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Challenges of Kosovo Judicial Reform from an International Perspective: Issues and Complexities³

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Abstract

This study systematically investigates the primary issues and obstacles impeding the establishment of a functional and credible judiciary in Kosovo, adopting an international perspective. The research methodology includes a combination of qualitative and empirical analytical approaches to concrete actions based on a review of relevant literature, reports, and legal documents. This paper concludes that Kosovo should be ready to reach compromises, strengthen the independence, professionalism, transparency and accountability of judges and prosecutors, and increase public confidence in justice, to achieve a successful reform in the judicial system. The paper offers several recommendations for improving the quality and efficiency of justice in Kosovo, such as promoting cooperation and coordination with international factors in this field.

Keywords: justice reform, judicial system, legislation, vetting, Republic of Kosovo.

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Wyzwania reformy sądownictwa w Kosowie z perspektywy międzynarodowej – problemy i komplikacje⁴

Streszczenie

Niniejsze studium systematycznie bada pierwotne problemy i przeszkody utrudniające ustanowienie funkcjonalnego i godnego zaufania sądownictwa w Kosowie, uwzględniając przy tym perspektywę międzynarodową. Przyjęta metodologia badawcza to połączenie jakościowego oraz empiryczno-analitycznego podejścia do konkretnych działań w oparciu o przegląd piśmiennictwa, raportów i dokumentów prawnych. Wnioskiem wynikającym z artykułu jest to, że Kosowo powinno być gotowe na osiągnięcie kompromisów, na wzmocnienie niezależności, profesjonalizmu, transparentności oraz odpowiedzialności sędziów i prokuratorów oraz na zwiększenie zaufania opinii publicznej do wymiaru sprawiedliwości, żeby z powodzeniem zreformować system sądownictwa. W artykule zawarto kilka zaleceń dotyczących tego, jak poprawić jakość i skuteczność wymiaru sprawiedliwości w Kosowie, takich jak promowanie współpracy i koordynacji z czynnikami międzynarodowymi w tym obszarze.

Słowa kluczowe: reforma wymiaru sprawiedliwości, system sądownictwa, ustawodawstwo, lustracja, Republika Kosowa.

⁴ Badania wykorzystane w artykule nie zostały sfinansowane przez żadną instytucję.

Introduction

The justice system in the Republic of Kosovo has already entered a journey of reforming the judicial system, which is not easy to achieve if we do not have coordination with all local and international institutions.

To achieve the goal, this paper uses a combined methodology, which includes qualitative and empirical methods such as the analysis of the legal aspect including the scientific literature, as well as the study of cases, recommendations and reports of other European countries that have undergone similar reform processes. Based on the aspect of legal regulation, it seems very difficult to achieve such a thing without constitutional changes. Also, the practices of international countries regarding the reform of the judicial system that have had to achieve the necessary success have had to make drastic changes in constitutional and legal terms,⁵ and in most cases, the changes have not been successful enough.

This study aims to identify the main problems that can lead to the achievement of such an important process as changes in the justice system. It is supposed to look at the processes of reforms in the countries of the region and in other countries that have gone through this process and take as a basis their results, positive and negative. Also, the paper aims to contribute to the literature on judicial reform in the context of transition and European integration, providing a critical assessment and a comparative perspective.

However, starting this process is not at all easy for the main initiators related to this process, even in our country. One of the main factors for this process to be properly successful is the consensus between the institutions and the consideration of all international opinions. These necessary changes are difficult to implement; therefore, doubts may arise whether it will be possible to implement a radical change in justice or to implement the vetting process without having to intervene in the amendment of the constitution.⁶ We will try to find an answer to this issue, without forgetting that Kosovo has a constitution that enters the framework of strong constitutions in terms of changes that can be made to it. For this, reaching a broad political consensus in Kosovo is required. Research questions that this

⁵ Venice Commission, *Judicial reforms*, Council of Europe, Strasbourg 2022, https://www.venice.coe.int/WebForms/pages/?p=02_Judiciary&lang=EN (access: 15.11.2023).

⁶ The Constitution of the Republic of Kosovo, Official Gazette of the Republic of Kosovo, Pristina 2008, Article 144, para 2, <https://gzk.rksgov.net/ActDocumentDetail.aspx?ActID=3702> (access: 15.11.2023).

paper aims to answer are: What are the constitutional, legal and institutional aspects of the change in the judicial system in Kosovo? What are the problems and challenges faced by the judicial system in Kosovo and what impact do they have on its functioning? Which of the reforms that took place in the countries discussed can be adapted to the reform of the justice system in the Republic of Kosovo?

The article begins by discussing the constitutional and legal issues of whether judicial reform can be delayed. Next, the paper addresses the importance of international institutions, which are frequently cited as having the ability to bring about reform in the justice system. In the end, the reforms of the justice system in several European countries will be discussed.

Regulation of the Constitutional and Legal Aspects for Reform in the Justice System in the Republic of Kosovo

In the constitutional aspect, before discussing the possibility of constitutional changes, one should take into account the current constitutional provisions regarding the judicial and prosecutorial system, which also present the constitutional aspect of changes in the judicial power, first of all, both possibilities should be analysed, either with the possibility of development without constitutional changes, or with the development of these processes with constitutional changes.⁷ To realize the possibility of changes in the judicial power without the need for constitutional changes, and to realize the necessary progress, the constitutional provisions must be carefully analysed so that during the creation of the legislation it does not conflict with the Constitution.

The appointment and reappointment procedures for judges and prosecutors are outlined in the Republic of Kosovo's Constitution. These procedures demand particular consideration because how they are interpreted also affects whether or not the constitution should be changed. In this sense, it should be seen how these institutions stand in terms of constitutional regulation, where Article 104 of the Constitution, entitled 'Appointment and dismissal of Judges', as seen, does not include reappointment, while in the first paragraph, along with appointment and dismissal, it includes renaming.⁸ Regarding the interpretation of the competence of re-appointment, it is the same as that of appointment,⁹ and only as a competence,

⁷ T.Y. Khabrieva, *Constitutional reforms in the modern world*, "Herald of the Russian Academy of Sciences" 2016, 86, pp. 269–275.

⁸ E. Hasani, I. Čukalović, *Commentary – The Constitution of the Republic of Kosovo*, Publication 1, Pristina 2013, p. 676, <http://jus.igjk.rks-gov.net/487/> (access: 16.11.2023).

⁹ *Ibidem*, p. 505.

but not as a process. The appointment of judges means the appointment of a candidate for judge to exercise the function of a judge with an initial term of three (3) years, while reappointment means the successful completion of the initial mandate of the appointed judge and after a positive evaluation is proposed by the Judicial Council of Kosovo for permanent mandates.¹⁰

Also, these actions related to the appointment are foreseen by the Constitution of the Republic of Kosovo.¹¹ The appointment and re-appointment process were carried out immediately after the country's independence, in what we have called the post-independence justice reform. That process is defined as a reappointment process even though it was open to all persons, not only to judges and prosecutors who were exercising their profession.¹² However, about 40% of the judges and prosecutors who went through the reappointment process received a permanent mandate, while 60% were new judges and prosecutors with a three-year mandate, where they would have to be supervised for the evaluation of the work they were doing,¹³ because, at the time of their reappointment, they have the opportunity to be reappointed by the President.

However, what is more important is that the constitutional provisions that were the main basis for that process are no longer in force,¹⁴ which implies that the judges can go through a reappointment process once more, without needing constitutional changes, only by issuing legal acts and regulating the renaming process more carefully.

Vetting as well as changes in the judicial power to be realized without constitutional changes is almost impossible, regardless of how the processes that have taken place can be commented on.¹⁵ We can take it as a known fact now that judges and prosecutors have a permanent constitutional mandate, and even though the process they went through is no longer in force, the legal consequences are almost irreversible regarding this situation. Constitutional changes are necessary, since

¹⁰ Judicial Council of Kosovo, *Regulation (05/2016) on the recruitment, examination, appointment and reappointment of judges*, Pristina 2016, Article 3, para. 1, point. 1.8. <https://w.gjyqesorirks.org/wpcontent/uploads/lgsi/RREGULLORE%20052016%20per%20Provimin%20Emerim%20dhe%20Riemerim%20e%20gjyqtareve.pdf> (access: 17.11.2023).

¹¹ Article 105, para. 1 of the Constitution of the Republic of Kosovo, 2008.

¹² OSCE, *Independence in Kosovo: Institutional and Functional Dimensions*, Pristina 2012, p. 15. <https://www.osce.org/files/f/documents/5/c/87139.pdf> (access: 22.11.2023).

¹³ IKD & FIQ, *Re-appointment process, independence and impacts (re-appointment and appointment of judges and prosecutors in Kosovo)*, Pristina 2011, p. 21. https://kliks.org/wpcontent/uploads/2015/05/Emerimi_dhe_riemerimi_i_gjykatesve_dhe_prokuroreve.pdf (access: 22.11.2023).

¹⁴ A. Bajrami, F. Mucaj, *The Constitutional Law*, University of Pristina, Pristina 2018, p. 427.

¹⁵ D.B. Haxhiu, E. Karamuço, *The Influence of the Justice Reform of Albania Towards European Union Integration*, "Journal of Namibian Studies: History Politics Culture" 2023, 34, pp. 4032–4057.

any kind of attempt to initiate changes in the judicial power would face opposition in the Constitutional Court by judges, prosecutors or whoever would be the subject of this vetting process, or even by political groups that could contest the constitutionality of these changes in the justice system.

Taking into account the dilemmas that we presented above, we can say that the constitutional possibility for terminating the mandate exists through a process of dismissal, that is, not necessarily through an assessment process that is provided for by constitutional provisions, but it would be sufficient even by issuing a law, since it is clearly stated in the Constitution that the mandate is permanent after re-appointment¹⁶ unless it is dismissed under the law. Despite this, the evaluation process should never be seen as a criterion that leads to the dismissal, but such a thing should be foreseen by the law, which should be per the Constitution to enable the completion of the constitutional mandate of the owning entity to the same.

To achieve the termination of the mandate, a constitutional amendment is necessary, firstly that of paragraph 1 of Article 105 of the Constitution, where, among other things, it would be necessary to add 'unless dismissed by the law or/and does not go through the evaluation and re-evaluation process as provided by the Constitution'.¹⁷ Additionally, additional constitutional provisions about the review and re-evaluation process would have to be added to guarantee the implementation of both transitional and permanent vetting. It is not out of the question that these modifications will function as temporary annexes to the Constitution, lasting until certain events happen (such as the conclusion of the re-evaluation of judges and prosecutors). However, it would be necessary to include other constitutional provisions that allow for the implementation of certain reforms in the justice system even after the practicality of the transitional vetting, since permanent vetting is permitted by both the law and the Constitution whenever it is deemed necessary.

These changes may encounter numerous obstacles, starting from the fact that Kosovo ranks among countries with rigid constitutions, for its change we may have procedural obstacles,¹⁸ which are not only related to the provision of numbers in the parliament to pass the constitutional amendments but also in the evaluation of the constitutionality of the proposed constitutional amendments.¹⁹

In order to have a clear overview of the case regarding the constitutional obstacles, we will present them in two directions, first in the political aspect and then in the legal aspect, each time only regarding the aspect of the obstacles in the constitutional

¹⁶ Article 105, para. 1 of the Constitution of the Republic of Kosovo, 2008.

¹⁷ A. Bajrami, F. Mucaj, *op. cit.*, pp. 429–437.

¹⁸ E. Hasani, I. Čukalović, *op. cit.*, p. 679.

¹⁹ Article 113 of the Constitution of the Republic of Kosovo, 2008.

change. In the political aspect, a majority of 2/3 is required, and that only of all deputies, but also of non-majority communities,²⁰ so this means that for the approval of the justice reform, compromises must be made, especially in achieving a majority of 2/3 among the ranks of the non-majority communities, especially the non-majority Serbian community. We can suppose that one of the obstacles may be the request of the Serbs that the judges and prosecutors of their community should not be subject to vetting. This agreement casts doubt on the change in the justice system. As for the obstacle in the legal aspect, it is seen that it is required that the amendments go to the Constitutional Court for the evaluation of their constitutionality. This requirement means that the draft amendments must not reduce any rights and freedoms that are defined by the Constitution.²¹ So, there is a possibility that such changes in the justice system may not be made possible by the Constitutional Court itself,²² which is competent for the evaluation of constitutional amendments.

The legislative and constitutional changes that are required for the advancement of the justice system must begin with the executive branch, which is the primary legislator. From there, interest groups must be involved. We can think of civil society, the Bar Association, Notaries, Bailiffs etc., as well as the Judicial and Prosecutorial Councils. Finally, there is no doubt that the Assembly of the Republic of Kosovo, which is the most significant institution that can pass or reject changes, must also take the initiative. The political will of the people's representatives in the Assembly will determine whether or not the legislative package, including the necessary constitutional amendments, is passed.

The Significance and Impact of the International Factor in Reforming the Justice System

The role of internationals in the Republic of Kosovo is very important, they are important factors in political decision-making in Kosovo.²³ We recall that even the reform in justice itself after the independence of the country was a consequence

²⁰ Ibidem, article 113, para. 3, subpar. 3.4.

²¹ E. Hasani, I. Čukalović, op. cit., p. 677.

²² A. Fauzan, A. Diniyanto, A. Hamid, *Regulation Arrangement through the Judicial Power: The Challenges of Adding the Authority of the Constitutional Court and the Supreme Court*, "Journal of Law and Legal Reform" 2022, 3(3), pp. 403–430.

²³ A. Bajrami, *The Constitutional System of the Republic of Kosovo*, Pristina 2011, p. 106; V. Salihu, B. Murati, *Harmonization of the legislation of foreign investments of the developing countries with that of the European*, "Journal of Governance & Regulation" 2023, 12(1), pp. 348–358.

of the international, where, according to the Ahtisaari Plan,²⁴ the process of appointment and reappointment of judges and prosecutors was foreseen, which was also one of the processes of important transits planned by that plan.

At the beginning of this initiative, the European Union did not fully support the initiatives for the development of the reform in the justice system, in particular the vetting in justice. In the 2021 report on Kosovo, the European Union assessed the complete reassessment of all prosecutors and judges as disturbing. According to this report, such a process should only be considered as an exceptional measure of last resort. After all, existing means and mechanisms to guarantee the integrity and fight corruption of judicial officials have been exhausted, as they should be by European and international standards, as well as with the advice of the Venice Commission.²⁵ However, in the report of the Council of Europe on Kosovo, published in October 2022, there is a softer position of the European Union regarding vetting.²⁶ In this change, it seems that the opinions of the Venice Commission played a role, which the government used as an important guide in implementing changes in the justice system.

Now the project, which was finalized by the government together with the Minister of Justice regarding the vetting process, has been submitted to the President of the Assembly,²⁷ who forwarded it for evaluation to the Venice Commission where they drafted a report regarding their recommendations for the evaluation of the draft law on vetting. The new initiative to change the justice system, in the last report from the European institutions for the country published in 2022,²⁸ was seen as a limited achievement in judicial power, almost similar to the earlier years. Kosovo continues to be at an initial stage in the development of a judicial system that works well. It is also highlighted in this report.

²⁴ P. Nimani, A. Maliqi, Maloku A., Avdija Sh., *The Constitutional and Legal Position of National Minorities in Kosovo Ahtisaari Package and the Privilege of Minorities*, "Access to Justice in Eastern Europe" 2023, 4(21).

²⁵ European Commission, *The report for Kosovo*, Brussels 2021, <https://neighbourhoodenlargement.ec.europa.eu/system/files/202110/Kosovo%202021%20report.PDF> (access: 28.11.2023).

²⁶ European Commission, *Key findings of the 2022 Report on Kosovo*, Brussels 2022, https://ec.europa.eu/commission/presscorner/detail/en/country_22_6090 (access: 29.11.2023).

²⁷ Assembly of the Republic of Kosovo, The Assembly reviewed the Draft Law for the State Bureau for the verification and confiscation of unjustifiable assets, Pristina, 20 November 2022, <https://kuvendi.kosoves.org/shq/per-publikun/lajmi/kuvendi-shqyrtoi-projektligjin-per-byrone-sht-28982/> (access: 3.12.2023).

²⁸ European Commission, *The report...*

Table 1. Percentage of citizens surveyed according to belief, impression and evaluation of the justice system in the Republic of Kosovo

Variable	Low confidence or none	Medium confidence	High/very high confidence
Trust in the justice system	57.5%	34.7%	7.8%
The impression of corruption in the justice system	64.6%	26.3%	9.1%
The impression of independence of judges and prosecutors from political pressure	47.8%	35.9%	16.3%
The impression of the accountability of judges and prosecutors for their work	51.9%	29.2%	18.9%
The impression of professionalism of judges and prosecutors	54.4%	28.5%	17.1%

Source: own elaboration and data compiled by the authors on the basis of several references.

Regarding the current government's initiatives to reform the justice system, it is emphasized that the reform for change 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, a wealth declaration system, disciplinary procedures, and consistent performance evaluation, by European standards and the recommendations of the Venice Commission Opinion of 17 June 2022.²⁹ Almost all the reports received by the European Commission include the same recommendations to implement the reform in justice most successfully.

However, in addition to all these developments that followed the year 2022, the assessment by the Department of the United States through a report had remarks from some of the institutions precisely about the actions taken concerning the development processes for reform in the justice system.³⁰ Accusing the government of a lack of transparency, among other things, the lack of effective judicial supervision, and the fragility of law enforcement have resulted in this problem, the report said. These are precisely some of the reasons why Kosovo has a great need for reform in the justice system, which is claimed to be achieved after the passage of these major processes.

²⁹ Ibidem.

³⁰ State Department U.S., *Country Reports on Human Rights Practices: Kosovo*, Washington D.C., 2022, p. 22, <https://www.state.gov/reports/2022countryreportsonhumanrightspractices/kosovo/#:~:text=Significant%20human%20rights%20issues%20included,involving%20violence%20or%20threats%20of> (access: 3.12.2023).

The Actions of Some European Countries That Have Acted to Reform the Justice System

Every change initiative aimed at reforming the justice branch has its characteristics and peculiarities. In our opinion, when comparing state-to-state actions regarding justice system reform, they are always welcome and significant, but they should never be viewed through the lens of a nation's level of success, as many variables affect how well these changes are implemented.

Through the comparison of rights, hasty conclusions on the importance of a rule or institution can be avoided,³¹ the comparison can serve us to avoid bad situations created as a result of a norm not previously practiced in the country ours.

The need for reformative changes in the justice system in Poland

The case that we can take as an example is a European Union state that a few years ago had developed a reform in justice, encouraged by the ruling majority, Poland.³² It is even among the most discussed reforms on the European continent, where it was often called the 'controversial judicial reform',³³ as a result of the discussions and objections between the Polish government and the Commission of the European Union, which continued in the European Court of Justice.³⁴

The Polish reform in the justice system was developed due to the low trust of the people in the courts (only 24%), the lack of efficiency of the procedures, the communist past of the judiciary, the influence on the justice system, the lack of responsibility for the totalitarian past of judges are part of the justice system, the imbalance between powers, the cult of formalism (high level of bureaucracy), the protection of independence (aiming to create mechanisms that 'cure' the diseases of the judiciary, which it cannot 'cure' itself) etc.³⁵ Different from Kosovo, the Polish judiciary

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- ³¹ M. Fromont, *The Greatest Foreign Systems of Law*, "LEX Collection", Papirus Editions, Tirana 2009, p. 7.
- ³² European Parliament, *Katarina Barley, Birgit Sippel, Parliamentary question in the European Parliament*, Strasbourg, https://www.europarl.europa.eu/doceo/document/E-9-2020-000110_EN.html (access: 3.12.2023).
- ³³ D. Boffey, *Polish prime minister escalates war of words with EU over rule of law*, "The Guardian", Brussels 2021, <https://www.theguardian.com/world/2021/oct/19/polish-prime-minister-escalates-war-of-words-with-eu-over-rule-of-law> (access: 3.12.2023).
- ³⁴ Court of Justice of the European Union, *European Commission v. Republic of Poland Case C-791/19*, Luxembourg 2021, <https://curia.europa.eu/juris/liste.jsf?num=C-791/19> (access: 4.12.2023).
- ³⁵ P. Čuroš, *Attack or reform: Systemic interventions in the judiciary in Hungary, Poland, and Slovakia*, *Oñati Socio-Legal Series*, 2023, 13(2), pp. 626–658.

does not complain about the low number of judges, not even about the financial support of the judiciary.³⁶

The European Union accused the Polish government in two cases of trying to control the judiciary and undermine democratic standards,³⁷ and in December 2017, the European Commission started the sanctions procedure under Article 7 of the Treaty on European Union, thus attempting to hinder the reform initiated by the ruling party in Poland, which according to the European Commission threatened the rule of law.³⁸ So, there is the tactical idea of using the critical attitude of some citizens towards the courts to incite hatred against a layer of the rich and lazy elite who make up the Polish judiciary today.³⁹ Such an idea should not be thought of in Kosovo, either. There is the idea that a political entity tries to politically use the citizens' dissatisfaction with the judicial system in Kosovo, thus trying to use the parliamentary majority that it has in the Assembly and the anger to seize justice through justice reform and vetting.

As well as the second issue related to the limitation of the mandate of judges, the changes in the Polish justice system tried to lower the retirement age, but giving the Ministry of Justice the opportunity for some judges to continue their mandate even beyond the age of retirement, but such a thing constituted a violation of the law of the European Union by the European Court of Justice.⁴⁰ Regarding this issue, the President of the Supreme Court of Poland himself protested, defending his 6-year mandate, which was limited by setting the age of 65 as the retirement age, but which, according to constitutional law expert Marek Chmaj, emphasized that the law that lowers the retirement age cannot act retroactively, emphasizing that such a law is unconstitutional.⁴¹ Given that the judges in Kosovo have permanent mandates and that any restriction on their authority could be deemed unconstitutional, the Polish reform stands to be one of the best models that the Republic

³⁶ Iustitia, *Response to the white paper compendium on the reforms of the Polish justice system, presented by the Government of the Republic of Poland to the European Commission*, Polish Judges Association, Warszawa 2018. <https://www.statewatch.org/media/documents/news/2018/mar/pl-judges-association-response-judiciary-reform-3-18.pdf> (access: 4.12.2023).

³⁷ Euractiv, *Polish-EU tensions flare again as new law requires judges to quit*, 2018, <https://www.euractiv.com/section/justice-home-affairs/news/polish-eu-tensions-flare-again-as-new-law-requires-judges-to-quit/> (access: 7.12.2023).

³⁸ P. Regalski, *The European Commission's attack on the reform of the justice system in Poland: Summary, chronology and challenges*, ECLJ, 2020, <https://eclj.org/geopolitics/eu/lattaque-de-la-commission-europeenne-contre-la-reforme-de-la-justice-en-pologne--resume-chronologie-et-enjeux?lng=en> (access: 7.12.2023).

³⁹ R. Zakrzewski, *Munition for the election campaign*, "Gazeta Wyborcza", 2020, <https://www.eurotopics.net/en/234984/judges-in-poland-gagged> (access: 7.12.2023).

⁴⁰ Court of Justice of the European Union, *Rule of law: The Polish justice reform of December 2019 infringes EU law*, press release No. 89/23, Luxembourg, 5 June 2023. <https://curia.europa.eu/jcms/upload/docs/application/pdf/202306/cp230089en.pdf> (access: 7.12.2023).

⁴¹ Ibidem.

of Kosovo should emulate. Different from Poland, Kosovo is adopting the policies dictated by the EU's support for its justice reform process.

The difficulties faced by the Ukrainian state as it underwent justice reform

Ukraine is one of the cases where the justice reform process took a long time, despite continuous support, they did not produce the right results, perhaps due to the complexity of the country's political and geo-political situation there. The state of the Ukrainian judiciary was depressing, considering several factors that emphasize that the justice system does not fulfil its duties at the appropriate level, where the level of corruption, the low independence of the judiciary, and the lack of consistency of judicial practice are highlighted, non-execution at the necessary level of court decisions, low level of legal culture and legal awareness of society etc.⁴² All these problems had created an unavoidable situation to demand a radical reformation of justice there, including the vetting process.

During the reform process in the justice system, out of 2,827 judges who passed the vetting process, only 35 were fired, while the vetting bodies (High Council of Justice – KLD) passed more than 70% of the judges who detained the protesters in the Revolution of Dignity and used disciplinary procedures to 'harass' independent judges.⁴³ To save the judicial reform, the Council of Europe offered support in the completion of the judicial reform and the implementation of the newly adopted legislation to ensure the independence, fairness, and effectiveness of the judiciary, by the standards and recommendations of the Council of Europe.⁴⁴ Meanwhile, despite the many difficulties with the COVID-19 pandemic and the ongoing conflict with Russia, the strategy for judicial reform (2021–2023)⁴⁵ focuses on improving the quality and access to justice, strengthening institutional capacities and accountability of legal institutions, increasing legal culture and public awareness, and integrating the Ukrainian legal system into the European system

⁴² Decree of the President of Ukraine, About the Strategy for Reforming the Judiciary, Judiciary and Related Legal Institutions for 2015–2020 No. 276/2015. Ukraine 2015, <https://zakon.rada.gov.ua/laws/show/en/276/2015?lang=en#Text> (access: 10.12.2023).

⁴³ O. Halushka, H. Chyzyk, *Is Ukraine's new judicial reform a step forward?* Atlantic Council, 24.10.2019, <https://www.atlanticcouncil.org/blogs/ukrainealert/is-ukraines-new-judicial-reform-a-step-forward/> (access: 10.12.2023).

⁴⁴ Council of Europe, Support to the judicial reform in Ukraine, *ECLC*, Strasbourg 2018. <https://www.coe.int/en/web/cdcj/-support-to-the-judicial-reform-in-ukraine> (access: 10.12.2023).

⁴⁵ Decree of the President of Ukraine, About the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021–2023 No. 231/2021. Ukraine 2021. <https://zakon.rada.gov.ua/laws/show/en/231/2021?lang=en#Text> (access: 11.12.2023).

and the global legal space. However, in addition to financial support, the international community needs to continue monitoring the reforms to stop their sabotage. Based on this practice, Kosovo can learn a lot from the Ukrainian reform process by not allowing such an example to be applied to us as well, but trying to implement the legal acts in practice and prevent the negligence that can come from the state bodies themselves.

The situation in Bulgaria during the justice reform process

Even Bulgaria, as one of the Balkan countries, also has its problems with the justice system, but being a member of the European Union, the pressure to solve these problems is even greater. The European Commission has criticized Bulgaria for its justice system, asking it for legislative changes related to the judiciary, where the biggest criticisms were on the functioning of the State Prosecutor's Office and the Supreme Judicial Council.⁴⁶

The judicial reform in Bulgaria focused on three main issues which are related to the powerful position of the Prosecutor General and his weak accountability, the composition of the Judicial Chamber as well as the issue of inspections and evaluations of judges.⁴⁷ The Venice Commission positively evaluated the 2015 constitutional changes in Bulgaria but pointed out that they were not sufficient as the current system still had shortcomings.⁴⁸ In this direction, the Venice Commission recommended some changes related to the improvement of the new justice bodies, with special emphasis on the competence of inspection, where the VC recommended that it be removed from the Presidents of the Courts, as well as the evaluation criteria should be more specified.⁴⁹ From the Bulgarian experience, the Republic of Kosovo should very clearly define the assessment criteria (whether it be a periodic assessment or an ad hoc assessment), the assessment bodies and the procedures followed. In contrast to Bulgaria, we also need to be careful that the legislative package fully enacts the anticipated constitutional changes. Kosovo has anticipated the establishment of the State Bureau for the confiscation of unjustifiable

⁴⁶ M. Cheresheva, M.A. Touma, *Romania, Bulgaria Still Need Monitoring, Commission Says*, Balkan Insight, Sophia, 25.01.2017, <https://balkaninsight.com/2017/01/25/romania-bulgaria-still-need-monitoring-commission-says-01-25-2017/> (access: 11.12.2023).

⁴⁷ Venice Commission, *Judicial reforms*, op. cit.; K. Popławski, *The Role and Functions of the Mechanisms of Soft Law in International Public Law Discourse: Remarks Against the Background of the Opinions of the Venice Commission*, "The Critique of Law" 2019, 11(3), pp. 74–90.

⁴⁸ Venice Commission, Opinion No. 855/2016 on the Judicial System Act for Bulgaria, Strasburg 2017, para. 111, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)018-e) (access: 15.12.2023).

⁴⁹ *Ibidem*, paras. 112–113.

property in addition to the vetting process; these are institutions that continue to function even after the justice reform process is completed, and their continued existence through the creation of new legislative packages should have this long-term positive effect.

The process of major changes in the Republic of Albania for reforms in the justice system

The Republic of Albania organized a justice system reform with a focus on the judicial system. This reform came about after extensive deliberation between domestic and foreign experts, technical and political discourse between the parties, negotiations and never-ending challenges.

In 2014, Albania launched the drafting of justice reform, an ambitious effort aimed at the radical transformation of a system gangrenous with corruption, political interference, and lack of professionalism and integrity.⁵⁰ This reform required constitutional changes that affected many issues, including the Constitutional Court itself. This is how the constitutional changes were planned, which would include the Constitutional Court, the judicial and penal system, legal education and legal education, legal services, free professions, anti-corruption, and financing of the justice system.⁵¹

On 21 July 2016, the Assembly of Albania approved with 140 votes in favour, none against, and no abstentions, thereby changing the country's Constitution and paving the way for vetting in justice.⁵² In Albania, there were changes in justice which created the belief that the justice system would manage to create the justice that all citizens were waiting for. Now that more than 7 years have passed since the approval of the reform process in the justice system, we can conclude that this process had many defects and flaws, from which the Republic of Kosovo should learn a lot.

A positive advantage that can be taken into consideration during the process of reforming changes in the justice system in Kosovo is the creation of independent mechanisms for the development of the vetting process. Judging by the actions taken so far, this practice has not been considered enough. Increasing the institutional and financial independence of the judicial and prosecutorial council. As for

⁵⁰ A. Balliu, *The Reform of Justice in Albania*, "Beijing Law Review" 2020, 11, pp. 709–728.

⁵¹ Reform of Justice, *Action Plan for Justice Reform in the Republic of Albania*, 2015, <https://www.reformane.drejttesi.al/dokumenti-strategjik-dhe-plani-i-veprimit> (access: 15.12.2023).

⁵² Assembly of the Republic of Albania, Minutes of the session 21.07, Tirana 2017, p. 28, <https://www.parlament.al/Files/Procesverbale/Proc.-21.07.2017.pdf> (access: 15.11.2023).

the initiative of the government in Kosovo, the body of the Judicial and Prosecutorial Council has not been considered at all, even though the latter presented an offer to the government for comprehensive cooperation.⁵³

Ensuring international supervision of the vetting process continues to be one of the main hopes for a successful reform process in the Republic of Kosovo because, in some parts of this paper, we say that the role of internationals in this process is very intense.

The minimization of the role of political bodies in the election of members of the judiciary. Precisely because of the neglect of this issue, the Constitutional Court recently annulled the Law on the Prosecutorial Council, because it provided that 50% of the members of this council should be appointed by the legislature.⁵⁴

Development of mandatory vetting for all prosecutors and judges. Public pressure and constant scrutiny are being used to shape the vetting procedure. The opposition parties are exerting the greatest pressure on the Republic of Kosovo to have a successful vetting process, but there is also pressure from the media, civil society, and the people themselves.

There are drawbacks that the Republic of Albania's judicial reform system experienced in addition to the advantages that should be viewed as opportunities to be sought. These include the following: The development of the top-down vetting process by de-functionalizing the Constitutional Court and the Supreme Court, the unclear definition of the election/appointment process of Constitutional Court Judges, creating an insoluble constitutional deadlock,⁵⁵ the lack of finalization/approval at the same time of the constitutional changes and the legislative package of justice reform,⁵⁶ the slow development of the vetting process creating chaos in the Albanian, in judiciary, and prosecution, the non-replacement of judges and prosecutors dismissed or resigned as a result of the vetting process, etc.

⁵³ Judicial Council of Kosovo, *Joint Statement of Commitment*, Pristina, 18 February 2022, <https://www.gjyqesori-rks.org/2022/02/18/deklarate-e-perbashket-zotimi/> (access: 15.12.2023).

⁵⁴ Constitutional Court of the RKS, *Regarding the constitutional review of Law no. 08/L-136 on Amending and Supplementing Law no. 06/L-056 on the Kosovo Prosecutorial Council*, Pristina 2023, https://gjk-ks.org/wp-content/uploads/2023/04/ko_100_101_22_agj_ang.pdf (access: 17.12.2023).

⁵⁵ Decree No. 11350 Referring to the case of two candidates for judges in the Constitutional Court of Albania, Mrs. Arta Vorpsi and Mrs. Marsida Xheferllari, on the appointment of a judge of the Constitutional Court, Tirana 2019, <https://www.aksedrejttesi.al/dokumenta/1592477399dekrete%20i%20emerimit.pdf> (access: 20.11.2023).

⁵⁶ Official Publication Center, *Package of Justice Reform Laws*, Tirana 2018, <https://klgj.al/wpcontent/uploads/2019/09/PaketaeLigjevet%C3%ABReform%C3%ABs-n%C3%AB-Drejt%C3%ABsi-2018.pdf> (access: 15.12.2023).

Conclusions

Political will is the common denominator for the majority of the several linkages that need to be mended concurrently to achieve change in Kosovo's justice system. Because it is from there that the actual process may begin, paving the way for the successful implementation of justice reform.

Justice reform is required since Kosovo's legal system is still unreliable and ineffective, plagued by ongoing issues including corruption, a backlog of cases in courts, and delays in the administration of justice.

Any attempt to have goals that are in conflict with the Constitution and seek to diminish the authority of the judicial system must be avoided if justice reform is to be accomplished.

Restructuring the disciplinary system for judges and prosecutors, putting the verification process into place, hiring more judges and staff, and offering continuing technical assistance and training are several of the specific reforms that are suggested for the rule of law sector.

The legal reform process aims to improve the transparency and efficiency of administrative decisions and procedures, as well as law enforcement. The development of an effective and human rights-based legal aid system is a big step towards increasing access to justice for citizens who face poverty, especially in rural areas.

Since different judicial reforms might have varying benefits and drawbacks depending on the context and demands of each country, we found during the treatment of the topic that there is no conclusion regarding the adaptation of any of the reforms that the governments have passed previously. As a suggestion, the Albanian justice reform can be implemented; it is a relatively new reform, and one can use best practices as a starting point for one's work while keeping in mind the negative aspects of the process.

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