



EU'S BENCHMARKING MECHANISM ON 'FUNDAMENTALS FIRST': RESULTS AND CHALLENGES

BENCHMARKING IN KOSOVO



**EU'S BENCHMARKING
MECHANISM ON 'FUNDAMENTALS FIRST':
RESULTS AND CHALLENGES**



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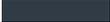
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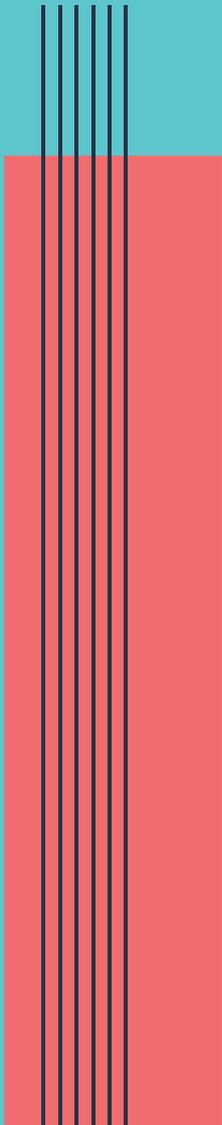
EU'S BENCHMARKING MECHANISM ON 'FUNDAMENTALS FIRST': RESULTS AND CHALLENGES



This report, part of a regional project, studies the effectiveness of the EU's benchmarking system on a selected policy issues within the Chapters 23 and 24 focusing on the case of Kosovo. The sample was selected following a mapping of benchmarks that are common or similar among the six Western Balkan aspirants for EU membership. This analysis represents a first major attempt to critically evaluate the degree to which the objectives are achieved and the extent to which targeted problems are solved in order to further advance in the EU accession process.



INTRODUCTION



In June 2018, it will be fifteen years since the Thessaloniki EU-Western Balkans Summit Declaration was held and the prospect to join the Union was restated to the region.¹ Yet, the integration process is lingering, while Kosovo still remains outside the visa-free regime. Six years ago Kosovo was given the Visa Liberalization Roadmap, which set out the reforms and requirements to complete in order to qualify for visa-free travel to the Schengen area. This was considered both as a serious engagement that reaffirmed the support of the Union and as the biggest carrot to be given to the country upon implementation of the reforms. Thus, although the issuance of the visa liberalization roadmap did not introduce any contractual relation with the Union, it marks a crossroad of country relations with the Union.

The EU only established a contractual relationship with Kosovo through the Stabilization and Association Agreement (SAA) which entered into force in April 2016, while it was signed in 2015.² The SAA presents the Union's policy framework and is designed to foster bilateral and regional cooperation, and set to help the country make the needed reforms. For this purpose, the government has adopted the National Program for Implementation of the Stabilization and Association (NPISAA) as a key national policy document. The NPISAA entails a mid-term framework of all needed reforms deriving from the SAA.³ To provide a new impetus and to set priorities in the SAA implementation process the European Commission launched the Kosovo-EU High Level Dialogue on Key Priorities – the European Reform Agenda (ERA).⁴ Therefore, the two national policy documents, a) NPISAA and b) ERA, serve the country to get in the way of progress to advance in its EU path.

Both years, 2012 and 2015, represent a critical juncture⁵ of Kosovo relations with the European Union. Of them, 2012 is selected as a starting year of this analysis, whose aim is to assess the effectiveness of the benchmarking mechanism⁶ employed in the EU's conditionality policy. Thus, eight selected benchmarks (elaborated below) will be analyzed during the period of 2012 to 2017. Given that, more data about the degree to which each benchmark is implemented and the extent to which the targeted problems are solved would be available and this will provide more in-depth and reliable analysis. The data in relation to each benchmark is traced back (from 2012) in enlargement documents like the EC country reports, the visa liberalization roadmap, and the EU enlargement strategy (elaborated further in the methodology).

The next section will discuss the methodology of the analysis and the selected benchmarks, while the following eight sections will provide a critical evaluation of each selected benchmark in terms of its implementation and effectiveness. The final section will offer evidence-based recommendations to the EC for increasing the effectiveness of benchmarking mechanism, as well as to the government of Kosovo for strengthening the monitoring mechanism.

1 European Commission and General Secretariat of the Council of the European Union (2003). "The European Union and the Western Balkans". European Union on the occasion of the EU-US Summit, Washington. Available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/76323.pdf

2 European Commission, Press Release. "Stabilisation and Association Agreement (SAA) between the European Union and Kosovo enters into force". Brussels, 1 April 2016. Available at http://europa.eu/rapid/press-release_IP-16-1184_en.htm European Council, Press Release. "Stabilisation and Association Agreement (SAA) between the European Union and Kosovo signed". 27 October 2015. Available at <http://www.consilium.europa.eu/en/press/press-releases/2015/10/27/kosovo-eu-stabilisation-association-agreement/>

3 Ministry of European Integration, Republic of Kosovo. National Program for Implementation of the Stabilisation and Association Agreement– NPISAA . Available at <http://www.mei-ks.net/en/national-program-for-implementation-of-npisaa>

4 European Commission, Press Release. "Johannes Hahn on the occasion of the launch of the European Reform Agenda" . 11 November 2016. Available at https://ec.europa.eu/commission/commissioners/2014-2019/hahn/announcements/johannes-hahn-occasion-launch-european-reform-agenda_en

5 Critical juncture refers to a year that represents a turning point or a crossroad of Kosovo's relations with the European Union.

6 For the purpose of this analysis we define benchmarks as a measurable tool that improves the quality of the negotiations by providing incentives for the candidate countries to undertake necessary reform at an early stage - they are measurable and linked to key elements of the Acquis chapters. Source: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, Enlargement Strategy and Main Challenges 2006 – 2007, Brussels, 2006.

METHODOLOGY

In order to assess the effectiveness of the benchmarking mechanism, this research process was based on sampling, comparison, monitoring of the implementation and assessment of the benchmarks. For the purpose of an in-depth analysis, the research is carried out on a sample of benchmarks from the Chapter 23 and 24.

The selection of the sample of benchmarks was done according to the following steps: interim and opening benchmarks that have been laid out for Serbia and Montenegro in Chapter 23 and 24 were taken as basis and were categorized in a table, depending on the type of action required:

Adoption of a policy document (Pol); Adoption of legislation (Leg); Implementation: Setting up/strengthening a body (B); Training (T) Setting up ICT systems (ICT) Cooperation (Coop) Track-record (Trck) Other (O).

Next, the research team selected a sample of 8 benchmarks which will be analysed in depth. In this process the following factors were considered: the relevance and importance of the issue both from a national and regional perspective; common critical junctures and equal distribution of categories and actions as set by the benchmarks; availability of information pertinent to assess the effectiveness of the benchmarks. While Montenegro and Serbia have traced the benchmarks in their Screening reports and Common position papers as countries that have opened negotiations, the other countries have adequately traced the benchmarks in the enlargement documents (EC country reports; roadmaps; Enlargement strategy). Thus, the following benchmarks were selected:

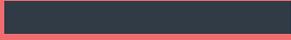
Chapter 23	
•Merit-based career system for the judges	Track record
•Judicial academy reforms	Setting up / strengthening a body
•Merit-based career system for civil servants	Other / track record
•Track record for addressing media intimidation; attacks on journalists; media independence	Track record / strengthening a body
•Implementation of Law on prohibition of discrimination	Leg/Pol
Chapter 24	
•Law on Asylum aligned with EU acquis	Leg
•Specific anticorruption plans; providing adequate follow up of detected cases	Track record/Cooperation
•The role of intelligence services and the oversight mechanisms that are introduced; established initial track record of investigations in organised crime	Other/track record

The data collection for all countries was consisted of desk analysis of and interviews with stakeholders. First, the key documents⁷ related to the EU accession process were analysed for the identification, sampling and analysis of the evolution benchmarks. In addition, for the assessment of the effectiveness of the benchmarking the study utilises the assessments of own reports of the research team engaged, but also reports of other international bodies that have monitored developments in the policy areas studied. These included Progress/Country Reports and strategic documents on enlargement by the European Commission SIGMA reports, OSCE reports, US Department State Reports, Reports of UN bodies, as well as Council of Europe Monitoring Mechanisms. Where available, the analysis of the state of play also includes a review of available quantitative indicators such as the Freedom House Nations in Transit scores. Second, in all countries semi-structured interviews were conducted with representatives of the EU delegation and/or EU Members States as well as representatives of national institutions in charge of EU accession and in the implementation of the selected benchmarks. The focus on the

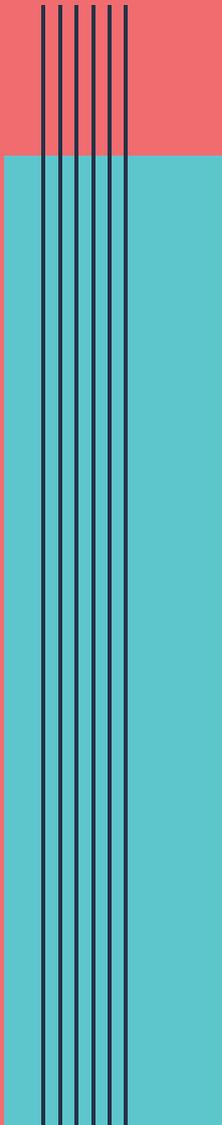
⁷ EU common positions on chapter 23 and 24 (for countries in accession negotiations); EC Country reports – staff working papers (analysing the areas in which the sample of EU benchmarks are mentioned); Enlargement Strategy – Communication of the Commission (analysing the areas in which the sample of EU benchmarks are mentioned); EU negotiating frameworks; EU screening reports; Roadmaps, conclusions of “high level dialogues” and other instruments setting conditions for further progress in the accession process; Documents through which the countries involved respond to the set benchmarks (National Plans); Action plans submitted by relevant authorities to the European Commission, Stabilisation and Association Council minutes, Subcommittees on Justice and Home affairs committees.

EU staff and the national civil servants is a result of the important role these individuals play in both crafting the benchmarks at the EU level as well as the respective national response(s). In the case of Kosovo interviews were conducted in the 02 January, 2018 to 31 January, 2018 and included the Ombudperson, Legal Director – Ministry of Public Administration, the Embassy of the Kingdom of the Netherlands, Association of Journalists of Kosovo, Kosovo Center for Security Studies, CSO expert on visa liberalization, and Kosovo Democratic Institute.

The analysis of the benchmarks was done through the insertion of the collected data and findings in a pre-determined template⁸ which consisted of several steps. First, it traced the introduction and evolution of the benchmark at least in the last five years, or since the last critical juncture in the EU documents. Second, the researchers assessed current state of play through document review, including through available quantitative indicators findings in the specific policy area. Last, conclusions were drawn on the effectiveness of the benchmarking in the specific policy area thus far. The information from the templates was further used to develop the country analyses by each of the partners.



ANALYSIS OF THE SELECTED BENCHMARKS



JUDICIARY: MERIT-BASED CAREER SYSTEM FOR JUDGES

The Kosovo Judicial Council (KJC) is the governing body of the judiciary, responsible for the recruitment, application of disciplinary measures and performance appraisal of judges. Merit-based recruitment principles and performance evaluation are in place and enshrined in policy documents; however, implementation is poor. According to a civil society rule of law expert, the performance appraisal of judges is merely done perfunctorily, is completely formal and without any real consequences on the promotion or demotion of judges.⁹ He underlines that “a complete lack of integrity and poor mentality” is present among judges in the country.¹⁰

The other dimension of a merit-based career system for judges is recruitment. This process is foreseen with the regulation nr.14/2016 for recruitment and evaluation of judges, amongst others.¹¹ According to the regulation, KJC administers the entry test for judges; however, this test is not managed in a credible manner. In November 2016, the KJC lowered the entry criteria for new judges on the basis of offering more space to judges coming from women and minority groups.¹² This decision is considered “a drawback in enforcing merit-based career system for judges” by the rule of law advisor of the Embassy of the Kingdom of the Netherlands.¹³ The same view is held by the rule of law expert who monitors the KJC work and considers that merit-based recruitment is reflected only in paper.¹⁴ Overall, the lowering of the entry criteria for new judges entering the system has a direct impact on the work quality and effectiveness of the entire justice system.

Furthermore, the EC country report also notes that the “level of professionalism and competence is still a matter of concern”.¹⁵ The EC recommendations in regard to having in place a merit-based recruitment system for judges can be traced back to 2012. Since then many by-laws have been adopted to ensure merit-based career system for judges, but as discussed above implementation lacks. In addition, public perception towards judicial independence continues to be low among the country's populace. Around 60 % of those that were surveyed think that the justice system did not improve in the last years.¹⁶ This might be partially explained on the basis of the lack of final verdicts in cases where high profile politicians are being investigated.

JUDICIARY: JUDICIAL ACADEMY REFORMS

There are no specific benchmarks in relation to the Judicial Academy Reforms before 2015. In 2017, the Law No. 05/L-95 on the Academy of Justice entered into force, transforming the Kosovo Judicial Institute into the Academy of Justice (thereafter the academy).¹⁷ The need to draft this law was identified in the 2015 SAPD meeting of the Sectorial Committee on Justice, Freedom and Security.¹⁸ There are no other concrete recommendations in regards to the Academy, apart from the EC requirements for training to be provided to judges and prosecutors and for more budget to be allocated to strengthening the entire justice system. The Academy is responsible for delivering initial and continuous training for judges and prosecutors based on the annual training curricula jointly prepared by the KJC, Kosovo Prosecutorial Council (KPC) and the Academy following a comprehensive needs assessment.¹⁹ However, according to a CSO expert on RoL, the Academy offers ad-hoc training to judges and prosecutors.²⁰ In every EC country report there is only one short paragraph about the Academy of Justice²¹, as this academy is considered “a work in progress”.²²

9 Interview with Ehat Miftaraj, CSO expert on RoL, 30 January 2018.

10 Ibid

11 Kosovo Judicial Council. Rregullore Nr.17 përndryshimin e rregullores (Nr.14/2016) përndryshimindheplotësimin e rregullorës (0912016) përprocedurat e zgjedhjes, emërimit, vlerësimit, pezullimitdhehshkarkimitëkrjetarëvetëgjykatavedhegjyqtarëvembikëqyrës. Available at <http://www.gjyqesori-rks.org/en/legislation/list?id=2&type=4&year=2016>

12 Kallxo. (2016). “KGJK ulkriterin për http://kallxo.com/kgjk-ul-kriterin-per-pakicat-dhe-grate/

13 Interview with Venera Ramaj, Policy Advisor on Rule of Law of the Embassy of the Kingdom of the Netherlands, 31 January 2018.

14 Interview with Ehat Miftaraj, CSO expert on RoL, 30 January 2018. According to him, there are allegations that the entry tests are spread prior to the test day to those people whom they want to enter the judiciary system. His given, the selection of judges is not done based on existing legal and policy framework, but rather based on political affiliation and connections which leaves out recruitment based on skills, knowledge and capacities.

15 European Commission (2016). Country Report for Kosovo.

16 ROLPIK - Indeksii Përfomancës së Sundimit të Ligjit në Kosovë” (2017). Group for Legal and Political Studies. Available at <http://www.rolpik.org/permireshimi-gjyqesorit?muaji=Qershor&viti=2017>

17 Academy of Justice. About us section. Available at <https://ad.rks-gov.net/en/about-us>

18 EU-Kosovo Stabilization Association Process Dialogue (SAPD). Sectorial Committee on Justice, Freedom and Security. Brussels, 27-29 January 2015.

19 Kosovo Justice Academy. Available at <https://ad.rks-gov.net/>

20 Interview with Ehat Miftaraj, CSO expert on RoL, 30 January 2018. According to him, the KJC and KPC have shown no interest in identifying their training needs for judges and prosecutors and thus do not smoothly collaborate with the Justice Academy to jointly prepare training curricula.

21 Please check the “Quality of Justice” paragraph in each country report and you will find the state of play and recommendations about the Justice Academy.

22 Interview with Venera Ramaj, Policy Advisor on Rule of Law of the Embassy of the Kingdom of the Netherlands, 31 January 2018.

ANTI-CORRUPTION: MERIT-BASED CAREER SYSTEM FOR CIVIL SERVANTS

The anti-corruption benchmark, precisely the merit-based career system for civil servants was first explicitly mentioned in the European Commission (EC) 2015 Progress Report for Kosovo. Nonetheless, the EC requirements for an efficient and effective public administration can be traced many years prior to 2015. Whereas the strategic approach for a sector reform by the government began with the drafting of the first Strategy for Public Administration Reform (2010-2013) and its action plan.

At present, merit-based recruitment of civil servants is regulated by the Law on Civil Service and the Law on Salaries of Civil Servants, both adopted in 2010, and by several by-laws adopted thereafter.²³ The latter include regulations that address aspects of recruitment, promotion, code of conduct, salaries and compensation, training, classification of jobs, and two reform strategies with the aim of enabling a professional and politically neutral civil service.²⁴ However, implementation remains poor, more precisely merit-based recruitment and promotion are not systematically implemented.²⁵ This given, all these regulations offer meager results in practice due to being only formally implemented while reflected mainly in the legislative and policy frameworks. Supporting this view is also the rule of law advisor of the Embassy of the Kingdom of the Netherlands who notes that “civil service recruitment remains politicized”, thus further commitment to reform is compulsory for smooth implementation.²⁶ In the 2016 country report, a long list of challenges to implementing a merit-based civil service are identified, like the lack of training for all civil servants, lack of systematic implementation of performance appraisals, immense political influence over appointment and dismissal of senior management and similar.²⁷ In an attempt to overcome the current systematic problems, the Ministry of Public Administration has sponsored the redrafting of these laws since 2012. The redrafting process of these two laws has passed the European Commission’s deadline. SIGMA has also noted that the finalization of these draft laws is critical for the improvement of the civil service, and as such should be prioritized.²⁸ This delay has been justified on the basis that these laws are being drafted not only in accordance with EU standards and legislation but are also based on evidence, analysis, lessons learned, and country context.²⁹ Overall, merit-based career system for civil servants presents a tardiness work in process that requires further political commitment in terms of reform prioritization.

FUNDAMENTAL RIGHTS: TRACK RECORD FOR ADDRESSING MEDIA INTIMIDATION; ATTACKS ON JOURNALISTS; MEDIA INDEPENDENCE

The two main identified challenges regarding the protection of journalists are: a) a lack of thorough investigations by the justice system in relation to physical attacks and b) the low efficiency of the courts giving final verdicts in relation to those cases.³⁰ The most intimidating fact is the increased number of physical attacks on journalists in the last two years.³¹ The same view is held by the ex-director of the media association who notes that in terms of physical security on journalists the situation was much better before 2015 and has worsened lately. While in terms of economic security the situation continues to be the same poor one, he adds.³² Furthermore, lack of media ownership continues to remain problematic, particularly related to some online media.³³ Both facts have contributed to making journalist feel unsafe with regard to reporting perspectives. As per identified challenges,

23 Law on the Civil Service of the Republic of Kosovo, No. 03/L-149. (2010) Official Gazette. Republic of Kosovo. Law on Salaries of Civil Servants of the Republic of Kosovo. No. 03-L-147. (2010) Official Gazette. Republic of Kosovo

24 Regulation No.04/2015 on Civil Servant Code of Conduct of the Republic of Kosovo. Available at [https://map.rks-gov.net/getattachment/cecdff8d-1f9e-448c-809e-a90a0d4f2ff5/RREGULLORE-\(QRK\)-NR-04-2015-PER-KODIN-E-MIRESJELLJ.aspx](https://map.rks-gov.net/getattachment/cecdff8d-1f9e-448c-809e-a90a0d4f2ff5/RREGULLORE-(QRK)-NR-04-2015-PER-KODIN-E-MIRESJELLJ.aspx)

Regulation No.06/2012 on Senior Management Position in the Civil Service of the Republic of Kosovo. Available at <https://map.rks-gov.net/getattachment/c8a9d54a-a15a-4da4-8398-23402ce80b7d/RREGULLORE-PER-POZITAT-E-LARTA-DREJTUESE-NE-SHERBI.aspx>

Regulation No.21/2012 on Civil Servant’s Career Promotion of the Republic of Kosovo. Available at <https://map.rks-gov.net/getattachment/e2d5d55e-0c2f-4abe-adbf-4b0edc89cd17/PER-AVANCIMIN-NE-KARRIERE-TE-NEPUNESVE-CIVILE.aspx>

Regulation No. 21/2012 on Civil Servant’s Career Promotion of the Republic of Kosovo. Available at <https://map.rks-gov.net/getattachment/e2d5d55e-0c2f-4abe-adbf-4b0edc89cd17/PER-AVANCIMIN-NE-KARRIERE-TE-NEPUNESVE-CIVILE.aspx>

Regulation No. 33/2012 on Allowances in Salaries and Other Compensations for Civil Servants of the Republic of Kosovo. Available at <https://map.rks-gov.net/getattachment/0c04c26e-fa07-4d6c-b35a-da738527e325/PER-SHTESAT-NE-PAGE-DHE-KOMPENSIME-TE-TJERA-TE-NEP.aspx>

Regulation No.19/2012 on Civil Servant’s Performance Appraisal Results of the Republic of Kosovo. Available at <https://map.rks-gov.net/getattachment/d5cd6705-10c1-4b02-a6e1-3cd12c76ed67/RREGULLORE-NR-19-2012-PER-VLERESIMIN-E-REZULTATEVE.aspx>

25 Interview with the Director of the Legal Office, Naser Shamolli. Ministry of Public Administration. 18 January, 2018

26 Interview with Venera Ramaj, Policy Advisor on Rule of Law of the Embassy of the Kingdom of the Netherlands. 31 January 2018.

27 European Commission. (2016). Country Report for Kosovo.

28 SIGMA (2017). “The 2017 monitoring report: The Principles of Public Administration in Kosovo”

29 Interview with the Director of the Legal Office, Ministry of Public Administration. 18 January, 2018

30 Association of Journalists of Kosovo (2016). Report on “Indicators for freedom of media and journalist’s safety”

31 Interview with Venera Ramaj, Policy Advisor on Rule of Law of the Embassy of the Kingdom of the Netherlands. 31 January 2018.

32 Interview with the ex-director of the Association of Journalists of Kosovo, Shkelqim Hysenaj. 19 January, 2018. According to him, in terms of economic security the situation continues to be the same, journalists have low salaries and contracts; however, de facto when there is a contract breach by the media, the inspectorate does not enforce the terms of the contract.

33 Association of Journalists of Kosovo (2016). “Indicators for freedom of media and journalist’s safety”

the last country report has recommended that cases of physical attacks against journalists and other forms of pressure are promptly investigated and adjudicated. The only achievement to this benchmark is the selection of one prosecutor in each basic prosecution to deal, and thus prioritize attacks on journalist cases.³⁴ Furthermore, the media legal framework was strengthened in 2014 by the Law on Protection of Journalism Sources adopted in 2013 that allows journalists to protect their sources, even in criminal procedures.³⁵

One of the main problems with media independence highlighted in each country report is the long-term financial sustainability of the public broadcaster. The EC has clearly required from the government to ensure a sustainable financial solution for the public broadcaster in order to limit political influence and ensure editorial independence. This persistent requirement has been neglected so far. Surely, recommendations continue to be repeated, even in the same wording, once they are not implemented.³⁶

FUNDAMENTAL RIGHTS: IMPLEMENTATION OF LAW ON PROHIBITION FROM DISCRIMINATION

In 2015 Kosovo adopted the so-called “Human Rights Package of Laws” to protect and promote the rights of individuals, including anti-discrimination and gender equality provisions. One of the three laws adopted was the Law on Protection from Discrimination. The adopted law stems as a requirement from the Visa Liberalization Roadmap with Kosovo, which requested the adoption and implementation of legislation that calls for effective protection against discrimination as well as for full respect of domestic provisions on Human Rights. In 2016, the regulation on institutional mechanisms on protection against discrimination in government and municipalities was also adopted in order to ensure full implementation of the law.³⁷ The adoption of this regulation led to the creation of the department on protection against discrimination within the Ombudperson institution. Still, two years after the law adoption, the actual implementation lags behind.³⁸

The main problem that the Law presents is thus its relative isolation within the broad legal system.³⁹ According to the Ombudperson, the Law on Protection from Discrimination lacks a legal harmonization with other laws and a low judicial independence in practice, both of which undermine the law implementation. “The legal human rights package was drafted with the help of six international experts who overlooked the legal harmonization not only of the legal package, but also with other laws in practice.”⁴⁰ More precisely, the Law on Protection from Discrimination has extended the mandate of the Ombudperson to the private sector, while creating an inconsistency as the Constitution of the Republic of Kosovo limits it to the public one. In addition, the law aims to “establish a general framework for prevention and combat of discrimination” based on a wide range of causes, among which nationality, religion, sex and even gender and gender identity are included. Since it does not present a numerous clauses, but an open list, these causes can only be read as orientative, and not final.⁴¹ In general, in practice there is deficient protection from discrimination due to many inconsistencies, contradictions, and misinterpretations of laws adopted.

ASYLUM: LAW ON ASYLUM ALIGNED WITH EU ACQUIS

Kosovo has aligned most of its legislation with the EU Acquis and international standards in the area of asylum. The requirements to adopt the law on asylum derive from the Visa Liberalization Roadmap in 2012. The last EC report also notes that the readmission agreements with EU Member States and Schengen Associated countries are being implemented smoothly. The Netherlands is satisfied with its implementation and cooperation. Furthermore, considering the fact that there was only one asylum seeker last year, one cannot rightly evaluate the

34 Interview with the ex-director of the Association of Journalists of Kosovo, Shkelqim Hysenaj, 19 January, 2018.

35 Law No.04/L-137 on the Protection of Journalism Sources. Available at <https://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20the%20protection%20of%20the%20journalism%20sources.pdf>

36 Interview with Venera Ramaj, Policy Advisor on Rule of Law of the Embassy of the Kingdom of the Netherlands, 31 January 2018.

37 Regulation No.03/2017 on Institutional Mechanisms on Protection against Discrimination in Government and Municipalities. Available at http://www.kryeministri-ks.net/repository/docs/RREGULLORE_QRK_-_NR__03_2017_P%C3%8BR_MEKANIZMAT_INSTITUCIONAL_P%C3%8BR_MBROJTJE_N...pdf

38 GarciaMartinez, F. J. and Cucchi, U. (2018). “An underutilized system: State of Play of the Human Rights framework in Kosovo” Group for Legal and Political Studies. Legal Analysis. In the process of publication.

39 GarciaMartinez, F. J. and Cucchi, U. (2018). “An underutilized system: State of Play of the Human Rights framework in Kosovo” Group for Legal and Political Studies. Legal Analysis. In the process of publication.

40 Interview with the Ombudperson, HilmiJashari, 22 January, 2018.

41 Garcia Martinez, F. J. and Cucchi, U. (2018). “An underutilized system: State of Play of the Human Rights framework in Kosovo” Group for Legal and Political Studies. Legal Analysis. In the process of publication.

Explanation: the reading of the law cannot be restrictive. Other sources of discrimination should also be considered, even if not explicitly stated in the document.

institutional capacity to assess asylum applications and to offer shelter to asylum seekers.⁴² Nonetheless, in the last three years the authorities have shown willingness to implement recommendations in regards to asylum policy.⁴³ Two other regulations have also been adopted; one on Procedures and Standards of Review and Ruling on Request for Asylum and one on Procedures and Standards of Admission and Initial Treatment of Asylum Seekers.⁴⁴ Furthermore, EC reports underlined that training of the staff in regards to their capacity to assess asylum applications shall be continuous in order for the law to be fully implemented.

EXTERNAL BORDERS AND SCHENGEN: SPECIFIC ANTICORRUPTION PLANS; PROVIDING ADEQUATE FOLLOW UP OF DETECTED CASES; COOPERATION ON BORDERS.

The External Border and Schengen benchmarks stem from the 2012 Visa Liberalization Roadmap. Different from other benchmarks deriving from the Country Reports, most of benchmarks on external border and Schengen were specific and measurable.⁴⁵ According to the CSO representative, these specific benchmarks have been effective and it has also been easier to monitor and report on the fulfillment of these benchmarks.⁴⁶ The remaining requirements to be fulfilled including demarcation with Montenegro (cooperation on borders) and final verdicts by courts in regards to organized crime (follow up of detected cases) are still in the process. The prolongation process in regards to these requirements is mainly due to two main factors: the lack of political will and political instability. The former refers to undue political influence, while the latter refers to the six months political stalemate of 2014⁴⁷ and the last elections of June 2017, which took four months of negotiations until the new government was formed.⁴⁸ The general perception is that the situation will harshly change for the lingering requirements to be fulfilled.

FIGHT AGAINST ORGANIZED CRIME: ROLE OF THE INTELLIGENCE SERVICES AND OVERSIGHT MECHANISMS INTRODUCED; ESTABLISHED INITIAL TRACK RECORD OF INVESTIGATIONS IN ORGANIZED CRIME

Fight against organized crime has been lifted to a top priority in terms of reforms in the enlargement process. The benchmark on fight against organized crime can be traced from 2012 visa liberalization roadmap. In view of the signed SAA, Kosovo needs to have an anti-corruption legislative framework, accompanied by polices and institutions for its implementation. The country has an anti-corruption legislation in place, but concrete results in the fight against organized corruption lack.⁴⁹ The number of complex organized crime cases to result in final verdicts is low and the number of sequestrated and confiscated assets ordered by the judiciary and executed by the police remains low. In the last three years, the EU has demanded confiscation and sequestration of assets and final conviction of perpetrators. Given that, the EU demanded the building of a track record of fighting organized crime. The 2016 Country Report has reported that the track record of fighting organized crime, including high-profile cases, is operational. Later on, the Commission has required a tracking mechanism not only for high profile cases, but one that would include all criminal cases. Given that, inter-institutional cooperation and information exchange among rule of law institutions could increase. Cooperation among rule of law actors is one of the key and repeated types of action required by the EC for fight against organized crime. The continuous operation and update of information in the established initial track record is compulsory for fulfilling the benchmark on fight against high level corruption and organized crime.⁵⁰ Overall, the fight against organized crime and high level corruption remains a work in progress that requires political will in terms of reform prioritization.

42 Interview with Venera Ramaj, Policy Advisor on Rule of Law of the Embassy of the Kingdom of the Netherlands. 31 January 2018.

43 Interview with Plator Avdiu, Kosovo Center for Security Studies. 02 January 2018.

44 Administrative Instruction No17/2013 on Procedures and Standards of Review and Ruling on Request for Asylum. Administrative Instruction No.16/2013 on Procedures and Standards of Admission and Initial Treatment of Asylum Seekers. Available at <http://www.kryeministri-ks.net/?page=2,32&date=2013-00-00>

45 Interview with Albana Merja, Research Fellow. Group for Legal and Political Studies. 15 January, 2018.

46 Merja, A. (2013). "Visa Liberalization Process in Kosovo: An Assessment Matrix of Achievements and Challenges (Third Assessment Report)". Policy Note. Group for Legal and Political Studies.

47 Kallxo, "KQZ Shpalli Rezultatet Përfundimtare të 8 Qershorit" 26 June, 2014 Available at <http://kallxo.com/gjnk/kqz-shpalli-rezultatet-perfundimtare-te-8-qershorit/> Kallxo, "Isa Mustafa, Kryeministër i Kosovës" 09 December, 2014. Available at <http://kallxo.com/isa-mustafa-kryeminister-i-kosoves/>

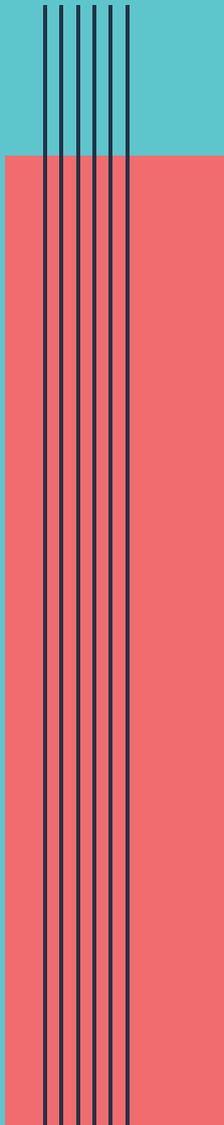
48 Zeri, "Votohet Qeveria, Ramush Haradinaj sërish kryeministër" 09 September, 2017. Available at <http://zeri.info/aktuale/161243/votohet-qeveria-ramush-haradinaj-serish-kryeminister/>

49 Rexha, A. (2016) "Mapping Confiscation of Criminalized Wealth: A statistical case scenario" Group for Legal and Political Studies. Policy Note. Rexha, A. (2015) "Confiscation of Illicit Wealth: Challenges and Perspectives of the Kosovar Approach" Group for Legal and Political Studies. Policy Analysis.

50 Interview with Venera Ramaj, Policy Advisor on Rule of Law of the Embassy of the Kingdom of the Netherlands. 31 January 2018.



DISCUSSION OF RESULTS



The eight selected benchmarks have been critically reviewed to address their degree of implementation and the extent to which the targeted problems are solved. For this purpose, data in relation to each benchmark has been traced since 2012 in a number of enlargement documents. In addition, several interviews with relevant interlocutors were conducted. The results present a *work in progress with initial results achieved* and work remaining to be done. In more concrete terms, the legislative framework is in place for most of the benchmarks; however, implementation is poor. The argument of “symbolic and/or creative compliance” employed by EU member states to facade themselves with the norm-conform behavior without giving up their original objectives seems to hold true even in the case of enlargement countries including Kosovo.⁵¹ This given this, one could note that the rift between the formal commitments made by the political elite and informal practices remains a challenge for the country.

A civil society representative notes that requirements stemming from the Visa Liberalization Roadmap are specific, particularly compared to other recommendations deriving from country reports. Given that, they were effective and easy to monitor.⁵² Another civil society representative is concerned with the vagueness of certain benchmarks like the fight against organized crime. This benchmark is not specific and leaves space for subjective interpretation of the achievements, thus being subject to political preferences.⁵³ Most of the interviewees from civil society agree that the visa liberalization roadmap was a good example with specific benchmarks, accompanied with political will, all of which enabled implementation, compared to other benchmarks. The interviewees noted that the benchmarks towards certain policies like rule of law were vague and allowed space for (mis)interpretation of achievements by the political parties in power. On the other hand, the rule of law advisor of the Embassy of the Kingdom of the Netherlands notes that “benchmarks are enough specific, for them to be implemented”.⁵⁴ She adds that the EC benchmarks are formulated not only in accordance with the EC “fundamentals first”, but also with the country context and challenges.

Overall, the analysis depicts that the government of Kosovo prefers to pay only lip service to the selected benchmarks while adopting legislation in line with the EU prescriptions, but resisting implementation of the adopted rules. Therefore, the EC should consider the following:

- make benchmarks more specific to the necessities of the country's context
- request detailed and explicit benchmarks in the fights against organized crime⁵⁵
- design benchmarks in a way that keeps the loop on the government on a regular and continual basis
- reflect substantively the recommendations of the civil society into those benchmarks.

51 Batory, A. (2016). “Defying the Commission: Creative Compliance and Respect for the Rule of Law in the EU” *Journal of Public Administration*.

52 Interview with Venera Ramaj, Policy Advisor on Rule of Law of the Embassy of the Kingdom of the Netherlands. 31 January 2018.

53 Interview with Albana Merja, Research Fellow. Group for Legal and Political Studies. 15 January, 2018.

54 Interview with Plator Avdiu, Kosovo Center for Security Studies. 02 January 2018.

55 Explanation: not only request for commitment and zero tolerance policy toward fight against corruption, but ask for specific measures to be taken to fight organized crime and corruption like drawing of a specific recommendation with an emphasis on crimes related to involvement of political actors

ANNEX 1

Benchmark [xxx]

[Country]

Date created:	[dd.mm.yyyy]
By:	[Organisation]

0. Benchmark basics	
Method of introduction <i>[E.g. laid out in document...]</i>	
Year introduced	
Content of the benchmark and actions required <i>[Please list actions required as bullets as per EC last report/specific document]</i>	
Type of benchmark and actions required <i>[E.g. Adoption of a policy document (Pol); Adoption of legislation (Leg); Implementation; etc.]</i>	
1. Data analysis/methodology	
Documents subject to analysis <i>[Desk research e.g. EC reports; OSCE reports; own monitoring reports - please include hyperlink next to each document]</i>	
Interviews <i>[Number of interviews and type of respondents]</i>	
Focus groups <i>[if applicable]</i>	

<p>Quantitative indicator findings <i>[Here inserted you have the indicators for each of the benchmarks – since we will fill out a separate template for each benchmark, please delete the rows of the benchmark you are not filling in and appropriately copy paste the rows for each of the benchmarks in their separate adequate template – you should at the end have 8 identical templates in which the sole difference is this section. In these regards note that we have taken the same indicators for the two benchmarks in the area of judiciary.]</i></p>	<p>Merit-based career system for the judges</p> <p>Judicial academy reforms</p>	<p>Freedom house – Nations in Transit</p> <p>Judicial Framework and Independence score <i>(insert the score for your country for the last 3 years)</i></p> <p>Balkan barometer –</p> <p>Figure 86: Do you agree that the following institutions are independent of political influence? (by economies)(NEW QUESTION) <i>(fill in the score for your country for this year for judiciary)</i></p> <p>Table 16: To what extent do you agree or not agree that the following categories in your economy are affected by corruption? (by economies)(NEW QUESTION) <i>(fill in the score for your country for this year for judiciary)</i></p> <p>BTI –</p> <p>Rule of Law – Independent Judiciary <i>(insert the score for your country for the last 3 years)</i></p>
	<p>Merit-based career system for civil servants</p>	<p>Balkan barometer –</p> <p>Table 16: To what extent do you agree or not agree that the following categories in your economy are affected by corruption? (by economies)(NEW QUESTION) <i>(fill in the score for your country for this year)</i></p>
	<p>Track record for addressing media intimidation; attacks on journalists; media independence</p>	<p>Freedom house – Nations in Transit</p> <p>Independent Media - <i>(insert the score for your country for the last 3 years)</i></p> <p>Freedom house - Freedom of the Press Scores</p> <p>Total Score; Legal Political and Economic Environment - <i>(insert the score for your country for the last 3 years)</i></p>
	<p>Implementation of Law on prohibition of discrimination</p>	<p>European Equality Law Network –</p> <p><i>[Source for Macedonia, Montenegro and Serbia. The rest of the countries: Kosovo; BiH and Albania please insert relevant grey literature reference.]</i></p>
	<p>Law on Asylum aligned with EU acquis</p>	<p>Findings from interviews and EC country report from the last 3 years</p>
	<p>Specific anticorruption plans; providing adequate follow up of detected cases; cooperation on borders</p>	<p>Findings from interviews; FOI request for track records and EC country report</p>
	<p>The role of intelligence services and the oversight mechanisms that are introduced; established initial track record of investigations in organised crime</p>	<p>Findings from interviews and EC country report from the last 3 years</p>

2. Overview of findings

Timeline/evolution of the benchmark over time <i>[Please add as many rows as needed in the table]</i>	<table border="1"> <thead> <tr> <th>Event/document/juncture</th> <th>Year</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>		Event/document/juncture	Year				
	Event/document/juncture	Year						
Narrative timeline of the benchmark <i>[Please briefly explain the evolution of the benchmark over time guided by the info that you have inserted in the table]</i>								
Key findings on the implementation and monitoring of the benchmark <i>[Please provide a critical evaluation and incorporate your findings from the interviews/desk research/organization expertise – please reference in this process]</i>								
Key findings on the effectiveness of the benchmarks <i>[Please provide findings from interviews and findings from quantitative indicators accompanied with a critical evaluation – please reference in this process]</i>								
Key challenges for the implementation/effectiveness of the benchmark <i>[Briefly state in bullets]</i>								
Observed trends <i>[Briefly state in two sentences]</i>								

3. Recommendations

Recommendations for strengthening the monitoring mechanism/the effectiveness of the benchmark <i>[Please list in bullets; add rows if needed.]</i>	To the government/specific institutions	
	To the European Commission	

4. Conclusions

[Please mention briefly the conclusion of your findings related to the specific benchmark.]