

JUSTICE REFORM

Seeking Consensus



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INTRODUCTION

This analysis aims to bring to focus the determining factors for pushing forward the justice reform in Kosovo, and especially the role and capacities of the Assembly to handle this reform. For the purposes of this analysis, KDI has also established a focus group on 25 November 2022, with experts in the field including institutional stakeholders, representatives of international organizations and representatives of civil society organizations.

The first part of the analysis provides a historical overview of past Government initiatives aimed at reforming the justice sector in the country. Meanwhile, the analysis further deals with the main initiatives of the current Government in this direction, with a focus on the vetting process in justice, the establishment of the State Bureau for Verification and Confiscation of Unjustifiable Assets, the reform of the Prosecutorial Council (KPC) and the Kosovo Judicial Council (KJC), Prosecutions and Courts.

The third part of the analysis extensively elaborates the lack of consensus between the Government and the justice sector and the lack of political consensus between the parliamentary majority and opposition subjects reflected in the Assembly, as one of the main and most challenging factors for the Government to move forward with the justice reform. In this section, the perspectives and standings of the ruling and opposition parliamentary parties on the reform and the reasons behind the respective positions are revealed.

Whereas, in the fourth part, the analysis focuses on the role and capacities of the Assembly to address the legal initiatives of the Government that are related to the justice reform, with a focus on the relevant parliamentary commissions on which falls the review of these initiatives.

At the end, in the concluding section, KDI reveals the conclusions and recommendations for the decision-making stakeholders, with special emphasis on the Assembly and the parliamentary majority, in order to really push forward the justice reform.

**REFORMING THE
JUSTICE SECTOR
IN KOSOVO:
A BRIEF
HISTORY**



The legislation has been greatly improved and the budget for the justice sector has increased over the years, in practice, concrete results in the rule of law have been lacking. This has resulted in a bad reputation of the justice bodies and low public trust towards them.

Deficiencies in the justice sector in Kosovo have been noted since the declaration of independence, in local and international reports. Measurements by credible organizations such as Human Rights Watch or Transparency International have evaluated the situation in the justice sector as inadequate, while reform in this sector was seen as vital for strengthening the rule of law.

The initiatives to reform the justice sector have been taken by almost all Governments in the past. Since 2008, when Kosovo's institutions had expanded their powers in the administration of justice, reforms in this sector had also begun. These included amending legislation, structural changes within the justice sector and increasing the budget and improving security measures for this sector.

Despite all the reforms until now, one problem remained almost permanent, the inefficiency of the justice bodies and the mainly political external interventions in this sector. This has resulted on the one hand in a large backlog of cases and on the other hand in interference in the management and epilogue of the cases. Critical remained the intervention in major cases of corruption and organized crime, which were either time barred or for which low sentences were imposed.¹

Although the legislation has been greatly improved and the budget for the justice sector has increased over the years, in practice, concrete results in the rule of law have been lacking. This has resulted in a bad reputation of the justice bodies and low public trust towards them.

Even in the annual reports for the country, the European Union (EU) has continuously sought improvements in the rule of law, by guaranteeing the proper functioning of the justice sector. Since 2015, in progress reports for Kosovo, the following sentence has not changed: "Kosovo is at an early stage in the development of a well-functioning judicial system."²

However, the EU's criticism of Kosovo for this sector dates back to earlier years. In the first progress report for Kosovo after independence, in 2009, the European Commission (EC) emphasized that the justice sector in Kosovo needs a thorough reform, which should begin with the adoption of adequate legislation.³ Based on these requests and internal needs, during the respective year, the Government and legislature of the time adopted and amended several laws related to the justice sector, such as the Law on Mediation, the Law on Supplementing and Amending the Criminal Code, the Law on Supplementing and Amending the Criminal Procedure Code and the Law on the Temporary Composition of the Kosovo Judicial Council.⁴ During the same year, the justice sector also underwent a vetting process, conducted under the supervision of an International Independent Judicial and Prosecutorial Commission. The EC considered this process successful, but the judges and prosecutors from the Kosovo Serb community were not subjected to vetting.^{5 and 6}

1 See the KDI report "Culture of Impunity in Kosovo", 2020, in <https://kdi-kosova.org/wp-content/uploads/2021/03/01-KULTURA-E-PAND%C3%80SHKUESHM%C3%80RIS%C3%80B-N%C3%80B-KOSOV%C3%80B-ALB-04.pdf>

2 See the Progress Report of the European Commission for Kosovo 2008-2022 at, https://neighbourhood-enlargement.ec.europa.eu/index_en

3 See the Progress Report of the European Commission for Kosovo in 2009, p. 11. at, https://neighbourhood-enlargement.ec.europa.eu/kosovo-progress-report-2009_en

4 Ibid, p. 10.

5 Ibid.

6 See the Progress Report of the European Commission for Kosovo in 2010, p. 10. at, https://neighbourhood-enlargement.ec.europa.eu/kosovo-progress-report-2010_en



Since 2015, in progress reports for Kosovo, the following sentence has not changed: “Kosovo is at an early stage in the development of a well-functioning judicial system.”

A year later, in 2010, the Government of that time proceeded to the Assembly with a package of four laws that reformed to a large extent the justice system, specifically, the Law on KJC, the Law on KPC, the Law on Prosecutions and the Law on Courts, which provided for the operationalization of a new system of prosecutions and courts from January 2013.⁷ and ⁸ These laws were amended several times over the following years. In addition to this legal package, three important laws in the justice sector were also adopted during that year, specifically, the Law on Amending and Supplementing the Law on the Prevention of Conflict of Interest in Discharge of a Public Function, specifically, the Law on the Anti-Corruption Agency and the Law on Declaration the Origin of Property and Gifts of Senior Public Officials. The approval of the latter resulted in the electronic publication of asset declarations.⁹

In the following year, in 2011, the annual budget for the judiciary was increased to 17 million EUR, as opposed to 14 million EUR in the previous year.¹⁰ Despite all these changes, the rule of law in the country was still weak and EC reports in the following years, but also the reports of local organizations emphasized that the limited efficiency, independence and impartiality of the judiciary in practice was a serious obstacle to strengthening the rule of law.¹¹

Criticisms and demands towards Kosovo regarding the justice sector continued in the following years. From 2015 to 2018, the EC demanded from Kosovo that the package of laws for the judiciary be implemented, that the budget, staff and staff capacities in the judicial sector be increased, that legal and timely appointments be guaranteed in the main institutions, specifically in KJC and KPC, the number of unresolved cases be reduced through the practice of mediation, as well as the law on the Office of the Disciplinary Council be adopted to strengthen accountability.¹² Furthermore, improvements were required in the administration of the court, through a functional case management system for the randomization of cases and the provision of reliable statistical data in accordance with European standards.¹³ At that time, Kosovo was also criticized for not having a comprehensive strategy for reforms in the justice sector and a proper mechanism for inter-institutional coordination. Whereas, although in November 2016, the Government of that time had adopted a decision to carry out a functional review of the rule of law sector, it had not taken steps in this direction.¹⁴

7 Ibid, p. 9.

8 See the Progress Report of the European Commission for Kosovo in 2012, p.8, at https://wbc-rti.info/object/document/10812/attach/ks_analytical_2012_en.pdf

9 See the Progress Report of the European Commission for Kosovo in 2010, p. 12. at, https://neighbourhood-enlargement.ec.europa.eu/kosovo-progress-report-2010_en

10 Ibid, p.11.

11 See the Progress Report of the European Commission for Kosovo in 2012, p.9, at https://wbc-rti.info/object/document/10812/attach/ks_analytical_2012_en.pdf

12 See the Progress Report of the European Commission for Kosovo in 2015, p.12-13 and of 2016 p.5 at https://neighbourhood-enlargement.ec.europa.eu/system/files/2018-12/20151110_report_kosovo.pdf and at, https://neighbourhood-enlargement.ec.europa.eu/system/files/2018-12/20161109_report_kosovo.pdf

13 See the Progress Report of the European Commission for Kosovo in 2018, p.13 at, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-05/20180417-kosovo-report.pdf>

14 Ibid, p. 14.

In the following three years (2019, 2020 and 2021), Kosovo made some progress in the justice sector, having adopted the Law on Disciplinary Liability of Judges and Prosecutors and the new Law on Mediation and advanced the electronic case management system.¹⁵ The EU, during this period, positively evaluated the fact that the Ministry of Justice of that time, in coordination with KJC and KPC, had launched the Justice 2020 project, detailing a series of steps to improve the functioning of the judiciary in the short term.¹⁶ However, this project was interrupted due to the change of Government. The new Government elected in June 2020 initiated new reforms in the justice sector, with special emphasis on the decision to examine the need for the development of a new vetting process in the judiciary, but even this project was not finalized due to the change of Government at the beginning of 2021.¹⁷

The current Government, elected in March 2021, has already started the new justice reform, through the amendment of existing laws but also the drafting of new legislation. In the meantime, the administration of justice in the country continues to be slow and inefficient.



Kosovo was also criticized for not having a comprehensive strategy for reforms in the justice sector and a proper mechanism for inter-institutional coordination. Whereas, although in November 2016, the Government of that time had adopted a decision to carry out a functional review of the rule of law sector, it had not taken steps in this direction.

¹⁵ See the Progress Report of the European Commission for Kosovo in 2019, p. 14 at, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-05/20190529-kosovo-report.pdf>

¹⁶ Ibid, p. 15.

¹⁷ The Ministry of Justice, led by Mr. Selim Selimi, had established the vetting working group with institutional and civil society participants. The leader of this group was a representative of KDI.

THE CURRENT GOVERNMENT INITIATIVES FOR JUSTICE REFORM



Having this in mind, the current Government, a few months after coming to power, completed the Functional Review of the Rule of Law Sector, within which the Strategy for the Rule of Law and the Action Plan (2021-2026) were also adopted

Evaluations of progress reports and citizens' perceptions of the justice sector over the years testify for the need for reform in this sector. Such a thing has been confirmed by public opinion measurements of international organizations and civil society. The annual barometer published by the Kosovar Centre for Security Studies (KCSS) also during the year 2022 has revealed a low level of citizen trust in the justice sector. Thus, only 32% of the respondents expressed that they trust Kosovo's courts and prosecutors to some extent, with 21% not trusting these justice bodies at all.¹⁸ Citizens have also expressed relatively low level of trust in the justice sector in the last measurement carried out by KDI in September of this year.¹⁹

The current Government led by the political party Vetëvendosje came to power in March 2021, under the electoral platform "Employment and Justice", where the comprehensive reform of the justice sector was proclaimed to be one of the two main goals of this party. Consequently, in the program of the new Government, the justice reform represents a central place where it is stated that the vision of the Government is independent, impartial, efficient and professional justice, and this is intended to be achieved through strengthening the justice sector and increasing citizen trust.²⁰ Having this in mind, the current Government, a few months after coming to power, completed the Functional Review of the Rule of Law Sector, within which the Strategy for the Rule of Law and the Action Plan (2021-2026) were also adopted.²¹ In its framework, a number of

legal initiatives have been started, with a special emphasis on the intention to implement a vetting process in the judiciary, the reform of KPC and KJC and the initiative to create a State Bureau for the Verification and Confiscation of Unjustified Assets.

Despite the new steps to reform the justice sector, in the new report for the country published in October 2022, limited progress in this sector has been evidenced, almost similar to previous years. The statement that Kosovo still continues to be at an early stage in the development of a well-functioning judicial system is also noted in this report. Regarding the current Government's initiatives for justice reform, it is brought to focus that the reform must be addressed, first of all by improving the implementation of existing tools to protect the integrity, independence and efficiency of the judicial system, including appropriate legislative changes. These mechanisms include, among others, an asset declaration system, disciplinary procedures and consistent performance evaluation, in accordance with European standards and the recommendations of the Venice Commission Opinion of 17 June 2022.²²

In addition, the Government is recommended to continue the implementation of the Strategy and Action Plan for the Rule of Law 2021-2026, without delays and ensuring inter-institutional coordination. Among other things, it is required to increase efforts to reduce the large number of backlogs, through a digitization strategy, which includes

18 See KCSS, "Citizens' perception of the integrity of public institutions in Kosovo", January 2022, p. 5 in, https://qkss.org/images/uploads/files/Barometer_2021_Kosovo_1_SHQP_%281%29_%281%29.pdf

19 See the KDI Public Opinion Research "Citizens' Perspective on Reform in the Justice System", September 2022, at <https://kdi-kosova.org/wp-content/uploads/2022/09/35-Reforma-ne-sistemin-e-drejtise-05-1.pdf>

20 See "PROGRAM OF THE GOVERNMENT OF THE REPUBLIC OF KOSOVO 2021 - 2025", at <https://masht.rks-gov.net/wp-content/uploads/2022/06/Programi-i-Qeverise-se-Kosoves-2021-2025.pdf>

21 See the Rule of Law Strategy 2021-2026 at, <https://md.rks-gov.net/desk/inc/media/6DC1CBD5-0DF1-46AE-9D1A-78C96146C7D0.pdf>

22 See the Report on Kosovo of the European Commission, of the year 2022, p. 16, at https://ec.europa.eu/commission/presscorner/detail/en/country_22_6090



The initiatives for new justice reform have been welcomed by the citizens of Kosovo. In the survey carried out by KDI in September 2022, 70.8% of citizens believe that justice reform is possible.

the systematic use of the Case Management Information System (SMIL) by judges, prosecutors and support staff, as well as the use and financing of alternative dispute resolution tools, such as mediation.²³ It should be noted that these recommendations have been repeated in almost all the EC's preliminary reports on Kosovo as well as in the current document on European Reforms Agenda.

The initiatives for new justice reform have been welcomed by the citizens of Kosovo. In the survey carried out by KDI in September 2022, 70.8% of citizens believe that justice reform is possible. Whereas, for more than 50% of them, justice reform means an increase in the quality of courts, professional judges and independent courts. In a very high percentage, over 70%, citizens have expressed support for the vetting process and the creation of the State Bureau for the Verification and Confiscation of Unjustified Assets.²⁴

The current Government has already proceeded with several legal initiatives related to the justice reform (See Annex). In its framework, some of the initiatives have been sent for opinion to the Venice Commission, whose recommendations are being used as an important guide for the implementation of the justice reform.

The Ministry of Justice (MoJ) has already drafted two of the main reform initiatives in the justice sector. One of these is the Draft Law on the State Bureau, which was adopted in the Assembly in the first reading. Meanwhile, the second initiative, after a long work within the Ministry of Internal Affairs, has sent the so-called 'Vetting File' to the Assembly, on which the Assembly must draft the constitutional amendments and the draft law on Vetting. This was done

with the aim of creating a political consensus for vetting in justice. This has given the Assembly an important role in the materialism of the justice reform.

While the real capacity of this institution to deal with and properly address the justice reform remains to be discussed, another challenge for the Government is the lack of political consensus and not only on pushing forward the reform.

²³ Ibid. P. 17.

²⁴ See the KDI survey: "Citizens with low trust in the justice system, demand reform", September 2022, at <https://kdi-kosova.org/aktivitetet/sondazhi-i-kdi-se-tytetaret-me-besueshmeri-te-ulet-ne-sistemin-e-drejtewise-kerkojne-reforme/>

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**LACK OF
CONSENSUS ON
HOW TO REFORM
THE JUSTICE
SECTOR**



The meetings that were held in the working groups for the concept document for vetting were followed by controversies between the representatives of the MoJ and the representatives of KJC and KPC. Meanwhile, the latter have boycotted some of the meetings of the working group.

From the beginning of the introduction of the reform in the justice sector, the current Government has encountered challenges and criticism from almost all sides. Initially, it encountered internal resistance from the stakeholders of the justice sector themselves, who expressed that they do not support the Government's initiatives for such reform of the sector. Until now, the latter has not reached a consensus with the representatives of these bodies to advance the main legal initiatives related to the justice reform.

In July of this year, after the Venice opinion on vetting and the Draft Law for the State Bureau, KJC stated, through a press release, that it does not support them and will not participate in the working groups for the legal initiative on vetting in justice. Furthermore, they have emphasized that they remain committed and ready to contribute to the working groups for supplementing or amending the Law on Courts, the Law on KJC, the Law on Disciplinary Liabilities of Judges and Prosecutors, or any other legal initiative aimed to further strengthening the internal mechanisms of the judiciary.²⁵ A Day later, KPC also issued the same press release.²⁶ The latter has expressed disagreements with MoJ also regarding the Draft Law on KPC.²⁷

Before that, the meetings that were held in the working groups for the concept document for vetting were followed by controversies between the representatives of the MoJ and the representatives of KJC and KPC. Meanwhile, the latter have boycotted some of the meetings of the working

group. As a result, MoJ continued with the completion of the vetting file and submitted it to the Assembly without support and without consensus with KPC and KJC.²⁸

Relations between the Government and the justice sector have further deteriorated after the Government's initiatives for changes in financial compensation in this sector, first through the provisions in the Draft law on Salaries, and finally through the repeal of a decision of the former Haradinaj Government that had automatically increased the salaries of judges and prosecutors. Although the Government has the right to repeal the decisions of the previous Governments, in this regard it must pay attention to preserving the principle of the separation of powers and the independence of the judiciary. The same principle should be reflected during the review and completion of the Draft law on Salaries.

In addition to the representatives of the justice sector, in the beginning the EU did not fully support the initiatives for justice reform, especially vetting in this sector. In the 2021 report on Kosovo, EU has evaluated as worrying the complete re-evaluation/vetting of all prosecutors and judges. According to this report, such a process should only be considered as an exceptional measure of last resort, after exhausting all existing means and mechanisms to guarantee the integrity and fight corruption of judicial officials, and must be in accordance with European and international standards, as well as the advice of the Venice

25 See the official website of the KJC, "The position of the Judicial Council of Kosovo after the opinion of the Venice Commission on the issue of Vetting", July 29, 2022, at <https://www.gjyqesori-rks.org/2022/07/29/qendrimi-i-keshillit-gjyqesor-te-kosoves-pas-opinionit-te-komisionit-te-venecias-per-ceshtjen-e-vetingut/>

26 See the official website of the KPK, "Position of the Prosecution Council of Kosovo after the Opinion of the Venice Commission on the Concept Document of the Ministry of Justice on "Vetting", July 30, 2022, at <https://prokuroria-rks.org/psh/lajm/8702>

27 See the KPK Media Statement of March 9, 2022, at <https://prokuroria-rks.org/psh/lajm/8124>

28 Portal "Kallxo", "Kurti and Haxhiu send the Vetting file to the chairman of the assembly Glauk Konjufca", at <https://kallxo.com/lajm/kurti-e-haxhiu-dergojne-dosjen-e-vetingut-te-kryetari-i-kuvendit-glauk-konjufca/>



On the other hand, the achievement of political consensus to push forward the justice reform remains an important element.

Commission.²⁹ However, in the latest EC report on Kosovo published in October 2022, there is a more softened position of the EU regarding vetting.³⁰ The opinions of the Venice Commission, which the Government is using as an important guide in the implementation of the reform, seem to have played a role in this change. Consequently, the Government has secured support from the EU, provided that the justice reform is done with increased caution, in accordance with international standards and the recommendations of Venice.

On the other hand, the achievement of political consensus to push forward the justice reform remains an important element. Initially, regarding the justice reforms, there were disagreements even within the parliamentary group of the LVV. A few days after the Government submitted the vetting file to the Assembly, the LVV PG MP Doarsa Kica-Xhelili, switched to the LDK political entity, and as the main reason she pointed out disagreements with the way the Government reformed the justice sector.³¹

The political support that translates into numbers in the Assembly for the adoption of legal initiatives related to the justice reform, seems to be one of the main challenges of the Government to move this process forward. Although the opposition entities have supported some of the draft laws sponsored by the Government, they have opposed some others, mainly due to disagreements about their content (see details in the Annex). Most of the initiatives related to the justice reform were adopted only with the votes of the parliamentary majority and were not supported

by the opposition entities. For example, the Law on KPC, a few weeks after its adoption in the Assembly, was sent to the Constitutional Court by the opposition entities, first by the Democratic Party of Kosovo (PDK) and then by the Democratic League of Kosovo (LDK), in two separate cases, since according to these two entities this Law infringes on the independence of the judiciary in the country.³²

Similarly, the opposition did not even support the Draft Law on the State Bureau for the Verification and Confiscation of Unjustified Assets in the first reading. After the remarks of the Venice Commission on the content, the opposition demanded that the Government withdraw this Draft law. However, the latter has supported the adoption of this Draft Law in the first reading. As a result of this, the opposition has boycotted the participation in the working group for the review of this draft law. However, before the draft law is processed in the session for second reading, it has been reviewed by the Legislation Commission. A part of this commission, led by the chairperson, has organized a series of public discussions with representatives from the MoJ, the Assembly, the Anti-Corruption Agency, local and international experts and representatives of civil society. Representatives of justice institutions did not participate in these discussions. During the discussions, amendments to the draft law were presented one by one by the chairperson of the Legislation Committee and the deficiencies in the first version of the Draft Law were addressed based on the requirements of the Venice opinion. The final version of the draft law was processed for a second opinion in the Venice Commission by the President of the Assembly Glauk Konjufca.³³

²⁹ See the 2021 EC Report on Kosovo.

³⁰ See the 2022 EC Report on Kosovo.

³¹ Klan Kosova, Rubikon, "Confession of Doarsa Kica-Xhelili (VIDEO)", September 8, 2022, at <https://klankosova.tv/rrefimi-i-doarsa-kica-xhelilit-video/>

³² Koha Net, "PDK and LDK bring the Law on the KPK to the Constitution", July 1, 2022, in <https://www.koha.net/lajmet-e-mbremjes-ktv/332907/pdk-ja-e-ldk-ja-cojne-ne-kushtetuese-ligjin-per-kpk-ne/>

³³ Kosova Press, "Konjufca sends the Draft Law for the State Bureau to the Venice Commission", November 20, 2022 në, <https://kosovapress.com/konjufca-der->

Although the parliamentary majority has the sufficient number of votes in the Assembly to adopt laws, there were not little cases when the necessary quorum for voting was lacking. Even the last progress report for the country has evidenced the political polarization in the Assembly and the lack of a quorum for decision-making. In this regard, it was brought to attention that efforts are needed to strengthen the role of the Assembly as a forum for constructive political dialogue and consensus building, especially in relation to the EU reform agenda.³⁴

A consensus in principle between the parliamentary majority and opposition entities has been reached regarding vetting in justice. The opposition entities have expressed their willingness to participate in the drafting of Constitutional amendments and the drafting of the Draft Law on vetting. Meanwhile, on September 4, the Government submitted the vetting documentation to the Assembly.³⁵ In this regard, the presidency of the Assembly should undertake the procedural steps to entrust the drafting of constitutional amendments to the Committee for Legislation or to create a special ad-hoc parliamentary committee for this process.

It is not yet clear what standings will the opposition entities have on this issue and whether the political consensus will continue in the later stages regarding the content of the vetting legislation. For constitutional amendments for vetting, the Government must secure 2/3 of the necessary votes for adoption. The joint position-opposition will for the drafting of these amendments is positive, however it is too early to conclude whether this will translate into support during the vote. On the other hand, for the amendment of the Constitution, the Government needs 2/3 of the votes of the MP from the non-majority communities. Given the usual attitudes of the political entity Serb List towards the Government, securing the necessary votes will be a challenge. After the adoption of vetting legislation, the question remains as to how this legislation will be applied in practice in the entire justice sector, specifically for Serbian prosecutors and judges. As evidenced in the official reports, the latter had refused to participate in the vetting process undertaken in 2009.

In addition to reaching the general consensus to push forward the justice reform, a special attention should be paid to the role of the Assembly and its capacities to handle the legal initiatives related to the reform.



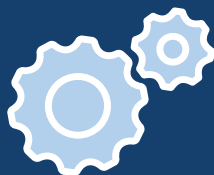
A consensus in principle between the parliamentary majority and opposition entities has been reached regarding vetting in justice.

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³⁴ See the 2022 EC report on Kosovo, p. 8,9.

³⁵ "Kallxo" portal, "Kurti and Haxhiu send the Vetting file to the speaker of the assembly Glauk Konjufca", at <https://kallxo.com/lajm/kurti-e-haxhiu-dergojne-dosjen-e-vetingut-te-kryetari-i-kuvendit-glauk-konjufca/>

THE ROLE AND CAPACITY OF THE ASSEMBLY TO ADDRESS THE JUSTICE REFORM



Another relevant aspect remains the capacity of the Assembly and its bodies to examine the complex reform process in detail and objectively, especially new initiatives such as vetting, but also the regulation of the legal framework for the State Bureau.

The Institution of the Assembly in a parliamentary republic, as is the case of Kosovo, has a decisive role in the legislative process. According to the Constitution, the prerogative of legislation is specified in Article 65, which vests the Assembly with competence to “adopt laws, resolutions and other general acts.”³⁶ Further, in the following paragraph, Article 65 stipulates the procedure to amend the Constitution, with the support of 2/3rd of all its MPs – including 2/3rd of MPs representing non-majority communities.³⁷

Furthermore, the Rules of Procedure of the Assembly specifies the role and responsibilities of the MPs and the function of the Assembly mechanisms. According to the Rules of Procedure, MPs exercise their legislative and oversight role in parliamentary sessions and committees. Based on the constitutional competences, the Assembly at the beginning of the election mandate shall appoint standing committees, functional committees and ad-hoc committees, which reflect the political composition of the Assembly. The current eighth legislature has established four standing committees, ten functional committees and several ad-hoc committees as needed.³⁸

The review of legal initiatives that come from the Government fall especially on the *Committee for Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency*, but also other standing committees that deal with budgetary aspects, European integration and community rights. Regarding the issue of vetting, if the Presidency of the Assembly decides to establish an ad-hoc parliamentary committee, it will be

this committee that will exclusively work on the drafting of constitutional amendments and drafting of the draft Law on Vetting. The fact that the Government has brought this issue to the Assembly makes the Assembly decisive in the implementation of a very important part of the justice reform.

Another relevant aspect remains the capacity of the Assembly and its bodies to examine the complex reform process in detail and objectively, especially new initiatives such as vetting, but also the regulation of the legal framework for the State Bureau. The latter has been adopted in the first reading and a part of the Legislation Committee worked on the drafting of legal amendments and addressing the remarks of the Venice Commission, before the draft law is proceeded for the second reading session.

As for the professional support, during the review of draft laws, the MPs relied to a great extent on the administration of the Assembly, especially on the four Directories which are tasked to support the MPs in procedural, legal and expertise matters. Specifically, the Directory for Plenary and Procedural Affairs, Directory for the Support of Parliamentary Committees, Directory for Legal Standardization, Approximation and Harmonization, and Directory for Research, Library and Archives.

According to the officials of some of these Directories, the Assembly has limited capacities to properly examine the initiatives that fall within the framework of the justice reform.³⁹ Some of the members of the Legislation

³⁶ See the Constitution of the Republic of Kosovo, Article 65, paragraph 1, at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

³⁷ Ibid, paragraph 2.

³⁸ The official website of the Assembly of Kosovo, at: <https://kuvendikosoves.org/shq/komisionet/>

³⁹ KDI interview with officials of the Legislation Committee and the Directory for the Support of Parliamentary Committees, Assembly of Kosovo, September 9, 2022.



Judging from the above perspectives, it can be affirmed that the Assembly, with all its mechanisms and bodies, needs increased support for dealing with a complex process, such as justice reform, with special emphasis on the issue of vetting.

Committee have legal expertise, however, the large volume of draft laws makes it difficult to properly deal with each draft law. Especially during 2022, when the Government has brought to the Assembly a large number of draft laws compared to other years. While during 2021, 36 laws have been adopted in the Assembly, during 2022, 103 laws have been adopted so far, whereas 49 draft laws are in the review procedure.⁴⁰

Regarding expert support for MPs, they have the opportunity to use the expertise provided within the Assembly by the Directory for Research, Library and Archives. This office currently has a staff of seven people who prepare request-based researches for MPs. However, due to the large number of draft laws in the Assembly, this office is overloaded with work and needs to fill vacant positions that have not yet been filled.⁴¹

Parliamentary Committees also have their own budget to engage experts for drafting parliamentary researches depending on the scope of draft laws, if such a thing is deemed necessary. However, the foreseen amount of 800 EUR for the engagement of an expert is considered low, which makes it difficult for them to engage in drafting parliamentary researches. Add here the fact that most experts choose not to engage as they consider this engagement to be involvement in political issues.⁴² The engagement of external experts by the committees is sometimes done based on the preferences of the political entities only formally and on the basis of the conflict of

interest, which results in inadequate provision of necessary expertise for the MPs.⁴³

On the other hand, regarding the necessary capacities for dealing with the justice reform, the MPs also share the same opinion with the officials of the administration of the Assembly. The MPs from the ranks of the opposition consider that the Assembly does not have sufficient capacities to properly examine the draft laws, including those related to the justice reform. Problematic is the fact that only a small number of MPs have professional training in the legal field, while most of them lack legal expertise for drafting norms.⁴⁴ Add here the fact that MPs do not have offices and assistants that could facilitate their work, as provided for in the Rules of Procedure of the Assembly.

A more or less similar opinion is shared by the MPs from the ranks of the position, who consider that the great dynamics of the draft laws that come to the Legislation Committee necessitates increased support for this committee. Furthermore, according to them, the Assembly does not have sufficient capacity to provide support to the MPs. Given that issues, such as vetting in justice or the establishment of the State Bureau, are new concepts, this makes it necessary to provide specialized external expertise for MPs.⁴⁵

40 From the focus group discussion, organized by KDI on 25 November 2022.

41 KDI interview with officials of the Directory for Research, Library and Archives, Assembly of Kosovo, September 9, 2022.

42 From the focus group discussion, organized by KDI on 25 November 2022.

43 Ibid.

44 KDI interview with members of the Assembly from the ranks of the opposition, Assembly of Kosovo, 13 September 2022.

45 KDI interview with members of the Assembly from the ranks of the position, Assembly of Kosovo, 12 September 2022.



In the end, political will remains the determining factor to push forward initiatives related to justice reform. Strengthening of capacities of the Assembly to deal with the justice reform must be preceded by the readiness of the political entities to move the reform forward.

Political entities should also pay special importance to the support of their parliamentary groups. A part of the own budget that each political entity has, should also be dedicated to the needs of parliamentary groups, especially to the increase of support with internal professional capacities, which include teams of experts and professional advisers.⁴⁶

In cases where the Assembly establishes ad-hoc committees, the work dynamics of the MPs and support staff of the Assembly is increased, and sometimes the work in these committees takes place even during the weekends. Furthermore, there are cases where certain MPs and officials of administration of the Assembly work in parallel in several committees and different draft laws, which penalize proper examination of materials. In this regard, it is important that in the event of establishment of an ad-hoc committee for vetting, this committee shall have a larger budget allocated for external expertise, as well as special support staff, potentially with professional legal training. This, given the complexity and importance of vetting as a process and given the ambitious plan of the MoJ and the parliamentary majority for this process to be handled and concluded as soon as possible.⁴⁷ In this regard, positive fact is that the vetting dossier submitted by the MoJ is quite advanced and MPs will have more of a role in checking the amendments and norms rather in their drafting from the beginning. In this process, they would be supported by the sponsor of this initiative, the experts and staff of the MoJ, but also international experts.⁴⁸ The Assembly has continuously been supported by international and civil society organizations, through parliamentary researches

on various issues. Although, this support is not extended to all issues and is provided depending on the thematic focus of respective organizations.⁴⁹

Judging from the above perspectives, it can be affirmed that the Assembly, with all its mechanisms and bodies, needs increased support for dealing with a complex process, such as justice reform, with special emphasis on the issue of vetting. Consequently, MPs need more support in terms of providing adequate expertise, which would enable clarification of the content of the proposed legal materials. Therefore, strengthening especially the Legislation Committee and other committees under which the reform falls, in terms of providing additional capacities, is important to strengthen the decision-making of MPs. In general, a decent treatment of the justice reform package should be characterized by a critical judgment based on knowledge that is made accessible to MPs through expertise. Only by handling the content of the justice reform in a professional manner and issuing practically applicable laws, the deficiencies in the justice sector could be corrected.

⁴⁶ From the focus group discussion, organized by KDI on 25 November 2022.

⁴⁷ From the focus group discussion, organized by KDI on 25 November 2022.

⁴⁸ Ibid.

⁴⁹ For example, for the completion of the amendments to the Draft Law on the State Bureau, the Legislation Committee had support from organizations such as UNDP, the Council of Europe and KDI.

In the end, political will remains the determining factor to push forward initiatives related to justice reform. Strengthening of capacities of the Assembly to deal with the justice reform must be preceded by the readiness of the political entities to move the reform forward.⁵⁰ Currently, the largest political entities have expressed their willingness to work together in one of the main initiatives, such as vetting in justice, nevertheless, in order to successfully complete this process, it is necessary that this willingness continue to the end and also include political entities of non-majority communities.

The Assembly should pay special attention to transparency and public inclusiveness during the review of initiatives related to the justice reform. To this end, relevant committees should develop a plan of communication with the public, which also includes organization of more public hearings in different cities of Kosovo. This is for the purpose of explaining new concepts related to the justice reform and their impact on the lives of citizens.⁵¹



The Assembly should pay special attention to transparency and public inclusiveness during the review of initiatives related to the justice reform.

⁵⁰ From the focus group discussion, organized by KDI on 25 November 2022.

⁵¹ Ibid.

5. CONCLUSION AND RECOMMENDATIONS

Initiatives to reform the justice sector in Kosovo commenced many years ago. Although the legislation in this sector has been advanced, and the budget and protective measures for this sector have increased, the performance of the justice bodies has not been satisfactory. The inefficiency of this sector contributed to the backlogging of a large number of cases, external and political interventions in their management and epilogue, as well as the lack of internal accountability. Consequently, the rule of law in the country remains to be poor, while citizens' trust in the justice system is generally low. Even international reports on Kosovo continue to evaluate that the country is at an early stage in the development of a well-functioning judicial system.

Given these circumstances, a new reform in the justice sector has begun even under the current Government, elected in 2021. This Government, headed by LVV, has had justice, alongside employment, as the two main goals of governance. Consequently, a number of legal initiatives aimed at the general reform of the justice sector have commenced. For some of the legal initiatives, the Government has not found support from justice stakeholders and opposition political entities. Therefore, materialisation and implementation of some of the main reforms still remains a challenge.

One of the main initiatives of the justice reform, the vetting, the Government has delegated to the Assembly for addressing, in an effort to ensure broad political consensus to move this process forward. However, its review remains within the limited capacity of this institution, which needs increased expertise to properly address this initiative.

Given the importance of increasing the efficiency of the justice sector, KDI offers the following recommendations regarding the justice reform:

- 1 The political entity in power must establish broad consensus with the stakeholders within the justice sector to push forward the reform in this sector.
- 2 The political entity in power must establish broad political consensus with all political entities, including political entities representing non-majority communities, to push forward the adoption of legal initiatives related to justice reform.
- 3 The political entity in power should aim for draft laws and amendments related to justice reform to be reviewed in the Assembly with genuine procedures, avoiding accelerated procedures.
- 4 The Assembly members must be equipped with necessary information and expertise to deal properly with the initiatives related to the justice reform.
- 5 Parliamentary groups must use a part of the budget of the political entity to which they belong to, to provide support staff with professional legal training, for the review of materials related to the justice reform.
- 6 The Presidency of the Assembly must allocate a suitable budget and sufficient professional capacities to the parliamentary committee that will deal with the issue of vetting in the justice sector, so that this process can be examined professionally and without delay.
- 7 The Assembly should further strengthen the support directories of the parliamentary committees based on their requests and the needs of the MPs.
- 8 The Assembly should pay special attention to transparency and inclusiveness of the public when dealing with initiatives related to the justice reform, including the organization of public hearings in the cities of Kosovo.

ANNEX:

Evidence of draft laws and laws related to justice reform

In the framework of the justice reform, the Government has so far proceeded the following draft laws in the Assembly, some of which have been adopted, while others are still in the process between the two readings. Most of these draft laws were adopted only by the votes of the parliamentary majority, but some of them were also supported by the opposition entities.

- The Law on Amending and Supplementing the Law on Disciplinary Liability of Judges and Prosecutors has been adopted in the Assembly on 4 October 2021 with 70 votes in favour, none against and no abstentions, with the support of opposition entities.⁵² This Law was also amended during the previous Governments, and its implementation has also been brought to focus in the progress reports of the EC. The same is considered as very important in increasing the efficiency of the justice and rule of law sector.
- The second draft law in the framework of the justice reform was the one for the establishment of the Commercial Court, the law that was adopted in the Assembly on 21 January 2022 with 74 votes in favour, none against and no abstentions, with the support of opposition entities.⁵³ Meanwhile, this Court started to operate on 3 August of the same year. According to the Ministry of Justice (MoJ), the establishment of this Court is another guarantee for economic development and creation of a much more suitable environment for foreign investors.⁵⁴
- On the same day, the Assembly adopted in the second reading the Draft Law on Property Rights of Foreign Citizens, through which the property issues for foreign citizens are regulated, and also fulfils one of the obligations that Kosovo has in the framework of the Stabilization and Association Agreement with the European Union.
- About a month later, on 9 February 2022, the Law on Amending and Supplementing the Law on Free Legal Aid was also adopted, through which the victims of many categories will benefit from the free legal aid.⁵⁵ The opposition had also given their support to this Draft Law, although with some remarks on its contents. The same was voted by the Assembly with 60 votes in favour, 2 votes against and no abstentions.⁵⁶
- On 3 March 2022, the Assembly also adopted the Law on Amending and Supplementing the Law on Administration of Sequestered and Confiscated Property, with the broad support of opposition entities, with 74 votes in favour, none against and no abstentions.⁵⁷
- During this same month, on 31 March 2022, the Assembly adopted two very important draft laws in the field of international legal cooperation, the Draft Law on International Legal Cooperation in Civil Matters, a draft law adopted for the first time in Kosovo, as well as the Draft Law on Amending and Supplementing the Law No. 04/L-213 on International Legal Cooperation in Criminal

52 See the transcript of the Assembly session held on 4 October 2021, page 45, at: https://www.kuvendikosoves.org/Uploads/Data/SessionFiles/2021_10_04_ts_Seanca_ERx8gG5sUn.pdf

53 See the transcript of the Assembly session held on 21 January 2022, page 137, at: https://www.kuvendikosoves.org/Uploads/Data/SessionFiles/2022_01_20_ts_Seanca_8NUmt9YWhM.pdf

54 Ministry of Justice, News and Events, "Commercial Court begins the work", 3 August 2022, at: <https://md.rks-gov.net/page.aspx?id=1,15,2786>

55 Beneficiaries of free legal aid will be the following categories: Persons sexually violated during the war in Kosovo in the years 1998-1999; Victims of domestic violence; Victims who witnessed violence, who are dependent on victims of domestic violence; Victims of gender-based violence; Victims of any type of sexual violence, including sexual harassment; Victims of human trafficking; Juvenile victims; Children living in institutions of social care; Foster children seeking to initiate proceedings without the consent of their legal guardian or against their legal guardian; Persons whose rights have been violated through an action or inaction that constitutes discrimination, based on the decision of the competent body according to the law in force on protection from discrimination; journalists,

56 See the transcript of the Assembly session held on 9 February 2022, page 20, at: https://www.kuvendikosoves.org/Uploads/Data/SessionFiles/2022_02_09_ts_Seanca_02_xzeeXetXMc.pdf

57 See the transcript of the Assembly session held on 3 March 2022, page 23 at: https://www.kuvendikosoves.org/Uploads/Data/SessionFiles/2022_03_03_ts_Seanca_mMhVfFXRe.pdf

Matters, through which it is intended to eliminate the obstacles and shortcomings of the existing law in terms of increasing the efficiency of law enforcement bodies in the field of international legal cooperation in criminal matters.⁵⁸

- Whereas, a few months later the Law on Bar Examination was adopted, specifically on 14 June 2022, which is considered an important part of the justice reform.
- A few days later, the MoJ proceeded with the second reading of the Draft Law on Amending and Supplementing the Law on Kosovo Prosecutorial Council, which was adopted by the Assembly on 23 June 2022. However, the same was sent to the Constitutional Court a few weeks later, after its adoption, by the opposition parties, first by PDK and then by LDK, in two separate cases.⁵⁹
- On 1 July 2022, the Assembly also adopted the draft Law on the Agency for Prevention of Corruption, according to which not only the name of the Agency is changed (from the Anti-Corruption Agency to the Agency for the Prevention of Corruption), but the mandate of the Agency (APC) is clarified and duties and responsibilities are clearly defined, focusing on the implementation of relevant laws, prevention of conflict of interest, declaration of assets and gifts, as well as whistle-blowers protection issues. Also, the Agency will be engaged in the aspect of preventing corruption, being involved in the process of drafting draft acts with the aim of identifying and recommending the elimination of spaces that are seen as misuse of official duties.
- Whereas, one month later, specifically on 14 July 2022, the Government also proceeded to voting the Criminal Procedure Code, which was adopted by the Assembly, through which the recommendations related to the European Reform Agenda (ERA) have been addressed, in an extensive consultations process, and through which important steps are taken in the direction of the fight against corruption and organized crime, with a special chapter being prepared for the issue of suspension of public officials in the case of indictments against them,

for certain categories of criminal offences. It is worth noting that this description of articles in the Criminal Procedure Code was made in accordance with the recommendations of the Venice Commission, a document which the Government (Kurti 1) had sent for opinion.

- On the same date (14 July 2022), the Assembly also adopted amendment to the Law on the Declaration, Origin and Control of Assets and Gifts, Law on Kosovo Probation Service, Law on Kosovo Correctional Service and the Law on the Execution of Criminal Sanctions.⁶⁰
- Progress has also been noted in the field of civil legal relations with a foreign element. Thus, on 4 August 2022, the Assembly adopted the Draft Law on Private International Law, in accordance with international standards in the handling of civil, family, hereditary and commercial matters with a foreign element. This draft law has been adopted for the first time in Kosovo, thus removing from the legal order of the country a law of the former Yugoslavia.
- Regarding the issue of crime victims, on 14 October 2022, the Assembly adopted the Draft Law on Crime Victim Compensation, thus advancing further the legislation in this field. Through the new Law, the criteria and procedures to apply for benefits from the crime victim compensation fund have been simplified, and immediate compensation for certain categories of victims, with special emphasis on those of domestic violence, as well as vulnerable victims, has been foreseen.
- In addition to these legal initiatives that have already been adopted by the Assembly, the Government has also proceeded with a number of draft laws in the Assembly within the framework of the justice sector reform, including the vetting file.

58 Several new cooperation agreements in this field were added to the field of international legal cooperation, such as the Agreement for mutual legal assistance in civil matters between the Government of the Republic of Kosovo and the Government of the Republic of North Macedonia, adopted by the Assembly with 22 February 2022, then the Agreement between the Government of the Republic of Kosovo and the Council of Ministers of the Republic of Albania on Mutual Legal Assistance in Civil and Commercial Matters adopted by the Assembly on 11 May 2022, the Treaty on Mutual Legal Assistance in Criminal Matters between government of the Republic of Kosovo and the Swiss Confederation, adopted by the Assembly, dated 21 July 2022.

59 Koha Net, "PDK and LDK sends the Law on the CPC to the Constitution", 1 July 2022, at: <https://www.koha.net/lajmet-e-mbremjes-ktv/332907/pdk-ja-e-ldk-ja-cojine-ne-kushtetuese-ligjin-per-kpk-ne/>

60 Assembly of Kosovo, Evidence of Laws and Draft Laws.

- In the meantime, the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets, which was adopted by the Assembly in the first reading on 14 July 2022, is currently in the process. Currently, this draft law has been sent for opinion for the second time to the Venice Commission, after consideration and completion of amendments by a part of the Legislation Committee, based on the initial opinion of the Venice Commission.
- The MoJ, during the months of September and October 2022, has also processed several other draft laws that are included in the framework of the justice reform. These include the Draft Law on the State Prosecutor and the Draft Law on the Special Prosecution, as part of the reform package of the prosecutorial system. These laws aim to ensure an efficient and effective system of prosecution and clear procedures and criteria for elections to leadership positions within the institution of the State Prosecutor, to ensure a prosecutorial system with integrity. Also, through the Draft Law on Special Prosecutor's Office, it is intended to clarify the powers and responsibilities of this prosecutor's office and provide for the regulation of the relationship between this prosecutor's office and the police, the details of which in terms of procedure are foreseen and regulated by a sub-legal act.
- The Draft Law on Amending and Supplementing the Criminal Procedure Code and the Draft Law on Amending and Supplementing the Criminal Code, which are expected to be reviewed during the month of November in the Assembly sessions⁶¹, with the aim of toughening the criminal sanctions for the perpetrators of the criminal offenses of rape, sexual violence and domestic violence, as a need and necessity to address such phenomena with worrying dimensions and consequences for our society.
- In the meantime, the MoJ has announced that it also plans to codify the Civil Procedure, to draft the Concept Document on Administrative and Labour Justice, which is the continuation of the reform of administrative justice, starting from the Draft Law on Administrative Conflicts, which has already been processed from the Government to the Assembly. The MoJ also plans the establishment of a special court for administrative and labour disputes, either as a single court or two separate courts (it remains to be recommended by the relevant experts), as well as the reform of the Supreme Court, namely the Special Chamber, with the aim of increasing of the efficiency of this chamber.

⁶¹ Assembly of Kosovo, Evidence of Laws and Draft Laws.

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