

# **‘Vetting in Kosovo’. A Two-Dimensional Perspective and Missing Criteria**

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## **Abstract**

*In this paper, the objective is to explore the concept of vetting in Kosovo as a crucial aspect of the justice system reform. The research delves into the historical background of the justice system in Kosovo, the previous vetting process conducted in 2009, and the current challenges in implementing a comprehensive vetting system. The study utilizes a qualitative research method, analyzing governmental reports, international assessments, and legal literature on transitional justice. The results highlight the deficiencies of past vetting processes, the ambiguities in the current vetting initiative, and the lack of clear structural parameters. The implications of the study suggest that a successful vetting process in Kosovo requires clear targets, criteria, sanctions, design, scope, schedule, rationality, and coherence to establish trust in institutional justice and ensure impartiality. Addressing these parameters is crucial for the effective transformation of the justice system in Kosovo on a comprehensive level.*

**Keywords:** *vetting, reform, challenge, human right.*

**JEL Classification:** K10, K20, K40

## **1. Introduction**

The historical and political realm in Kosovo during the 20<sup>th</sup> century was characterized by multidimensional political events, at the center of which was the collective effort to materialize the project of independence from the former Yugoslav socialist system.

In the course of events and contradictions that have characterized this effort, and which take the final form in the general armed uprising of the people of Kosovo against the Milosevic regime, the idea of a legal system that responds to political consciousness and culture has been obscured and perceived with attributes of an institutional mistrust, since the Yugoslav legal system has served as an instrument to exercise the political authority of Yugoslavia and has not taken root as an institutional and constitutional tradition that administers justice in an impartial and fair manner.<sup>2</sup>

As a result, the idea of the legal system for the citizens of Kosovo has not been accompanied by the necessary parameters such as trust in institutional justice and this has had a long-term impact on the way the citizens of Kosovo have perceived and still perceive the institutional level of justice.

In the last two decades, due to political developments and frequent changes in governance mentality, starting from international administration, the presence with institutional mandates of European Union mechanisms, the direct assistance of the

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<sup>2</sup> Cohen, Leonard, J. (1992), *Post-Federalism and Judicial Change in Yugoslavia: the rise of ethno-political justice*, „International Political Science Review”, 13 (3), pp. 301–319.

United States of America and the reconceptualization of the system of justice on the basis of the Constitution of the Republic of Kosovo announced in 2008,<sup>3</sup> has caused the mixture of many legal and institutional schools of thought to influence the opening of cardinal topics aimed at consolidating a fair and independent system.

In this regard, these complex developments, taking into account the fact that socio-political and socio-economic development has highlighted new dynamics that are directly related to justice, such as the integrity of institutions and the fight against corruption and abuse, in recent years have increased public pressure for a more efficient and reliable justice, bringing into the background the preconditions that enable such a thing.

In this context, the integrity of judges and prosecutors has dominated the public discourse about justice, drawing out and laying out alternatives to improve efficiency, transparency and legality and ethics. Among other things, vetting has taken a central place.

However, theoretically and practically, vetting is a matter that requires adequate preparation and conception, in order to achieve the effects, it foresees. On the contrary, the implementation of a vetting that aims to implement a moral conception of justice, without adapting to its legal concept, risks further worsening justice when it is claimed to be applied.

Being a complex issue, the administration of a vetting process is a challenge and the selection of vetting modalities that respond to real needs is among the most sophisticated policies that a state and society must apply.

In Kosovo, the debate about vetting is a popular debate and with support, but the alternatives for the adequate model of vetting have often been missing or have been laid out of the right dimension. Such a debate is happening even now, which is also the central theme of this paper.

## **2. Vetting as a formality and legacy, versus the demand for deep vetting**

Vetting, in principle, means the process of re-evaluation of judges and prosecutors, at the center of which is the organization of the verification of judges and prosecutors in at least three aspects: professional ability, the status and property data, moral and professional integrity, qualities which constitute the essence of the process.<sup>4</sup>

These three fundamental parameters that the vetting process claims to address are also the central dimensions of public criticism of the justice system in Kosovo.<sup>5</sup>

In fact, the image and perception of Kosovo's justice institutions are mainly built on the basis of reports and findings of local and international organizations – which are generally based especially on assessments that the third power is not sufficiently accountable and transparent to the public, and it is not efficient and effective in ensuring access to justice and providing legal security to citizens.

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<sup>3</sup> The main partners in the justice system in Kosovo since 1999 include: the UN, the European Union, the United States of America, the OSCE and many other international and regional organizations.

<sup>4</sup> United Nations High Commissioner for Human Rights (2006). *Rule of Law Tools for Post Conflictual States – Vetting: an operational framework*. p. 3–6, <https://www.ohchr.org/sites/default/files/Documents/Publications/RuleoflawVettingen.pdf>.

<sup>5</sup> Kosovo Law Institute. (2022). *Justice in the eyes of citizens*. Analytical Report, accessible at: <https://klls.org/drejtesia-ne-syte-e-qytetareve-2/>, consulted on 1.04.2024.

Despite ongoing reforms in the justice system, the above perception has not changed. Therefore, the idea for a concrete vetting process has its roots in the process of re-evaluation of judges and prosecutors that took place in 2009 and is considered deficient.

The Republic of Kosovo carried out a vetting process after the Declaration of Independence, namely in 2009.<sup>6</sup> At that time, with the new reality created by the declaration of independence and the establishment of the new constitution, it was necessary to re-evaluate and try to unify the schools of thought that had contributed during the period of international administration.

Consequently, in order to lead the reappointment and appointment process, in April 2009, the High Representative of the Secretary General established a temporary body, as part of the Kosovo Judicial Council, which was mandated through an UNMIK Administrative Instruction no. 2008/2.<sup>7</sup>

In this process, over 400 judges and prosecutors underwent the re-evaluation process, under the supervision of the EU Liaison Office. The results of this process highlighted two central dimensions. First, only about 50% of judges and prosecutors had passed the ethics test and the professional test. Secondly, 450 new candidates entered this process.<sup>8</sup>

Although there was generally a step forward in the consolidation of a professional ethic based on European and Western norms and standards, the general political atmosphere did not allow the promotion of the justice sector as a central pillar in the consolidation of the legal order.

Moreover, the vetting process carried out at that time was not carried out within the parameters and within what legal science refers to as 'transitional justice'.<sup>9</sup> Avoiding the two main principles of transitional justice, namely inclusion and exclusion, therefore, the filtering of those who apply standards of justice that respects human rights as a category was avoided, giving priority only to the administrative level of verifying the responsible personalities, with a focus especially in relation to criminal offences, justification of wealth and self-esteem.

A substantial problem that characterized this process was the relationship with the officials who were part of the system and who came from the minority communities, specifically from the Serbian community, which in the phase after the independence of the country, was influenced by the parallel Serbian structures in Kosovo, sabotaging subordination to the vetting process.

All these features of that period influenced the insufficiency of the vetting to establish the implementation of the institutional and constitutional basis for a transparent, reliable and efficient justice.<sup>10</sup> Such dilemmas have often been characteristic

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<sup>6</sup> See the source: <https://kli-ks.org/wp-content/uploads/2019/09/3.-Vetingu-pa-alternative.pdf>, consulted on 1.04.2024.

<sup>7</sup> See the source: [https://unmik.unmissions.org/sites/default/files/regulations/02english/E2008ads/ADE2008\\_02.pdf](https://unmik.unmissions.org/sites/default/files/regulations/02english/E2008ads/ADE2008_02.pdf), consulted on 1.04.2024.

<sup>8</sup> Balkans Group for Policy Research Report (2019), accessible at: <https://balkansgroup.org/wp-content/uploads/2020/01/Gjyqesori-i-keq-administruar-i-kosoves.pdf>, consulted on 1.04.2024.

<sup>9</sup> Mayer-Reickh, A. and De Grieff, P. (Eds.) (2007). *Justice as Prevention: Vetting Public Employees in Transitional Societies*. International Center for Transitional Justice, p.17.

<sup>10</sup> See USAID. Kosovo Justice Support Program Annual Report, June 2007 – June 2008, [https://pdf.usaid.gov/pdf\\_docs/Pdaco757.pdf](https://pdf.usaid.gov/pdf_docs/Pdaco757.pdf), consulted on 1.04.2024.

in the circumstances of major social changes, where courts and prosecutors have been seen within their influence for institutional stability.<sup>11</sup> Since the public pressure has continuously increased, the new demand was consequently for a deep and comprehensive vetting, which as a final product would have the purification of justice from the corrupt.

### 3. A new vetting on the horizon

The epilogue of the 2009 vetting, therefore, did not give a new occasion to the recovery of justice as a category in which citizens could build a degree of complete trust. On this basis, the great political debates that took place between the years 2009–2020, which confronted ideas and views about many processes that had taken place in Kosovo in those years, including the process of privatization, infrastructural construction, the quality of elections, and that gravitated about accusations of corruption, abuse of power and impunity, placed the justice system at the center of criticism, describing it as a ‘captured system’ by politics and the establishment.<sup>12</sup>

The political polarization in this period was quite deep and the justice system had become a topic around which political operations were conducted, although there was a lack of a clear perspective about the future and integrity of this system.

Successive governments in partnership with the European Union and the United States of America tried with a set of solid reforms to restore the efficient functionality of the system and citizens’ trust in institutional justice.

Although legislation that deepened the responsibility and accountability of the judiciary and the prosecution were in place and was being implemented, public opinion continued to view the justice system as politically influenced and inefficient.

Parallel to the political changes, justice as a theme in the last two short-lived governments and the current government led by a majority which until recently was an opposition force, and which largely forged the view of justice in the last ten years in the eyes of public opinion, made inevitable the model that would have to provide a solution to this topic.

Vetting was therefore made a priority for the government. However, although it was a government priority to which there were great hesitations among the Prosecution and Judicial Council of Kosovo, in the ongoing process some cardinal questions came to light, among others: *how to do the vetting, what was actually the vetting, who would it include, who would do it and what should be practiced as a standard in its realization?*

In order to answer these questions, the government in 2021 had appointed a working group from among experts, without the full involvement of actors and representatives of justice institutions.<sup>13</sup>

The working group had considered the alternatives to realize vetting between

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<sup>11</sup> Griffith, J. A. G (1977). *The Politics of Judiciary*. Manchester University Press, p. 43.

<sup>12</sup> Source: media articles that articulate the evaluative views of the opposition over the years: <https://zeri.info/aktuale/70544/albulena-haxhiu-sistemi-i-kapur-i-drejtewise-vazhdon-persekutimin-politik-te-deputeteve/>; <https://www.arbresh.info/lajmet/harroni-vizat-sivjet-raporti-i-progresit-pikellues/>, consulted on 1.04. 2024.

<sup>13</sup> See media reports, illustrated as in this article: <https://paparaci.com/155316/pa-kpk-ne-dhe-kgjk-ne-haxhiu-mbledh-grupin-punues-per-vettingun/>, consulted on 1.04. 2024.

two main perspectives: through constitutional changes and through legal changes.<sup>14</sup> Bringing proposals that the institutional framework saw as lacking and which were not sufficiently clear about procedures, actors and modalities, the proposals were referred to the Venice Commission to assess their compatibility with democratic standards.<sup>15</sup>

In its assessments, the Venice Commission found that the process had ambiguities and flaws both in terms of structure and reasonableness and lack of consistency that characterized it, criticizing the path chosen by the Government to implement the vetting process in Kosovo, including and the lack of expertise to carry out this process.<sup>16</sup>

All this contemplation to implement something necessary in the eyes of the public, but extremely delicate in the eyes of the constitution and institutions, took place and became a debatable topic about vetting, if the prerequisites for its realization were met. On the government's side, the vetting is without an alternative. In the background of criticism, vetting appears to be an uncertain process for successful realization and achieving the necessary objective of radical transformation towards the integrity, impartiality and accountability of the justice system.

But what makes the whole current report of the launched vetting process even more complex is the ambiguity of the degree of involvement and scope. Exactly, two basic elements that this process should contain. It has often been said that vetting, to be complete, must include the entire architecture of public safety, law and order. This means the implementation of the vetting process in the Kosovo Police, the Prosecutor's Office, the Judiciary and other investigative bodies. However, to date, it is very unclear which sector the proposed vetting will include or exclude.

#### 4. A scenario with standards

Although vetting remains the central theme of the reforms, its modalities hold hostage the full scenario of how it should happen. The dilemma of whether vetting should take place on the basis of laws or by changing the constitution is a substantial dilemma because until today none of the actors who want vetting has been willing to bring a complete structural picture of the objectives and goals that are intended to be being fulfilled through it.

Wanting to bring a reflection on this current deficit from a scientific point of view, such as an institutional project, as interpreted by legal science, would have to be subject to some basic parameters such as:<sup>17</sup>

- a) **The targets**, or the definition of whom, which institution and which positions are the targets of vetting;
- b) **Criteria** or which deficits are intended to be highlighted in order to be avoided;
- c) **Sanctions**, or defining the measures that will be taken against those who do

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<sup>14</sup> Concept documents of the Government of the Republic of Kosovo, accessible at: <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=41154>, consulted on 1.04. 2024.

<sup>15</sup> Council of Europe, Venice Commission (2022). *Opinion on the concept paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution*. 131 Plenary Session, Venice, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)011-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)011-e), consulted on 1.04. 2024.

<sup>16</sup> *Ibid.*

<sup>17</sup> Mayer-Reickh, A. and De Grieff, P. (Eds.), *op. cit.*, p. 20.

not pass the vetting process;

d) **Design**, or which steps, procedures, and processes should be implemented within this process;

e) **The scope**, or the amount of the number of those who will undergo this process;

f) **Schedule and duration**, or a work calendar that has a timetable for the realization of the vetting;

g) **Rationality**, or what are the objective aspects why a vetting should take place;

h) **Coherence**, or what is the connection that vetting should have with the processes of other institutional reforms.

These structural steps are not as important as a ranking as they are important as thematic areas without which it is difficult to achieve a real vetting process.

Before concluding what model should be followed and whether it is necessary to do it by law or by constitutional changes, the above elements should be defined clearly and coherently.

Outside these parameters, a vetting process can always be carried out, either on the basis of the law or even the constitution, but its mission would not be able to produce anything substantial to really affect the improvement of the quality of justice, professional ethics and the trust of citizens in it.

Therefore, avoiding the transitional justice that has already been exceeded, the time to realize a fair, impartial and efficient institutional justice as a collective ambition should be subject to the discussion, based on this list of preliminary standards to enable a vetting process that it is not seen as political hunting, nor as moral justice.

The future of the vetting process in Kosovo still remains a challenge and in its current format does not guarantee the success of this process. The parties involved and the experts involved in the design of the architecture of complete vetting in justice would have to take ownership of the idea of this process from the hands of public judgment and through international standards put it in the hands of the institutional sphere.

Although such a thing is happening technically as an administrative process, it has not yet started to happen as a substantive and significant process. Skepticism about full, fair vetting and on the right model, therefore, is likely to triumph over the goal and the real possibility to realize the same.

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