





REPORT


Taking stock on Kosovo's rule of law: good governance in a newborn state?

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TAKING STOCK ON KOSOVO'S RULE OF LAW: GOOD GOVERNANCE IN A NEWBORN STATE?

On 12 November 2019, Vocal Europe in cooperation with Portugal's Permanent Representation to the EU organised the panel discussion "Taking Stock on Kosovo's Rule of Law: Good Governance in a New-born State?" This event aimed at evaluating where Kosovo stands regarding reforms on its path to the EU in the fields of rule of law and fundamental rights ten years after its declaration of independence.

The panel was hosted by the Permanent representation of Portugal to the EU and moderated by **Ebubekir Isik**, senior policy analyst at Vocal Europe, with the contributions of: H.E **José Fernando Costa Pereira**, Permanent Representative to the Political and Security Committee at the Portuguese Permanent Representation to the EU; **Elsa Fenet**, Head of Division, Western Balkans at the European External Action Service; **David Cullen**, Head of Unit, DG Near at the European Commission; **Mimoza Kusari-Lila**, Member of Assembly of the Republic of Kosovo, Member of Vocal Europe's Advisory Board; and **Barbara Matias**, Research Fellow at the Group for Legal and Political Studies.

The general view of the assembly was that a decade after independence, Kosovo had come a long way in consolidating its democracy. Despite sometimes slow progress, many crucial and positive improvements for the country have been made. In particular, many different laws and legal acts have been put in place and there has been admirable progress in establishing and improving the functioning of legal institutions.

However, there are still many challenges in Kosovo in order to achieve a state of law that meets EU requirements and expectations. It was also mentioned that in order to contribute to Kosovo's efforts in improving its rule of law, it will be crucial to improve the capacities and functioning of certain public institutions and to ensure better implementation of the many positive legislative reforms already adopted.

Finally, it was pointed out that after years of close cooperation between the national authorities and the international community, the young country had now reached a degree of maturity allowing it to assume/take over increased responsibility. International partners, including the European Union, will remain on the spot to monitor the situation and to provide assistance in support of rule of law, democracy and good governance. The parties finally hoped that the already close EU-Kosovo cooperation could be further strengthened.

Background

In 2008, Kosovo declared its independence after nearly 20 years under Serbian ruling and 10 years under strong international presence. Since then a transition period has been ongoing in the country aimed at rebuilding political and judicial institutions. However, the latter remains quite a challenging issue for this "new-born" state.

The Stabilisation and Association Agreement between the EU and Kosovo, which entered into force in 2016, provides the basis for the EU – Kosovo relationship and offers a path for the implementation of reforms. A lot has been achieved regarding the improvement of the legal framework in the rule of law and public administration sectors, however Kosovo's democratic development remains slow in

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the establishment of special judicial departments focused on the fight against corruption and the recent amendment of its Criminal Code concerning protection against LGBT hate crimes.

One of the main reasons for this slow implementation, according to the European Commission's annual report, is the lack of coordination among political representatives due to a strong polarization and a judicial system that has persistent challenges, especially regarding corruption and organised crime cases. The case of the north of Kosovo remains a sensitive matter, also in the Kosovo-Serbia dialogue. Finally, civil society groups point out the lack of support in fundamental rights matters.

With the latest parliamentary elections, the government led by the ruling elite came to an end. A wind of change is about to blow on Kosovo's political scene; therefore, this panel aims to take stock on what has been accomplished regarding rule of law and how the newly elected representatives of Kosovo will tackle the major issues related to Kosovo-EU relations.



José Fernando Costa Pereira, 12 November 2019, Brussels. Credit | Vocal Europe

José Fernando Costa Pereira, Permanent Representative to the Political and Security Committee, Portuguese Permanent Representation to the EU

According to Mr. Costa Pereira, Western Balkans are a part of Europe and Portugal has always supported the accession process of the countries in the region. Considering the geographical distance and the limited historic relations, Portugal's involvement in the region was a direct consequence of the country responsibilities' not only in the EU, but also in the UN, NATO and the OSCE.

Portugal participated in all peace missions in the region since the outbreak of the war in the former Yugoslavia. In the case of Kosovo, around 6.500 Portuguese, military and civilians, participated since 1999 in UNMIK, KFOR, EULEX and OSCE-Kosovo. During the last three Portuguese EU

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Presidencies a special attention was given to the Western Balkans and Mr Costa Pereira expects an increased attention to be given to the region also during the 1st semester 2021 Portuguese EU Presidency.

Portugal recognized Kosovo as an independent State in October 2008 and Kosovo recently opened a full-fledged resident Embassy in Lisbon. Last year Foreign Minister Pacolli visited Lisbon and this visit was followed-up by the first bilateral MFA senior official's meeting. Mr Costa Pereira reminds that neither all EU member states, nor all UN member states recognize Kosovo, and Portugal fully respects all stances regarding the status issue.

During the 2000 Portuguese presidency of the EU, the European Council in Feira acknowledged that Western Balkans countries which took part in the Stabilisation and Association process could be potential candidates to EU membership. This principle, enshrined in Thessaloniki agenda for the Western Balkans, remains the keystone for the Portuguese foreign policy in the region. Portugal encourages the implementation of rule of law in Kosovo, considering it crucial for the future perspectives of the country.

Elsa Fenet, Head of Division, Western Balkans, European External Action Service

From the outset, Ms. Fenet underlined that Kosovo and the Western Balkans more generally remained one of the top priorities on the EU's agenda. For the European Union, but also for the member states, promoting rule of law is at the centre of what the European Union is trying to achieve today, corresponding to the expectations of European citizens.



Else Fenet, 12 November 2019, Brussels. Credit | Vocal Europe

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Europe, according to Ms Fenet, uses its entire toolbox in the process of supporting the rule of law in Kosovo and in the Western Balkans, and provides the countries concerned with assistance and expertise in order to ensure a rule of law situation which will benefit all and will meet both European and international standards.

She recalled the progress already made by Kosovo in recent years in building and consolidating rule of law, democracy and good governance. Using the example of the recent early elections, she underlined the positive assessment of the EU's Election Observation Mission, which would, however, also present a number of recommendations for further improvements. Ms Fenet also pointed to the issue of public trust in Kosovo institutions which showed a mixed picture across rule of law bodies.

In the area of the judiciary, EULEX Kosovo held executive competences in the past and rendered 648 judgements, while the mission was now focused under its current mandate on monitoring cases handled by Kosovo's judicial institutions. According to Ms Fenet, this shows the EU's continued willingness to support Kosovo in its efforts to ensure the rule of law and an independent and efficient judiciary. Beyond CSDP, she also highlighted the multitude of other instruments employed by the EU to this end, ranging from political dialogues to sectoral cooperation and financial assistance.

David Cullen, Head of Unit, Directorate-General for Neighbourhood and Enlargement Negotiations, European Commission

For Mr. Cullen, today's situation is interesting from the point of view of a European observer because soon after the elections in Kosovo, it will be important to focus on the continuity of reforms and of key promises made by governments in Kosovo to improve the rule of law; including in the EU-Kosovo Stabilisation and Association Agreement.



David Cullen, 12 November 2019, Brussels. Credit | Vocal Europe

He added that, pending the formation of Kosovo's new government, the EU wants to underline its willingness to continue cooperation, including its supportive position on many levels, (e.g. through its advising role and through the financial and technical assistance it provides). He also stressed that the expectations from the Commission, as outlined in the annual enlargement package, will remain the same.

He said Kosovo has shown commitment to achieve the goals it has jointly set with the European Union in a wide range of areas through the Stabilisation and Association Agreement and the European Reform Agenda. In the last 10 years, Kosovo has made good progress in establishing and consolidating its democracy. Despite numerous shortcomings, it is important to note the way in which Kosovo has established a coherent judicial system and police service.

Today however Kosovo continues to face challenges in the area of rule of law. For example, trust in public institutions remains low. The institutions will need to deliver to increase this trust, for instance as regards the functioning of the justice system. Kosovo has high quality legislation, drafted also through EU and international expertise, but we must recognize that the implementation of this legislation remains a problem.

There are some clear examples of this: the law on extended powers of confiscation, important in the fight against organised crime and corruption, is a well-drafted piece of legislation. However, in practice, while temporary confiscations in Kosovo today are numerous, sometimes reaching 10 million euro a year, final confiscated assets during 2018 numbered only around 48,000 euro.

This shows us that the application of these laws is not consistent and that it is necessary for the authorities to ensure better enforcement. Other examples include the proper use of disciplinary procedures for Kosovo judges and prosecutors and the application of the law to prevent conflict of interest and the law on asset declaration in order to reduce any undue political influence on police, prosecution and judiciary. The European Union will be there to support and sustain Kosovo's reforms along its European path, especially in the key area of rule of law and fundamental rights.

Mimoza Kusari-Lila, Member of Assembly of the Republic of Kosovo, Member of Vocal Europe's Advisory Board

Ms. Kusari stressed the fact that the debate on rule of law in Kosovo should not be isolated from the country's historical and political background. As opposed to the other former Yugoslav Republics where institutions resumed right after the war, Kosovo's institutions were shut down by Milosevic's regime and this break lasted for ten years. It is only with Pillar I in 2001 that the rule of law took over by control over police, prosecutors, and the judicial system until EULEX in 2008.

She emphasized the lack of response from the United Nations regarding Pillar I at that time due to the high bureaucratic procedures within the institution. According to Ms. Kusari, rebuilding a completely dismantled system that was in the hands of international actors until a short while ago, appeared to be a challenging task.

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Mimosa Kusari-Lila, 12 November 2019, Brussels. Credit | Vocal Europe

Ms. Kusari compared the expectations of the EU regarding Kosovo's institutions to the ones Kosovo had from EULEX at the start of its mission, arguing that the latter addressed only a few cases from the ones it was in charge with "including war crimes, high corruption and other high sensitive cases" despite the huge amount of people deployed for the mission. At that time, EU's expectations were different when trying to build Kosovo's judicial and a rule of law system.

Another sensitive issue is the case of North Kosovo which was under French military administration right after the war. Kosovo's institutions had no control over North Kosovo which contributed to instability still perceptible in this region. Even recently, a Serbian politician from North Kosovo was murdered being the third case in a row. For Ms. Kusari, this situation is a joint responsibility. Notwithstanding, the international community is more to blame since it was originally accountable for restoring peace and stability in this part of Kosovo. Despite the fact that local institutions including courts, police, and border police are developing in North Kosovo, this issue is still discussed in the Kosovo/Serbia dialogue.

Ms. Kusari drew attention to key elements regarding the functioning of democracy in Kosovo. It is the only country of the region whose parliament voted for the implementation of a specialized chamber for war crimes committed from 1998 – 2000. This chamber will operate in The Hague and is funded with Kosovo's own budget. Freedom of expression is also a thing Ms. Kusari wanted to highlight, arguing that the opposition parties could freely express their opinion about EU institutions and other international actors whether critical or not.

Concerning the judicial institutions, there was a serious need to break with the citizen's perception that corruption is part of the country's political system. In this respect, Kosovo established a special prosecution for high crimes including corruption, a special department of basic court and appeal court,

in order to deal with and judge the cases investigated by special prosecutions. Indeed, criticism broke out from civil society as basic courts were judging corruption cases. Kosovo judicial and prosecutorial council exist but they are still lacking full integrity to make sure that prosecutors and judges are the ones who send the misconducted cases to the president.

Ms. Kusari outlined a few positive achievements firstly regarding the successful return for infighters of ISIS and the establishment of a reintegration program. Kosovo also has serious engagement on domestic and gender violence matters with one of the examples being the Pride Parade organized for several years in a row without a single incident.

About the extradition of six Turkish citizens living in Kosovo, Ms. Kusari clarified that after this event, the minister of interior and head of intelligence were dismissed and Kosovo's parliament established a committee of investigation, in front of which the President was called immediately. Lastly, the latest parliamentary elections in Kosovo were a sort of democracy indicator since no incident was recorded, even though parties with different positions were competing. Ms Kusari added "Kosovo people are much higher in the perception of democracy than the politicians have given them credit for."

Ms. Kusari concluded her speech by highlighting some points that should be taken into consideration for the next government: vetting system, increase of functional review of legislation, observation of the implementation of the current laws passed, reform on the law on financing of political parties and higher transparency, and improvement in the coordination and functionality of the judicial and prosecutorial council.

Barbara Matias, Group for Legal and Political Studies

Ms. Matias represented civil society and presented a constructive criticism about the achievements in Kosovo. When talking about Kosovo, four elements need to be taken into account: rule of law, judiciary framework, the role of civil society, and fundamental rights.

The key concepts for the implementation of rule of law are transparency, accountability and effectiveness which are associated with stability and security in the region. As already mentioned by Ms. Kusari, Ms. Matias referred to Kosovo's historical impact on its state building process emphasizing that substantial work has been done on action plans, regulation, and laws despite the particular post conflict and multi-ethnic context. Now, it is a matter of implementation and enforcement.

When talking about statistics, Kosovo presents a 54.2% fulfilment of rights according to the Rule of Law checklist created by the Venice Commission of the Council of Europe, as found by a project conducted by the Group for Legal and Political Studies. The nearly 46% remaining are explained by issues of corruption, among others, which has become a more of a social norm affecting the independence and impartiality of the judicial system. The lack of trust in local institutions is one of the consequences of the latter and it is important to revitalize this trust among citizens. Although the

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passing of action plans is often seen as a bureaucratic process, a strong commitment by the government regarding passing and drafting laws can be observed and is important, nonetheless.



Barbara Matias, 12 November 2019, Brussels. Credit | Vocal Europe

The judiciary system in Kosovo is currently decentralized and uncoordinated, thus the government having launched an all-encompassing functional review of this same system last year. The top priorities will be to review the legal framework in order to “harmonize, provide recommendations, prevent overlapping responsibilities between the ministries and to create a national rule of law strategy.” One step further was visible through the establishment of a special department in the basic court of Pristina and in the appeal court, as well as the appointment of new judges and prosecutors on major cases.

While Kosovo’s 2008 Constitution can be taken as an example of best practices, its implementation is undermined by a lack of political prioritization. Members of civil society also highlight that there is a lack of funding for human rights strategies. Besides the institutional problems, Kosovo’s population is one of the youngest in Europe and its commitment to mobilize and advocate shows to which extent it adheres to European values.

Civil society’s role in Pristina over the last few years is getting more and more important. Its main actions include redesigning of public policies, helping the reform process and contributing to a fair and democratic debate. The challenge for civil society will be to gather a bigger part of the population on sensitive issues such as violence against women or LGBTQ, in order to cover an audience mobilization gap among advocacy events.

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