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**REPORT ON *EX-POST* EVALUATION
OF LAW NO. 05/L-087 ON MINOR OFFENCES¹**

Maj 2024

¹ Report on Ex-post Evaluation of Law No. 05/L-087 on Minor offences, was approved on the 206 meeting of the Government of Kosovo, with the decision No.05/206, dated 21.05.2024.

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EXECUTIVE SUMMARY

1. Minor offence shall be the behaviour by which there are violated or jeopardised the public order, peace, as well as social values guaranteed by the Constitution of the Republic of Kosovo, the protection of which is impossible without minor offence sanctioning.² A minor offence is committed by an omission when the perpetrator is obliged to undertake an action but fails to carry it out.³
2. Minor offences encompass violations of public order, social discipline, or other social values not covered by the Criminal Code or other laws addressing criminal offenses. In this context, they primarily entail breaches of specific legal norms that either prohibit or mandate certain behaviours. Additionally, minor offences extend to violations of social discipline or other social values. Defining particular breaches of social discipline or other social values as minor offences serves the purpose of preventing potential threats to public safety, property, unhindered economic, cultural and social activities, as well as the maintenance of a peaceful life.
3. Law No. 05/L-087 on Minor Offences was published in the Official Gazette of the Republic of Kosovo, No. 33, on September 8, 2016, and according to its Article 171, it entered into force on January 1, 2017. Despite the fact that we have an organic/basic, material, legal, formal, and substantive law, whose entry into force has ceased the legislation in force on minor offences of the previous system, however, the provisions for on minor offences not in accordance with this law, had to be harmonized within the deadline of one (1) year from the date of entry into force of this law (that is, until January 2018).⁴
However, even though most of the legislation has been harmonized, a part of the legal framework still remains unharmonized with the Law on Minor Offences, despite the fact that this was one of the obligations foreseen by the Law on Minor Offences.
4. Given the significance of this Law in establishing legal certainty and guaranteeing equal treatment before the law, as well as non-discrimination against anyone who commits minor offences, the Ministry of Justice has recognized the necessity for an ex-post evaluation of this Law.
5. The aim of this initiative is to identify challenges in the implementation of this Law, with particular emphasis on safeguarding the rights of individuals who may violate it, those responsible for its enforcement, and, in particular, determining steps to enhance its implementation. Specifically, this ex-post evaluation is aimed at ascertaining whether, after seven years since the enactment of the Law on Minor Offences, adequate resources were available to support its implementation. We also aim to assess whether

² Article 2 (1) of Law No. 05/L-087 on Minor Offences /Official Gazette of the Republic of Kosovo/No.33/ September 8, 2016, Prishtina.

³ Article 8 of Law no. 05/L-087 on Minor Offences /Official Gazette of the Republic of Kosovo/No.33/ September 8, 2016, Prishtina.

⁴ See Article 167 of the Law on Minor Offences.

the institutions or mechanisms tasked with enforcement fulfilled their responsibilities and whether it is in line with existing legal frameworks and EU directives pertaining to relevant minor offense areas.

6. In this context, the Ministry of Justice has set-up a Working Group tasked with conducting the *Ex-Post* evaluation of the Law on Minor Offences. Led by the Legal Department of the Ministry of Justice, this group includes representatives from other relevant institutions in the field of minor offences, as stipulated by specific laws.
7. During the drafting of the *Ex-Post* Evaluation Report, significant difficulties arose in obtaining statistical data regarding the cases of imposing minor offences and their execution prescription in certain cases, particularly from courts and inspectorates. This challenge stemmed from the sheer volume of cases and the limited time available to compile detailed and accurate information. Consequently, the report was rendered incomplete due to the absence of concrete data on cases and the reasons for non-implementation of minor offence sanctions as per legal provisions. Stakeholders cited overwhelming caseloads as a primary obstacle. As a result, the *Ex-Post* Evaluation Report relied on meetings and interviews conducted with relevant institutions responsible for implementing the Law on Minor Offences.
8. In the *Ex-Post* evaluation of the Law on Minor Offences⁵, the working group is categorized under the “***Evaluation of implementation and compliance***”, as one of the three types of *Ex-Post* evaluation. This classification aims to assess the implementation process of the Law on Minor Offences, ensuring its adherence and identifying factors that facilitate or impede its execution. The assessment scope is not focused on the entirety of the law, but specifically on selected articles or paragraphs governing particular issues.
9. The findings and recommendations of this Report have been derived from conducted interviews, working group meetings, discussions with relevant stakeholders, received written comments, and expert assessments. These findings underscore the necessity for legal amendments aimed at enhancing the implementation of the law and resolving practical challenges encountered over several years. Proposed changes include:
 - i. Reformulating the provision dealing with Diplomatic Immunity (Article 12);
 - ii. Determining exceptional cases regarding the amount of fines (Article 29) for specific areas and exploring the possibility of setting fines as a percentage of annual profit to align with relevant EU regulations;
 - iii. Examining ways to increase efficiency and eliminate the statute of limitations for the execution of minor offences;
 - iv. Reformulating the legal provision defining the competence of the minor offence body to provide clarity (Article 56);
 - v. Reformulating the legal provision defining conflict of competence (Article 57);
 - vi. Reformulating the legal provision determining the composition of the commission for deciding (Article 60) in administrative procedures concerning the exercise of legal remedies.

⁵ Decision of Secretary General No. 136.2023, dated 01.01.2023.

- 10.** The Report also identifies inconsistencies and conflicts between the legal provisions of the Law on Minor Offences and those of other legislation, such as laws pertaining to civil aviation and air navigation, finance, banking and payment systems, competition, environmental protection, trade, industry, consumer protection, ore and mining, among others. These disparities underscore the urgent need for legislative amending and supplementing of the Law on Minor Offences. Furthermore, there is a pressing need to harmonize other laws, which have not yet been aligned with the Law on Minor Offences, to ensure coherence in defining minor offences across legal frameworks.
- 11.** In addition, the Law on Minor Offences should specify that in cases where the provisions of local legislation defining minor offences need to be harmonized with the EU Acquis, then the Law on Minor Offences should allow for flexibility to accommodate exceptions only in these cases, as far as it belongs to the setting of fines for minor offences exceeding those defined by the Law on Minor Offences, including fines based on percentages (%) of the turnover and profit of an economic operator or similar. This adjustment could be achieved by adding a paragraph to Article 29 of the Law on Minor Offences.
- 12.** In the end, the Report recommends remedial actions concerning the Law on Minor Offences. The recommendations consist of the steps that should be taken to address the identified challenges and gaps regarding the improper implementation of the Law on Minor Offences, starting from the need to amend certain provisions of the Law on Minor Offences and subsequently making changes and additions to align other specialized legislation with the provisions of this Law. Furthermore, with the amending and supplementing of the Law on Minor Offences, there is a need for specifying the powers of administrative bodies responsible for implementing the Law, revising fine amounts that can be imposed by administrative bodies versus those exclusively under court jurisdiction, as well as the determination of the obligation by Law to further harmonize the penal provisions regarding the determination of the offending sanctions in the material-legal provisions of the specific laws of various fields and the determination of the offending body in those laws, as well as the harmonization of the minimum and maximum fine for minor offences.

I. INTRODUCTION

I.1. Evaluation Context

- 13.** Throughout the monitoring process and data collection, it became evident that institutions tasked with enforcing the Law on Minor Offences encounter significant obstacles in certain cases. These challenges include legal non-harmonization, insufficient institutional and functional capacities, as well as pronounced deficiencies in financial and human resources for law enforcement.
- 14.** Moreover, data reported by the Kosovo Police, Inspectorates, Courts, and other relevant mechanisms responsible for imposing minor offences indicate persistent limitations in their capacities. This includes municipal minor offence bodies. Despite their mandates, all institutions involved in minor offence enforcement continue to grapple with insufficient resources, hindering their ability to ensure the efficient and effective implementation of the Law on Minor Offences.
- 15.** Consequently, building upon the aforementioned context and in response to numerous requests from institutions addressed to the Ministry of Justice regarding legal opinions on the implementation of certain minor offence provisions, both the Ministry of Justice is committed to conducting an *ex-post* evaluation of the Law on Minor Offences.
- 16.** Therefore, the decision to conduct an *ex-post* evaluation of this law was based, in part, on its significant role in establishing legal and institutional frameworks aimed at ensuring legal certainty, uniform application of minor offence regulations, and safeguarding citizens' rights from potential arbitrary actions by relevant authorities.
- 17.** Additionally, other factors prompting this decision include challenges highlighted by various state mechanisms (as mentioned earlier), such as inadequate harmonization of laws and failure to enforce minor offence sanctions, taking into account the constitutional and legal obligation to ensure equal treatment under the law, a fundamental value of the constitutional framework of the Republic of Kosovo.

I.2. Purpose and scope of evaluation

- 18.** The purpose of this *Ex-Post* Evaluation Report is to highlight the main challenges in the field of minor offences and the challenges faced by bodies and institutions in terms of legal, institutional, and functional aspects. Special emphasis is placed on analysing the implementation and harmonization of the law with other legislation in force. This evaluation also aims to identify gaps and propose relevant recommendations for a

proper review and restructuring of the legal framework. This includes not only the Law on Minor Offences but also the provisions of special laws that address minor offences in specific areas. It takes into consideration the concrete proposals of each of the institutions' minor offence bodies within the process of reforms expected to be made in the future in the field of minor offenses.

- 19.** Such reforms should commence with the legislation, followed by determining the competence of the bodies responsible for imposing offending sanctions in cases of violations of special laws. This involves addressing organizational and functional aspects.
- 20.** In addition, the analysis will serve as a basis for future legislative changes to the Law on Minor Offences, as well as other special laws in the part dealing with minor offences in order to ensure the principle of the rule of law.
- 21.** The *Ex-Post* Evaluation of the Law on Minor Offences is regarded as a crucial instrument for identifying the level of implementation, the challenges encountered during implementation, and the measures necessary to strengthen the implementation of the law. It aims to ensure the practical implementation of constitutional and legal obligations for the appropriate treatment of all cases that violate the legal order and citizens' lives, even those involving lighter actions than criminal offenses, such as minor offences.
- 22.** Therefore, the working group has decided that, in terms of defining the scope of this evaluation, it will focus on "Assessment of implementation and compliance." This type of assessment is utilized to determine the degree of enforcement of the Law on Minor Offences. The evaluation aims to ascertain whether the Law on Minor Offences has been fully, partially, not implemented, or implemented but improperly.
- 23.** The evaluation of the Law on Minor Offences covers the period from its entry into force until the present. In terms of scope, the *ex-post* evaluation focuses specifically on Articles 12, 29, 30, 56, 57, and 60 of the Law. These Articles regulate significant aspects of minor offences, including the determination of fine amounts, the competent bodies for their imposition, enforcement of fines within the minor offences procedure, the availability of effective legal remedies, and other related provisions.
- 24.** The parties actively involved in the process of implementing the Law on Minor Offences include all inspectorates at the central and local levels, other bodies authorized by special laws to issue minor offences, the Kosovo Police, the courts, and others.

II. DESCRIPTION OF THE LAW TO BE EVALUATED AND THE APPLIED METHODOLOGY

II.1. Description of the law or sub-legal acts to be evaluated

25. The Law on Minor Offences, as outlined in Article 1 of the purpose and scope provision, states that: “This Law governs the conditions for determining minor offences and sanctions for minor offences, the parties and responsibility for minor offences, the minor offences procedure, the special procedure for minors and the procedure of execution of sanctions for minor offences”.
26. In criminal-legal literature, a criminal offense refers to a violation, specifically of a legally recognized interest, posing a significant social risk as it jeopardizes the common good. Conversely, a minor offence denotes an unlawful act with a comparatively lower social risk.
27. The approval of the principle of legality in minor offences law (*regarding the principle that, for a minor offence, a person can be punished only if it has previously been prescribed by the legal norm as a minor offence, and only with the sanction that was previously prescribed for the specific minor offence*), highlights that the disparity between criminal offenses and minor offences is essentially quantitative. It is a fact that minor offences are lighter violations of certain social values and that they carry a lighter legal punishment (namely a lighter sanction) than criminal offenses. Consequently, disparities exist in the pertinent provisions governing the definition of minor offences, starting from the bodies that implement the procedures, the procedural rules, the sanctions that are imposed, the way the sanctions are executed, etc.
28. Given the extensive array and diversity of special minor offences, the matter of special minor offences law has not been codified with the Law on Minor Offences. Such codification of the specific part of the minor offences is not even possible, at least not as it is done in criminal law.⁶
29. Some of the basic issues addressed by Law No. 05/L-087 on Minor Offences are:
- a. The general material aspect of minor offence law has been thoroughly regulated, and the minor offence procedure has been standardized in its entirety.

⁶ The fundamental question surrounding the legal regulation of minor offences pertains to whether the determination of punishment for such minor offenses should be entrusted to the courts in judicial proceedings or to the state administration in administrative proceedings. Different countries and eras have responded to this question in diverse ways. Nevertheless, within the domain of minor offences, there exists a desire to systematize and categorize provisions that delineate specific offenses and stipulate legal sanctions for them.

- b. Sanctions for minor offences are exclusively determined in accordance with the provisions set forth in this law (Article 2, paragraph 2).
- c. No one can be punished for a minor offence or subjected to a minor offence sanction for an offence which, before it was committed, was not defined as a minor offence by law or by acts (municipal regulations) of the Municipal Assembly, and for which there was no offence sanction defined (Article 3, paragraph 1);
- d. The definition of a minor offence must be precise, and interpretation by analogy is not allowed. In cases of ambiguity, the definition of the minor offence is interpreted in favour of the person against whom the minor offence procedure is conducted (Article 3, paragraph 3);
- e. No one can be considered guilty and have the minor offence sanction applied to him until he has been declared guilty by a final decision—the principle of presumption of innocence (Article 4);
- f. The legislation that was in force at the time of the commission of the minor offence applies to the perpetrator. If the legislation in force changes after the commission of the minor offence, before issuing the final decision for the minor offence, the legislation that is more favourable to the perpetrator is applied, i.e., the principle of the most favourable legislation is applied (Article 5, paragraphs 1 and 2);
- g. If a perpetrator of a minor offence has been found guilty of a criminal offense with a final decision in the criminal procedure, which also includes features of the minor offence, no minor offence procedure can be conducted against them. If the minor offence procedure has started or is in progress, it cannot be continued and is completed (Article 6);
- h. The minor offence legislation applies to every person who commits a minor offence within the territory of the Republic of Kosovo. However, for minor offences defined by municipal regulations of the Municipal Assembly, the minor offences procedure will be initiated if the minor offence is committed within the territory of that local self-government unit (Article 11);
- i. No minor offence procedure can be conducted against persons who enjoy diplomatic immunity (Article 12);
- j. The minor offence procedure cannot be initiated if one (1) year has passed from the date when the minor offence was committed – statute of limitations (Article 42);

- k. The sanction imposed for the minor offence cannot be executed if one (1) year has passed from the date when the decision on the minor offence became final – the statute of limitations for execution (Article 43, paragraph 1);
- l. The court is obliged to accurately and completely establish all the facts that are important for making a legal and fair decision on the minor offense. It must equally demonstrate diligence in proving and verifying both the facts that incriminate the defendant and those that favour them - the principle of truth (Article 51);
- m. The court judges within the limits of its subject competence provided by law, while for some minor offenses defined by law or regulations of the Municipal Assembly, the minor offense procedure can be developed, and the minor offense sanction can be imposed by the state administration body or the body which carries out public authorizations (hereinafter: the body for minor offense) of supervision for the implementation of the law, in which minor offense are foreseen (Article 55, paragraph 1 and 4);
- n. The minor offenses body conducts the minor offense procedure if the law provides exclusive competence for its action. Exceptionally, the minor offense body is competent to act according to all minor offenses:
 - i. for which the sanction of a fine in the specified amount is foreseen;
 - ii. for which a fine of up to five hundred (500) Euro is foreseen for natural persons;
 - iii. for which the legal entity is sanctioned with a fine of up to one thousand (1,000) Euro; and
 - iv. for which the imposition of a fine is foreseen on the spot (Article 56);
- o. In cases of conflict of competences between the courts and the minor offense bodies, the competent court decides according to the administrative conflict (Article 57);
- p. The minor offense body, in conducting the minor offense procedure, appropriately applies the provisions of the Law on general administrative procedure, unless this law and the law defining the minor offense have determined otherwise (Article 63).

30. This Law does not include a special part. The definition of minor offenses is provided in various special laws and regulations of the Municipal Assembly. Typically, in the special part of these provisions, punitive measures are specified to determine the relevant sanctions for the minor offense. Due to the large number of such minor offense sanctions, as previously mentioned, it has become increasingly difficult, if not impossible, to codify the specific part of the substantive minor offenses law.

- 31.** The Law on Minor Offences has been aligned with amendments made in the criminal legislation of Kosovo and the Law on Courts. Additionally, it has been harmonized with EU directives, including Directive 2012/13/EU of the European Parliament and of the Council, dated May 22nd, 2012, on the right to information in criminal proceedings, and Directive 2010/64/EU of the European Parliament and the Council of October 20th, 2010, on the right to interpretation and translation in criminal proceedings.
- 32.** In particular, the Law on Minor Offences has contributed to simplifying and enhancing the efficiency and expediency of minor offense procedures, with the aim of reducing the caseload in minor offense courts.
- 33.** Likewise, the Law on Minor Offences has been harmonized with the basic principles of the Council of Europe, namely:
- i. Recommendation R (86) 12 on measures to prevent and reduce court overload;⁷
 - ii. Resolution of the Council of Ministers 76 (10) regarding certain penal alternatives to prisons.⁸
- 34.** For the purpose of this *Ex-Post* assessment, Articles 12, 29, 30, 56, 57, and 60 of this law are the focus of the evaluation. These articles pertain to the determination of fine amounts and exceptions in certain areas, the competent authorities responsible for issuing fines, the execution of fines imposed in minor offenses procedures, and the availability of effective legal remedies, whether through administrative or judicial procedures.
- 35.** Therefore, this *Ex-Post* evaluation has addressed the most problematic issues of the aforementioned articles. It is worth noting that, according to the Law on Minor Offences, the minimum and maximum fines for minor offences are correctly determined. Additionally, the law allows for the possibility of doubling the fine for minor offences committed and violations found (Article 29). Furthermore, the competence of the relevant bodies is specified, which must be determined by other special laws. Additionally, the powers and responsibilities of each relevant body to impose offenses determined by the special law are outlined, ensuring that they fall within the minimum and maximum fines defined by the Law on Minor Offences.
- 36.** Problems have been identified in certain laws and fields, including the environment and spatial planning, health, civil aviation and air navigation, energy and mining, competition, etc. In these areas, it is believed that the fines stipulated by the Law on

⁷ <https://rm.coe.int/16804f7b86>

⁸ <https://rm.coe.int/16804feb80>

Minor Offences are insufficiently high, and some of these special laws have yet to be harmonized.

37. Furthermore, the prosecution statute of limitation, particularly the enforcement of fines, poses a challenge due to institutional inefficiency and the absence of a budget allocation for the payment of enforcement fees stipulated by the law on enforcement and its related sub-legal acts.
38. Furthermore, it's noteworthy that there is no approved concept document related to this law. As a result, this Ex-Post evaluation report will not be able to analyse the correlation between the analysis of policies outlined in a concept document and their reflection in this Ex-Post Evaluation Report.
39. This *Ex-Post* evaluation report serves as the first official and tangible document to outline the challenges encountered in the implementation of this law.

II. 2. Chain of results

40. Given the scope and nature of this *Ex-post* evaluation, the working group has concluded that this aspect does not pertain to the evaluation.

II.3. Methodology

41. The Ministry of Justice has established a Working Group to carry out the *Ex-Post* evaluation of the Law on Minor Offences. This Working Group is led by the Legal Department of the Ministry of Justice and includes participants from other competent institutions in the field of minor offences.
42. The NDI project, funded by the US Government through its programs, has provided the necessary technical support by offering expertise to support the Working Group in preparing the *Ex-Post* Evaluation Report of the Law on Minor Offences, with a special emphasis on evaluating the implementation and compliance of this law. The project has also provided other necessary support for carrying out this evaluation process.
43. The methodology for preparing the Report of the *Ex-Post* evaluation of the Law on Minor Offences consists of using qualitative methods and analysis. It aims to collect data on the current structural functioning for the implementation of this Law, to analyze the implementation methods, and to identify the problems and challenges encountered by all state mechanisms and bodies in implementing the Law on Minor Offences.
44. The data were collected from two sources:

- (i) Primary sources: legislation currently in force in the field of minor offences, reports, and other documents provided by the main bodies and institutions that deal with the field of minor offences;
- (ii) Secondary sources: meetings with institutions responsible for implementing the Law on Minor Offences to collect data regarding the level of implementation and the challenges faced by these institutions.

45. Regarding the primary sources, the constitutional provisions, the relevant provisions of the Law on Minor Offences, the Law on the Protection of Competition, legislation in the field of customs, the banking and payment system, as well as that of micro-financial mechanisms in the field of civil aviation and air navigation, environmental protection, and spatial planning legislation, in the field of trade and industry, have been analyzed. This analysis also includes relevant reports sent concerning the Law on Minor Offences by state mechanisms, highlighting problems encountered in practical implementation.

46. One of the challenges encountered in the preparation of this report was the lack of detailed reports and data related to the field of minor offences by the judiciary and state administration bodies at both central and local levels. Additionally, reports are sent upon request regarding problems encountered in practice.

47. Thus, in relation to this Law, there is a marked lack of analysis of this problem through relevant reports and empirical studies, which were not carried out earlier by the relevant institutions. Such analyses could have provided information on the real situation in the field of minor offences, procedures, and institutional capacities for implementing legal obligations, serving as a good basis for drafting this *Ex-Post* evaluation report.

48. In the context of secondary sources, data was collected from meetings held during the phase of harmonizing some laws in the fields that have already been harmonized with the Law on Minor Offences, from the analysis of other fields and specific laws, and from meetings and unstructured interviews held with representatives from various institutions during the drafting phase of this assessment. These meetings focused on questions structured in four sections: questions on the minor offence body, establishment, and capacities across all institutions; questions on their functioning, development, and training of staff serving as the minor offence body; questions on challenges in imposing minor offences and their enforcement; legal challenges and reasons for not harmonizing some special laws with the Law on Minor Offences, as well as the part of suggestions and recommendations.

49. The results of these discussions, including the perspectives of these institutions regarding the level of implementation of the Law on Minor Offences, the measures they have undertaken in its implementation, the challenges they have faced, and the capacities they have available to ensure the performance of legal responsibilities, have been part of the discussions with these institutions.

50. From the meetings held with the competent institutions in the process of implementing this law, aspects related to the commitment of these institutions to implementing the Law on Minor Offences, their challenges, and recommendations for strengthening the implementation of this law were discussed. Therefore, this evaluation is based to a considerable extent on the analyses and discussions about the challenges encountered by these institutions, which are also presented in this *Ex-Post* evaluation report.

51. The findings from these meetings were presented to the Working Group by the engaged expert and were discussed and reflected in this report. The Legal Department of the Ministry of Justice, as the coordinators of this process, have reviewed the prepared draft and have ensured that the report has content according to the requirements of the Manual for *Ex-Post* Evaluation of Legal Acts. In addition, the *Ex-Post* Evaluation Report was reviewed by the Council of Directors of the Legal Departments of the Government of the Republic of Kosovo, who recommended that it be processed for review and approval at the Government Meeting.

III. EVALUATION RESULTS

Subchapter I – Applicability

General Information

52. From the meetings held with the competent institutions, it has been found that the challenges in implementing the Law on Minor Offences vary widely, from issues such as the incorrect formulation of legal norms in separate laws and their non-harmonization with the Law on Minor Offences, to the lack of sufficiently prepared human resources, including lawyers who have passed the bar examination exam. Additional challenges include the absence of special budget lines for initiating enforcement procedures with private enforcement agents for the enforcement of fines and a general lack of knowledge about the field of minor offences due to insufficient training. These factors have led to a non-uniform implementation of the Law on Minor Offences, affecting its overall effectiveness.

Establishment (non-establishment) of Institutional Mechanisms (Minor Offence Bodies)

53. In many cases, minor offence bodies have been established by the responsible institutions, but there are instances where offences are defined by law without creating mechanisms for their imposition. This issue is exemplified by the minor offences defined in the Law on Protection from Discrimination, as highlighted in its *Ex-Post* Evaluation Report.

54. It is deemed necessary to increase the fines for minor offences that minor offence bodies can impose, to enhance the efficiency of their imposition and to avoid protracted court procedures and the burdening of courts with cases.

55. A persistent challenge is that numerous institutions continue to request legal opinions/clarifications regarding the Law on Minor Offences, particularly concerning the minor offence body. While this is not an issue for inspectorates established by law or for the police, understanding the provisions of the Law on Minor Offences poses a challenge for minor offence bodies not established as inspectorates by law, which may also be tasked with such responsibilities by the Regulation on Internal Organization of the Institution.

5. Lack of Initiation of Ex-Officio Enforcement Procedure by State Bodies

56. Meetings have revealed that the number of enforcement proposals initiated ex officio is unsatisfactory, with a significant number of cases reaching the statute of limitations in both administrative and judicial procedures. This issue arises in inspectorates, police, courts, and other administrative bodies, often due to the non-initiation of enforcement procedures because of the absence of payments required for the procedure by the enforcement proponent.

Lack of Imposition of Minor Offence Sanctions

57. Due to the incorrect wording of legal norms and their non-harmonization with the Law on Minor Offences, many separate laws fail to appropriately define or specify minor offences, nor are they harmonized with the Law on Minor Offences. An example is Article 23 of the Law on Protection from Discrimination, which does not specify the minor offence sanctions for specific discriminatory actions, thereby not adhering to the principle of determinability of sanctions, nor does it define the responsible administrative body for imposing these fines.

Lack of Unified Judicial Practice in the Field of Minor Offences

58. There is a noticeable lack of unified practice in issuing minor offences by different inspectorates and courts. Unifying these practices would facilitate the implementation of the Law on Minor Offences and the special laws defining minor offences.

Lack of Inter-Institutional Coordination

59. The insufficient coordination between competent institutions in the field of minor offences has resulted in a lack of tangible improvements in the execution of minor offences, a lack of unified practice in implementing the provisions of the Law on Minor Offences, and consequently, legal uncertainty. An example is the varied implementation of Article 30 of the Law on Minor Offences regarding the suspension

of the legal effect of a minor offence order and the right to a 50% reduction in the fine amount upon submitting a complaint. Various institutions have demonstrated varied approaches to implementing this legal provision.

Lack of Organization of Trainings and/or Their Follow-up

60. Discussions with the Justice Academy indicated that although it designs training programs based on the assessment of training needs, including the field of minor offences, there is limited interest in conducting or participating in these trainings. This lack of interest is partly because judges prioritize other areas, with minor offences often covered by criminal judges in many jurisdictions.

Lack of Sufficient Financial and Human Resources in Some Institutions

61. There is a clear need to increase the capacities of minor offence bodies, including those in inspectorates and other administrative bodies. Building capacity should also be a priority for minor offence judges, and the possibility of making minor offence training mandatory should be explored.

Subchapter II - Importance:

62. From the process of this *Ex-Post* evaluation, it has been determined that Articles 12, 29, 30, 56, 57, and 60 of the Law on Minor Offences play a crucial role in ensuring the necessary framework for the full implementation of this law. However, there is, in some instances, a lack of understanding on the part of the implementers, and in others, there may be a lack of complete legal clarity, such as with the clarity regarding the competence of law enforcement mechanisms (minor offence bodies). Consequently, some provisions must be amended and supplemented, primarily to harmonize and adapt to the actual circumstances and the specific requirements of EU legislation, as well as the findings of this *Ex-Post* Evaluation Report. Furthermore, it is important to make exceptions for cases where some laws in specialized fields also impose sanctions at certain percentages of their annual profit during the amendment and completion of the relevant articles.

Subchapter III- Harmonization:

Harmonization with international standards

63. Based on current practices in the implementation of minor offence provisions and the development of EU legislation, it is advisable that future legislation in the field of minor offences be revised to align with international standards, particularly with EU legislation. For instance, EU Directive 2019/2161 allows for the imposition of fines at

levels higher than those specified by Article 29 of the Law on Minor Offences, including fines up to 2 million euros or even 4% of the annual turnover.⁹ Similar provisions exist in other EU legislation, such as EU Regulation 2016/679 on the protection of personal data.¹⁰

Lack of harmonization with laws in the field of competition

- 64.** Furthermore, inconsistencies with internal legislation were identified, notably a discrepancy between this law and other active laws in specific fields. The evaluation revealed that the Law on Minor Offences has significant inconsistencies with the provisions related to competition concerning minor offences. According to experts from the Kosovo Competition Authority, the maximum fines stipulated by law for violations of legal provisions are profoundly disproportionate to the damage caused.

Lack of harmonization with laws in the field of customs, financial, banking and payment systems

- 65.** The absence of alignment between the Law on Minor Offences and the specialized legislation in the fields of customs, the financial system, banking, and payments highlights the need for amendments. This is because the fines for these areas, as determined by the Law on Minor Offences, are very low. Consequently, it is crucial to introduce exceptions to the Law on Minor Offences, allowing for the imposition of higher fines through special laws than those presently stipulated by the Law on Minor Offences.

- 66. *Lack of harmonization with the laws governing the fields of energy, mining, environment, spatial planning, as well as telecommunications, trade, and industry.***

Even in these crucial areas, where minor offences are committed by various entities operating within the relevant markets, it is deemed that the maximum fines stipulated by the Law on Minor Offences are insufficient to act as a deterrent for all market operators. The misalignment between the Law on Minor Offences and the specialized legislation in the fields of energy, mining, environment, spatial planning, telecommunications, trade, and industry highlights the necessity for revisions and amendments to the Law on Minor Offences. These changes should specifically address the need to increase fines for these particular sectors.

⁹ See Directive 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Directive 93/13/EEC and Directive 98/6/EC and 2011/83/EU of the European Parliament and of the Council with regard to improving the implementation and modernizing the Union rules on consumer protection, accessible at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L2161>.

¹⁰ See Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with regard to the Processing of Personal Data, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016R0679-20160504&qid=1532348683434>

Subchapter IV-Efficiency:

67. Considering the scope and nature of this *Ex-Post* evaluation, the working group has concluded that this part does not apply to the evaluation.

IV. CONCLUSIONS AND RECOMMENDATIONS

IV.1. Conclusions

A. CONCLUSIONS ON APPLICABILITY

68. With the entry into force of the Law on Minor Offences, the issue of minor offences is regulated in a completely new way. It first defines the principle of legality, according to which minor offences can only be determined by law and not by a sub-legal act, except for those at the municipal level, which can also be determined by municipal regulations.

69. Furthermore, the Law on Minor Offences defines the minimum and maximum fines for minor offences that can be imposed on natural persons, legal persons, the responsible persons of a legal entity, and individual businesses. These fines can then be further specified by separate laws of different areas, within the limits defined by the Law on Minor Offences. Consequently, according to Article 167 of this law, there is a need for the general harmonization of all special provisions that define and regulate minor offences. This aims at the uniform application of the law and the creation of legal certainty.

70. However, even though the Law on Minor Offences has brought enormous benefits to the legal system, its incomplete implementation, especially in the most sensitive areas that were highlighted above in this *Ex-Post* evaluation report, determines the need to create some exceptions, while the rest of the laws that are not in this category and municipal regulations must be harmonized with the Law on Minor Offences and implemented without further delay, defining the body for minor offences, as well as the specific actions that constitute a violation of the material provisions legal, and then the sanction within the limits of the Law on Minor Offences.

71. After analyzing the Law on Minor Offences alongside other relevant legislation that defines minor offences, it is clear that these cannot be considered in isolation, even though the focus remains primarily on the Law on Minor Offences. Additionally, when considering international legal acts and data from various institutions involved in the minor offence sector, it becomes evident that this field requires a thorough review. There is a need to advance the level of applicability and continue legal reforms and harmonization efforts, both at the central and local levels.

72. Based on the legal analyses conducted up to this point, including the drafting phase of this report, it has been determined that, in addition to legal conflicts, there are also challenges related to the exercise of powers by the responsible institutions, which are the minor offence bodies. Below, some specific conclusions are outlined as follows:

- a.** In some instances, the institutions responsible for enforcing the Law on Minor Offences and related legal provisions suffer from significant shortages of human and financial resources. Additionally, there's often a lack of adequate knowledge in the minor offence domain, which has hampered the effective implementation of the Law on Minor Offences.
- b.** There is a noticeable lack of coordination among institutions involved in implementing the Law, alongside inconsistent practices among various inspectorates, regardless of whether they operate at the central or local level. This issue extends to the judicial realm, where there is a lack of uniformity in minor offence case handling.
- c.** The field of minor offences is markedly deficient in professional training.
- d.** The understanding of legislation related to minor offences is generally insufficient. This is evident from meetings where differing interpretations of the same legal provisions by the authorities involved have been observed.
- e.** Another challenge in this field is the lengthy process of establishing and executing minor offences, which act as significant obstacles to achieving the issuance of fair decisions, whether through administrative or judicial procedures in Kosovo. Observations from meetings held thus far indicate that criminal proceedings, from their initiation and imposition to execution, often span several years. This duration seldom aligns with the standards of justice regarding the right to a trial or judgment within a reasonable time frame, as stipulated by the European Convention on Human Rights and Freedoms. This delay in procedures frequently results in the expiration of the statute of limitations for minor offences. Consequently, all efforts and costs prove fruitless, burdening the state and its institutions, while the offenders of minor offences go unpunished. This inefficiency could also contribute to the high incidence of recidivism in minor offence cases.
- f.** It is important to highlight that in minor offence cases the obligated parties often do not comply voluntarily. If the competent minor offence bodies, which have issued the enforceable decision (now in the form of a final judgment and thus holding an executive title under the Law on Enforcement Procedure), do not initiate forced enforcement procedures, these cases can be delayed. This inefficiency can be exacerbated by the complex legal remedies available to the

parties involved, such as appeals in administrative and judicial proceedings, lawsuits in administrative conflicts, objections against enforcement decisions, and other effective legal remedies in either administrative or judicial proceedings. Moreover, it is crucial for the parties to utilize these legal remedies to ensure justice is served.

- g.** Another challenge is the brief period allocated for the enforcement of final minor offence decisions, which, according to Article 43 of the Law on Minor Offences, is only one year. This timeframe is considered excessively short.

B. CONCLUSIONS ON SIGNIFICANCE

The regulation of minor offences, along with the elimination of legal gaps and conflicts, significantly requires enhancement. This necessity extends beyond the Law on Minor Offences to include specialized legislation that defines minor offences.

C. CONCLUSIONS FOR HARMONIZATION

Harmonizing the Law on Minor Offences with good international practices, especially concerning the determination of fine amounts for certain violations, is essential. Additionally, ongoing harmonization of specialized legislation across various fields where minor offences are defined is crucial to ensure consistency with the Law on Minor Offences.

The analysis suggests that while the Law on Minor Offences generally aligns with international standards, there is still scope for introducing exceptions related to fine amounts. There is also a pressing need to harmonize specialized laws and municipal regulations with the Law on Minor Offences. Notably, the Law on Minor Offences exhibits inconsistencies with specific laws, which are further elaborated in the recommendations section.

IV.2. Recommendations

A. RECOMMENDATIONS FOR IMPLEMENTATION:

A1. Recommendations for raising professional capacities through training and raising civic awareness:

- i.** To organize ongoing training programs for all entities involved in minor offence enforcement, including the judiciary. Analysis indicates a significant knowledge gap among some professionals in handling minor offence cases. Therefore, it is essential to establish incentives for continuous advanced training in minor offence management. This could involve collaboration with the Academy of

Justice (for judges and enforcement officers), the Kosovo Institute for Public Administration (for inspectorates and state administration bodies), the Police Academy, and the Chamber of Private Enforcement Agents, among others. The aim is to include institutions from both the private and non-governmental sectors to enhance overall awareness and understanding of minor offences.

- ii. Raising public awareness about the importance of adhering to legal provisions is crucial. This involves enhancing social discipline, preventing minor offences, and understanding the potential social consequences of such actions. Promoting a culture of law respect through organized awareness campaigns is essential for fostering a community that values and observes legal standards.

A2. Recommendations for increasing the amount of fines that can be imposed by the minor offence authorities and the short period of statute of limitation for execution

- i. Since in some areas it has been considered that the maximum fines for minor offences determined by Article 29 of the Law on Minor Offences is quite low, considering the seriousness of the minor offences, as well as the fact that the European Union legislation in these areas defines very high fines larger, as a percentage of the annual turnover or even fines in amounts much larger than the maximum defined in Article 29, then, it is recommended that this Article be amended and completed in order to determine the exceptions to the amount of fines for some specific areas.
- ii. Taking into account the procrastination of the procedure as well as the short term of the relative statute of limitation of execution of one (1) year determined by Article 43, paragraph 1 of the Law on Minor Offences, as well as the short term of the absolute statute of limitation of execution of two (2) years defined by Article 43, paragraph 6 of this law, it is recommended to amend and supplement Article 43 of this law, in order to extend the relative limitation period from one (1) year to two (2) years, while the term of absolute limitation to be extended from two (2) to four (4) years.

A3. Recommendations for increasing the budget and increasing the human resources of the minor offence bodies

- iii. There is an urgent need to improve the allocation of funds to enhance the staffing levels of institutions responsible for enforcing minor offence regulations. This applies to minor offence bodies at both the central and local levels, including the courts. Ensuring adequate resources for these entities is

crucial for the effective and precise implementation of their responsibilities in the minor offence domain.

- iv. Allocate budget funds specifically for the implementation of executive decisions by all administrative and judicial bodies. Current delays and the statute of limitations expiring on numerous minor offences have resulted in substantial state budget losses. Addressing this issue is essential to prevent further financial impact and ensure timely enforcement of legal decisions.

B. RECOMMENDATIONS FOR HARMONIZATION

In the process of amending and supplementing the Law on Minor Offences, it is crucial to revise special laws to define exclusionary provisions for specific areas and outline the implementation of these laws upon the detection of minor offences. Specifically, the amendments must aim to achieve the following objectives:

B1. NECESSARY LEGAL CHANGES

Furthermore, it is essential for the provisions of special laws and municipal regulations to accurately define minor offences. This includes specifying the sanctions for each minor offence and identifying the responsible enforcement bodies, all in alignment with the Law on Minor Offences. The goal is to ensure uniformity across all minor offence legislation and fully harmonize these regulations with the Law on Minor Offences.

Initially, exceptions in the Law on Minor Offences should be made for the specific areas mentioned. Thus, the Law on Minor Offences ought to specify that in areas requiring the transposition and harmonization with the EU *Acquis*, it should be flexible enough to permit exceptions. These exceptions may include assigning minor offences with penalties exceeding those defined by the Law on Minor Offences, such as fines calculated as percentages (%) of the total annual turnover from the previous financial year. However, such exceptions should be permissible only by explicitly referencing the EU Regulation or Directive that authorizes them. This could be achieved by incorporating a new paragraph into Article 29 of the Law on Minor Offences.

Moreover, it is crucial that the provisions of special laws and municipal regulations accurately define minor offences, establish sanctions for each minor offence, and identify the responsible bodies for enforcement. This should be done in accordance with the Law on Minor Offences, aiming to achieve a harmonization of all minor offence legislation with the Law on Minor Offences.