

THIRD
EDITION

*Rule of law findings in
Kosovo - based on the
rule of law checklist*

"A state of deadlock"



Group for Legal
and Political
Studies



Embassy of the
Kingdom of the Netherlands

Rule of Law Findings in Kosovo - based on the Rule of Law Checklist

"A state of deadlock"

Third edition

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Executive overview

This report contains a six-month assessment of the current state of the rule of law implementation in Kosovo, based on the Rule of Law Checklist, adopted and approved by the Venice Commission.¹ This checklist serves as a tool for systematic and comprehensive evaluation of the fundamental pillars in the rule of law field. The current assessment report provides thorough information regarding the time period from May to October 2022.

During this period, the average grade of fulfillment for Kosovo is 53.24%, which means that Kosovo has again scored a grade above the “passing grade”, which is very similar to the previous period assessment for (November 2021 - April 2022). Out of the five (5) evaluated categories, the category Equality before the law scored again the highest points, with a score of 70%, but compared to the previous evaluation where it scored 80%, this category has suffered a decline. On the other hand, the Prevention of Abuse (Misuse) of Power category again scored the lowest, marking 37.5% compliance, without any change in points from the previous assessment. All other categories, Legality (44.28%), Legal Security (56.25%), Access to Justice (58.2%) scored an average result, which are analyzed in this report. It is worth noting that, compared to the previous evaluation, there is no big change, however, the evaluation has suffered a 2.8% decrease in fulfillment.

¹ Rule of Law Checklist, adopted by the Venice Commission at its 106th plenary session, Venice, 11-12 March 2016, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)

Introduction

Kosovo continues to face challenges and problems in the rule of law sector. This evaluation does not present any change from the previous evaluations, there are no obvious improvements provided, and we are even presented with a slight decrease in the result compared to that of the previous period. Challenges and problems present themselves in almost every pillar of the control of the rule of law.

In the category of Legality, we note that there have been delays in the adoption of laws or by-laws; in this evaluation period we had the case of the Law on Salaries and the Law on Public Officials, where even though the Constitutional Court had obliged the Assembly of Kosovo to undertake all the necessary measures to amend and complete these laws in accordance with the findings of the Court, we still do not have approved laws. In fact, the Draft Law on Public Officials published on the public consultation platform is noted to be in conflict with the SAA Law, not focusing on career development in the public service. Also, it is worth noting that greater dedication is needed in the publication of legal acts for public consultations, without exceptions, so that each proposed legal act goes through the consultation process in accordance with the legislation in force, as well as the accompanying documents explain indeed the reasons for the proposed changes. Also, in this category, it is necessary to pay more attention to the implementation of the law, since there are many shortcomings and it is observed that there are cases when measures are not taken for non-implementers of the law. In the category of Legal Security, we note that laws are changed very often, which affects the stability and consistency of laws, since these legal changes cannot often be justified and approved with an accelerated procedure. Also, in the category of preventing the abuse (misuse) of power, we have seen cases where public authorities exceeded their powers or acted contrary to the legal acts in force. Further, even in the category of equality before the law and non-discrimination, it can be observed that challenges are still presented, where, for example, women are often discriminated in the workplace. Challenges and problems in the category of access to justice are presented in all aspects, including in terms of the effectiveness of court decisions, where we often notice deficiencies in the supervision of the implementation of court decisions.

It is worth noting that, during the reporting period, the Ministry of Internal Affairs has published for consultation two draft laws that are part of the reform of the administration, the Draft Law on Public Officials and the Draft Law on Salaries, which are being re-drafted after the respective Judgments of the Constitutional Court. The Constitutional Court, after examining the constitutionality of the approved laws, found that some provisions are contrary to the Constitution of the Republic of Kosovo, or in the case of the Law on Salaries, found that the law as a whole is contrary to the Constitution. Also, during this period, the Ministry of Justice has continued to work with the initiatives started in the justice system. The Law on the Prosecutorial Council of Kosovo has managed to be approved in the Assembly, but the opposition has sent the law to the Constitutional Court for constitutionality assessment. The Constitutional Court has not yet made a decision, even though it has exceeded the legal deadline set by the Law on the Constitutional Court. Regarding the initiative of the Ministry of Justice for the vetting of judges and prosecutors, in June the Venice Commission approved its opinion recommending, among other things, that the Kosovo authorities focus only on legislative changes, which are easier to implement and be limited to checking the integrity of the members of the Judicial Council, the Prosecutorial Council, presidents of courts and chief prosecutors. Furthermore, the initiative for civil confiscation of unjustifiable assets and the establishment of the State Bureau has been approved in principle by the Assembly and it is expected that the approved draft law will undergo some changes to address the findings and recommendations of the Venice Commission.

Methodology

The Group for Legal and Political Studies (GLPS) regularly monitors and evaluates the rule of law implementation in Kosovo, based on the Council of Europe's checklist for evaluating the rule of law from the aspect of constitutional provisions, laws, bylaws such as and rules of procedure to assess the difference between the written law and its implementation.

The checklist contains eight main standards, which in turn include several indicators to monitor and assess the current state. The categories mentioned below are considered to provide for common core concepts of the rule of law. The Constitution was taken as the highest source of law, followed by primary and secondary legislation, court decisions and relevant CSO monitoring reports.

The first methodology in the checklist has got 5 categories:

1. Legality;
2. Legal certainty;
3. Prevention of abuse (misuse) of power;
4. Equality before the law and non-discrimination;
5. Access to justice.

The indicators within each group include further questions that must be answered for the indicator to be fully realized. Each operative question is assigned a score of 1 if the operative question is met, 0 if not and, in cases where the situation is doubtful, 0.5 is given. Indicator fulfilment gives the percentage of fulfilment - for example if an indicator has 6 operational questions and 3 are achieved, then we can say that the indicator is 50% fulfilled. Furthermore, the analysis also provides a descriptive interpretation and explanation of the results.

Rule of law in Kosovo – data analysis

A. LEGALITY

The principle of legality allows limiting the arbitrary exercise of executive power.² This principle reflects the Supremacy of Law, Relations between International Law and Domestic Law, Legislative Powers of the Executive, Legislative Procedures, Exceptions in Emergency Situations, Duty to Implement Law, Private Actors in Charge of Public Duties.

The Supremacy of Law scored 3.5 points out of 8 points in total. This sub-category deals with the compatibility of state actions with constitutional and legal authorizations. Moreover, it checks the compatibility of laws with the Constitution and the adoption of laws when required by the Constitution, as well as the adoption of by-laws at the appropriate and predetermined time.

This subcategory is recognized by the Constitution of the Republic of Kosovo, where it is determined that the Constitution is the highest legal act and that laws and other legal acts must be in accordance with this Constitution.³ However, very often the legislation in Kosovo is late adopted, and also the by-laws are very often characterized by numerous delays. For example, in the case of the Law on Salaries and the Law on Public Officials, even though the Constitutional Court has obliged the Assembly of Kosovo to take all the necessary measures to amend and complete these laws in accordance with the findings of the Court, we still do not have approval of new laws. These two draft laws had the deadline for approval in the Government in March 2022 and have not yet been approved. In addition to these two laws, there are delays in the approval of many other laws. If we look at the Legislative Program for the year 2022, there are several laws that have been included in the annual legislative program for at least 6 consecutive years (e.g. the Draft Law on amending and supplementing Law No. 04/L-004 on Private Security Services, Draft law on the amendment and completion of Law No. 02/L-31 on Religious Freedom in Kosovo, etc.). Also, it is worth noting that the Legislative Program is modified frequently during the year and sometimes draft laws without a concept document are added to the legislative program.

For example, in 2022 until September, the Legislative Program has been changed 7 times (the Legislative Program for 2022 was approved at the 56th meeting of the Government of the Republic of Kosovo, with Decision No. 01/56, dated: 26.01.2022, amended and supplemented by Decision No. 01/63, dated 24.02.2022, Decision No. 01/69 dated 13.04.2022, Decision No. 06/78 dated 16.05.2022, Decision No. 01/84 dated 22.06.2022, Decision No. 03/89 dated 20.07.2022, Decision No. 20/94 dated 24.08.2022 and Decision No. 03/99 dated 30.09.2022).⁴ Whereas, in 2021, the Program was also changed 7 times.⁵

² Steven Greer, *The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights* (Strasbourg: Council of Europe Publishing, 2000), 15-16.

³ Constitution of the Republic of Kosovo, Article 16.

⁴ Legislative Program for 2022, <https://lds.rks-gov.net/DraftLaws/ProgramiLegjislativ>

⁵ Legislative Program for 2021, <https://kryeministri.rks-gov.net/blog/programi-legjislativ-per-vitin-2021-26-11-2021/>

Also, as far as the by-laws are concerned, there are many delays, especially the by-laws that originate from Law no. 06/L-113 for the organization and operation of the state administration and independent agencies.⁶ In this regard, Regulation (QRK) No. 01/2020 on Internal Organization Standards, Systematization of Workplaces and Cooperation in State Administration Institutions and Independent Agencies (in the following text: Regulation (QRK) No. 01/2020)⁷ determines the time frame within the relevant regulations for internal organization and systematization of workplaces are drawn up, specifying that these regulations must be drawn up within the time limit of six (6) months from the entry into force of Regulation (QRK) No. 01/2020, as well as to be presented for approval. Regulation (QRK) No. 01/2020 entered into force in February 2020. So far only four (4) institutions have approved their regulations for internal organization and systematization of workplaces, while all others are late.

Compliance with the law out of 6 points scored 2.5, which means that it remained at the same stage from the previous evaluation period. This subcategory aims to present whether the actions of public authorities are in accordance with the law or not. Likewise, if the powers of public authorities are defined by law and if the definition of powers between different institutions is clear. Constitutional provisions and legislation provide a clear definition of competences, Kosovo's public authorities continue to fail to comply with the established laws. The actions and scope of public authorities are regulated by the Constitution and bylaws (regulations). It is worth noting that from the assessment of the Legal Office of the Prime Minister's Office, it was found that out of 1762 by-laws approved by the ministers, from the establishment until December 2021, 289 by-laws are without legal basis.

However, this situation has been addressed by the Government, which issued a decision to repeal these by-laws.⁸ Also, it is something positive that this will continue with the evaluation of the by-laws approved by the Government of Kosovo.

As for the relationship between **international law and domestic law**, this subcategory scored 1 point out of 2 points in total. Although Kosovo is not part of many international or regional agreements and conventions on human rights, Article 22 of the Constitution⁹ defines which international agreements and instruments on human rights and freedoms are directly applied in the Republic of Kosovo, as well as in case of conflict with the provisions of laws and other acts have priority. However, this subcategory suffered a decline compared to the previous assessment.

This is because in the Draft Law on Public Officials published on the public consultation platform, it can be seen that it tends to conflict with Article 120 of Law no. 05/L-069 for the ratification of the Stabilization and Association Agreement between the Republic of Kosovo, on the one hand, and the European Union and the European Atomic Energy Community, on the other hand (in the following text: SAA Law).¹⁰ This article establishes that cooperation in the field of Public Administration, among other things, will focus on career development in public service, and that the recent amendments to the Draft Law on Public Officials do not reflect this. In addition, the Courts still do not apply the practice of the European Court of Human Rights in their decisions.

The sub-category of **Legislative Powers of the Executive** scored 1 point out of 3. The Constitution of the Republic of Kosovo provides that the Government of the Republic of Kosovo is responsible for the implementation of laws and is subject to parliamentary control. However, this is not regularly practiced. The regulation of the Assembly of the Republic of Kosovo foresees general rules on parliamentary control, where it is established that the parliamentary commissions control the general activity of the relevant ministry. During the last months, the regular parliamentary supervision over the work of the Government has been lacking, except for energy, more precisely for the energy crisis in Kosovo

6 Law no. 06/L-113 on the organization and operation of the state administration and independent agencies, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18684>

7 Regulation (QRK) No. 01/2020 on Internal Organization Standards, Systematization of Workplaces and Cooperation in State Administration Institutions and Independent Agencies, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=27043>

8 Government Decision no. 02/50, dated December 23, 2021 for the approval of the legal analysis for the assessment of the legal basis of the by-laws issued by the ministers;

9 Constitution of the Republic of Kosovo, Article 22

10 Law No. 05/L-069 for the ratification of the Stabilization and Association Agreement between the Republic of Kosovo, on the one hand, and the European Union and the European Atomic Energy Community, on the other, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=11239>

and for electoral reforms. In May, two investigative commissions for electricity were established, one investigative commission to investigate all measures taken during the energy emergency period and the other to investigate activities in the energy sector in the period 2006-2022.¹¹ However, the members of the investigative majority commission for the period 2006-2022 have considered that the performance is not satisfactory, but they hope that at the end of the commission's mandate they will come out with a report.¹² It is worth noting that even though the law-making powers of the Executive are defined by law, in some cases this power is confused with the Assembly, such as in the case of regulatory agencies, and more specifically in the case of the Independent Commission for Mines and Minerals, which performs an administrative function. In Kosovo, Independent Regulatory Agencies have been established without any criteria and sometimes not in accordance with Article 119 of the Constitution, establishing them as regulatory agencies even though some of them are not.¹³

Law-making procedures measures how transparent, comprehensive and democratic the law-making procedure is. In this period, this subcategory scored 4 points out of 6. The Constitution clearly presents the law-making procedures, as well as determines that the Assembly is the supreme body in determining the content of the law, accountability, transparency and inclusiveness. However, even though the rules of public consultation are clear, very often they are not taken into account, or they are done only to say that they have complied with these legal requirements. There are cases when the recommendations were not considered; in general during the law-making process and especially in the initial procedures. On the public platform of public consultations, every citizen has the right to submit comments on the published consultations. According to the statistics published on this platform, from May 2022 to September there were 44 comments on this platform. However, 0 received comments are noted, which actually has no data as to whether these comments have been received or not.¹⁴

So, there is a lack of data on how the posted comments were addressed, either through the online platform or even through e-mail. In this period, 105 documents were published on the consultation platform, where most of the publications are Administrative Instructions, 43 in total, then 25 regulations and 19 laws. While in the initial, preliminary consultations, the interested parties are rarely consulted, because practice dictates that these types of consultations are carried out at the institutional level. Usually, draft legal acts are published on the public consultation platform, however, e.g. Administrative Instruction (MIB) no. 04/2022 for the registration with "RKS" license plates of vehicles that have "PR", "KM", "PZ", "GL", "UR", "PE" and "DA" or "ĐA" license plates has not been published in platform of public consultations, so this act was approved without going through the prescribed legal procedures. It is worth noting that the explanatory memoranda, which are part of the documentation of the draft act, continue to be superficial and fail to argue why the relevant changes are made.

Further, the Assembly publicly debates the proposed legislation, but there are no explanatory reports drafted that are available to the public. Although the drafts are also published on the website of the Assembly of Kosovo and the citizens are informed about the process in the Assembly, the citizens no longer have the opportunity to make comments.

Recently evaluative analyses, ex-post or ex-ante (concept documents), have been done more. For example, for 2022, 71 concept documents are planned to be drawn up. However, this list is difficult and almost impossible to achieve in its entirety. Also, even though these concept documents are drafted and sometimes approved, the drafting of new legal acts is not based on them. For example, the drafting of the Draft Law on Public Officials, even though the Constitutional Court had obliged the Assembly to take measures to amend the Law on Public Officials in the points for which the Constitutional Court has assessed that it was contrary to the Constitution of Kosovo, the Ministry of Internal Affairs has drafted a new draft law, completely changing the previous law. For this draft

11 The Assembly votes for the formation of two investigative commissions for energy, <https://www.evropaelire.org/a/komisione-hetimore-energji-elektrike-/31835941.html>

12 Majority investigative committee on energy for the period 2006-2022, <https://kosovapress.com/%E2%80%8Bkonstituohet-komisioni-hetimor-i-shumices-per-energji-ne-per-periudhen-2006-2022/>

13 Racionalizimi i Agjencive të Pavarura Rregullatore në Kosovë: Cilat janë opsionet?, publikuar në maj 2021 nga Grupi për Studime Juridike dhe Politike, http://www.legalpoliticalstudies.org/wp-content/uploads/2021/05/GLPS_ShenimPolitikash_Racionamilizimi-i-ARP-ve.pdf

14 Public Consultation Platform, accessed 23 September 2022, <https://konsultimet.rks-gov.net/statistics.php>

law, a concept document has not been drawn up, which would analyze several options and allow the Government to approve one of the proposed options and which it would consider to be the most favorable. As for ex-post analyses, according to the Program for Ex-post Evaluation of Legislation for the year 2022, seven (7) ex-post evaluation reports are planned to be drawn up. From this list, four (4) ex-post evaluation reports were approved, while from the month of May three (3) (such as the ex-post evaluation report for Law No. 06/L-092 on commissioning and exchange of the immovable property of the Municipality, on Law No. 06/L-026 on asylum and on the Law on the Bar).¹⁵ The ex-post analysis report of Law no. 06/L-092 on the provision for use and exchange of the immovable property of the Municipality is accessible to the public on the official website of the Ministry of Local Government Administration.¹⁶ It is worth noting that it is necessary to further regulate the procedure of drawing up ex-post evaluation reports of the legislation, including the issue of publishing the reports.

Exceptions in emergency situations scored 3 points out of 4 points. This subcategory is clearly described in Article 131 of the Constitution, specifying which provisions apply during the state of emergency, the scope, duration and limitations. Also, it is determined that some laws cannot be changed during the state of emergency, such as Law on elections. In this article of the Constitution, it is determined that other principles for the actions of public institutions during the state of emergency are regulated by law. Meanwhile, the Assembly of Kosovo on December 9 approved emergency measures for energy supply taking into account the energy situation in the country. The Government of the Republic of Kosovo, on September 23, 2022¹⁷, made decision no. 01/98 for the extension of emergency measures in energy supply by proposing to the Assembly of Kosovo, the extension of the measures for another 30 days in order to fully normalize the situation¹⁸. This proposal was approved by the Assembly of Kosovo on October 3, 2022. According to Law no. 05/L-081 for energy, emergency measures in the energy sector may have a maximum duration of sixty (60) days, unless extended by the Assembly for another thirty (30) days up to a total of one hundred and eighty (180) additional days.¹⁹

On the other hand, the subcategory of **Law Enforcement** Duty by public authorities scored 0 points out of 5 in total. Public institutions are inclined to adopt laws in accordance with the EU legal framework, without carrying out a proper ex-ante analysis, in order to analyze the compatibility with the respective country. Furthermore, there are no effective legal remedies that ensure the effective implementation of the law by public authorities and there are no specific measures defined in case of non-implementation of the Law. Also, we must emphasize that public institutions continue to fail in evaluating the impact of the law, both in the preliminary and ex-post evaluation, as well as in the implementation of the law. As an example, we can mention the non-enforcement of Law No. 04/L-156 on Tobacco Control, which, although it specifies the bodies that are obliged to implement this law, this law is not implemented (it obliges sanitary inspectors, health inspectors, market inspectors, etc.).²⁰ Even recently, there have been statements in the Assembly by the Speaker that they accept numerous complaints regarding smoking in the parliament buffet, that is, in a closed space that is contrary to this law.

As for the subcategory **Private actors charged with public duties**, the Constitution of Kosovo does not provide any rules for the delegation of public duties to private actors. However, the Law on General Administrative Procedure (LPPA)²¹ is applied whenever a private person acts on behalf of a public institution with a clear authorization by law or by virtue of a law, which is clearly specified in Article 2, paragraph 2 of this law. And also the Law on the organization and functioning of the state administration and independent agencies (LOFAShAP)²², in article 33, defines that: "The state

15 Document received through the request for access to public documents submitted to the Office of the Prime Minister on 26.10.2022;

16 Ex-post analysis report of Law no. 06/L-092 for the transfer and exchange of the immovable property of the Municipality, <https://mapl.rks-gov.net/wp-content/uploads/2022/07/RAPORT-FINAL-i-analizaz.pdf>

17 The Assembly approves the extension of emergency measures for electricity, October 3, 2022, <https://www.evropaelire.org/a/masa-emergjente-rryme-kosove-/32063165.html>

18 The Government of the Republic of Kosovo decision no. 01/98, dated 23.09.2022 for the extension of emergency measures in energy supply, <https://kryeministri.rks-gov.net/wp-content/uploads/2022/09/Vendim-i-mbledhje-se-98-te-Qeverise-1.pdf>

19 Law no. 05/L-081 for Energy, article 25, paragraph 2, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12689>

20 Law no. 04/L-156 on Tobacco Control, Article 19, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8665>

21 Law no. 05/L-031 for the General Administrative Procedure, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=12559>

22 Law no. 06/L-113 on the organization and operation of the state administration and independent agencies,

administration can delegate the exercise of certain tasks for the realization of administrative functions according to this law, to natural or legal persons for-profit and not-for-profit." Also, this law in article 34 and 35 defines the conditions of delegation and supervision of delegated tasks. Nevertheless, this subcategory scored 0.5 out of 1 points, since even though the LPPA applies to such cases where a public task is transferred to non-state entities, there is a lack of effective supervision of the implementation of the delegated tasks.

In general, the category of Legality scored 44.28% of fulfillment (15.5 out of a total of 35) for the period May - October 2022. The subcategory for the relationship between the domestic legal system and international laws, which had full points in the previous assessment, scored, this taking considering the tendency to change the Draft Law on Public Officials. As explained above, these changes may conflict with Article 120 of the SAA Law. On the other hand, it can be concluded that Kosovo needs fundamental reforms in the task of law enforcement, where the result was lower, because Kosovo has difficulties in implementing the law and there is a lack of effective tools that would enable the implementation of the law in punctuality. Likewise, reforms are needed in terms of respect for the law and the supremacy of the law, where the result shows that there is room for improvement and real efforts are needed in the law-making procedures.

B. LEGAL CERTAINTY

Legal certainty is the second category of the rule of law checklist that consists of the following subcategories: **Accessibility of legislation, Accessibility of court decisions, Foreseeability of the laws, Stability and consistency of law, Legitimate expectations, Non-retroactivity, Nullum Crimen Sine principles Lege and Nulla Poena sine Lege as well as Res Judicata.**

The **accessibility of legislation** subcategory scored 2 points out of a total of 2 points (100%) and there have been no changes from the previous evaluations. This assessment has been achieved due to the fact that before coming into force, the draft laws are published on the official website of the Prime Minister's Office after approval by the Government.²³ Also, draft laws are published on the official website of the Assembly of Kosovo, where citizens have access and can see at which stage the draft law is assigned.²⁴ After approval, the Laws are published on the official website of the Official Gazette²⁵, where they are accessible to every one in five languages: Albanian, English, Serbian, Turkish and Bosnian.

As for the **Accessibility of court decisions** subcategory, this subcategory scored 1.5 points out of 2 points. It is worth noting that the decisions of the Constitutional Court are published every time within a reasonable time, on the official website of the Constitutional Court, but also in the Official Gazette of the Republic of Kosovo.

In addition, Administrative Instruction No. 04/2019 on the publication of issued judgments stipulates that all courts publish all judgments, except for some exceptions, within sixty (60) days from the date of issuance of the judgment. Most of the decisions of the basic courts, the Court of Appeal and the Supreme Court, continue to be accessible on their respective websites. However, cases of exemptions are often not justified to the public. So far, a total of 88,238 judgments of regular courts have been published on the KJC website.²⁶

The subcategory of **Foreseeability of the laws** scored 1 point out of 2 points in total. The laws are to some extent clearly written and they expressly state which previous law is repealed or amended. Also, even in the Official Gazette, it can be easily noted that the respective law has been repealed or amended. However, the amendments to the law are not included in a consolidated version, and until now there is no consolidated version of other laws. In this regard, the draft law on legal acts foresees to regulate the issue of consolidation of the legal act, where the proposing body will be obliged to carry

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=18684>

23 <https://kryeministri.rks-gov.net/dokumente/>

24 <https://www.kuvendikosoves.org/shq/projektligjet-dhe-ligjet/>

25 <https://gzk.rks-gov.net/LawInForceList.aspx>

26 <https://www.gjyqesori-rks.org/aktgjykimet/>

out the consolidation procedure. Moreover, it is foreseen to issue a by-law - administrative instruction, for the detailed regulation of this procedure in accordance with the law. The Draft Law is currently in the Assembly, while in July 2022 it was in principle examined by the Functional Committee, which concluded that the Draft Law meets the conditions to be forwarded to the Assembly for review and approval in principle.²⁷ It would be a positive thing if the issue of consolidating laws would be regulated, because it would facilitate access and work with these laws.

As for the subcategory **Stability and consistency of laws**, it is worth mentioning the fact that laws are changed very often. This subcategory scored 0.5 points out of 2 in total. Although, changing laws usually happens with a reasonable warning. However, it happens that the changing of laws is done quickly and without reasonable advance warning. For example, The Draft Law on the amendment of the Law on the Independent Oversight Board of the Civil Service of Kosovo was not planned to be amended at the beginning of 2022. This proposal is included in the legislative program with the decision no. 06/78, of May 16, 2022, for the amendment and completion of the Legislative Program of 2022.²⁸ This Draft Law was published on the public consultation platform on July 14, 2022, with 4 articles in total.²⁹ Whereas, on September 30, 2022, this Draft Law was approved by the Government with the decision no. 30/99 with 9 articles in total.³⁰ Thus, not all changes have been accessible to the public for comment and this draft law with all 9 articles has been published only after approval by the Government.

It is also worth noting that, e.g. Law no. 06/L-114 for Public Officials³¹ has defined a certain form of recruitment of civil servants, while the new Draft Law³² published on the public consultation platform completely changes the law, which law has not yet managed to be fully implemented and also without any preliminary analysis of how well this system would work. All these changes are happening within a period of three (3) years.

Another case is the amendment of the Law on the Kosovo Prosecutorial Council. The two main changes determined by the new draft law approved in the second reading by the Assembly of the Republic of Kosovo are the reduction of the number of members of the Council and the immediate replacement of the current members.³³ These issues have raised public debate and these changes have also been addressed by the Venice Commission, which has issued two opinions, where the last opinion was given on March 23, 2022, where the changes made in the mentioned Draft Law are addressed. Regarding the transitional provisions, the Opinion of the Venice Commission emphasized that in the original draft it was proposed that the mandate of the members of the Prosecutorial Council be terminated immediately, in which case the Venice Commission had said that at least some of the current members should be allowed to continue their mandate, unless a major improvement is foreseen in the current system. In the revised draft, this idea has been abandoned and it is proposed that the current members complete their mandate, so that their mandate is not terminated immediately. The Venice Commission has emphasized that the revised version of the transitional provisions respects the security of the mandate of the members.³⁴ Despite this opinion, the Draft Law in the Assembly underwent changes, and the provision that offered the possibility for the current members of the Prosecutorial Council to remain in office until the end of the current mandate was removed from the transitional provisions.

27 Draft Law on Legal Acts, <https://www.kuvendikosoves.org/shq/projektligjet/projektligji?draftlaw=345>

28 Government decision, no. 06/78, of May 16 2022 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=58974>

29 The Draft Law on the amendment of the Law on the Independent Supervisory Council of the Civil Service published on the public consultation platform, <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=41464>

30 The Draft Law on the amendment of the Law on the Independent Supervisory Council of the Civil Service approved by the Government's Decision no. 30/99, of September 30, 2022, <https://kryeministri.rks-gov.net/wp-content/uploads/2022/10/PROJEKTLIGJI-PER-PLOTESIMIN-DHE-NDRYSHIMIN-E-LIGJIT-NR.-06L-048-PER-KESHILLIN-E-PAVARUR-MBIKEQYRES-PER-SHERBIMIN-CIVIL-TE-KOSOVES.pdf>

31 Law no. 06/L-114 for Public Officials, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=25839>

32 The Draft Law on Public Officials, published on the public consultation platform on September 15, 2022, <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=41546>

33 The Draft Law no. 08/L-136 on the amendment and completion of Law no. 06/L-056 for the Prosecutorial Council of Kosovo, <https://www.kuvendikosoves.org/shq/projektligjet/projektligji?draftlaw=372>

34 Venice Commission - Opinion in the revised case of the Draft Law on the amendment and completion of Law no. 06/L-056 for the Kosovo Prosecutorial Council, approved by the Venice Commission at the 130th plenary meeting, held on March 18-19, 2022, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)006-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)006-e)

Whereas, the subcategory **Legitimate expectations** deals with the fact that how much public authorities adhere to the promises and expectations raised, not only by the law. In this case, in the last year, the public authorities have failed to respect the principle of legitimate expectation.

Regarding the subcategory of **Retroactivity of legislation**, it is worth noting that there is no general law that speaks about the retroactivity of laws. However, the Criminal Code of the Republic of Kosovo expressly prohibits the retroactivity of the law in criminal cases.³⁵ **Nullum Crimen Sine lege** and **Nulla poena sine lege** apply as legal principles and are provided in the Criminal Code as well as in the Constitution. **The Principle of Res Judicata** is provided by the Criminal Code of Kosovo.

In this regard, the final result of Legal Security is 9 out of 16 points in total (56.25%), a similar assessment to the previous assessment. However, it is considered that it is necessary to work more in the direction of the predictability of the laws, and especially in the beginning of the procedure of consolidation of the laws, as well as in the direction of the stability and consistency of the laws, enabling a greater legal stability without frequent legal changes.

C. PREVENTION OF ABUSE (MISUSE) OF POWER

Prevention of abuse (misuse) of power includes only one subcategory, which is **the existence of legal guarantees against arbitrariness and abuse of power by public authorities**. In Kosovo, there is legislation in this regard. However, there is a lack of implementation or adequate functioning of mechanisms to prevent, correct and sanction these arbitrary actions.

In recent years, many cases of abuse of power have been documented, from the President to the Prime Minister and other officials. One such case, which happened in recent months, is the case of the appointment of the Chief Inspector of the Labor Inspectorate. The government with the decision no. 01/79, on May 25, 2022, appointed the Chief Inspector of the Labor Inspectorate based on Article 3, paragraph 4 of Law no. 2002/9 for the Labor Inspectorate, amended by Law no. 03/L-0177. The appointment procedure had to be developed in accordance with LOOSAIA and LPO, for the reason that the directors are civil servants of the senior management category. In this regard, the Independent Oversight Board for the Civil Service of Kosovo (IOBCSK), has carried out an extraordinary monitoring of the Ministry of Finance, Labor and Transfers in order to review the legality of the appointment of the Chief Inspector of the Labor Inspectorate, and on July 14, 2022 issued the decision MJ. no. 50.2022³⁶, approving the monitoring report emphasizing that the developed appointment procedure contradicts the provisions of the LPO. IOBCSK has recommended that, in order to restore legality, the Prime Minister should take all the necessary actions to cancel the Decision on the appointment of the Chief Inspector of the Labor Inspectorate. However, the Prime Minister has not taken such a step.

Another case is the case of the competition for the election of the Director of the Tax Administration of Kosovo (TAK). Even in this case, the IOBCSK has found that the process was carried out illegally, for the reason that it was not done on the basis of the provisions of the LPO, therefore it has recommended that in order to restore legality, the Ministry of Finance, Labor and Transfers should undertake all the necessary legal actions for the cancellation of the competition with reference number 01/2022/ATK/MFPT for the position of the General Director of the Tax Administration of Kosovo, and also the same to take care that in the future the announcement of the competition for the General Director of the Tax Administration of Kosovo is made in accordance with the given.³⁷ Because Decision no. 50/2022 has not been implemented by the Minister of the Ministry of Finance, Labor and Transfers, IOBCSK has decided through decision no. 107/2022 of October 3, 2022 to withhold 50% of the monthly salary from the same.³⁸

³⁵ Criminal Code no. 06/L-074 of the Republic of Kosovo, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18413>

³⁶ Decision on the approval of the extraordinary monitoring report in the Ministry of Finance, Labor and Transfers, dt. July 14, 2022, no. 50/2022, <https://kpmshc.rks-gov.net/assets/cms/uploads/files/20220715114334944.pdf>

³⁷ Ibid.

³⁸ Decision on the suspension of 50% of the monthly salary no. 107/2022 of the date 03.10.2022, received from, <https://www.gazetaexpress.com/denohet-edhe-hekuran-murati-ministrit-i-ndalet-gjysma-e-rrogjes/>

Thus, in these two cases, a monitoring mechanism on misuse of public authority is presented, which is something positive, because legal guarantees exist. However, the implementation of these decisions remains problematic. Likewise, the IOBCSK has made a decision to approve the report of the extraordinary monitor in the Ministry of Foreign Affairs and Diaspora (hereinafter: MFA) in the case of the competition of 32 officials of the diplomatic mission. With this decision, the IOBCSK found that the competition in question was announced in violation of the Law on Public Officials, for the reason that this competition was opened on the basis of the Law on the Foreign Service of the Republic of Kosovo and was not based on the Law on Public Officials at all. Therefore, the IOBCSK has recommended that the Secretary of the Ministry of Foreign Affairs take all necessary legal actions to cancel the public competition announced for 32 officials of the diplomatic mission, and has also recommended that the filling of positions within the civil service be done in accordance with Law on Public Officials.³⁹ In this case, the Ministry of Justice canceled the competition and acted according to the decision of IOBCSK. On the other hand, the approval of the Draft Law for completing and amending Law no. 06/L-048 for the Independent Oversight Board for the Civil Service of Kosovo without going through a genuine public consultation process is a type of abuse of power by public authorities.⁴⁰

Moreover, at the beginning of October, the Government has decided not to execute the salaries for the officials who participated in the strike organized by the United Union of Education, Science and Culture of Kosovo (UUESCK) for the demands of education workers. The suspension of the execution of salaries of education workers from the central level is contrary to Law no. 03/L-040 on local self-government, for the reason that in article 17 of this law it is determined that the provision of public pre-university education, including the payment of salaries, is the sole competence of the municipalities, which means that the municipalities have full and exclusive powers in this field.⁴¹ In these last two mentioned cases, there is no data on whether any action was taken to avoid the legal violations.

Based on the above, the overall result for this category is 1.5 points out of a total of 4 points (37.5% of fulfillment).

D. EQUALITY BEFORE THE LAW AND NON-DISCRIMINATION

As for this category, the Constitution of the Republic of Kosovo in Article 24 defines that everyone is equal before the law and also ensures non-discrimination.⁴² Likewise, Law no. 05/L-021 on protection against discrimination expressly prohibits direct and indirect discrimination.⁴³

The Constitution of the Republic of Kosovo provides an example of how equality before the law and non-discrimination should be ensured. However, there are cases when these principles are violated by public institutions. For example, The Advocate of the People, through the Report in case A. no. 474/2021 Arianit Dobrosi and others regarding the claims of the complainants on the basis of freedom of association as members of the Trade Union Association of Workers of the Civil Aviation Authority of Kosovo⁴⁴ found that there was a violation of human rights and freedoms by state bodies, in this case by the Civil Aviation Authority of Kosovo. In this case, the professional staff, who had founded or joined the trade union, had received pressure from the general director of CAA or his subordinates. The ombudsman has concluded that the freedom of association is guaranteed by the legislation in force

39 Decision on the approval of the Report of the Extraordinary Monitor in the Ministry of Foreign Affairs and Diaspora, with no. 52/2022 of the date 20.09.2022, received by ISCCSK, <https://kpmshc.rks-gov.net/assets/cms/uploads/files/20220920153811528.pdf>

40 The Draft Law for supplementing and amending Law no. 06/L-048 of the Independent Supervisory Council for the Civil Service of Kosovo, <https://kryeministri.rks-gov.net/blog/projektligji-per-plotesimin-dhe-ndryshimin-e-ligjit-nr-06-l-048-per-keshillin-e-pavarur-mbikeqyres-per-sherbimin-civil-te-kosoves/>

41 Law no. 03/L-040 for local self-government, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2530>

42 Constitution of the Republic of Kosovo, Article 24 <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=3702>

43 Law no. 05/L-021 on protection against discrimination, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10924>

44 Report of the Advocate of the People A. No. 474/2021 Arianit Dobrosi and others regarding the complainants' claims of discrimination on the basis of freedom of association as members of the Trade Union Association of Workers of the Civil Authority of Kosovo, <https://oik-rks.org/2022/06/09/raport-i-avokatit-te-popullit-ankesa-nr-4742021-arianit-dobrosi-dhe-te-tjeret-perkitazi-me-pretendimet-e-ankuesve-per-diskriminim-ne-baze-te-lirise-se-asociimit-si-aretare-ne-shoqaten-sindikale>

and therefore has recommended that the Civil Aviation Authority of Kosovo undertake all measures respecting the right of association and union organization without any obstacles, as well as some other recommendations.

Social inequality between women and men in Kosovo continues to be evident, especially at work. The Center for Strategic Judicial Cases founded by the Group for Legal and Political Studies (GLPS) in 2020 handled a case of an employee of a public institution, who was denied the right to annual leave, on the grounds that she had used the leave of maternity and the same was no longer entitled to the regular annual leave. This was a baseless reasoning and the employee, through the Center's legal assistance, had managed to obtain the legal right that belongs to her.

As for the sub-category of **Equality under the law and Equality before the law**, Kosovo continues to do well, since there is legislation that guarantees equality under the law, even though there may be problems in implementation. Kosovo is a multi-ethnic state, where the Constitution recognizes special rights, in addition to basic human rights and freedoms, to residents who belong to the same national or ethnic, linguistic or religious group, traditionally present in the territory of the Republic of Kosovo. However, a constant demand of the Roma community is the recognition of the Roma language as an official language in the Municipality of Prizren. Currently, various activities are being developed for the promotion of the Romani language, where according to this community, three requests have been presented regarding the acknowledgment of the language, which until now have been neglected by the local authorities.⁴⁵ Also, cases of violence against women or sexual assaults do not receive proper treatment, and cases of this nature are often prescribed. The case of the rape of an 11-year-old minor raised a debate on the effectiveness of the justice system, due to the fact that one of the 11 suspects in this case had other criminal cases, but he was not rehabilitated by the responsible bodies.⁴⁶

This category scored 7 points out of a total of 10 points (70%), which means that there was no change from the previous assessment.

E. ACCESS TO JUSTICE

The Access to Justice category includes: **Independence and Impartiality, Fair Trial and Constitutional Justice**. The Constitution of Kosovo in Chapter VII, Justice System, defines these principles and guarantees a unique, independent, fair, apolitical and impartial judicial power, as well as ensures equal access to courts.

The first subcategory is **Independence and impartiality of the judiciary**. This subcategory includes the independence of the judiciary by assessing whether there are constitutional and legal guarantees for the independence of the judiciary. The independence of the judiciary is defined in the Constitution of the Republic of Kosovo and also in separate laws. The criteria and procedure for the appointment of judges are defined in detail by the Law on Courts.⁴⁷ According to the Constitution of the Republic of Kosovo, judges can be dismissed only in cases where they are convicted for a serious criminal offense or for serious non-compliance with duties. In more detail, this matter is regulated by the Regulation on the disciplinary procedure of judges no. 05/2019,⁴⁸ which regulates the disciplinary procedure that takes place before the Judicial Council of Kosovo (in the following text: Council). The Council establishes the investigative panel, where for the consideration of a disciplinary case, this panel consists of three (3) judges, who do not serve in the Court where the judge before whom the procedure takes place, serves. Thus, the composition of the investigative panel consists only of judges of different degrees. Regarding the transfer of judges, the Constitution provides that: "judges cannot be transferred against their will, unless otherwise provided by law, due to the efficient functioning of the judiciary or disciplinary

45 The Roma demand that their language be made official in Prizren, source <https://www.koha.net/kosove/344498/romet-kerkojne-qe-gjuha-e-tyre-te-behet-zyrtare-ne-prizren/>

46 KJC declares regarding the case of the rape of the 11-year-old girl in Pristina, published on September 5, 2022 by Justice Today, <https://www.rolpik.org/kgjk-deklarohet-lidhur-me-rastin-e-dhunimit-te-11-vjecares-ne-prishtine/>

47 Law no. 06/L-054 for the Courts, source <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>

48 Regulation (05/2019) on the disciplinary procedure of judges, source: https://www.gjyqesori-rks.org/wp-content/uploads/lgsl/6651_Rregullorja%2005-2019.pdf

measures".⁴⁹ In more detail, the issue of transfer is regulated by Regulation no. 08/2022 for the transfer of judges.⁵⁰ This regulation defines the rules of regular, extraordinary and permanent transfer. The judge also has the right to appeal against the transfer decision to the Supreme Court through the Council. Whereas, regarding the perception of the independence of the judiciary, it is worth noting that for this period we did not have new measurements, but according to the latest research of Drejtësia Sot, the perception of citizens towards the institution of the JCK and the judiciary in general is not high. According to the findings of this analysis, Drejtësia Sot has come to the conclusion that: "justice institutions still have work to do in terms of fighting corruption, organized crime and money laundering at the country level, which automatically results in the loss of citizens' trust in the country's justice system."⁵¹ It is worth noting that the Ministry of Justice is continuing work on the initiative for vetting in the justice system. The Venice Commission in June 2022 approved the legal opinion on the Concept Document for the vetting of judges and prosecutors, where it assessed that reform in the justice system in Kosovo is necessary, recommending to be done through legal changes. Likewise, the Venice Commission expressed the opinion that the vetting process can be limited only to assessing the integrity of the members of the JCK and the PCK, as well as the presidents of the courts and the chief prosecutors of the state.⁵²

This subcategory scored 2 points out of 4 points in total, which means that there are no changes from the previous assessment. The second subcategory within Access to Justice is **the autonomy and control of the prosecution**, which scored 5 points out of 12 points in total. Currently in the process of approval is the Law on the Prosecution Council of Kosovo. This law was one of the most debated laws between the government and the opposition. On June 23, 2022, the Law on the Prosecutorial Council of Kosovo was approved by 60 of the 61 deputies present.⁵³ Meanwhile, on the 1st of July, the opposition addressed the Constitutional Court, asking for an opinion on the compatibility of this law with the Constitution of the Republic of Kosovo.⁵⁴ Until now, even though the time limit of 60 days for issuing a decision according to the Law on the Constitutional Court has passed, the Constitutional Court has not issued a decision.⁵⁵ The main changes expected to be made with this Law are the composition of the Prosecution Council of Kosovo, reducing the number of members and the inclusion of members who are not prosecutors, as well as the immediate termination of the mandate of the current members of the Prosecution Council. It is worth noting that the draft law was also sent to the Venice Commission, where the latter issued a second legal opinion on March 23, 2022 on the revised draft.⁵⁶ These legal changes, according to the Ministry of Justice, as proponents of this draft law, aim to address previous problems by reforming the Kosovo Prosecutorial Council. The Venice Commission in its opinion has emphasized that the inclusion of those elected by the Assembly of Kosovo as members of the Prosecutorial Council is not against European standards as such, but care must be taken that their presence does not lead to the politicization of the Council.⁵⁷ Regarding the citizens' perception of the independence of the Prosecutor's Office, there were no new measurements, therefore there are no changes from the previous measurement. According to the latest edition of Drejtësia Sot⁵⁸, only 15.9% of respondents think that the Prosecutor's Office is able to perform tasks/responsibilities independently, therefore it is considered that still it needs work to be done to have a positive perception.⁵⁹

49 The Constitution of the Republic of Kosovo, Article 104, Paragraph 6, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

50 Regulation no. 08/2022 for the transfer of judges, https://www.gjyqesori-rks.org/wp-content/uploads/lgs/57309_KGJK_Regullore_Nr_08_2022_transferimin_brendshem_gjyqtareve.pdf

51 Monitoring Report: Monitoring of the Judicial and Prosecutorial System in Kosovo, published March 2022, <https://www.rolpik.org/wp-content/uploads/2022/04/Raporti-vjetor-i-monitorimit-Janar-Dhjetor-2021-shqip-1.pdf>

52 Venice Commission, Opinion on the Concept Document on the vetting of judges and prosecutors and on draft constitutional amendments, approved at the 131st plenary meeting, June 17-18, 2022, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)011-e)

53 The Draft Law no. 08/L-136 on the amendment and completion of Law no. 06/L-056 for the Prosecutorial Council of Kosovo, <https://www.kuvendikosoves.org/shq/projektligjet/projektligji/?draftlaw=372>

54 The PDK and the LDK bring the Law on the PCK to the Constitutional Court, <https://www.koha.net/lajmet-e-mbremjes-ktv/332907/pdk-ja-e-ldk-ja-cojne-ne-kushtetuese-ligjin-per-kpk-ne/>

55 Law no. 03/L-121 for the Constitutional Court of the Republic of Kosovo, Article 43, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2614>

56 Kosovo – Opinion on the revised draft of amendments to the Law on the Prosecutorial Council, approved by the Venice Commission at the 130th plenary meeting, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)006-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)006-e)

57 Ibid.

58 Justice Today is a product developed by the Group for Legal and Political Studies (GLPS) under the support of the British Embassy in Kosovo, which represents a monitoring system on the judicial and prosecutorial system.

59 Monitoring Report: Monitoring of the Judicial and Prosecutorial System in Kosovo, published March 2022, <https://www.rolpik.org/wp-content/uploads/2022/04/Raporti-vjetor-i-monitorimit-Janar-Dhjetor-2021-shqip-1.pdf>

Regarding the third subcategory, **the subcategory for the impartiality and independence of the Advocacy**, it is worth noting that in this category there was a decline compared to the previous assessment and scored 4.5 points out of 5 points in total. In Kosovo there is an independent and organized body for the profession of Advocacy. Law no. 04/L-193 on the Advocacy regulates, among other things, the organization and work of the Chamber of Advocates of Kosovo.⁶⁰ In this law, it is determined that the supervision of the legality of the general acts of the Chamber of Advocates is done by the Government of Kosovo, while the monitoring of lawyer's work and the conditions for its work was done by the Ministry of Justice, taking care of its independence. However, there is no public data on how the supervision of the Ministry of Justice works. In August 2022, it was reported about a clash between members of the Chamber of Advocates over some proposed changes to the Statute of the Chamber of Advocates. It has been warned that the decision-making system in the Chamber of Advocates of Kosovo will be changed, reducing the quota of lawyers to 1/3 of the members who must be present during the decision-making process. Currently, the Statute of the Chamber of Advocates of Kosovo, in its article 96, provides that a meeting of the Governing Council of the Chamber of Advocates can be held only if the majority of members participate in the meeting.⁶¹ This announced change has caused dissension among the members of the Chamber, which has even led to an attack by a member.⁶² A positive point is that the meetings of the Governing Council of the Chamber of Advocates of Kosovo are broadcasted online on their social network Facebook page.

The next subcategory, **Fair Trials**, includes several issues. This subcategory deals with the issue of **Access to Justice**. The legislation in force ensures that every individual has the right to oppose any public or private act that violates his/her rights. However, given that the resolution of cases in courts takes years, citizens' access to justice is not easy. In cases where an individual does not have financial means, he can address the Agency for free legal aid to obtain the necessary legal service. According to the Law on Free Legal Aid, the person requesting free legal aid must meet certain criteria, such as legal, financial and qualifying criteria.⁶³ However, in urgent cases, free legal aid from the Agency for free legal aid can be given regardless of the fulfillment of the criteria required by law and this aid is given immediately.

As a prerequisite for a fair trial is also the **Presumption of Innocence**, which is defined by the Code of Criminal Procedure, where in its article 3 it is stated that any person suspected or accused of a criminal offense is considered innocent until proven guilty by a final judgment of the court.⁶⁴ However, often reports in the media do not respect this principle and there are many irregularities, especially in the reports of online news portals. In addition, on October 13, 2022 with decision no. 396/2022, the Prime Minister of Kosovo dismissed the director of the Agency for Emergency Management from his position due to the well-founded suspicion of committing a criminal offense.⁶⁵ In the justification of this decision, we see that the decision is based on internal and external Audit reports. In this case, the Prime Minister did not wait for any decision of the justice bodies, but he himself investigated the case and determined that there is a well-founded suspicion that a criminal offense has been committed, and in this case, he decided to terminate the employment relationship of the director of the Agency for Management Emergency. So, in this case, the presumption of innocence has not been applied and there is no information on whether criminal procedure has been initiated. Also, another issue that has been brought up recently is the confiscation of unjustified property according to the concept of civil confiscation. On July 14, 2022, the Assembly approved in principle the draft law for the State Bureau for the Verification and Confiscation of Real Estate.⁶⁶ For this Draft Law, the opposition had expressed concern that the opening of the bureau could create parallel institutions of justice, so it had sent the Draft Law to the Venice Commission to request an opinion. In this regard, the Venice Commission on June 20, 2022 approved the legal opinion on this matter. In this opinion, it is emphasized that

60 Law no. 04/L-193 for the Advocacy, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8673>

61 Statute of the Chamber of Advocates of Kosovo, article 96, source:

https://www.oak-ks.org/assets/cms/uploads/files/Statuti/Statuti_i_OAK_04_N%C3%ABntor_2017_312201.pdf

62 <https://kallxo.com/lajm/incident-ne-mbledhjen-e-odes-se-avokateve-pretendime-per-sulm-e-sharje-me-nene/>

63 Law no. 04/L-016 for free legal aid, article 6-9, source: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2803>

64 Code no. 08/L-002 of criminal procedure, article 3, source <https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759>

65 Prime Minister Kurti dismisses Fasil Kodra (document), source

<https://kallxo.com/lajm/kryeministri-kurti-shkarkon-fasil-kodren-dokument/>

66 Bill no. 08/L-121 for the State Bureau for the verification and confiscation of unjustifiable assets, received in the Assembly on January 11, 2022 source: <https://www.kuvendikosoves.org/shqj/projektligjet/projektligji/?draftlaw=359>

although the goal may be justifiable, it should be taken into account that the civil confiscation must be designed and implemented in accordance with the country's Constitution and that the European Convention on Human Rights is directly applied and taking into account European standards. Në këtë drejtim, Komisioni i Venice has given some recommendations for changing the draft presented to the Commission, for the reason that the Commission has considered that the wording presented may represent a violation of the fundamental rights guaranteed by the Constitution and the Convention.⁶⁷ So far, there is no public record of how the recommendations of the Venice Commission have been addressed.

Other aspects of the right to a fair trial are the right to be heard, the appeal procedure, the equality of arms, the means against the prolongation of the judicial procedure, the reasoning of the decisions, which are also guaranteed by the new Code of Criminal Procedure. Recently, on August 15, 2022, the Constitutional Court published the Judgment in case KI10/20, where the applicant, the Syndicate of the Institute of Forensic Medicine, requested the evaluation of the constitutionality of the Supreme Court Judgment, which the applicant claimed to be violated the rights and freedoms guaranteed by articles 31, Right to a Fair and Impartial Trial, 32, Right to Legal Means and 54, Judicial Protection of Rights, of the Constitution of the Republic of Kosovo.⁶⁸ The request submitter, the Syndicate, contested with a lawsuit in the Basic Court the Regulation on the Internal Organization and Systematization of the Institute of Forensic Medicine, asking the Court to declare it illegal. The Basic Court had issued a Decision by which it dismissed the lawsuit filed as inadmissible, reasoning that the contested act, in this case the Regulation, is not a final administrative act and as such cannot be contested with a lawsuit for administrative conflict. Although the case went to the Supreme Court, the decision did not change, but the Supreme Court also confirmed the decisions of the lower courts. In the end, the Syndicate of the Institute of Forensic Medicine addressed the Constitutional Court saying that they were not able to realize the rights guaranteed by the Constitution and were not able to protect their rights by the courts. In this case, the Court, after dealing with all the claims of the applicant, has found that the circumstances of the case constitute elements that are related to the claim of violation of the right to access to the court. So, the Court found that the regular courts of the legal system of Kosovo take care of preserving the legal supremacy of the law, namely the compatibility of the by-laws with the law, therefore by not checking the legality of the IFM Regulation with the Law on Forensic Medicine, the applicants's right to "access to the court" has been denied. In this regard, it is worth noting that the Draft Law on Administrative Conflicts sent to the Assembly, defines the possibility of filing a "lawsuit against the by-law normative act".⁶⁹ With this type of lawsuit, the cancellation of a by-law normative act can be requested, and this lawsuit can be submitted in cases where a natural or legal person claims that the act is contrary to the law and for this reason it violates or will violate its rights in the future.⁷⁰

In terms of the **effectiveness of court decisions**, it is worth noting that when they are final, they are immediately enforceable. However, there are cases when there is no supervision of the implementation of court decisions. In the case of lawsuits filed by the Group for Legal Studies/ Center for Strategic Judicial Cases and several organizations for the protection of the environment to oppose the environmental and water decisions issued by the Ministry of Environment, Spatial Planning and Infrastructure for the hydropower plants in Deçan, Shtërpcë and Kaçanik, there are reports that the decisions of the courts are not being implemented. In these cases, we have three (3) judgments of the Supreme Court, which confirm the temporary measure, the suspension of contested decisions, however, activists report that often these hydropower plants operate, despite the court's decisions. This is worrying and directly affects the effectiveness of judicial decisions.

The last subcategory for Access to Justice is **Constitutional Justice**. Individuals have access to constitutional justice in cases where their fundamental rights have been violated, after using all other

67 Venice Commission, Opinion no. 1083/2022 of dt. June 20, 2022 on the Draft Law no. 08/L-121 for the State Bureau for verification and confiscation of unjustifiable assets, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)014-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)014-e)

68 Verdict in the case no. KI10/20, Applicant Syndicate of the Institute of Forensic Medicine, Request for evaluation of the constitutionality of the Judgment of the Supreme Court of Kosovo ARJ. No. 115/2021 of November 2021, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=62661>

69 The Draft Law on administrative conflicts, <https://kuvendikosoves.org/shq/projektligjet/projektligji/?draftlaw=421>

70 Ibid, Article 25.

legal means. The Constitution of the Republic of Kosovo does not provide opportunities for “actio popularis”, that is, individuals do not have the right to take actions to review the constitutionality of normative acts after their entry into force. The Assembly and the Executive are obliged to act according to the arguments and decisions of the Constitutional Court. However, there have been cases when the Executive has not taken as a basis the evaluations of the Constitutional Court as a whole, something we can notice in the case of the Law on Public Officials and the Law on Salaries, the draft of which has been published on the public consultation platform.⁷¹ This subcategory scored 4 points out of 7 in total..

Access to Justice scored 39 points out of 67 points in total, which means it scored 58.2%. From this it results that there have not been many changes from the previous evaluation and that more work should be done on improving access to justice and thus on changing public perception and increasing their trust in justice.

Conclusions

The Rule of Law Sector in Kosovo is going through a period of numerous legal reforms. These reforms may have good intentions, however the biggest problem in Kosovo is the practical implementation of the law. Therefore, focusing on this aspect would be very necessary. This is also shown by the evaluation report according to the Venice Commission's checklist, where the categories that scored the least points are the categories related to the implementation of the provisions in practice. The assessment for the period May - October 2022 did not present any major changes with the previous assessment, however, it marked a slight drop in points. The Government of Kosovo must take action to increase citizens' trust in the institutions of the rule of law, and make more efforts to ensure transparency, especially during new legislative proposals, accountability and impartiality of the justice sector. At the same time, the justice sector and the institutional level should further engage to take into account international standards, such as those of the Venice Commission's checklist, in order for Kosovo to continue its journey in the process of integration into the European Union.

The following section offers some recommendations based on challenges, shortcomings and problems identified during this evaluation period.

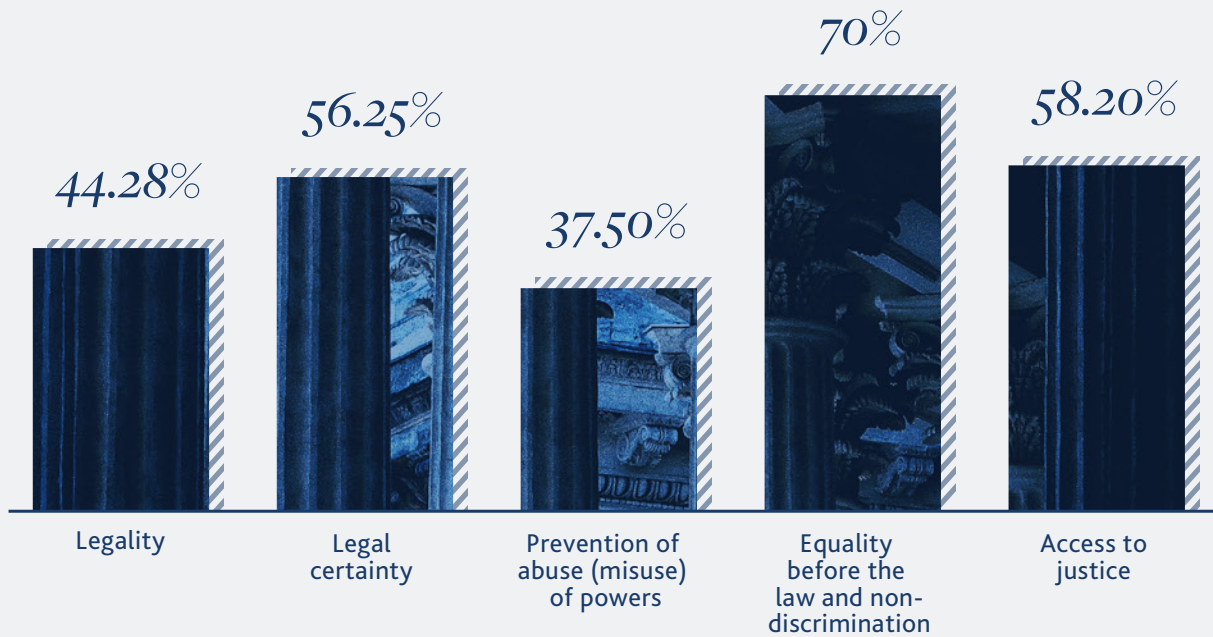
⁷¹ Draft Law on Public Officials, source: <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=41546>
The Draft Law on Public Sector Salaries, <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=41547>

Recommendations

- Public institutions must always ensure consistency between laws, including bylaws with the Constitution;
- Public institutions must ensure the implementation of laws as a whole and certain measures to be taken for non-implementers;
- Public institutions must ensure the adoption of laws without delay, when requested by the Constitutional Court;
- Regulating the issue of consolidated versions of the law, as it is an urgent need;
- Regulating the process of ex-post evaluation of legislation, enabling the publication of such reports so that they are easily accessible to the public;
- It is essential that the Parliamentary Committee on Legislation improves its supervising role as mandated by law;
- Public institutions should facilitate access to justice for marginalized groups and ensure the implementation of the non-discrimination law. In addition, they should provide positive measures for the benefit of specific groups in order to address existing inequalities;
- Legal aid should be available to every individual, along with pro-bono legal aid for those in financial difficulty;
- To encourage the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) for transparency and accountability;
- Public institutions must take all the necessary measures so that court decisions are fully implemented;
- Responsible public institutions should familiarize themselves with the Venice Commission Checklist and make an assessment of the rule of law based on this document.

Rule of Law Checklist

May – October 2022 findings

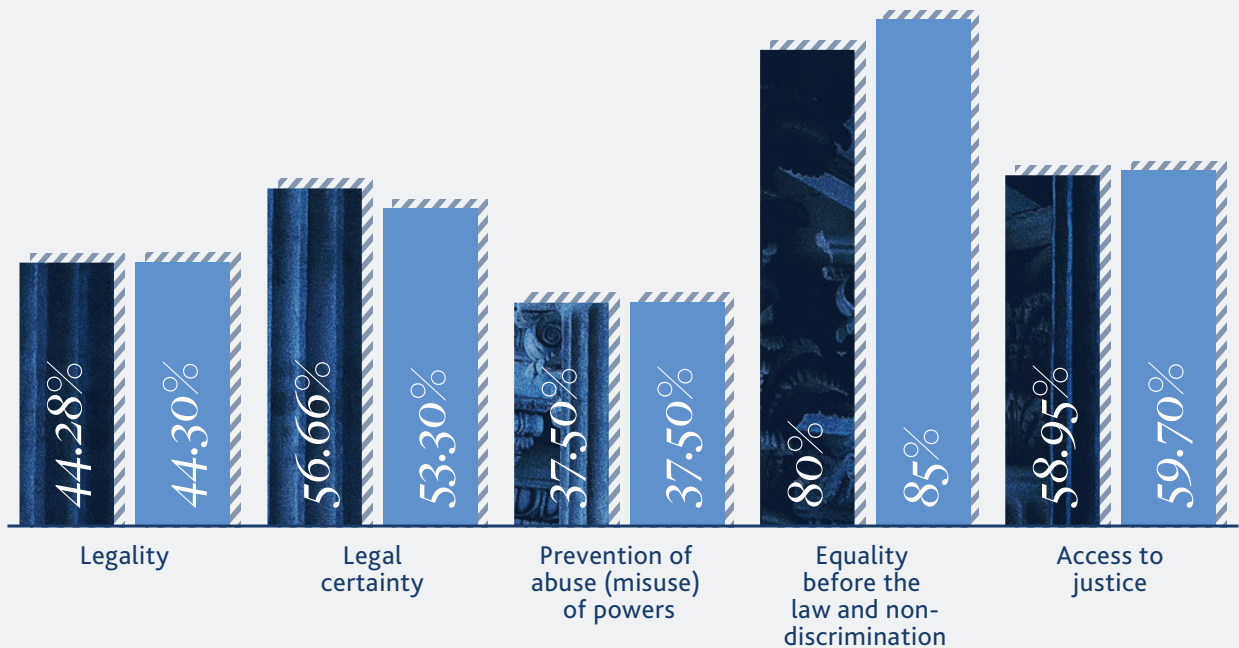


Rule of Law Checklist Comparison

2021/2022

November 2021 - April 2022

May - October 2021





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