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Ministria E Drejtësisë - Ministarstvo Pravde - Ministry Of Justice

**CONCEPT DOCUMENT ON CIVIL PROCEDURE CODE OF
KOSOVO**

August, 2023

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Concept Document Summary

General Information	
Title	Concept Document for the Civil Procedure Code of Kosovo
Responsible ministry	Ministry of Justice, Legal Department
Contact person	Isuf Jahmurataj, Senior Legal Officers, Legal Department, Ministry of Justice. Phone: 67 085
GAWP	Development objective: Third Pillar: Security and Rule of Law – 9. Effective Justice Strategic objective: 9.1 Timely justice and 9.4 Proper access to justice
Strategic priority	This concept document is foreseen in the list of 2023 concept documents

Decision	
Main issue	The lack of a codified, unified (consolidated) and harmonized legislation for the definition of legal rules for the resolution of civil, commercial, economic or administrative disputes represents the need for codification, improvement of existing norms and their updating with the best international standards.
Consultation summary	From the preliminary consultations and those conducted with the public, there were no controversial issues.
	Consultations with the public started from 04.05.2023 to 25.05.2023. Preliminary consultations have started from 04.04.2023 to 04.25.2023 Comments have been provided by: GCS/OPM, OSCE, USAID, Office of the European Union. The comments are summarized in a table, where the concrete comments and the reasoning for their acceptance or non-acceptance are placed there (together with the Concept document).
Proposed option	Adoption of the Civil Procedure Code.

Main expected impacts

Budget Impact	Implemented under current budget ceiling.
Economic Impacts	It will help in the clarity of procedural norms and the speed of civil and administrative disputes adjudication and resolution, giving more security for economic relations as well.
Social impacts	It will significantly contribute to access to justice.
Environmental impacts	No relevant impacts expected in this category.
Crosscutting impacts	No relevant impacts expected in this category.
Administrative burden for companies	NA
SME Test	The SME test has not been applied because this concept paper addresses issues that are not relevant to SMEs.

Next steps	
Short-term	Drafting of the Civil Procedure Code.
Medium-term	<ol style="list-style-type: none"> 1. Approval of the Civil Procedure Code 2. Training of judges and other legal professionals who will implement the norms of the Civil Procedure Code.

Figure 10: Table with background information on the Concept Document

Title	Concept Document for the Civil Procedure Code of Kosovo
Responsible Ministry	Ministry of Justice, Legal Department
Contact person	Isuf Jahmurataj, 67 085
GAWP	Development objective: Third pillar: Security and Rule of Law – 9. Effective justice Strategic objective: 9.1 Timely justice and 9.4 Proper access to justice
Strategic priority	This concept document is foreseen in the list of 2023 concept documents
Working Group	<ol style="list-style-type: none"> 24. Isuf Jahmurataj, Chair, MOJ 25. Ruzhdi Osmani, Deputy Chair, MOJ 26. Albert Zogaj, Chair of KJC 27. Qerim Ademaj, Deputy Chair of KJC 28. Fejzullah Rexhepi, Supreme Court Judge 29. Rrustem Thaqi, Supreme Court Judge

	<p>30. Zenel Leku, Supreme Court Judge 31. Nenad Laziq, Supreme Court Judge 32. Arsim Hamzaj, Court of Appeals Judge 33. Hidajete Gashi, Court of Appeals Judge 34. Franciska Ymeri Zhitia, Court of Appeals Judge 35. Eros Gashi, Political Advisor to Minister 36. Florent Spahija, External Political Advisor to Minister 37. Trendelina Qorraj, Officer for Integration, DEICP/MoJ 38. Albulena Uka, Senior Legal Officer, MoJ 39. Florentina Beqiraj, Human Rights Unit Coordinator, MoJ 40. Hajrije Zogaj, Senior Budget Officer, MoJ 41. Saranda Salihu, Acting Head of PCO 42. Albert Selimi, Senior Officer for Policy Coordination, GCS/OPM 43. Kushtrim Canolli, Senior Officer for Policy Coordination SPO/ OPM 44. Alberita Hyseni, Senior Legal Officer, LO/OPM 45. Gëzim Bislimi, Senior Budget Analyst /MFLT 46. VyrtYTE Gervalla /BIRN</p>
Additional information	

1. Introduction

Civil justice is included in the domain of state activity aimed at peaceful and binding settlements, through law, of disputes that different parties operating in a certain state have, with the ultimate goal avoiding self-justice and disturbance of social peace. The legal norms that regulate the activity of granting civil justice are found in the so-called civil procedure legislation. This legislation regulates all stages of civil justice, starting from the structural organization of civil justice, the various phenomena that occur before a lawsuit is filed in court (e.g. the type of evidence that can be presented in court), continuing with the rules for the lawsuit filing, its formal conditions, the jurisdiction of the court, the position and rights of the parties and their representatives, the deadlines and other rules for conduct and termination of the main hearing, the various decisions taken by the court during and at the end of the main hearing, the right to appeal of the parties, up to the enforcement proceedings. The latter being the culmination of the realization of the civil rights of the parties and best reflects the coercive power of the state in action.

The clearer, easily accessible, simply written, and systemized civil procedure norms are, the more likely it is for court service users to have equal and efficient access to civil justice. In fact, the legal norms are not only addressed to legal professionals, but above all they regulate the exercise of rights by the parties, who can be, in the true sense of the word, any person (individual, interest group or legal person, local or foreigner and/or stateless), who is involved in a dispute and is trying to solve it through the justice system, which is one of the most important state prerogatives. The efforts to create a corpus of legal norms date back to ancient times, where we can mention for example, the Law of the 12 Tables (450 BC) which was adopted in ancient Rome. What is known is that the first book of these 12 tables spoke about civil procedure, specifically about the possibility of being granted civil justice by a Roman magistrate.²⁴ In recent centuries, most of countries with the civil law tradition (the Romano-Germanic family) have codified the rules of civil procedure, with the purpose of systemizing them into a single legal act, which is helpful not only to legal professionals, but also to every “consumer” of civil justice.

The civil procedure legislation in Kosovo consists of a set of laws that regulate certain aspects of civil judicial process. Among them are, the Law No. 03/L-006 on Contested Procedure, amended and supplemented with the Law no. 04/L-118 on Amending and Supplementing the Law No. 03/L-006 on Contested Procedure; Law No. 03/L-007 on Out Contentious Procedure; Law No. 04/L-139 on Enforcement Procedure, amended and supplemented with the Law No. 05/L-118 on Amending and Supplementing the Law No. 04/L-129 on Enforcement Procedure.

These laws were generally drawn up under the influence of the legislation of former Yugoslavia²⁵. However, after years as an independent state and having acquired its identity and characteristics in regard to institutional and legal system, Kosovo needs to reform its procedure rules and to reflect the best international standards while integrating the development of internal practice and the needs identified by legal practitioners.

Procedural norms are generally a valuable tool for the functioning of the legal system as a whole. Researchers have evidenced a dual role of these norms: on the one hand, they aim to provide a fair, cost-effective, quick, and legally compliant resolution of disputes that the parties wish to settle in court. On the other hand, they provide judges with an instrument to exercise their function of interpreting, clarifying, developing and of course, applying the law.²⁶ Therefore, the clarity and efficiency of these norms is important for the functioning of the rule of law.

In many countries (the Netherlands, the United Kingdom, Switzerland, or the countries of Central and Eastern Europe)²⁷, civil procedure norms were subject to revision in order to

²⁴ The Dynamism of Civil Procedure – Global Trends and Developments. Guy I. Seidman. Springer, 2016. f. 6.

²⁵ The Concept Document on Contested Procedure, approved with the Decision No.09/77, dated 4.12.2018.

²⁶ Jolovicz, ‘On Civil Procedure’, at pp. 70, 71., quoted in Common minimum standards of civil procedure, by Blomeyer & Sanz: Magdalena Tulibacka, Margarita Sanz, Roland Blomeyer, 2016, p. 21.

²⁷ A. Uzelac, Goals of Civil Justice and Civil Procedure’, at p. 6, quoted in Common minimum standards of civil procedure, by Blomeyer & Sanz: Magdalena Tulibacka, Margarita Sanz, Roland Blomeyer, 2016, p. 21.

increase their efficiency. Lately, among the countries of the Balkan region, Albania has also undertaken a radical reform in justice, what dictated the need to reform the civil procedure regulatory framework as well. The Code of Civil Procedure was subject to several amendments in November 2016, March 2017 and March 2021, following the endorsement of the Justice Reform aimed at increasing the performance of courts, simplifying court procedures, creating a legal mechanism to address the issue of adjudication of the cases within a reasonable time limit, strengthening the rules for electronic notification of the parties, clarifying and reforming ordinary and special adjudication procedures at appeal levels (Courts of Appeals and Supreme Court), etc.

As part of these reforms, the current regulatory framework for civil procedural norms in Kosovo should be reformed as well, not only to provide solutions to the problems encountered in practical implementation, but also to reflect international standards that ensure access to justice.

Chapter 1: Problem definition

The main problem: Lack of codified, unified (consolidated) and harmonized legislation establishing legal norms for the settlement of civil, commercial, economic, or administrative disputes. At the same time, due to the problems identified in the current implementation of procedural laws, there is a need to improve the existing norms and update them with the best international standards in the field of civil procedure.

0. The need for legal reform of civil procedure laws in alignment with European civil procedure standards.

The need to align Kosovo's civil procedural legislation with the best European standards stems from the Constitution of the Republic of Kosovo (Article 22) and Law No.05/L-069 on Ratification

of the Stabilization and Association Agreement Between the Republic of Kosovo, of the one part, and The European Union and the European Atomic Energy Community, of the other part, (articles 1(2)(a)(d), 4, 74, 83).

The initiative to reform the procedure legislation in Kosovo started earlier and some intervention requirements were addressed in the concept document on Contested Procedure, approved on 04.12.2018, with decision no 09/77. This document has highlighted some of problems and the need to amend the Law on Contested Procedure as a need to approach European Standards and to modernize these laws which to a considerable extent have been influenced by the laws of the former Yugoslavia. However, it should be kept in mind that, in addition to the general harmonization of these norms, as a result of the integration process in European structures, the civil procedure is "*deeply embodied in a nation's political organisation, social and economic*

*structure, its constitutional and social identity, as well as the arrangements for wealth distribution.*²⁸ In this background, it is fundamental that the civil procedure rules reflect these elements and become expressive of the national identity of the country that integrates them while maintaining a minimum standard of approximation necessary in view of the greater exchange that we face today.

This holistic reform is also affecting other domains of legal regulation in Kosovo whereby we mention initiatives to significantly change not only the procedure law (the Criminal Code of Kosovo has already been adopted), but also the substantive ones. The reform for the adoption of Code of Civil Procedure or the word on drafting the Civil Code are indicators of the efforts to further consolidate the internal regulatory framework.

The need for reform has also been repeatedly emphasized by the progress reports of the European Union drawn up for Kosovo, which have consistently placed the emphasis on the increase of efficiency in the judicial system, as it has been concluded a low level of judicial capacity to judge the cases within the deadline.²⁹ In general, progress reports have concluded that the administration of justice has continued to be slow, inefficient and impacted by inappropriate influences.³⁰ Along with these conclusions, these reports have assigned the tasks of reducing the case load in a revised plan and a strategy for digitalization³¹. In this context, a more significant role in reducing the backlog of cases plays the establishment of procedure rules aimed at speeding up court proceedings. Therefore, the reform of civil procedure norms should also aim to create mechanisms for faster trials.

Report has underlined the need for faster trial, as the time it takes to adjudicate cases (from the day the suit is filed until a decision is made) is worrying, as it is too long. In 2021, the trial time for civil and commercial cases in the first instance is 1339 days whereas for administrative cases is 798 days. In the appeals processes, the civil and commercial cases are decided within a period of 646 days, while administrative cases within 426 days.³² These delays have become the reason for complaints filed by citizens to the Ombudsperson and when Kosovo eventually will become part of the Council of Europe, this can become a reason for judgements against Kosovo for violation of the reasonable deadline, according to Article 6(1) of the European Convention of Human Rights.

At the same time, in addition to these requirements, as a reform being prepared at a time of great technological developments, it is advisable to integrate the use of electronic technology tools (also known as e-justice) in the judicial process. In this regard, a better regulation of e-evidence or even regulation of remote hearings will significantly help in adjudicating cases within a

²⁸ M.Tulibacka, 'Europeanisation', at p. 1532, quoted in Common minimum standards of civil procedure, by Blomeyer & Sanz: Magdalena Tulibacka, Margarita Sanz, Roland Blomeyer, 2016, f. 23.

²⁹ Kosovo Progress Report 2021, p. 16, Kosovo Progress Report 2022, p. 16.

³⁰ Kosovo Progress Report, 2022, p. 16.

³¹ Ibid., p. 16.

³² Kosovo Progress Report, 2022, p.22.

reasonable time. Therefore, the European Commission's progress report on Kosovo in this regard emphasizes the need to improve the use of digital technologies and adopt the necessary changes for the development of remote hearings.³³

The main laws that regulate rules of civil procedure and that are affected by this concept document are as follows:

1. Law No. 03/L-006 on Contested Procedure.
2. Law no. 04/L-118 on Amending and Supplementing the Law No. 03/L-006 on Contested Procedure.
3. Law No. 03/L-007 on Out Contentious Procedure.
4. Law No. 06/L-007 on Amending and Supplementing the Law No. 03/L-007 on Out Contentious Procedure.
5. Law No. 04/L-139 on Enforcement Procedure.
6. Law No. 05/L-118 on Amending and Supplementing the Law No. 04/L-129 on Enforcement Procedure.
7. Law No. 2004/26 on Inheritance in Kosovo (Articles 76-80).

Figure 11: Relevant policy documents, laws and sub-legal acts

Policy document, law or sub-legal act	Link to policy or planning document online and to legal acts in the Official Gazette	State institution(s) responsible for implementation	The role and tasks of the institution(s)
Law No. 03/L-006 on Contested Procedure	https://gzk.rks.gov.net/ActDocumentDetail.aspx?ActID=2583	Ministry of Justice Courts	Drafting of legislation and supervision of implementation Legislation implementation
Law no. 04/L-	https://gzk.rks-	Ministry of	Drafting of

³³ Kosovo Progress Report, 2022, p.17.

118 on Amending and Supplementing the Law No. 03/L-006 on Contested Procedure	gov.net/ActDocumentDetail.aspx?ActID=2849	Justice Courts	legislation and supervision of implementation Legislation implementation
Law No. 03/L-007 on Out Contentious Procedure	https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2608	Ministry of Justice Courts	Drafting of legislation and supervision of implementation Legislation implementation
Law No. 06/L-007 on Amending and Supplementing the Law No. 03/L-007 on Out Contentious Procedure	https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18304	Ministry of Justice Courts	Drafting of legislation and supervision of implementation Legislation implementation
Law No. 04/L-139 on Enforcement Procedure	https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2870	Ministry of Justice Courts Enforcement agents	Drafting of legislation and supervision of implementation Legislation implementation

Law No. 05/L-118 on Amending and Supplementing the Law No. 04/L-129 on Enforcement Procedure	https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=14673	Ministry of Justice Courts Enforcement agents	Drafting of legislation and supervision of implementation Legislation implementation
Law No. 2004/26 on Inheritance in Kosovo (Articles 76-80).	https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2407	Ministry of Justice Courts	Drafting of legislation and supervision of implementation Legislation implementation

Figure 12: The Problem Tree, indicating the main problem, causes and effects

Effects	Difficulties of the professionals and the public to access to the consolidated civil procedural legislation.
Main problem	Lack of a codified, unified (consolidated) and harmonised legislation for determining the legal rules for the settlement of civil, commercial, economic or administrative disputes as well as the need to improve the existing norms and update them according to the best international standards in the field of civil procedure.
Causes	Distribution of procedural norms in several separate laws.
	The earlier tradition of drafting separate laws for different segments of civil procedure.
	Failure to adapt the civil procedural legislation to the current technology changes.

	Lack of codification in the matter of the civil procedure in contrast to that in the criminal procedure.
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Main problem

As presented in the table above, the main problem faced by the sector of the civil justice in Kosovo is the lack of a codified, consolidated and harmonized legislation for the determination of civil procedural rules. The current laws that regulate separate parts of civil judicial procedures (eg: contentious, non-contentious or enforcement procedures), contain legal regulations that do not result in unnecessary repetition of different civil procedural institutes or principles, eclectic and sometimes unharmonized regulation of rules procedural, as well as the non-existence of some procedural institutes in harmony with European law, and especially the law of the European Union (eg: procedure for issuing payment order, or trial of lawsuits with small values).

Causes

The direct cause of this main problem is the distribution of procedural rules in several different laws, drafted in different periods and by different working groups. Also, this has come about because of the previous legal tradition. A non-evolution of civil procedural legislation is noted, especially in relation to the adoption of new information technologies, regarding electronic notices, remote court hearings, etc. Also, the subject of the civil procedure is not in the same direction of development as the criminal procedure, which has already been codified in a Code of Criminal Procedure. Even the main civil legislation is in the stage of Codification, through the Civil Code Project of Kosovo, which is in advanced stages of approval.

Effects

The effects resulting from the absence of the Kosovo Civil Procedure Code are related to the increased difficulty not only for professionals in the field, but also for the general public, regarding the effective use and recognition of civil procedural rules. This is especially so in the conditions when in Kosovo, as far as the actual trial is concerned, the representation of the parties by a lawyer is not mandatory. This leads to the need and effect that access to justice and access to the procedural rules that condition access to justice, be as complete and effective as possible. The grouping of procedural rules in a single act, for all stages of the civil judicial

process, will mitigate the negative effect that the current scattered regulation has on the civil procural cases.

The figure below lists the identified stakeholders. It also shows whether they are affected by causes, effects, or both. In addition, the last column in the overview shows how they are affected.

Figure 13: Overview of stakeholders based on the problem definition.

Name of the stakeholder	Cause(s) to which the stakeholder is linked	Effect(s) to which the stakeholder is linked	The way in which the stakeholder is linked to these cause(s) or effect(s)
Ministry of Justice	Responsible for improved access to justice for all citizens	Improvement in access to civil procedural legislation.	Drafts legal policies for justice sector
Kosovo Judicial Council	It is the justice administrator in country.	Supervision of the efficient implementation of civil proceedings.	Implements policies drawn up within the frames of constitutional and legal powers
Kosovo Justice Academy	Responsible for enhanced professionalism of judges and support staff	Organizes trainings on the understanding and correct application of civil procedural laws.	Develops specific training for judges and support staff in accordance with policy needs.
Courts of all levels and jurisdictions	Implement civil procedural norms	Develop jurisprudence on understanding various civil procedural norms of the public and legal professionals' interest.	Courts are responsible for implementation of civil procedural rules in order to guarantee a regular legal process for the parties and others involved in the procedure.

1. European standards in the field of civil procedure

It should be emphasized from the beginning that the current civil procedure legislation of Kosovo has already incorporated many of the best standards generally accepted in Europe, as far as the fair rules of civil procedure are concerned. The need for refinement and improvement of procedure legislation is a permanent constant not only in Kosovo, but also in any other country that has legal rules in civil procedure, since the dynamics of social development is such that it is

necessary from time to time to adapt the legislation to innovations brought about by social and technological development.

As far as the European Union is concerned, there is no single instrument governing civil procedure standards. For a long time, civil procedural law was and is largely the exclusive domain of individual European states. The system of civil procedure norms at the supranational level in Europe consists of the set of standards enshrined in the treaties of the European Union, the principles of the Charter of Fundamental Human Rights, the European Convention on Human Rights, the case law of the Court of Justice of the European Union (ECJ) and the European Court of Human Rights (ECtHR). This primary legislation is supplemented by secondary legislation that generally contains directives adopted in the context of judicial cooperation policy.

Convention or treaties provisions are in the form of principles and there are no concrete procedure rules, however these principles are broken down into procedure norms by both, by secondary legislation and by the case law of the above-mentioned courts.

One of the main principals, part of the aforementioned acts, is the principle of effective legal protection. Treaty of European Union provides that “Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law”³⁴. This provision refers to the structure of legal system in the European Union as well as to the national legal systems. This obligation is also reiterated by Article 47 of the European Charter of Fundamental Rights which provides that “Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Everyone shall have the possibility of being advised, defended, and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice”.³⁵

On the other hand, two important provisions, almost in the same line with the provision of the Charter are Article 6³⁶ and 13³⁷ of European Convention on Human Rights that regulate due process and the right to an effective solution. Article 6(1) of the Convention defines that “1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice [...]” While

³⁴ Article 19(1), Treaty of European Union Official Journal of the European Union C 326/13.

³⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

³⁶ European Convention on Human Rights. https://www.echr.coe.int/documents/convention_sqi.pdf

³⁷ European Convention on Human Rights. https://www.echr.coe.int/documents/convention_sqi.pdf

Article 13 of the Convention establishes the obligation for member states to provide effective remedies before national bodies by determining that "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." The difference between these instruments is that the Charter applies only to aspects related to the implementation of Union law, while the Convention has a broader scope. However, these rights are not absolute but can be limited according to the tests elaborated by the competent courts (the European Court of Human Rights and the Court of Justice of the European Union).

In addition to these instruments, in the European Union there is a number of secondary legislative acts³⁸ that contain civil procedure norms, where, among others, we can mention:

1. Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition of judgements in civil and commercial matters (recast).
2. Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. (Regulation on Taking of Evidence)
3. Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).
4. Regulation (EU) 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. OJ 2004 L 143/15 (Regulation on European Enforcement Order).
5. *Regulation (EC) No 1896/2006* of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure. OJ L 399/1 (2006) (Regulation of European Payment Order).
6. *Regulation (EC) No 861/2007* of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.07.2007 (European Regulation of Small Claims Procedure), etc.

On the other hand, an important source to take into account in the reform of civil procedure are the recommendations and guidelines given over the years by the Committee of Ministers, acting according to the powers recognized by the Statute of the Council of Europe. These provide widely accepted standards in Europe that help within the framework of improving the various civil procedure provisions or institutes that are currently incorporated in the various laws that regulate civil procedure law in Kosovo, and for the most part it should be noted that most conform to these recommendations. Specifically, the most important acts are:

³⁸ We mention only a few of the initial acts approved without listing their amending acts.

15. Recommendation R (84) 5 on the principles of civil procedure designed to improve the functioning of justice.
16. Recommendation No. R (95) 5 concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases.
17. Recommendation Rec (2001)2 concerning the design and re-design of court systems and legal information systems in a cost-effective manner.
18. Recommendation Rec (2001)3 on the delivery of court and other legal services to the citizen through the use of new technologies.
19. Recommendation Rec (2003)15 on archiving of electronic documents in the legal sector.
20. Recommendation Rec (2003)16 on the execution of administrative and judicial decisions in the field of administrative law.
21. Recommendation Rec (2003)17 on enforcement.
22. Recommendation Rec (2004)20 on judicial review of administrative acts.
23. Recommendation CM/Rec (2009)12 on principles concerning missing persons and the presumption of death.
24. Recommendation CM/Rec (2010)12 on judges: independence, efficiency, and responsibilities.
25. Recommendation CM/Rec (2012)11 on the role of public prosecutors outside the criminal justice system.
26. Guideline CM (2018)169 on electronic evidence in civil and administrative matters.
27. Guideline dated 16.06.2021 on online dispute resolution mechanisms in civil and administrative court proceedings.
28. Guideline dated 31.03.2021 on efficiency and effectiveness of legal aid schemes in the areas of civil and administrative law, etc.

Another source of information about the common European rules and standards in the field of civil procedure, which is taken as a basis in this concept document and which will be taken into account in the eventual improvement of special procedural provisions in the future, are the ELI/UNIDROIT Model European Rules of Civil Procedure, which have been approved by the Council and Membership of ELI (European Law Institute) in the summer of 2020, as well as by the Governing Council of the UNIDROIT organization, in the second meeting of the 99th session, on September 23-25 2020.

1.1. European standards for dispute resolution mechanisms using information technology tools (Online Dispute Resolution)

One of the demands of the modern times we live in is the adaptation of civil court procedures to the development of information and communication technology (ICT) in society. Virtual

(online) meetings are already part of people's everyday lives, and it has become necessary to incorporate these technologies into court proceedings. E-Court or E-Justice are now imperative requirements of the times as they potentially may provide mechanisms that reduce time, increase efficiency, and reduce the cost of the use of court services by parties and stakeholders involved. In this respect, the guidelines adopted on June 16, 2021, by the Committee of Ministers of the Council of Europe "on mechanisms for online disputes resolution in civil and administrative matters" provide a particularly good basis for the development of electronic judicial systems that enable parties to access e-justice. This guide is based on the case law of the ECtHR and consists of several basic principles. Although Kosovo is not yet a member of the Council of Europe, it has accepted the implementation of the European Convention on Human Rights and the case law of the ECtHR, so these principles relating to digital justice, which are based on Articles 6 and 13 of the ECHR, are presented with a particular interest in the Reform of Kosovo's civil procedure law. Below we summarize the basic principles to be considered by different states when designing and using information technology tools, in court or enforcement proceedings.

In this part of the concept document, the abbreviation ODR (Online Dispute Resolution) will be used for electronic information technology that can be used by courts to resolve or help resolve various disputes.

According to the guidance, states are encouraged to promote trust and confidence in the use of ODR, which in any case should not create obstacles for parties to access justice. Judicial procedures normally used in court should also be used when using ODR, unless the specifics of ODR mechanisms require a different approach. The parties to the procedures that take place via ODR must be identified using secure mechanisms. Below we list some of the basic principles that should be observed in the designing and use of ODR by courts, which should be at least partially incorporated into the legal rules of civil procedure law.

3) The right procedure

a. Access to justice.

- i. ODR should be easy to understand, useful and simple to use, so that it can be used comfortably by as many subjects as possible.
- ii. The parties must be informed about how the ODR works, how to use it, how to monitor the progress of the proceedings and how to access court decisions.
- iii. The use of ODR should not be disadvantageous to the parties or give any of them an unfair advantage.
- iv. ODR should be designed and implemented in accordance with internationally recognized technical standards, so that it can be used by as many people and with as much autonomy as possible.

- v. The costs of legal proceedings in which ODR is used should not exceed those in which ODR is not used.
- vi. The parties must be notified in cases where Artificial Intelligence mechanisms are intended to be used in the adjudication of their case.
- b. Equality of the parties
 - i. Participation in ODR proceedings should not violate an individual's right to participate effectively in judicial proceedings or to have their case effectively resolved.
 - ii. The process in which the ODR is used must guarantee the standard of independence and impartiality.
 - iii. The parties must be familiar with the case materials, including those submitted by other parties, and have reasonable time to familiarize themselves with them.
- c. Evidence obtained during ODR procedures.
 - i. The fairness of the proceeding must ensure that when applying ODR, the parties can present evidence in such a way that it does not put them in a weaker position vis-a-vis other party.
 - ii. The parties must have the opportunity to present their case and challenge the evidence presented by the other parties.
 - iii. ODR must respect the principles of legal clarity (predictability) and the protection of the legitimate expectations of the parties.
- d. Effective procedure
 - i. The implementation of ODR should aim to improve the effectiveness of the procedure by allowing the parties to participate without being physically present in court and broadcasting the entire procedure in real time as much as possible.
 - ii. Technical difficulties in the operation of the ODR should not prevent the courts from examining the cases and taking the necessary procedural steps, even for short periods of time.
 - iii. If local law provides that alternative dispute resolution is a prerequisite for initiating legal proceedings, including those conducted by ODR, this should not unnecessarily prolong the dispute resolution process or significantly increase the costs of the parties.
- e. Making decision
 - i. The final actions in a procedure performed with ODR must be transparent.
 - ii. Any final decision made using ODR must be made public in accordance with the case law of the European Court of Human Rights.
- f. The right to a reasoned legal decision

- i. Sufficient reasons must be given in decisions made using ODR or with the help of ODR, in particular decisions made through the inclusion of Artificial Intelligence (AI) mechanisms.
 - g. Enforcement of decisions
 - i. The fact that a decision has been made using ODR mechanisms should not prevent its mandatory enforcement.
 - h. The right to judicial review of cases where automated decision-making processes are used.
 - i. Where local law allows for decisions to be made through automated processing procedure, these automated decisions must be subject to review by a judge.
- 4) Transparency in the use of ODR and requests for sessions
 - a. Transparency in the design and implementation of ODR mechanisms
 - i. The design and implementation of ODR mechanisms should be transparent and explained in an understandable way using clear and simple language.
 - b. Public and oral hearings
 - i. The use of ODR mechanisms should guarantee appropriate ways to enable public oversight of the proceedings.
 - ii. The use of ODR in court should not in itself constitute an obstacle for the parties to request an oral hearing, at least at a level of court jurisdiction.
 - c. Other issues related to transparency and public oversight.
 - i. Parties to the process in which ODR is used must be informed of any conflicts of interest related to the use of ODR mechanisms.
 - ii. The ODR should be designed in such a way that all documents produced, including the final court decision and other decisions or notices, are written in clear and simple language.
 - iii. Procedure rules related to the use of ODR should be transparent.
 - iv. Parties to proceedings where ODR is used must be informed and have the opportunity to access the procedural rules that apply to ODR.
 - d. Special issues related to Information and Communication Technology (ICT) and ODR techniques.
 - i. Cyber safety
 - 1. ICT products, services or processes that facilitate the use of ODR must be safe, in order to comply with the requirements of Articles 6 and 13 of the ECHR and to ensure the creation and maintenance of trust and confidence in ODR mechanisms.

2. The level of cyber safety for ICT products, services and processes facilitating the use of ODR is considered adequate when there are safeguards against:
 - a. Unauthorized access to confidential data.
 - b. Unintentional modification or deletion of data.
 - c. The technical impossibility of accessing the system and other data stored for ODR users.
 - d. Uncertainty as to the identity of the judge or other professionals involved in the proceedings by ODR.
 - e. Fraud with the identity of the parties.
- ii. Protection of human rights, including protection of personal data
 1. States must assess the impact of the use of ODR on individuals and social groups throughout its lifecycle and identify specific requirements for the ethical and fair use of ODR with the aim of respecting human rights as an integral part of the development and use of any type of ODR mechanism.
 2. The use of ODR must not violate data protection, including, where applicable, the right to information, the right to access data, the right to object to data processing and the right to delete data.
 3. Technical and organizational measures must be implemented to ensure that the rules for the protection of personal data are respected, both during the determination of the processing methods and during data processing.
 4. ODR mechanisms must be designed and developed in a way that directly and structurally applies the principles of personal data protection, with particular attention to
 - a. The implementation of technical or organizational measures that ensure the protection of personal data, in particular using anonymization or pseudo-anonymization techniques.
 5. The acquisition of ODR services by external operators must not allow personal data to be processed for commercial purposes.

2.2. Basic principles for electronic evidence in civil court procedure

In the digital age, courts are increasingly faced with electronic data, which constitute evidence for the various facts important for the resolution of civil, commercial, economic, or administrative disputes. The Committee of Ministers of the Council of Europe has approved the Guideline CM (2018)169 "On electronic evidence in civil and administrative proceedings",

which constitutes a practical tool for states to adjust procedural activity towards the increased use of electronic evidence. Certainly, the special legislation on electronic communication or electronic documents is the primary tool for identifying of those electronic data that can constitute evidence in civil trials, but the procedural legislation also needs to contain some basic principles regarding the definition of electronic evidence, their types, the manner of their submission and administration in the trial, as well as their evidentiary value. According to the guidelines, electronic evidence means any evidentiary fact derived from the data held or produced by any device, the operation of which depends on an electronic program (software) or data that is stored or transmitted by means of a certain computer system or network. The concept of "metadata" is also important, which refers to any electronic information in relation to other electronic data, which can highlight identifying data, the origin or the history of the creation of evidence, together with the date or time of creation or modification of data. Here we are presenting some of the basic principles elaborated at the European level (Council of Europe), in relation to the electronic evidence.

10. It is for courts to decide on the potential probative value of electronic evidence in accordance with national law.
11. Electronic evidence should be evaluated in the same way as other types of evidence, in particular regarding its admissibility, authenticity, accuracy, and integrity.
12. The treatment of electronic evidence should not be disadvantageous to the parties or give unfair advantage to one of them.
13. Oral evidence taken by remote link.
 - a. Oral evidence can be taken remotely, using technical devices, if the nature of the evidence so permits.
 - b. When deciding whether oral evidence can be taken remotely, the courts should consider, in particular, the following factors:
 - i. The significance of the evidence,
 - ii. The status of the person giving evidence,
 - iii. The security and integrity of the video link through which the evidence is to be transmitted,
 - iv. Costs and difficulties of bringing the relevant person to court.
 - c. When taking evidence remotely, it is necessary to ensure that:
 - i. The transmission of the oral evidence can be seen and heard by those involved in the proceedings and by members of the public where the proceedings are held in public; and
 - ii. The person being heard from a remote location can see and hear the proceedings to the extent necessary to ensure that they are conducted fairly and effectively.

- d. The procedure and technologies applied to the taking of evidence from a remote location should not compromise the admissibility of such evidence and the ability of the court to establish the identity of the persons concerned.
- e. Irrespective of whether evidence is transmitted via a private or a public connection, the quality of the videoconference should be ensured and the video signal encrypted to protect against interception.

14. Use of electronic evidence

- a. Courts should not refuse electronic evidence and should not deny its legal effect only because it is collected and/or submitted in an electronic form.
- b. In principle, courts should not deny the legal effect of electronic evidence only because it lacks an advanced, qualified, or similarly secured electronic signature.
- c. Courts should be aware of the probative value of metadata and of the potential consequences of not using it.
- d. Parties should be permitted to submit electronic evidence in its original electronic format, without the need to supply printouts.

15. Collection, seizure, and transmission

- a. Electronic evidence should be collected in an appropriate and secure manner, and submitted to the courts using reliable services, such as trust services.
- b. Having regard to the higher risk of the potential destruction or loss of electronic evidence compared to non-electronic evidence, member States should establish procedures for the secure seizure and collection of electronic evidence.
- c. Courts should be aware of the specific issues that arise when dealing with the seizure and collection of electronic evidence abroad, including in cross-border cases. Courts should co-operate in the cross-border taking of evidence. The court receiving the request should inform the requesting court of all the conditions, including restrictions, under which evidence can be taken by the requested court.
- d. Electronic evidence should be collected, structured, and managed in a manner that facilitates its transmission to other courts, in particular to an appellate court.
- e. Transmission of electronic evidence by electronic means should be encouraged and facilitated in order to improve efficiency in court proceedings.
- f. Systems and devices used for transmitting electronic evidence should be capable of maintaining its integrity.

16. Relevance

- a. Courts should engage in the active management of electronic evidence in order, in particular, to avoid excessive or speculative provision of, or demand for, electronic evidence.
- b. Courts may require the analysis of electronic evidence by experts, especially when complex evidentiary issues are raised or where manipulation of electronic

evidence is alleged. Courts should decide whether such persons have sufficient expertise in the matter.

17. Reliability

- a. As regards reliability, courts should consider all relevant factors concerning the source and authenticity of the electronic evidence.
- b. Courts should be aware of the value of trust services in establishing the reliability of electronic evidence.
- c. As far as a national legal system permits, and subject to the court's discretion, electronic data should be accepted as evidence unless the authenticity of such data is challenged by one of the parties.
- d. Where applicable law provides special protection for categories of vulnerable persons that law should have precedence over these guidelines.
- e. As far as a national legal system so provides, where a public authority transmits electronic evidence independently of the parties, such evidence is conclusive as to its content, unless and until proved to the contrary.

18. Storage and preservation

- a. Electronic evidence should be stored in a manner that preserves readability, accessibility, integrity, authenticity, reliability and, where applicable, confidentiality and privacy.
- b. Electronic evidence should be stored with standardized metadata so that the context of its creation is clear.
- c. The readability and accessibility of stored electronic evidence should be guaranteed over time, considering the evolution of information technology.

2. The problems identified by the practical application of procedural norms

One of the most immediate needs that causes the change of a certain legal rule, derives from the identification of serious problems in its practical implementation. The best resource for highlighting the problems of institutes or special civil procedural provisions are the subjects that deal with their daily implementation, as well as the professional studies conducted in the relevant field. For the needs of this concept document, it was deemed necessary that in addition to the identification of problems from a comparative view of civil procedure legislation, as well as from what has resulted from the various reports of international organizations on justice in Kosovo, as well as the previous concept document for the change of the Law "on contested procedure", to also obtain the opinion of judges and other legal professionals, in terms of identifying the problems with the main laws that make up the legal corpus that is supposed to be

included in the Civil Procedure Code of Kosovo. Some of the identified problems will be addressed herein.

2.1. Problems identified based on the surveys conducted in the courts.

The survey that judges and other legal professionals took part in consisted of 15 different questions. Hereinafter will be presented the questions together with a summary of answers given by the judges for each individual question.

- (16) Do You think that the Codification of the Civil Law of Kosovo is necessary (ratification of the Civil Procedure Code)?

Results: All respondents considered that the ratification of one Civil Procedure Code is a necessary measure for Kosovo, as it would allow easier access to procedural legislation.

- (17) Which are, in Your Opinion, the major procedural problems that obstruct court proceedings within the First Instance Courts?

Results: The respondents identified the following problems in implementing Civil Procedure: procedural time limits (their time limits are too short), postponed hearings, irregular service of the court orders to the parties, impossible service by e-mail of the orders, frequent change of residence addresses of the parties, delays of expert evidences, case workload, failure of the parties to appear before the court for examination, fulfilling of the forms and other technical and administrative tasks, including registration of the requests in CMIS 'Cases Management System', incomplete requests filed with the courts as per the requests required by the law (especially in cases when parties are non-experts).

- (18) Which are the major procedural problems that obstruct the judicial procedure of the Appellate Court?

Results: The respondents named as problematic: the procedural time limits, enormous number of cases, formation of panels according to the CMIS System, lack of supporting staff, incomplete cases with acknowledgment of receipt, such as acknowledgement of receipt of Judgements, at the appellate procedures where the appeal for response was not sent. This leads to the need for evaluation of the time period for filing the appeal. Also, the receipt stamp is often invisible, obstructing the calculation of the procedural time limits.

- (19) What are the major procedural problems that obstruct the judicial procedure of the Supreme Court?
Results: Among the identified problems are mostly the procedural time limits.
- (20) Do You think that one simplified procedural legislation for the cases referring to Contract disputes regarding the small amounts (for example under 3000 euro) needs to be introduced?
Results: The respondents stated that such a change is necessary in order to reduce the number of court cases, given that the number of cases referring to the disputes of the value under 3000 euro is high.
- (21) Do You think that the presence of a party's lawyer should be made mandatory during all contested and non-contested procedures?
Results: In regard to this question, the respondents gave different answers: one part of the respondents stated that the presence of the lawyer was not obligatory, the other part of the respondents agreed that the presence of one is needed on condition that the exceptions be made for the specific categories, the others stated that for some categories the representation should be mandatory, such as: work relations or inheritance issues or contested procedures reaching the amount above 10.000 euro.
- (22) Do You think that bankruptcy court procedures should be treated as independent type of procedures within the Civil Procedure Code?
Results: Majority of the respondents agreed on including within the Civil Procedure Code the detailed regulations on bankruptcy court procedures.
- (23) Do You think that currently there are problems in the civil court procedure, regarding the procedure of notification of parties? If yes, can You name some of them?
Results: According to the respondents, the address system in Kosovo, change of names of the streets, failure of parties to inform the courts about their change of residence are the problems that prolong the court proceedings.
- (24) Does Your Court face the backlog in judging the cases? If yes, which are the reasons for creation of backlog?
Results: According to the respondents, lack of judges, overpopulation on the territory that the court covers, low court fees, an enormous number of appealed cases, enormous number of urgent cases – all these have caused backlog and delays in court proceedings.
- (25) Do You think that a concrete legal regulation for establishment of the E-Courts (court hearing to be performed through electronic system)?

Results: Majority of respondents stated that establishing of Electronic Court System is necessary. The only concern was that this regulation should be done in accordance with the current technological developments. The mechanism adopted should be firstly good tested.

(26) Do You think that one procedural mechanism for avoiding the delays and increasing the efficiency of the court proceedings within an acceptable time period should be created?

Results: Majority of the respondents agreed that the creation of such a procedural mechanism is necessary. Several of them requested that unnecessary procedure that have no effect be eliminated and that the new pragmatic methods be found.

(27) Do You think that currently the Court has sufficient legal competences to prevent and punish abuse by parties or their representatives during the proceedings?

Results: Majority of the respondents confirm the existence of rules, but their implementation could be improved. Among the respondents there were also those who believed that the actual rules need further improvement.

(28) Could You identify any procedural problem among non-contested proceedings in Kosovo?

Results: Majority of the respondents did not identify any problem regarding the non-contested proceedings. However, one part of the respondents believed that the proceedings regarding the expropriation could be improved. One respondent identified as a problem implementation of the law in a timely manner, adding as an example a case where a case was judged before 1999 according to the non-contested procedure and afterwards contested complaint for compensation has been filed and then the problem arose regarding the case judged.

(29) Could You identify any procedural problem that needs to be solved regarding the enforcement procedures?

Results: Majority of the respondents did not identify any problem regarding the enforcement procedures. Some of them identified as a problem the meaning of the enforcement document (its suitability and the death of the debtor and the repudiation of inheritance). Also, in cases of private enforcement the courts should decide as a second instance body (according to the complaints), whereas the enforcement agents should decide on the repudiations, or the repudiation should be considered as a claim and a case should be solved according to the contested procedure.

(30) During Your work, did You encounter any other procedural problem that you would want to be solved through the ratification of the Civil Procedure Code of Kosovo?

Result: Majority of the respondents did not identify any other additional problem. One respondent added that there are problems that needed to be addressed such as the cases dealing with the ownership issues and acquisition of immovable property ownership by adverse possession over the public, social and private property, within the time limit of 20 years.

2.2. Some of the problems identified earlier in the concept document drafted in 2018 for the amendment of the Law “on Contested Procedure”, as the following:

- i. The clear definition of the cases that are adjudicated by each court. Thus, a more accurate definition of subject matter jurisdiction.
- j. Problems with serving notices (summons) as the law does not oblige the claimant to clearly define and identify the address of the defendant.
- k. Better and more qualitative regulation of judicial representation.
- l. Clearer definition of procedural timelines within which the trial must be completed at each level.
- m. In order to have a speedy trial without delay, the cases should be clearly defined in which the Court of Appeal annuls the first instance decision of the first instance and returns it for a retrial (Abrogates the decision).
- n. Regulates the causes of recourse.
- o. Better regulation of claims with small value.
- p. Resolution of some cases outside the court, such as for uncontested inheritance cases which can be resolved before the notary, etc.³⁹

2.3. Problems identified by the comparative view of Kosovo procedure legislation and the analysis of the Working Group for the drafting of the CD:

23) It should be noted that the small values contentious procedure is not fully harmonized with the Regulation No. 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure. The value of contests established with Articles 484-491 of the Law on Contested Procedure is very small (it can increase to the amount of 3000 euros) in relation to the Regulation. According to Article 5 of the Regulation, the rule in these trials is that they take place in written form and only for

³⁹ Concept Document for the Contested Procedure, adopted by the Decision no. 09/77, dated 4.12.2018.

exceptional cases a hearing is allowed. The entire written procedure is carried out on the basis of the forms that are attached to the Regulation, which can be adapted and constitute an annex to the procedure legislation of Kosovo, or a designated body (the Supreme Court, or the Judicial Council of Kosovo) with the adoption of the format of the forms and make them public for the parties. In the spirit of the Regulation, the local law must specify the deadlines for the procedural actions of the court and the parties in matters of this nature. Pursuant to articles 8 and 9 of the Regulation, simplified procedures must be provided for hearing the parties through remote technological means of communication (video conference) and for taking evidence (*through written testimony*). The judgment in cases of small value is notified to the parties without reasoning, and only if they request to file an appeal with the highest court, they must notify the court and the latter must reason the decision and make it available to them, within well-defined deadlines. The revision of the decision must be accepted in the cases defined in Article 18 of the Regulation.

- 24) In implementation of Article 6 of Recommendation no. R(95)5, dated 07.02.1995 of the Committee of Ministers of the Council of Europe, in order to insure that appeals are heard expeditiously and efficiently, the possibility should be provided that a type of a case procedural in nature (filing an appeal or procedure request outside the time limit, or an incomplete appeal that has not been corrected, etc.) or appeals against decisions taken during the small values contentious proceedings, appeals to the Court of Appeal or revision to the Supreme Court, to be examined by a single judge instead of the trial with a panel consisting of three judges.
- 25) The procedure for issuing a payment order according to articles 492-504 of the Law on Contested Procedure must be harmonized with *Regulation (EC) No 1896/2006* of the European Parliament and of the Council on creating a European order for payment procedure. The legal procedure for issuing a payment order must be distinguished from the one that arises when the defendant brings an objection to the evidence or law of the claimant's claim for issuing a payment order. The procedure for issuing the payment order must be a formal procedure, in which the court does not look at the merits (foundation) of the claims, but only the fulfilment of the formal criteria for issuing the payment order. The entire procedure for issuing the payment order must be in writing and as automatic as possible and carried out on the basis of the forms attached to the Regulation which can be adapted and constitute an annex to the procedure legislation of Kosovo, or a designated body (the Supreme Court, or Kosovo Judicial Council), for approving the format of the forms and making them public for the parties. The current deadlines are very tight and should be adapted to those of the Regulation. The Basic Court of Pristina can be designated as the competent court for the processing of all requests for issuing payment orders in Kosovo.

- 26) An effective legal mechanism should be adopted to address the concerns of the parties regarding the delays in court or enforcement proceedings and to enable them to seek a finding of a breach of the reasonable time in the trial or enforcement of the cases (cases) and taking any action relevant to expediting the judgment or enforcement. Only if these measures fail, the monetary damages of predetermined values can be sought for the delay caused in trial or enforcement. The CEPEJ standards and the case law of the ECtHR⁴⁰ are guidelines for the creation of this mechanism, which aims at the effective implementation of Articles 6 and 13 of the ECHR. The relevant provisions of the Code of Civil Procedure of the Republic of Albania (Articles 399/1-399/12), which have passed the test of compatibility with Article 6 of the ECHR, as confirmed by the case law of the ECtHR, can be taken as a model.
- 27) There is a need for a prediction and improvement of the current provisions regarding the possibility of courts to conduct remote trials and regarding the administration of electronic evidence. The European standards elaborated earlier in this Concept Document can be used for this.
- 28) The linguistic improvement of the procedure provisions is needed to make them clearer and more user-friendly not only for legal professionals but also for people who are not legal professionals. The codification process would be a good opportunity for capillary intervention in the various procedural rules, for harmonization and correction of the legal terminology used.
- 29) In the Working Group meetings, it was identified that the structure of the LCP is dysfunctional and should be reviewed with regard to the arrangement of provisions and civil procedural institutes. Article 18 of LCP presents difficulties in implementation. The possibility of supplementing Article 99 of the Civil Code (e.g. in terms of electronic communication, as well as the connection of the authorization (power of attorney) in cases where the lawsuit is filed by the representative) should be considered, since there is no provision for dismissal of the lawsuit as not allowed for being submitted by an unauthorized person, as regulated in the legal remedies.
- 30) Submissions addressed to the court must be comprehensible and must contain certain necessary elements (name of the court, general info of the parties, subject of dispute, content of the submission, signature, etc.). In relation to Article 102 of LCP, the possibility of completing the advice for temporary representative (in relation to Article 81) should be reviewed.
- 31) It is necessary to review the possibility of sending submission through email according to Article 104 of LCP. In relation to Article 133 of LCP, it is necessary to review and clarify the challenging means against the decision through proposal for return to previous

⁴⁰ The case *Bara and Kola Albania* (Claims no. 43391/18 and 17766/19), decision of the ECtHR dated 12.10.2021, made final on 28.02.2022.

- situation because there are dilemmas in practice when the challenging is allowed; in particular it is necessary to clarify whether it is allowed when the trial is held in absence of the duly summoned party or only in cases where the court issues a judgment due to absence in terms of Article 151.
- 32) The existence of Article 151 of LCP on Judgment in Absence should be reviewed because this article provides the possibility for the court to issue a judgment in absence. However, one way of deciding according to the provisions of the LCP is almost inapplicable given that according to Article 394 on Response to Claim it is obligatory to serve the claim for the purpose of the response to claim.
 - 33) Article 162 (supplementing judgment) needs to be reviewed. In practice we have cases when parties submit requests for supplementing the judgment where the second instance court has not decided on all the requests of parties as separate points in the enacting clause of the first instance judgment, which has been challenged with an appeal, the requests of which have not been submitted within the legal deadline of 15 days.
 - 34) Regarding Article 211 of LCP (Revision), it is necessary to see the possibility of increasing the value of dispute.
 - 35) The need for clarification of Article 179 of LCP should be assessed. This provision poses problems in cases where licensed lawyers submit regular and extraordinary legal remedies in capacity of authorized persons of parties without the authorization attached thereto.
 - 36) Article 235 needs to be revised by adding a paragraph stipulating that when the repetition of the procedure against the decisions of the Supreme Court is requested, whereby the decision of lower instance courts is amended, the Supreme Court should be the competent court to decide.
 - 37) Article 245 (request for Protection of Legality) should be reviewed to assess whether it is still necessary to exist as an extraordinary legal remedy and if so, to precisely define the reasons for which it is allowed as well as the procedure that should be carried out.
 - 38) Article 253 (Content of Claim) of the LCP needs to be further clarified. With regard to Article 297, the second paragraph should be supplemented by adding the legal deadline of 7 days. Meanwhile, it must be considered the possibility of adding a paragraph regarding the amount of security for claim so that for dispute of value up to 10,000 euros, the security for claim should be up to 3,000 euros. When the value of subject of dispute is more than 10,000 euros, the security for claim should be 10% of the value of dispute. Furthermore, according to Article 308, there must be reviewed the provisions related to measures of security particularly with reference to means of challenge that refer to the proposals for interim measures where courts decide extrajudicially rejecting the proposal for imposing such measures. There must be foreseen in the provision that the case should

be dealt with priority when the interim measure is imposed. Article 308 of LCP needs to be revised.

- 39) The provision of Article 356 (Experts) of LCP, as amended by Article 21 of the Law amending the LCP, needs to be revised because in practise there were presented dilemmas as to whether the courts should always ex officio receive evidence by expert or should this apply only in exceptional cases as foreseen by Article 7 paragraph 2 of LCP for status issues and cases provided by law.
- 40) With regard to Article 392 paragraph a) of the LCP, the text as in Article 22 paragraph 3 of LCP should be added. In Article 485 paragraph 1 - The value of dispute should be 3000 euros. There must be considered the possibility of referral to mandatory mediation in advance. There must be considered the possibility that the decision for such cases is more simplified (reasoning only upon request). In Article 491 paragraph 1 of LCP, there should be added the paragraph: The judgment or decision that concludes the procedure for resolution of small value dispute must not have a reasoning, except for cases where the parties request so. If parties request a reasoning, they shall pay additions tax (according to the set value).
- 41) It appears necessary to review the Law on Commercial Court, whereas the Chapter XXX of LCP should either be deleted from the LCP or not included in the Civil Procedure Code. The same should apply for Chapter XXIX, which regulates the Payment Order Procedure. It is also necessary to specify the dimensions of the active role of Court (Article 7.2, 319 I LCP).
- 42) Regarding the Law on Out Contentious Procedure, it is necessary to review the provisions of the Law on Expropriation of Immovable Property, which regulates the compensation for expropriated property, accessory parts and its fruits, in order to correctly determine the subject-matter competence of the Court to examine all the requests of the factual owner or possessor, either for the property, its accessory parts and its fruits, which have been included in the final decision for expropriation, or for those that have not been included in the expropriation.
- 43) Article 21 of LCP shall be applied accordingly for the same situations in a non-contested procedure.
- 44) Civil procedural norms need to be harmonized with the provisions of substantive law contained in various laws, such as the Law on Family, the Law on Administrative Disputes, the Law on Commercial Courts, the Law on Private International Law, etc. (including the future Civil Code).

Chapter 2: Objectives

The Ministry of Justice, within the Kosovo Government Program 2021-2025, has foreseen the “Reform of the criminal, civil and administrative justice system”. In this regard, within the framework of the National Development Plan, strategic goal 9.1. Effective justice.

Figure 14: Relevant Government Objectives

Relevant Objective	Name of relevant planning document (source)
<i>Strategic objective – Reforming the criminal, civil and administrative justice system</i>	Program of the Government of the Republic of Kosovo 2021-2025 National Development Plan
<i>Specific objective – Reforming the legislation in the civil procedural field in accordance with the changes in other material fields of civil law</i>	As per this Concept Document
<i>Specific objective – Realization of access to justice within a reasonable time</i>	As per this Concept Document

Chapter 3: Options

It is worth noting in advance that among the countries of the region, with the exception of the former member states of the former Yugoslavia, the civil procedural legislation is regulated in the respective Codes of Civil Procedure, such as: Albania, Greece, Bulgaria, etc.

The Code of Civil Procedure of the Republic of Albania was adopted in 1996 and took as a model the regulations made by the previous Codes of Civil Procedure (before the 90s), as well as having a strong influence from the Code of Civil Procedure of Italy. The code is divided into four parts, where the first part is with general provisions, the second part deals with the trial in the first instance, the third part deals with appeals and the ways of their trial, while the fourth part regulates the enforcement phase, or as it is called otherwise mandatory execution phase. The Civil Procedure Code of Albania regulates procedures with opposing parties (disputing parties) and without opposing parties (non-disputing parties), as well as enforcement

procedures. The Code defines the main principles of any type of judicial procedure, the composition, powers and jurisdiction of the court, the role of the court and the parties in the management of the case, the responsibility of the parties for abuse of the rights derived from the process, the way of filing the lawsuit, deadlines, notices, invalidities, the preliminary and preparatory phase, as well as the trial and decision-making phase. The Code regulates the types and manner of obtaining evidence. The Code also provides for special trials (non-contentious) or special procedures (judgment of small claims). The Code has undergone 14 amendments over the years, through which certain provisions have been improved, as well as certain procedural rules have been included or removed.

Greece also has a Code of Civil Procedure (*Kodikas Politikis Dikonominas*) that regulates the procedure before civil courts. This Code was adopted in 1968 and relies heavily on the principle of the initiative of the parties. The Code regulates the competences of the courts of first instance (with two levels), the courts of appeal and the Supreme Court (*Areios Pagos*), which does not have the characteristics of an appeal court, but of a cassation court. The Code regulates the rules for filing a lawsuit in court, the actions, deadlines and obligations that the parties and the court have in the context of judging the case. It also defines detailed rules for notifications, court acts, evidence that can be taken at trial, rules for their presentation, as well as court decision-making, as well as ordinary and extraordinary means of appeal. The code also deals with the mandatory execution phase.

Bulgaria adopted the Civil Procedure Code in 2008. This Code contains the first part with the general rules, which contain the basic principles of civil procedure (legality, the principle of disposition, the principle of ex-officio activity of the court, the principle of adversariality, the equality of the parties, the discovery of the truth, etc.) . The Code regulates the jurisdiction and competence of the courts for the review of civil disputes, as well as the composition of the trial panel at first instance, in appeal and in cassation. The Code also contains provisions for the parties, their competence, procedural representation, etc. Further, special rules are provided for notifications, deadlines and their reinstatement, etc. The Code also contains provisions for free legal aid. The second part of the Code regulates the trial at first instance, the evidence [including the norm for the presentation of electronic evidence (Article 184)], the changes that may occur in relation to the claim, the parties or the process. In the following, the Code regulates the means of appeal (appeal, cassation appeal). Further, the Code deals with the effects of final decisions, as well as the revocation of decisions. The third part of the Code deals with special judgments (dissolution of marriage, civil status of individuals, removal of capacity to act, division of hereditary property, etc.). Part four of the Code deals with injunctive relief and other interim measures that may be taken by the court. The fifth part deals with the enforcement process (executive title, execution order, as well as special enforcement procedures, etc.). The sixth part provides special rules for special protective measures (judicial certification

of the fact, declaration of death, etc.). The seventh part provides rules related to judicial procedures that are affected by the rules of European Union law (European payment order, recognition and execution of foreign judgments, etc.).

Among the Balkan countries that are part of the European Union, but that do not have a Code of Civil Procedure, we can mention Croatia. The latter, in the tradition of the former Yugoslavia, has the Civil Procedure Law, which contains rules for contested trials. The first part of this law contains the general provisions, the rules for jurisdiction and competence, the parties and their representatives, the language of the process, notices, deadlines, hearings, minutes, and decision-making. The law also provides rules for judicial cooperation. The law regulates the filing of the claim, counterclaim, co-litigation, participation of third parties, etc. The law defines the types of evidence and the procedure for obtaining or providing them. The preparatory actions of the court and the rules for judging the case are dealt with in detail in articles 277-347 of this law. Title twenty-five deals with ordinary means of appeal (appeal, special appeals), while title twenty-six deals with extraordinary means of appeal (revision, revision). The third part of the law deals with some of the special contested judgments, such as those arising from labor relations, infringement of ownership, payment orders, etc. This law, as is currently the case in Kosovar legislation, does not contain rules for the enforcement process, which is regulated by a separate law.

Referring to the above exposition, the structure of the Code of Civil Procedure of the Republic of Albania can serve as a good model to be followed by the Republic of Kosovo, which can be taken into account *mutatis mutandis*, along with the provisions of specific civil procedural laws of Kosovo, which can be merged into a single act (together with the relevant amendments) and constitute the Code of Civil Procedure of Kosovo. In this way, the simultaneous codification and consolidation of civil procedural legislation is realized. Furthermore, the possible options related to the initiative for the Codification of Kosovo's civil procedural legislation are discussed below.

There are three possible options to find implementation in the case of civil procedure rules:

1) Make no change, 2) Change the special procedure laws without implementing the codification of all norms in a single act and 3) Draft a Civil Procedure Code of Kosovo, which will be able to summarize all the current provisions that regulate civil procedure, harmonizing them with each other and correcting the problems that may have been encountered in practice, whereby always having as a compass the best international standards in the field of civil procedure. In the following chapters 3.1, 3.2 and 3.3 each of the above three options will be analysed separately.

Chapter 3.1: No Change Option (the Status Quo)

Failure to reform the civil procedure rules leaves intact all the problems identified in the implementation of these norms in practice. In the conditions of the repeated need to amend the content of the procedure provisions, a problem pointed out, among others, by the progress reports of the European Union, the legal non-intervention is not a variant to be supported. The problems pointed out by the previous attempts to amend the Law on Contested Procedure prove that the need to improve the procedure legal framework also exists internally, due to the need to solve problems that they encounter in practical implementation.

For this reason, while legislative non-interference and maintaining the status quo is a possible option, it is not an option that is supported, even if it does not involve additional costs. For this reason, the analysis of this variant ends here and it is not appropriate to evaluate the advantages, disadvantages and challenges, a methodology that will be followed for the options below.

Chapter 3.2: Improvement of special civil procedure laws without codification

Another viable option is to intervene in all laws that regulate aspects of civil procedure, but without codifying them in a code. This option considers the need for a revision of the procedural standards highlighted earlier, but although possible, requires the approval of some amending legislation that must address all of the issues identified in the existing legislation. In other words, this means the passage of at least four more laws amending and improving Law No. 03/L-006 on Contested Procedure (amended), Law No. 03/L-007 on Out Contentious Procedure (amended), Law No. 04/L-139 on Enforcement Procedure (amended) and Law No. 2004/26 on Heritage of Kosovo (for its articles 76-80).

3.2.3. Advantages

This variant has the advantage that it requires less intellectual investment because there will be no need for fine coordination of existing civil procedure norms. At the same time, this option will reflect the necessary changes to correct the problems found by legal practitioners.

3.2.4. Disadvantages

On the other hand, this way goes to the detriment of the effective publicity of legal norms, as it does not offer much legal certainty and clarity because the regulation of the procedure aspects by several different laws remains a challenge for lawyers and even more so for non-lawyers who defend their cases in the court. Therefore, in this aspect, the distribution of norms that have an organic connection between them in several laws at once, is not a supported variant. There are few countries in Europe that continue to have scattered laws in the field of civil procedure. The

vast majority of them have Codes of Civil Procedure, which summarize the basic norms for the regulation of the civil procedure from its initial stages, up to the final stage, the enforcement stage. Moreover, the process of codification in Kosovo has started with the adoption of the Code of Criminal Procedure, the continuation of the work on the drafting of the Civil Code, and in this regard the domain of civil procedure cannot be an exception. The lack of codification of civil procedure in Kosovo will also result in the continuation of unconsolidated laws, as currently citizens are not offered updated versions of procedure laws, but can access separately the original law, and especially to the laws subsequently changing, which makes it extremely difficult for the public to effectively access procedure legislation.

Chapter 3.3: Drafting of the Civil Procedure Code of Kosovo

This working group, after analysing the consultations and identifying the problems of the current laws, believes that the third option of changing the legal framework by drafting the Civil Procedure Code is more appropriate and acceptable to solve the main problem finally and permanently. The process of codification aims to consolidate the laws governing the same subject into a single law. In this way, this procedure offers more coherence and the avoidance of contradictions between the legal institutions and the unification of legal terminology. This creates more clarity and certainty for all legal practitioners. Public access to civil procedure rules will become even easier and more accessible.

2.3.1. Advantages

According to the definition in the legislation of the European Union,⁴¹ the codification means the process of joining one or more legal acts and the amendments made to them, in a single new legal act. Codification has two forms:

- Vertical: when a legal act and its amending acts are incorporated into a new unique act.
- Horizontal: when 2 or more original acts dealing with related subjects, as well as their amending acts, merge into a new unique act. Unlike the consolidation process (when all subsequent changes are incorporated into the initial legal act), the new act emerging from the codification process goes through a full legislative procedure and replaces the acts it codifies.

During the legislative codification process, it will be possible to identify current legal provisions that are unclear, duplicated, or unenforceable. It is also possible to correct the linguistic

⁴¹ <https://eur-lex.europa.eu/EN/legal-content/glossary/codification.html>

terminology used in the old texts, to make it more in line with the standards of the official language of Kosovo.

Through the procedure of codification of civil procedure laws, it is possible to further align the procedure legislation with that of developed European countries, as during this process the current procedure institutes can be improved and new institutes can be incorporated, such as the mechanism for ascertaining the violation of reasonable deadlines for trial and execution of cases, which is a request of the Council of Europe and derives from the case law of the European Court of Human Rights

The drafting of the Civil Procedure Codes has these advantages:

- 8) It is intended to repeal changes in existing laws and to incorporate (merge) all changes into a single new law, making the appropriate improvements where necessary.
- 9) The Code of Civil Procedure will improve public access to procedural laws as it is easier to use.
- 10) The code of civil procedure will continue the reform process in Kosovo, which has included the codification of the main legal areas such as the code of criminal procedure or the draft civil code.
- 11) The Code improves the jurisdiction of the Courts of Appeal by introducing the concept of a single judge deciding on certain types of claims, in order to allow faster decision-making on different cases, in particular on appeals against judgments or other cases defined in Article 6 of the Recommendation No. R (95) 5 of the Committee of Ministers of the Council of Europe.
- 12) With the adoption of the Civil Procedure Code, Kosovo joins the lengthy list of European countries that have a code of civil procedure. Among these countries we list: Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Netherlands, Switzerland, Portugal, Poland, Albania etc.
- 13) will be possible to introduce an unblocking mechanism in cases of unreasonable delays in the hearing or execution of court or enforcement proceedings.
- 14) The codification process will serve as a good opportunity for improving the linguistic aspects of the various procedure provisions, making them clearer and easier to understand.

2.3.2. Disadvantages

On the other hand, the only "disadvantage" of drafting a Civil Procedure Code is related to the technical difficulties in setting up a working group that will need a sufficient amount of time to draft this Code, in order not only to unify the current special laws, but also radically improve the

current provisions not only from a linguistic point of view, but also from a conceptual point of view, adding other necessary institutes that today require a modern Civil Procedure Code.

Chapter 4: Identifying and assessing future impacts

Option 1: (no change)

Option 1 is expected to only have negative impacts, as it does not allow moving forward with the harmonization, correction, and reformation of the current procedural legislation, leaving all previously identified problems intact.

Option 2: (change of special laws, with no codification)

This option affects the preservation of the status quo regarding the difficulty of the public to have effective access to civil procedure norms. Also, through this option, one more amending law will simply be added, making it even more difficult to read the applicable norms, since in any case it will be necessary to keep in mind the original text of the law, the subsequent amendment, and the last amendment.

Option 3: (Draft the Civil Procedure Code)

The drafting of the new Civil Procedure Code will affect the public's better access to civil justice, as it shall enable for the main norms of the civil or executive court proceedings to be easily found in a single legal act, accessible freely by anyone. The code implies a structure in which all the main procedural rules applied by courts and enforcement agents are established. In this regard, it is much easier to navigate and identify procedural rules when they are contained in a single legal text.

The Civil Procedure Code affects the legal structure in general, since together with the Criminal Code, the Criminal Procedure Code, and the Civil Code, it forms the basis of the legislation of a certain country. Certainly, the Codes themselves are not self-sufficient. They are supplemented by other legislation, which regulates other necessary aspects, which cannot be included in the Codes, as they would excessively burden their structure and comprehensibility. For example: it is generally accepted that the rules on court organization do not belong to the Civil Procedure Code, but to a separate Law on Courts.

The Civil Procedure Code, by improving the access of the citizens to the laws, used by the courts to resolve various disputes, shall have an impact on the general improvement of the basic human rights climate and even on the business climate. This is because the Codes are generally perceived as stable legal acts, which are not often amended. In this regard, it is of particular importance to structure the Civil Procedure Code in such a way as to avoid its subsequent amendments as much as possible.

The changes that are intended to be incorporated into the Civil Procedure Code will establish efficient mechanisms (accepted by the European Court of Human Rights)⁴² for dealing with and preventing the violation of reasonable timelines of the trial of various cases as well as enforcement procedures.

Through the changes proposed to the procedural rules that shall be incorporated into the Civil Procedure Code, the procedural rights of the parties shall improve, the efficiency of the courts shall increase to avoid prolongation of court cases, and a part of the procedure for the issuing of a payment order or for the adjudication of disputes of small value shall be formalized, enabling a faster and easier access to justice for various subjects.

In general, it can be said that the codification process carries itself the benefit of the possibility of substantial improvement of civil procedure norms, to incorporate the latest technological developments, as well as the best European standards in the field of civil procedure.

Figure 15: Most relevant identified impacts per impact category

Category of impacts	Relevant identified impacts
Economic impacts	Codification improves the climate of business doing as it will incorporate rules for remote adjudication, which is of economic importance to the parties.
Social impacts	Increased access to justice
Environmental impacts	No expected impact
Impacts on Fundamental Rights	Increased access to justice and guarantee for a fair legal proceeding
Gender impact	No expected impact
Social equity impact	No expected impact
Youth Impact	No expected impact
Administrative burden impact	No expected impact

⁴² The case of *Bara and Kola v. Albania* (Requests no. 43391/18 and 17766/19), ECtHR decision dated 12.10.2021, made final on 28.02.2022.

SME impact	No assessment on this data
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Chapter 4.1: Challenges in data collection

While drafting this document, no difficulties were encountered in collecting the necessary data since the working group included members of the Ministry of Justice and the Kosovo Judicial Council, who provided sufficient information for the previous periods and data on the current situation. The working group also conducted consultations and cooperation with all other relevant actors in terms of data collection, including international donors, specifically.

Chapter 5: Communication and consultation

The interested parties in relation to this concept document are Ministry of Justice; Kosovo Judicial Council, Judges dealing with civil, economic, and administrative matters, Chambers of Commerce operating in Kosovo; Lawyers and civil society organizations, etc.

The consultation process aims at:

- obtaining all views from the parties that have been and are involved in the implementation of existing laws, starting from the problems, the effects caused in practice, as well as the changes that should be foreseen in the Code of Civil Procedure.

Main aim	Target group	Activity	Communication/ Announcement	Indicative deadline	Budget needed	Person in charge
Open meeting for all stakeholders	KJC, OPM, MFLT, local and international experts	Public meeting	e-mail	January 2023		Chair of the working group
Public consultation in writing	KJC	Publication of consultation through the public consultation platform	e-mail/phone calls	February – March 2023		Chair of the working group

Consultation with the relevant institutions	KJC	Meetings/interviews with judges, except for those who were part of the working group	e-mail/phone calls	February-March 2023		Chair of the working group
Preliminary written consultation	Institutions of the Republic of Kosovo	Distribution of the draft for preliminary consultation	E-mail	April 2023		Chair of the working group
Preliminary written consultation	All stakeholders	Publication of the consultation on the portal for public consultation and written consultation	Platform and e-mail	May 2023		Chair of the working group

Chapter 6: Comparing options

In this chapter, the three possible options presented in this concept document are compared, highlighting the significance and importance of each of them. The first option is not advisable, not only because it brings no advantages, but because it carries all the disadvantages of the status quo, which were highlighted earlier in this Concept document. The second option, although it has the advantage of creating the possibility to reform the civil procedure rules, it requires for the amending law to affect many provisions of the existing civil procedure laws, which entails the great disadvantage related to the clarity and easy access of the public to the laws that regulate various civil procedures. The third option is not only the most desirable because of the innovation it brings, but it is also the option that best enables the combination of the advantages

of the second option, with the need for a unique, harmonized and modern procedural legislation, which can be easily accessed not only by legal professionals but also by non-lawyers.

Chapter 6.1: Implementation plans for the different options

Option 1: This option does not require any action but is fulfilled by inaction.

Option 2: This option requires the establishment of a working group, to identify the concrete needs for amendments in the special laws that regulate the subject of civil procedure in Kosovo. This working group should consist of professionals from the field of justice (judges, lawyers, enforcement agents, notaries, lawyers of the public administration, lecturers of the Faculties of Law, international experts who are familiar with the civil procedure). Within this working group, the amending laws shall be drafted, proposing, in respect of the legislative technique operating in Kosovo, concrete legal provisions that should be included in the amending laws. For this, it is necessary to establish a reasonable deadline for preparing the first drafts, their consultation, revision of the drafts and their final approval.

Figure 16: Implementation Plan for Option 2

Purpose of policy	Option to improve implementation and execution with no legal changes							Estimated cost figure
Strategic objective	Improve the functioning of justice institutions							
	Products, activities, year and responsible organisation/department							
Specific Objective 1 Reforming the legislation in the civil procedural field in accordance with the changes in other material fields of civil law	Product 1.1							
	Code of Civil Procedure approved	2023	2024	2025	2026	2027	Institution /department in charge	
	Activity 1.1.1 Drafting of the Code of Civil Procedure		x				MOJ	
	Activity 1.1.2 Consultation with stakeholder		x				MOJ	

		s.						
		Activity 1.1.3 Consultation between the minister and the public through the relevant online platform		x				MOJ
		Activity 1.1.4 Presentation of the Draft Code of Civil Procedure in the Assembly of Kosovo			x			
		Activity 1.1.4 Informing interested parties about the New Code of Civil Procedure			x			

Option 3: Same as the second option, the third option also requires the establishment of a working group, for drafting from scratch, by incorporating the current provisions of special laws, in a draft of the Civil Procedure Code of Kosovo. This working group should consist of professionals from the field of justice (judges, lawyers, enforcement agents, notaries, lawyers of the public administration, lecturers of the Faculties of Law, international experts who are familiar with the civil procedure). The Civil Procedure Code of Kosovo shall be drafted by this working group. For this purpose, it is necessary to establish a reasonable deadline for the first draft, its consultation with interest groups, the revision of the draft by the working group and its final approval.

Figure 17: Implementation Plan for Option 3

Purpose of policy	Timely justice and access to justice.							Estimated cost figure
Strategic objective	Improvement and codification of existing laws in the civil procedural field until 2025							
	Products, activities, year and responsible organization/department							
Specific Objective 1 Reforming the legislation in the civil procedural field in accordance with the changes in other material fields of civil law	Produkti 1.1 Kodi i Procedurës Civile		2023	2024	2025	2026	2027	Institution /department in charge
	Activity 1.1.1 Drafting of the Code of Civil Procedure			x				MOJ
	Activity 1.1.2 Consultation with stakeholders.			x				MOJ

		Activity 1.1.3 Consultation between the minister and the public through the relevant online platform		x				MOJ	
		Activity 1.1.4 Presentation of the Draft Code of Civil Procedure in the Assembly of Kosovo			x				
		Activity 1.1.4 Informing interested parties about the New Code of Civil Procedure			x				

Chapter 6.2: Table with comparison of all three options

The three options that are discussed in this CD are that of no change, that of changing procedural laws but without doing Codification, and the option of codifying civil procedural legislation, through drafting of the Civil Procedure Code of Kosovo. The third option is the best because it is in line with other legal initiatives in Kosovo (drafting of the Criminal Code, the Criminal

Procedure Code, the draft Civil Code), it affects the increased the access of professionals and public to civil procedural norms, and it enables the consolidation of civil procedural legislation into a single legal act.

Figure 18: Comparison of Options

Comparison method:			
Relevant positive impacts	Option 1: No change	Option 2: Improving existing laws	Option 3: Drafting Civil Procedure Code
		Amendment and harmonization of existing laws in the form of the current regulation.	Better public access to civil justice.
		Access to justice for citizens	Procedural norms will be codified into a single legal act
		Trial within a reasonable time.	Easier identification of procedural norms by increasing legal certainty.
			Better harmonization of procedural law institutes.
			Increased efficiency of courts for timely adjudication of cases.
			Harmonization with international standards in the field of civil procedure that are not part of existing laws.
Relevant negative impacts			
	It does not allow the harmonization, revision and reformation of the current procedural legislation.	<ul style="list-style-type: none"> 4. Number of amending laws of a procedural nature is increased. 5. Effective access to justice becomes difficult. 6. Identification of procedural norms in force becomes difficult. 	None.

Relevant costs	=====			=====			=====		
Expected budget impact assessment	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3
	0	0	0				30,007,121.00	34,685,308.00	35,988,923.00
Conclusion				Offers slight positive benefits					

Chapter 7: Conclusions and vision for the structure of the Civil Procedure Code of Kosovo

In conclusion of this Concept document for the Civil Procedure Code of Kosovo, it can be said that drafting of the Civil Procedure Code of Kosovo is a necessity and a need that results not only from the general trend of codification of criminal, civil or criminal procedure legislation in Kosovo, but also from the need to modernize the civil procedure legislation, by introducing the new civil procedure institutes, the change of the existing ones and the overall linguistic improvement of the terminology used. The final goal is to create a Civil Procedure Code, which is well-written, modern, in accordance with the best European standards, complete and which shall enable the fair, speedy and efficient resolution of disputes or other cases within the jurisdiction of the courts, as well as the enforcement procedure.

As the codification process itself implies, there will be a merger of the three main laws that exist today in Kosovo that regulate civil procedure, which are the Law "On Contested Procedure", the Law "on Out-Contentious Procedure" and the Law "on Enforcement Procedure". Laws or other parts of special laws may be added to the Code, depending on the structural and organizational need that will arise. The aim in this codification process is to preserve the current rules provided by the abovementioned laws and to make improvements or additions only where necessary, referring to the best European standards. By acting this way, the new Civil Procedure Code shall preserve the local identity and will not be a "foreign thing" to law practitioners. The advantage of this is that the entire case law and experience created over the years shall be preserved, enabling a gradual development of legislation. The alternative of drafting a Civil Procedure Code that has no resemblance to the existing rules is not only inappropriate but also harmful in the short and medium term. Thus, the new Civil Procedure Code will be an evolution of the current rules of civil procedure that are scattered in several separate laws. Only the organizational provisions of

the private enforcement service, which are redundant to be included in the Code of Civil Procedure, may remain in the Law "on Enforcement Procedure".

The structure of the Civil Procedure Code of Kosovo is thought to be as follows. The code shall consist of 5 parts:

6. PART I will be titled "GENERAL PROVISIONS"
7. PART II will be titled "TRIAL IN THE FIRST INSTANCE"
8. PART III will be titled "SPECIAL TRIALS"
9. PART IV will be titled "MEANS OF APPEALS"
10. PART V will be titled "ENFORCEMENT PROCESS"

In general terms, we can say that PART I will include the general principles of civil procedure, which shall incorporate the current provisions of the Law "on Contested Procedure", the Law "on Out Contentious Procedure" and partially the Law "On Enforcement Procedure", as well as some general principles will be established in relation to remote trials and in relation to electronic evidence. In addition, the rules on the jurisdiction and competence of different courts will be established, harmonizing the provisions found in the separate laws. It shall provide for the cases of disqualification of the judge, the rules for the parties, co-litigants and their representatives, the acts and procedural deadlines for the parties and the court, retrial within the deadline, the types of trials that can be conducted by the courts (in writing or in a public court session, the default judgment, etc.), compilation of procedural acts by the court, rules for notification of acts, including electronic notification. The rules for the lawsuit or request addressed to the court, the determination of their value, the position of the prosecutor or the state's attorney in civil court proceedings, etc. shall be provided.

Furthermore, in general terms, the PART II shall include the detailed rules on the formal conditions of filing a statement of claim or request in court, where the current provisions of the Law "on Contested Procedure", the law "on Out Contentious Procedure", preliminary or preparatory actions conducted by the court. The court session, the rules on its conduction, the competencies of the court to discipline the parties or their representatives (fines). The means of defence available to the defendant (objection, counterclaim), the participation of third parties in the civil court procedure, the procedural deadlines for exercising the rights in the process by the parties or third parties shall be addressed. The cases of trial termination (suspension) or stay, the rules on legal assistance between local courts (summons), the rules on securing the claim, evidence means and taking evidence, etc.

PART III shall incorporate the current rules of articles 474-510 of the Law "on Contested Procedure", as well as other regulations of the Law "on Out Contentious Procedure". These rules

shall prevail over the rules of Part II, unless otherwise provided or in the absence of a specific regulation. This part shall include the rules on adjudication of personal and family matters, the regulation of inheritance matters, the division of assets in co-ownership, the determination of the compensation amount for expropriated property. In this part, it shall be assessed whether it is necessary to transfer a part of authorizations of the court to the notaries in relation to the compilation and authentication of the content of the documents. Also, the court deposit may no longer be provided as a court right. In this part, the special rules provided by special laws can be included, which provide for the special procedures for addressing other issues by the court. This part shall also include the special procedure according to the special mechanism that is intended to be established, to avoid violation of reasonable deadlines in the adjudication of cases by the courts and the execution of cases by the enforcement service, etc.

PART IV shall incorporate the current provisions of the Law "on Contested Procedure" (articles 176-251) and some provisions of the Law "on Out Contentious Procedure", which deals with the means of appeal (challenge), which are regular and extraordinary. This part shall also provide for the trial procedure before the Court of Appeal or Supreme Court, of certain types of procedural aspects of the appeal, by a single judge of these courts. The need to have the "Request for the Protection of Legality" institute will be discussed, as well as the need for re-dimensioning the role of the Public Prosecutor in cases of justice between private individuals, etc.

PART V shall incorporate the provisions of the Law "on Enforcement Procedure" leaving out only the third part of this law which pertains to the provisions related to the structural organization of private enforcement agents. Here, the enforcement procedure based on reliable documents will be harmonized with the special procedure for issuing the payment order that is foreseen to be included in the Part III of the Civil Procedure Code. The aim is to avoid overlapping of different procedures, as much as possible, by clearly demarcating the boundaries between the two instruments available to the person who is the holder of the authentic document.

Annex 1: Economic Impact Assessment Form

Economic impact category	Key impact	Is this impact expected to occur?		Number of affected organisations, companies and/or individuals	Expected benefit or cost of the impact	Preferred level of analysis
		Yes	No			
Jobs ⁴³	Will the number of available jobs increase?		X			
	Will the number of available jobs decrease?		X			
	Will there be an effect on the level of payment?		X			
	Will there be an effect on the ease of finding a job?		X			
Doing business	Will there be an effect on the access to finance for business?		X			
	Will certain products be removed from the market?		X			
	Will certain products be allowed on the market?		X			
	Will businesses have to be closed down?		X			
	Will new businesses be created?		X			
Administrative burdens	Will businesses have to comply with new information obligations?		X			
	Are information obligations for businesses simplified?		X			
Trade	Are the current import flows expected to change? X		X			
	Are the current export flows expected to change?		X			

⁴³ When there is an impact on jobs, there will be social impacts as well.

Transport	Will there be an effect on how passengers and/or goods are going to be transported?		X			
	Will there be a change in time that is needed to transport passengers and/or goods?		X			
Investment	Are companies expected to invest in new activities?		X			
	Are companies expected to cancel or postpone investments?		X			
	Will investments by the Diaspora increase?		X			
	Will investments by the Diaspora decrease?		X			
	Will foreign direct investment increase?		X			
	Will foreign direct investment decrease?		X			
Competitiveness	Will the price of business inputs, such as electricity, increase?		X			
	Will the price of business inputs, such as electricity, decrease?		X			
	Is innovation or research likely to be promoted?		X			
	Are innovation and research likely to be hindered?		X			
SME Impact	Are the companies that are affected mainly SMEs?		X			
Prices and competition	Will the number of goods and services available for business or consumers increase?		X			
	Will the number of goods and services available for business or consumers decrease?		X			
	Will the prices of existing goods and services increase?		X			
	Will the prices of existing goods and services decrease?		X			

Regional economic impacts	Will a specific business sector be affected?		X			
	Is this sector concentrated in a certain region?		X			
Overall economic development	Will future economic growth be affected?		X			
	Could there be an effect on the inflation rate?		X			

Annex 2: Social Impact Assessment Form

Social impact category	Key impact	Is this impact expected to occur?		Number of affected organisations, companies and/or individuals High/low	Expected benefit or cost of the impact High/low	Preferred level of analysis
		Yes	No			
Jobs ⁴⁴	Will the number of available jobs increase?		X			
	Will the number of available jobs decrease?		X			
	Are jobs in a specific business sector affected?		X			
	Will there be an effect on the level of payment?		X			
	Will there be an effect on the ease of finding a job?		X			
Regional social impacts	Are the social impacts concentrated in a certain region or specific cities?		X			
Working conditions	Are the rights of workers affected?		X			
	Are standards for working under dangerous conditions introduced or abolished?		X			
	Will there be an effect on how the social dialogue between employees and employers takes place?		X			
Social	Will there be an impact on		X			

⁴⁴ When there is an impact on jobs, there will be economic impacts as well.

inclusion	poverty?					
	Is access to social protection schemes affected?		X			
	Will the price of basic goods and services change?		X			
	Will there be an impact on the financing or organisation of social protection schemes?		X			
Education	Will there be an effect on primary education?		X			
	Will there be an effect on secondary education?		X			
	Will there be an effect on tertiary education?		X			
	Will there be an effect on vocational training?		X			
	Will there be an effect on education of workers and life-long learning?		X			
	Will there be an effect on the organisation or structure of the educational system?		X			
	Will there be an impact on academic freedom and self-governance?		X			
Culture	Does the option affect the cultural diversity?		X			
	Does the option affect the funding of cultural organisations?		X			
	Do the option influence opportunities for people to enjoy cultural activities or participate in them?		X			
	Does the option affect the preservation of cultural heritage?		X			
Governance	Does the option affect citizens' ability to participate in the democratic process?		X			
	Is every person treated equally?		X			
	Will the public be better informed about certain issues?		X			

	Does the option affect the way that political parties operate?		X			
	Will there be an impact on civil society?		X			
Public health and safety ⁴⁵	Will there be an effect on the lives of people, such as life expectancy or mortality rates?		X			
	Will there be an effect on the quality of food?		X			
	Will the health risk increase or decrease due to harmful substances?		X			
	Will there be health effects due to changes in noise levels or the quality of air, water and/or soil?		X			
	Will there be health effects due to changes in the use of energy?		X			
	Will there be health effects due to changes in waste disposal?		X			
	Will there be an effect on the lifestyle of people, such as take-up levels for sports, diet changes, or changes in the use of tobacco or alcohol?		X			
	Are there specific groups that face much higher risks than others (determined by factors such as age, gender, disability, social group or region)?		X			
Crime and security	Are the chances that criminals get caught affected?		X			
	Is the potential gain from crime affected?		X			
	Is there an effect on corruption levels?		X			
	Is the capacity of law enforcement affected?					
	Is there an effect on the rights and security of victims of crime?		X			

⁴⁵ When there are public health and safety impacts, there regularly are environmental impacts as well.

Annex 3: Environmental Impact Assessment Form

Environmental impact category	Key impact	Is this impact expected to occur?		Number of affected organisations, companies and/or individuals	Expected benefit or cost of the impact	Preferred level of analysis
		Yes	No			
Climate and sustainable environment	Will there be an effect on the emission of greenhouse gases (carbon dioxide, methane etc.)?		X			
	Will fuel consumption be affected?		X			
	Will the mix of resources that are used for energy production change?		X			
	Will there be a change in price for environmentally friendly products?		X			
	Will certain activities become less polluting?					
Air quality	Will there be an effect on the emission of air pollutants?		X			
Water quality	Does the option affect the quality of freshwater?		X			
	Does the option affect the quality of groundwater?		X			
	Does the option affect drinking water resources?		X			
Soil quality and land use	Will there be an effect on the quality of soil (related to acidification, contamination, use of pesticides or herbicides)?		x			
	Will there be an effect on soil erosion?		X			
	Will soil be lost (through construction etc.)?		X			
	Will soil be gained (through decontamination etc.)?		X			

	Will there be a change in land use (e.g. from forest to agricultural or urban use)?		X			
Waste and recycling	Will the amount of waste that is generated change?		X			
	Will the ways in which waste is treated change?		X			
	Will there be an effect on the recycling possibilities for waste?		X			
Use of resources	Does the option affect the use of renewable resources (fish stocks, hydropower, solar power etc.)?		X			
	Does the option affect the use of resources that are not renewable (groundwater, minerals, coal etc.)?		X			
Scale of environmental risks	Will there be an effect on the chances of risks such as fires, explosions or accidents?		X			
	Will there be an effect on the readiness when natural disasters occur?		X			
	Is the protection of society against natural disasters affected?		X			
Biodiversity, flora and fauna	Will there be an effect on protected or endangered species or the areas where they live?		x			
	Will the size of or the connections between nature zones be affected?		X			
	Will there be an effect on the number of species in a given area?		X			
Animal welfare	Will there be an effect on the treatment of animals?		x			
	Will there be an effect on the health of animals?		x			
	Will there be an effect on the quality and safety of animal feed?		x			

Annex 4: Fundamental Rights Impact Assessment Form

Fundamental rights impact category	Key impact	Is this impact expected to occur?		Number of affected organisations, companies and/or individuals	Expected benefit or cost of the impact	Preferred level of analysis
		Yes	No			
Dignity	Does the option affect the dignity of humans, their right to life or the integrity of a person?	Yes		High	High	
Freedom	Does the option affect the right to liberty of individuals?	Yes		High	High	
	Does the option affect a person's right to privacy?	Yes		High	High	
	Does the option affect the right to marry or start a family?					
	Does the option affect the legal, economic or social protection of individuals or the family?	Yes		High	High	
	Does the option affect the freedom of thought, conscience or religion?	Yes		High	High	
	Does the option affect the freedom of expression?	Yes		High	High	
	Does the option affect the freedom of assembly or association?	Yes		High	High	
Personal data	Does the option involve the processing of personal data?	Yes		High	High	
	Are the individual's right to access, rectification and objection guaranteed?	Yes		High	High	
	Is the way in which personal data is processed clear and well-protected?	Yes		High	High	
Asylum	Does the option affect the right of asylum?	Yes		High	High	
Property	Will property rights be	Yes		High	High	

rights	affected?					
	Does the option affect the freedom to conduct business?	Yes		High	High	
Equal treatment ⁴⁶	Does the option safeguard the principle of equality before the law?	Yes		High	High	
	Are there chances that certain groups would suffer directly or indirectly from discrimination (e.g. any discrimination based on any ground such as sex, race, colour, ethnicity, national minority, political or any other opinion, age or sexual orientation)?		No			
	Does the option affect the rights of people with a disability?	Yes		High	High	
Children's rights	Does the option affect the rights of children?	Yes		High	High	
Good administration	Will administrative procedures become more burdensome?		No			
	Is the way in which the administration takes decisions affected (transparency, procedural time, right to access to a file etc.)?	Yes		High	High	
	For criminal law and envisioned sanctions: are the rights of the accused affected?		No			
	Is access to justice affected?	Yes		High	High	

⁴⁶ Gender equality is addressed in through *Gender Impact Assessment*