovo has a Rule of Law Strategy in place and measures that are not clearly anti-corruption measures should not be addressed in the Draft Strategy. This is so that the Draft Strategy does not duplicate efforts by defining measures that could be part of the Rule of Law Strategy or any other Strategy.

For this reason, it is recommended that the Draft Strategy and Action Plan include only measures that clearly constitute anti-corruption actions.

10. The need for expansion into other areas

Within the institutional and legal framework for preventing corruption, there are several very powerful fields and tools for achieving this goal. This includes preventing and managing conflicts of interest, protection of whistleblowers, assessing corruption risks in various fields or different sectors, and assessment of risks and gaps in legislation (primary and secondary), that could potentially increase corruption and the evaluation whether the legislation is in line with international anti-corruption standards.

These key measures in the area of corruption prevention are not addressed in the Draft Strategy. Some of them, the Draft Strategy mentions in a general context or within the framework of other measures, but does not foresee specific measures aimed at advancing these areas.

These areas are of particular importance in preventing and combating corruption. Prevention and management of conflict of interest ensures fair decision-making and

impartiality, preventing the abuse of official authority for personal gain. Whistleblower protection encourages the reporting of violations and corruption, providing security for individuals who expose wrongdoings. Assessing corruption risks in different sectors identifies vulnerabilities and enables specific interventions to prevent abuses and to increase transparency. Analysis of risks and gaps in legislation helps eliminate legal deficiencies that may favor corruption. Compliance with international standards ensures a legal framework harmonized with the most important international acts and ensures the effectiveness of anti-corruption measures.

Regarding the confiscation of property, of illegal assets, the Draft Strategy only mentions the issue of the Law on the State Bureau for Verification and Confiscation of Unjustified Assets, but does not contain any analysis regarding this area. This issue needs to be addressed further, to present and address all relevant issues in this field.

It is a well-known fact that so far, many of the Strategies adopted in many areas have not yielded results in practice. This is mainly due to the lack of political will. Without a clear and strong political commitment, reform efforts and law enforcement may remain only on paper without being realized in practice. For this reason, political will is a key factor for the successful implementation of anti-corruption measures, and beyond the Prime Minister's words, this area should be addressed specifically in the Draft Strategy.

Corruption in the private sector also deserves special attention within the Draft Strategy. While we often focus on the public sector, corruption in the private sector can have equally harmful effects, including market distortion and the creation of an unequal competitive environment. The strategy should foresee measures to raise awareness of the importance of integrity and ethics in business and promote good corporate practices. Involving the private sector in the fight against corruption is essential to achieve a comprehensive and effective approach, encouraging a culture of integrity that transcends the boundaries of the public sector.

Another important aspect that should be addressed in detail in the Draft Strategy is international cooperation. Corruption often transcends national borders and requires cooperation with other states. The Draft Strategy should include measures to strengthen cooperation with international institutions and other countries in information sharing, judicial and police cooperation, as well as in capacity building. This will help combat corruption on a broader level and increase the effectiveness of the measures taken.

The detailed treatment regarding the commitment to membership in international anti-corruption mechanisms is another key pillar for the strategy. This engagement

will ensure that Kosovo is part of international initiatives that promote transparency and the international fight against corruption.

Harmonization with European Union directives is essential for Kosovo's European integration and to ensure that the legislation is in line with the EU's high standards in the fight against corruption. The Draft Strategy should include specific objectives on specific issues for adapting the legislation to meet EU criteria, while ensuring that reforms are sustainable and effective.

Despite its importance, The Draft Strategy did not include the Kosovo Police, and only mentioned this institution in passing. The Kosovo Police has a crucial role in implementing anti-corruption measures. The Draft Strategy should also address this institution specifically and foresee measures to increase the capacities of the Kosovo Police in investigating and prosecuting corruption cases.

The Draft Strategy leaves aside the secondary level of government, the Municipalities. Based on the role they have and the budget they manage, it is necessary that the Draft Strategy includes a specific analysis in relation to the secondary level of governance and to provide specific measures to prevent and combat corruption at the municipal level.

The institutionalization of assessing the adequacy of anti-corruption measures, as defined in Article 5.3 of UNCAC, is necessary to ensure that the measures taken are effective and to identify the need for further improvements. The Draft Strategy should foresee clear mechanisms for the regular monitoring and evaluation of anti-corruption policies and practices, as required by Article 5.3 of UNCAC.

The Draft Strategy should also cover the issue of integrity plans, as provided by Law No. 08/L-017 on the Agency for the Prevention of Corruption.

Although mentioned in some sections, the Draft Strategy and the Draft Action Plan, do not provide a substantive analysis or plan specific actions related to raising citizen awareness, collaboration with the media, and civil society. The Draft Strategy should contain specific measures to raise awareness among citizens against corruption, enabling them to adequately monitor governance and report corrupt practices. In this regard, the Draft Strategy should also contain actions to promote cooperation between public institutions with the media and civil society. Involvement of the media and civil society in public policymaking helps foster a transparent and accountable environment.

Ensuring that all funds and donations are effectively coordinated and focused on combating corruption is another key element that should be included in the Draft

Strategy. This document should incorporate measures to ensure that international donations are well-coordinated.

A crucial aspect that should be included in the Draft Strategy is the development of public discussions in cases where decisions with significant financial impact are issued. According to the Rules of Procedure of the Government of the Republic of Kosovo [Article 46], the public consultation process is subject to draft concept documents, draft general legal acts, draft strategic documents, as well as all other documents for which written consultation is required. Thus, based on this article, government decisions remain outside public consultation. As we have seen in certain cases, the government issues decisions that involve the expenditure of tens of millions of euros. In these cases, these decisions have a great corruptive potential. Therefore, a powerful way to prevent corruption in these cases is the obligation to follow public consultations. This issue should also be treated and addressed by the Draft Strategy as an adequate measure to prevent corruption.

Therefore, KLI recommends reviewing these issues and due to their importance, measures for their advancement should be foreseen within the Draft Strategy and Draft Action Plan.

11. Constitutional justice

The Draft Strategy [page 41] "proposes the development of a concept document for the Constitutional Court – as a supra-institution transcending the boundaries of the three branches of the government – to exercise a mechanism for appeals against the decisions of the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC)." Through this proposal, the Draft Strategy aims to position the Constitutional Court as an oversight institution for KJC and KPC, which would be activated upon the requests of parties, including KJC and KPC themselves.

The Constitution of the Republic of Kosovo, in Article 4, has defined the provisions concerning the separation of powers. Alongside the legislative, executive and judicial powers, there are two institutions that operate outside this division: the President of the Republic of Kosovo and the Constitutional Court. Therefore, the designation of the Constitutional Court as a supervisory institution of the institutions of the justice system is not in harmony with the Constitution.

Furthermore, the model outlined in the Draft Strategy is inconsistent with the principles governing the operation of the constitutional judiciary. Article 4.6 of the Constitution of the Republic of Kosovo states that "The Constitutional Court is an independent body for the protection of constitutionality and provides the final interpretation of the Constitution." Therefore, it is not within the nature of an institution like the Constitutional Court to serve as an oversight body for another

institution such as the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC).

According to the draft strategy, cases involving the Assembly, the Presidency, and the Government are directly examined by the Constitutional Court, whereas decisions of the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) can only be challenged after all legal remedies have been exhausted. The Draft Strategy emphasizes that "The lack of the possibility to directly challenge the decisions of the KJC and KPC before the Constitutional Court leads to the perception that the KJC and KPC are overly independent and immune from accountability."

The analysis of the jurisdiction of the Constitutional Court according to Article 113 of the Constitution should be viewed based on two (2) criteria: The authorized parties and the issues that can be challenged. In paragraph 2, the authorized parties are the Assembly, the President, the Government and the Ombudsperson, and that for two (2) specific issues. Thus, the emphasis is on the issue and not on the institution. The following paragraphs follow the same logic. In other words, not every party can approach the Constitutional Court (even if they have a legal interest), while even the authorized parties cannot approach the Constitutional Court for every issue, but only for those specifically listed in Article 113 of the Constitution.

Thus, the jurisdiction of the Constitutional Court does not imply that the Assembly, the Presidency, and the Government are institutions under the direct oversight of the Constitutional Court, although for some of the issues, certain authorized parties may initiate cases before the Constitutional Court.

Regarding the initiation of cases before the Constitutional Court against decisions of the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC), these cases are initiated by the authorized parties according to Article 113.7 of the Constitution, which states that "[i]ndividuals are authorized to raise violations by public authorities of their individual rights and freedoms, guaranteed by the Constitution, but only after they have exhausted all legal remedies provided by law." Therefore, the issue of initiating appeals against individual decisions is a matter regulated by Article 113.7 of the Constitution.

The Draft Strategy emphasizes that the provision of the right to challenge the decisions of the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) directly before the Constitutional Court is in accordance with Article 113.10 of the Constitution of the Republic of Kosovo, which stipulates that "Additional jurisdiction may be regulated by law." In this specific case, while the right to challenge the decisions of KJC and KPC is covered by paragraph 7 of Article 113, then we are dealing with a matter already regulated by the Constitution and not with additional

jurisdiction. Hence, such regulation is not in harmony with Article 113.7 of the Constitution.

As stated, according to the Constitution [Article 4.6], “The Constitutional Court is an independent body for the protection of constitutionality and provides the final interpretation of the Constitution.” Therefore, since it is not a regular court, the Constitutional Court is mandated to assess only the constitutionality of a particular decision. The Constitution itself leaves the regulation of many specific areas at the level of the law. In this situation, direct challenges to the decisions of the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) before the Constitutional Court allows for the assessment of only constitutionality and legality.

The Draft Strategy emphasizes that “Legal theory and practice limit regular courts from conducting judicial reviews on matters beyond the level of laws. If a constitutional issue arises, the regular courts typically refer it to the Constitutional Court.” However, while the regular judiciary has the right to raise a constitutional issue before the Constitutional Court, the opposite does not stand: the Constitutional Court would not have the ability to raise a legal issue before the regular judiciary.

The obligation to exhaust legal remedies is a constitutional duty and is in accordance with the European Convention on Human Rights, a convention directly applicable in Kosovo [Article 22 of the Constitution] and the jurisprudence of the European Court of Human Rights [jurisprudence that is binding according to Article 53 of the Constitution]. Thus, the designation of the Constitutional Court as an oversight institution for the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) is not in harmony with the Constitution and the nature of the functioning of constitutional justice in Kosovo.

Beyond this, it should be emphasized that such a regulation as intended, has the potential to make the Constitutional Court an institution with dominant competencies over the entire legal order. If a collegial body of nine (9) judges were to be the first and last institution for the evaluation of the decisions of these Councils, this could limit the constitutional independence of these Councils and create a more pronounced dependency on this collegial body. Given that the judges of the Constitutional Court are elected by the Assembly, a possible politicization of the Constitutional Court could affect the independence of the justice system.

The Draft Strategy [page 41] states that “There is minimal likelihood that judges will rule contrary to the original decisions of the KJC, considering their accountability to the same entity.” According to the Constitution and the Law, judges are independent in their decision-making, and the KJC does not have the mandate to interfere in specific cases. If there is evidence that this occurs, then the independence of the judges

should be reviewed, and not to give the Court the right to examine cases against the decisions of the KJC and KPC. While the Draft Strategy does not provide any evidence, in practice, there have been cases where courts have ruled against the decisions of the KJC.

As for the duration, it should be emphasized that it is important to take measures to ensure that all cases are handled within a reasonable timeframe. The challenges in achieving this should not lead to measures that exclude the regular judiciary from decision-making. However, as demonstrated even in practice, in cases where the Constitutional Court finds that the available legal remedies are not effective, it has agreed to directly examine such cases.

In conclusion, as stressed, the decisions of the KJC and KPC are not outside the orbit of the Constitutional Court's oversight. But, this oversight is exercised in the manner in which constitutional justice is conducted, through initiated cases. Thus, in each case, any of the authorized parties to file a case with the Constitutional Court can also file a case against the decisions of the KPC and KJC. It should be noted that this Court has annulled the decision of the KPC on the proposal of the Chief State Prosecutor (see the Court case, No. KI99/14 and 100/14, with petitioners Shyqyri Sylja and Laura Pula, Judgment of July 8, 2014), the decision of the KJC on the proposal of the President of the Supreme Court (see the Court case, No. KI34/17, with petitioner Valdete Daka, Judgment of June 12, 2017), the decision of the KJC regarding the appointment of the President of the Court of Appeals (see the Court case, No. KI55/77, with petitioner Tonka Berisha, Judgment of July 17, 2017), etc.

For all these reasons, it is suggested that the Draft Strategy revise this planning in order to fully align with the Constitution and the nature of constitutional justice in Kosovo.

12. Criminal record

Through the Draft Strategy [page 9], it is aimed to “the link the Procurement Review Body with the Central Criminal Record database ensures compliance with procurement laws, preventing individuals with criminal records from accessing public funds.”

Criminal record data are considered sensitive personal data (See Law No. 06/L-082 on the Protection of Personal Data, Article 3.1.1.15). In order to protect this data, specific provisions have been established in Chapter IX of the Criminal Code No. 06/L-074 of the Republic of Kosovo. Article 98 of this Code deals with the content and disclosure of data from the criminal file. Additionally, Law No. 08/L-194 on the Central Criminal Record System has also entered into force.

The determination of the possibility for an institution to automatically access data from criminal records violates personal data protection. Furthermore, beyond specific procedures, the easy access to this data fundamentally violates provisions related to the obligation to protect personal data.

In the case of public tenders, contracting authorities only need to include as a criterion the submission of a certificate from the criminal record, through which it can be determined whether a subject has been convicted or not. This situation not only allows the achievement of the intended goal, but also does not violate personal data and the system for protecting this data. Furthermore, in this specific case, by submitting the certificate in question, the data subject themselves grants consent to access this data.

For this reason, it is recommended that this purpose of the Draft Strategy be revised.

13. Draft Action Plan

An Action Plan of a strategy should be a practical document that outlines the concrete steps for implementing the objectives of a strategy. It includes specific activities, timelines, necessary resources, and responsible parties for their execution. Its main purpose is to ensure effective and sustainable implementation of strategic goals, ensuring clear coordination and monitoring of progress.

The Government Manual for Planning, Drafting, and Monitoring Strategy Documents and their Action Plans emphasizes that in the case of Action Plans, it defines in detail the elements that an Action Plan should contain. The Draft Action Plan has not fully adhered to these requirements.

According to this Manual, "Strategic and specific objectives should be accompanied by at least one indicator for measuring the achievement of the objectives. In the case of a strategic objective, the indicator may be set at the impact level. The indicators should also include the baseline value (initial situation) and the targeted values (goals)"¹¹. The Draft Action Plan does not contain these indicators.

According to the Manual, "...actions should also be effective ways of solving the problems and causes that have been identified during the problem analysis phase"¹². However, not all the issues addressed in the Draft Strategy have been transformed into actions in the Draft Action Plan.

¹¹ "Manual for planning, drafting and monitoring of strategic documents and their action plans". Page 52. Office of the Prime Minister - Office for Strategic Planning. January 2019, Prishtinë. (See link: <https://kryeministri.rks-gov.net/wp-content/uploads/2022/05/MANUAL-PER-PLANIFIKIMIN-HARTIMIN-DHE-MONITORIMIN-E-DOKUMENTEVE-STRATEGJIKE-DHE-PLANEVE-TE-TYRE-TE-VEPRIMIT.pdf>). (Accessed for the last time on January 14, 2025).

¹² Id., page 56.

The manual in question also describes the elements that the Action Plan should contain¹³. KLI finds that the Draft Action Plan does not contain all of these elements.

For these reasons, KLI recommends revising the Draft Action Plan, so that it aligns with the Government's Manual for Planning, Drafting, and Monitoring Strategic Documents and their Action Plans.

14. Timeline of the Draft Strategy and Draft Action Plan

The Published Draft Strategy and Draft Action Plan are for the years 2024-2027. Now, since the Draft Strategy and Draft Action Plan were not approved during 2024, the deadline of these documents should be changed and adjusted to 2025.

For this reason, KLI recommends that the Draft Strategy and Draft Action Plan be adapted for the years 2025-2028 and that this change be reflected in the content of the Draft Strategy and Draft Action Plan.

¹³ Id., page 59.