



**PROGRESS ON LOCAL
GOVERNMENT, PUBLIC
PROCUREMENT,
ASSEMBLY OF KOSOVO,
AND ELECTORAL REFORM**

Initiated and supported by the
Kosovo Foundation for Open Society's project

PROGRESS ON LOCAL GOVERNMENT, PUBLIC PROCUREMENT, ASSEMBLY OF KOSOVO, AND ELECTORAL REFORM

June 2014

Prishtinë, Kosovë

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Foreword

The Kosovo Foundation for Open Society has supported Kosovo's European integration process since 2006, when it founded the European Integration and Good Governance program. Since then, the Foundation has constantly supported the non-governmental organizations' engagement in the process with their analysis, monitoring of policy developments, public discussions, and advocacy processes. The support has resulted in numerous analyses through the years and acquisition of essential knowledge and expertise over the processes by Kosovo's civil society organizations. Hence, in joint effort with a number of organizations already active in certain segments of integration process, the Foundation initiated the project "Civil Society for the Progress Report 2014" through which it offered the organizations an opportunity to channel their contribution to the upcoming Progress Report and the current Stabilization and Association Process Dialogue through focused and well-informed analysis, built on their multi-year experience and engagement.

Each analysis produced within the project addresses a specific segment of the current dialogue between Kosovo and the European Union, informing about the current situation, from the civil society's point of view, followed by the recommendations on the needed improved performance.

We hope that this exercise has produced will be of value not only to Kosovo's civil society organizations for further amplification of their voice within the integration process, but also to the European Union and the Government of Republic of Kosovo towards building of a standing cooperation with this segment of the state-building process. Ultimately, we hope that as a result of all the stakeholders' engagement, Kosovo's European integration process will accelerate, overcoming all the political barriers that stand on our way to this destination.

Iliriana Kacaniku
European Integration and
Good Governance Program

Local Government

Previous EC Progress Reports on Topic

The European Commission had reported that the local government structures are still weak in Kosovo, as stated in the 2013 report, citing capacities to implement legislation, financial impact assessments, policy objectives and policy making process. Nevertheless, it assessed that capacities of local governments, overall, had improved¹. In its 2012 report it positively assessed developments in decentralization of competences, assessing “significant progress². In 2011, it positively assessed the improvements of legislation on local government³.

The areas of local governance where the EC called for improvements were transparency of its decisions, more equitable service delivery in new and rural municipalities and land management. The challenges that it cited in its 2012 report were budgetary constraints of municipalities, absorption capacities, data management and weak professional expertise. The lack of political will at central level to decentralize its competencies in certain fields was also a critique of the 2012 report.

Criticism of EC Progress Reports

The criticism of EC Progress Report for Kosovo on local governance has been that it has never really stressed the financial autonomy of municipalities. In the 2012 report the EC noted that Kosovo had made “significant progress on decentralization” but in fact fiscal decentralization has remained at the low level and generally decentralization has not followed with the proper finances. The EC did mention “budgetary constraints” of municipalities but it accredited decentralization solely on devolving of competences and not the finances⁴. Whereas in the 2013 report, the EC report did not follow up much on the issue of decentralization. It just mentioned that local authorities have a need for more support to continue decentralization, but it did not mention fiscal decentralization or what type of support. It seemed as the EC has taken that decentralization process in

1 European Commission. (2013). Kosovo Progress Report for Kosovo 2013.

2 European Commission. (2012). Kosovo Analytical Report 2012.

3 European Commission. (2011). Kosovo Progress Report for Kosovo 2011.

4 Ferati, Sadri. Former Minister of Local Government - MLGA (2014, May 6). Personal Interview.

Kosovo has nearly concluded.

Secondly, the EC progress report has not mentioned one of the most worrying issue in local governance development, which is collection of own source revenues. Own source revenue collection have remained at a very low level. Considering that this revenue is the only revenue with which the municipalities can maneuver freely in their budget, this worrying to the fiscal decentralization and fiscal autonomy of municipalities.

The third issue that raised voices of criticism of the most recent report has been that while the EC has reported on the progress of decentralization, it did not mention or warn on the attempts to centralize competences currently on the hands of local authorities such as inspections of markets, public safety such as firehouses but also retrieving of delegated competences such as civil registry, registration of businesses and protection of forests.

Fourthly, while the EC report did mention that local governments need to be more transparent it did not mention another worrying issue at the local level, that of public consultations⁵. The public consultation process, be it through public discussions or budgetary hearings, has been done more as a legal requirement but without a proper process to include the public input in the issues in the matter. Many municipalities hold public discussions with very few people due to poor information of meetings or do not take to account seriously the input of the public. This discourages the communities of such municipalities who often complain that their local governments have not taken into account their input or reported back on the issue they discussed.

Lastly, there are voices of criticism regarding the fact that none of the EC reports have mentioned the overlooking of Municipal Assemblies by the executive whether it has been about offering enough information on issues placed on agenda or the time required to review important plans such as urban plans.

⁵ Kosova Democratic Institute. "Annual Assessment of Municipalities of Kosovo – 2013." (2014, January 15).

Legislation Changes

No new legislation was adopted that would directly affect local government legislative framework. Secondary legislation has been issued to local governments on organization and functioning of required municipal committees. The ratification of the Law of the City of Prishtina foreseen with the local government legislation has not made any progress. The new Mayor of Prishtina has declaratively hinted that it will work with the Ministry of Local Government Administration to get this law adopted but nothing has moved.

The Ministry of Local Government Administration (MLGA) issued 598 legal advices to various municipalities since the beginning of 2013. Most of these have confirmed the legality of the decisions of local governments but some have warned local government of their illegal decisions whether in public land management or the legality of statutes in the case of majority-Serb north Kosovo municipalities⁶.

Progress/Regress from Last Year

Accountability of Executive was Weak

It should be noted that 2013 was an electoral year for local institutions. More than half of the municipalities elected new Mayors. However, this election year interrupted the work of local governments considerably, mostly because local elected leaders were campaigning during most of the second half of the year. As a consequence Municipal Assembly proceedings were low, public consultations on various matters and the budget were considerably low and even service delivery was notably weaker due to some sections of administrative staff being involved in campaigning. Unfortunately, this is becoming a trend in Kosovo for any election period. Local institutions must be called upon not to disrupt the proceedings of the municipality, public consultation for current issues (not electoral promises) and service delivery in election period.

In 2013, regress has been made in the reporting of the Mayors to their legislative branch, as they are legally required to report at least once in six months on the financial state of the municipality and the plans for investments. In 14 municipalities the Mayor reported only once during the year (2013) to their municipal assembly. In one municipality the

⁶ Ministry of Local Government web-page. Legal Interpretations for Municipalities. <http://mapl.rks-gov.net/Main-menu/Legislacioni/Keshilla-Ligjore.aspx>

Mayor never addressed the municipal assembly. Moreover, the dynamics of work in municipal assemblies was lower as well in 2013. Five municipalities failed to hold the 10 legally required meetings of municipal assemblies⁷.

Unwillingness to Reform Administration for Service Delivery

The EC report mentioned that there were examples of improvements in the organization of municipal administration. This trend continued with many of the new leaders of municipalities that came in after the November 2013 local elections. However, the administration remains very large and incompetent in important sectors such as urban planning and inspections. A thorough reform of the administration has not taken place in Kosovo and there are very little signs that such reforms are taking place⁸. The relatively large number of Departments of local governments continued with the new Mayors that came to power in more than half of the municipalities of Kosovo. This shows the lack of willingness of even the new Mayors to better streamline the administration of local government.

In a representative survey about local government conducted for KDI on October 2013, access to water remains one of the main problems of local service delivery. There is a wide problem of clashes and miscommunication between local governments and regional water companies to provide services. In our work in the field, we identified villages where the water pipes have been put in place by the local government but the water supply has not been connected to the pipes despite the agreements. This problem in local government competencies goes deeper as water companies are public corporations that are lead by a Board made up of only one representative of each municipality of the region, whether the municipality is with a population of 5,000 or 200,000. The Ministry of Economic Development responsible for this department has not bothered much to establish a dialogue with local governments about solving this issue even though it is an urgent, daily life matter for a considerable part of the population.

⁷ Ministry of Local Government Administration. "Report on Functioning of Municipalities of Kosovo – January –December 2013." (May, 2014).

⁸ Ferati, Sadri. Former Minister of Local Government - MLGA (2014, May 6). Personal Interview.

Public consultation weakened and Civil Society contact strengthened

Public consultation meetings of local governments in 18 of the 34 municipalities were less than two a year (the minimum legal requirement for public consultations), one municipality had none in 2013 and the rest had the bare legal minimum of just two public consultations in the year of 2013. In addition, public consultation in most municipalities came to be seen more as a legal requirement and thus very little emphasis is placed in follow-up and taking the matters of public participation in local policy making seriously. However, it must be stated that in some municipalities where new Mayors took over, particularly in the larger municipalities such as Prishtina, Gjakova and Mitrovica, public consultation has increased considerably in the first few months of the year and their mandate. Nevertheless, more progress needs to be done in consulting the public, the quality of consultations and the follow through and particularly in some municipalities there's been a negative trend.

However, relations of local governments with civil society have notably made some improvements mostly due to more organizations being involved in monitoring and advocacy of local governments. While public consultations of local governments have decreased, local officials have been increasingly more open to local civil society organizations input. However, some municipalities still hold an adversarial view of NGOs. KDI alone in the last 15 months assisted local organizations with technical and financial assistance to monitor and advocate for community issues in 18 municipalities of Kosovo. The contextual discussion raised by NGOs has engaged more municipalities. Some of the new Mayors have been very open to consulting NGOs in improving their transparency. KDI has signed an MoU with Gjakova for a Liaison Office with Citizens, which has started operating with four paid interns and is in the process of initiating another such Office with another municipality.

There has been an improvement in cooperation of local institutions with the civil society as there has been more discussion on local policies. Nevertheless, as mentioned above, public consultation remains a weak spot of local institutions so there is much to be done in this aspect⁹.

⁹ Ministry of Local Government Administration. "Report on Functioning of Municipalities of Kosovo – January –December 2013." (May, 2014).

Institutional cooperation between central and local institutions was rightly mentioned in the last report as in need for improvement and this has remained true in the last year. Particularly line ministries, agriculture, health, labour and social welfare, environment and education, do not cooperate as much as they should on their sectors and municipal institutions feel left out.

Transparency of Municipalities

On their capacities to make information transparent on management and budget, mentioned in the last EC report, while progress has been made, much remains to be done as web-pages of most municipalities still lack such information. Moreover, transparency of municipal budgets prior to being placed for review or the mid-term review of the budget is lacking. Those municipalities that make their budget transparent in their web-pages, only make it transparent after it is approved by the Municipal Assembly¹⁰. The budget is not presented properly in budgetary hearings that municipalities are required to hold and this leaves public input greatly out of the budget process. The EC report also mentioned that decisions of municipalities must be more transparent and this remains still true for most municipalities who do not publish their decisions, do not hold regular press conferences and some that do not report properly to the Municipal Assembly. However, in some municipalities with new Mayors, such as Prishtina and Gjakova, the transparency of decisions by the executive has greatly improved as they are much more active in the media and share real time information on official municipal web-pages and social media.

While there has been progress in the use of official municipal web-pages to make more information available to the public, most municipalities do not publish their executive decisions or regulations in the web-pages. There is more online transparency on the budget but again the budgets are made transparent after they are approved and not in their draft state when there is time for input, nor are the mid-term budget review transparent online in most municipalities. Most local governments do not publish their expenditures every three months as it is legally required.

¹⁰ Kosova Democratic Institute. "Annual Assessment of Municipalities of Kosovo – 2013." (2014, January 15).

Financial Constraints and the Fall of Own Source Revenue

The biggest regress in local government in the last year has been the drop in own-source revenue. Own source revenue of local governments fell by more than 3.6 million Euros in 2013 or 12% in comparison to the planning. This source of revenues that local governments, were such institutions have more autonomy in spending, has already been alarmingly low at 55.8 million Euros in 2012 and stands at around 14% of their total budget. Most of the negative trend in own source revenue was due to a fall in building licenses, greatly attributed to the fall of such revenue in Prishtina. Further, the registration of businesses, where the Ministry of Trade and Industry removed the municipal registration fee, contributed to nearly 1.5 million in loss of own source revenue. However, there was 10% increase in collection of property tax, which is a municipal competence¹¹.

Strong Monitoring of the Implementation of MSA Negotiation

The EC report of 2013 mentioned a few issues regarding local governance and here an update of each issue will be given based on the developments of last 10-12 months. One of the first issues that EC mentioned in which local government had improved its capacities was addressing the return and reintegration of their residents coming mostly from Western Europe. In this issue, local government has continued to address this issue particularly the larger municipalities with more resources such as Gjakova, Gjilan, Ferizaj where considerable assistance to the returnees have been offered. But there are many complaints from local authorities and the returnees on the requests for services that the Ministry of Internal Affairs is supposed to offer in this case and on the management of the reintegration fund. Municipalities still do not manage the Reintegration Fund¹².

There has been progress in the obligations for municipalities resulting from the Negotiation of the Stabilization Association Agreement. Local governments have made considerable progress in offering quick access to civil register documents. Administrative procedures have been simplified and in the past three months electronic application for personal documents and postal delivery of such documents has been widespread.

11 Ibid

12 Ukimeraj, Rozafa. Director of Department of European Integration MLGA (2014, May 7). Personal Interview.

However, administration at the local level, as in at the central level, remains large¹³.

The reintegration fund has not been decentralized to municipalities as requested by the Negotiation of SAA. The procedures for the beneficiaries are currently prolonged and many broadcasters have reported on the dissatisfaction with such procedures and prolonging of procedures¹⁴.

The central level, respectively the Ministry for Local Government Administration, closely monitors and reports on the obligations of local governments resulting from the Negotiations of SAA. They publish quarterly reports detailing each progress. The Ministry has also prepared a 10 year Strategy for Local Governance and has started consultations with local governments and civil society.

Consolidation of Serb Municipalities

The Association of municipalities with Serbian majority foreseen to be established after local elections has not began due to the prolonging of consolidation of local institutions in the north of municipalities. There was re-voting in North Mitrovica and Zvecan and the statutes of the four most northern municipalities of Kosovo were rejected twice for legal and constitutional breaches. These factors prolonged for over five months the consolidation of new local institutions.

There has been some progress in the consolidation of the local governments with the most northern municipalities of Kosovo with a Serbian majority as elections were held for the first time according to the Kosovo legislation. However, this process has been slow and with many difficulties. The statutes of these municipalities were returned twice by the central government for breaches of local government legislation and the first Mayor did not give the oath of office as legally required so new mayoral elections were organised. There has not been progress in the joint Board for Mitrovica and Mitrovica North as foreseen by law. Even after five months of elections the services are still being offered by the Administrative Office of North Mitrovica.

13 Vasolli, Besnik. Expert on European Integration (2014, May 10). Personal Interview

14 Ukimeraj, Rozafa. Director of Department of European Integration MLGA (2014, May 7). Personal Interview.

Recommendations

1. Increasing their own source revenues should be one of the main aims of local governments in their quest to strengthen their institutions, ensure more fiscal independence and secure a more sustainable financing structure for local services and infrastructure projects;
2. Local governments must improve online transparency of their decisions so that NGOs and citizens could have quick access and begin using social media for public information of public meetings, consultations and pushing information of public importance (as some newly elected administrations have started doing);
3. The pre-approved municipal budget should be available online so that public input can be generated as the state legislation requires. In addition, quarterly expenditure reports should be made public;
4. Local governments should improve their public consultation process on plans, projects and services of local competency, and they should respect the local government legislation provision on the minimum number of public consultations and municipal assembly meetings;
5. Local governments in the north Kosovo must start to respect and follow accordingly the legislation of Kosovo as the Agreement between Kosovo and Serbia suggests and they must respect the requests and inputs of the Albanian minority in these municipalities;
6. The Ministry of Internal Affairs must decentralize the Fund for Reintegration as the local governments need to build an experience with this fund and would manage it more efficiently if it was within municipalities. MIA must play an oversight role of the Fund but local governments should manage it as the returned need the services in a timely manner once they are returned from other countries;
7. Line ministries should be more involved in assisting municipalities to carry through their obligations of the SAA Negotiation talks and generally improve their vertical communication;

Sources

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Public Procurement

Problem Analysis

Public Procurement in Kosovo remains one of the sectors with the most negative perception regarding corruptive affairs, mismanagement and poor efficiency of public contracts management. Kosovo spends more than 50% of its budget through public procurement. This figure is about 15% of the entire gross domestic product. In the scope of this period, the public procurement sector was marred by some deficiencies that have affected the performance of budgetary organisations.

The Procurement Review Body (PRB), which has a legal mandate to review economic operators' complaints, was left without a board for more than seven months and subsequently did not review any complaints of private companies. More than 260 complaints on different cases were filed in this institution. Almost none of the cases were reviewed at all, because the new board had concluded that all legal deadlines for reviewing them had expired. Many claims on the violations of the Law on Public Procurement have been left untreated by this institution.

The Central Procurement Agency (CPA) was established three years ago and has hired 15 officials. The CPA has enough employees to start with consolidated or common (joint) procurement activities. This Agency functions in the scope of the Ministry of Finances (MF). It has continuously provided the list of joint or common articles that the CPA wanted to establish consolidated contracts about. This list has been handed to the MF but has never been approved by Kosovo Government, an act that would allow the CPA to conduct procurement procedures. The consolidated/centralised procurement, in case it would managed properly would ensure a better value of the public money.

Furthermore, the MF has not yet elected CPA's director and in the meantime the agency is functioning with an acting director. Kosovo Assembly, through its monitoring of the implementation of the Public Procurement Law report, had asked the Government to start conducting consolidated/centralised procurements and elect a director for the agency. The European Commissions Progress Report has mentioned the lack of centralised procurements, as one of the key criticisms as far as public procurement is concerned.

The Public Procurement Regulatory Commission (PPRC), has successfully compiled all secondary legislation and has provided numerous legal interpretations based on the requests of different institutions and businesses. However, these interpretations are kept only internally between the parties and are not made public. Civil Society, media and other interested parties do not have access the interpretations provided by the PPRC on specific cases. This makes it impossible for them to provide any comments or recommendations.

One of the responsibilities of the PPRC is monitoring of public procurement, more specifically observing the compliance and performance of contracting authorities. This responsibility however, is the weakest stain of the work of the PPRC. Only a handful of monitoring audits have been conducted by the PPRC as they lack the human resources to observe more contracting authorities in their path of spending the public money. The head of PPRC has stated in many cases that Kosovo Assembly has not fulfilled their requests for additional staff in this department, while on the other hand, members of the Parliamentary Committee on Budget and Finances confirm that during their budgetary hearings they did not receive written requests by this institution for additional staff. Ilaz Duli, vice-president of the PPRC said that they have made their requests through reports submitted to the Assembly.

In its 2013 annual report, PPRC reported to have accomplished 100% of its monitoring plan. However, through the report it is easy to note that PPRC has avoided monitoring institutions that have greater budgets and are consequently rumoured for mismanaging public procurement. Out of eight (8) officials that the Monitoring Department has, one (1) is the head of the department; three (3) do monitoring of contracts while another four (4) monitor procurement procedures. In order to strengthen implementation of the LPP it is vital to undertake additional monitoring of contracting authorities in order to ensure that officials and institutions that violate the law will be penalised. More attention must be paid to institutions that possess larger budgets or those that have more complaints filed against them in the PRB. Until now, PPRC has been avoiding these institutions, having monitored only four (4) ministries that are not known for high amounts of budgets to go through public procurement.

Electronic procurement is considered one of the factors that will contribute to increased transparency, decreased favouritism during assessment of bids, increased competition and access, etc. Electronic procurement will also increase the administrative efficiency

of procurement procedures because it is less time consuming. Electronic procurement also decreases expenses made in purchasing goods and services. This way, in Albania for example, according to the report of the Public Procurement Agency, savings of about 10% of the total amount spent has been noted.

In Kosovo, even with continuous promises by public officials that the electronic system of procurement will be put in place and that the current legislation provides room for this, there are delays in the procedures of selecting the company who will implement this project. According to Ilaz Duli, vice-president of the PPRC, even with the delays of recent years, through the loan that Kosovo got from the World Bank, an institution that has partnered with the PPRC in this project, there are plans to start the project within this year, starting with pilot projects first. According to him, the announced tender has already been completed with the selection of a winning company that is a consortium of Luxemburg, Greece and Kosovo. Currently, PPRC is awaiting approval by the World Bank related to the procedures of the selection of the winning company. PPRC says it will make electronic procurement obligatory for all contracting authorities, in the quarter of next year.

Numerous cancellations of tenders continue to be a major concern. According to the PPRC and Kosovo's Anti-corruption Agency's reports, about 35% of tendering procedures fail. More precisely, they are cancelled by procurement officers. This is not decreasing. This damages economic operators due to the financial costs of preparing the tender. Furthermore, during the opening of bids, business secrets are damaged due to the fact that competitor will become aware of the offered values and defined conditions set forth in other companies' bids. PPRC should pay special attention to these deformities in the system and to ensure that cancelation of tendering procedures is not done in order to favour or discriminate certain companies.

Arithmetic errors are another problem that needs more institutional attention because it has remained unregulated legally. Contracting authorities have always used it as a means of raising the value of the contract or to affect the selection of the winning bidders of the specific procurement. PPRC admits that they are powerless when it comes to the regulation of this issue through possible secondary legislation because the law has not defined this issue precisely. Even the Parliamentary Committee on Budget and Finances during its monitoring of the implementation of the LPP concluded that arithmetic errors are an issue that needs to be regulated through the legislation, in order to minimize the amounts up to which tenders with such errors may be accepted or to forbid admission

of such bids entirely.

The lack of referring prices has enabled contracting authorities to enter into contract with either very cheap or very expensive operators relative to the real value per unit on the market. This is another issue remaining unregulated by the LPP due to the fact that it does not define when would one bid be considered abnormally low. The same applies for very expensive bidders but the Law only required cancelling of procedures if the offer is above the committed budget. However, in many cases the prices per unit are a method of hiding very high prices in public contracts. An illustrative example is the tender for the construction of the Ministry of Internal Affairs, where windows were contracted only with five (5) Euros while the prices for concrete went up to 999 Euros per cubic meter. Due to the lack of referring prices, pricing has drastically differed between economic operators. Abnormally low prices affect the quality of services or work performed which is even further eased with the lack of proper oversight and management of public contracts. European directives foresee that any offer that is up to 50% lower than the other competing offers must be considered abnormally low. There is no legal provision that specifies what is an abnormally low offer which consequently makes it very hard for contracting authorities to declare such offers as unreasonable. Corruption in public procurement remains a major concern, particularly due to the fact that this phenomenon does not seem to attract the State Prosecution. Based on the State Prosecution's annual report for 2013, there is not even one single mention of this sector, even though there were a number of indictments, primarily filed by international EULEX prosecutors. The Kosovo Anticorruption Agency has warned about the low level of knowledge of this law by Kosovo local prosecutors who drop the cases processed by the ACA or cease investigation because they are not able to treat the cases properly. As a consequence, violations remain unsanctioned. ACA has requested to stop tendering procedures after having found discrepancies between tender dossier requirements and the LPP. Last years Progress Report has concluded that in the high level trials that EULEX is dealing with, nine individuals were found guilty for corruption related to procurement while other cases are still under investigation. The Report also emphasises that the public perception on public procurement is worsening.

Criticisms of the Progress Report

Last year's European Commission Progress Report drew criticism over the public procurement system. The criticism has largely to do with the lack of implementation of the legislation in place by relevant institutions. It says that technical specifications on public procurement are unclear.

This may cause discontent. A number of complaints filed by businesses to the PRB are due to the fact that the criteria is not precise and leaves room for doubt. The report has also criticised the functioning of the PRB due to the lack of its board. Other issues related to training of procurement officers were also mentioned as well as the lack of applying the centralised/consolidated procurement.

The most serious criticisms of the report have to do with corruption in the sector and the increasing public perception of high level of corruption in public procurement. Indictments filed against public officials related to mismanaging public funds through procurement are also emphasised.

As far as the fight against corruption in this sector is concerned there is no change seen yet as still prosecutors hesitate to deal with these cases due to the sensitivity and the complexity of these cases. Prosecutors in Kosovo do not have proper knowledge in investigation of financial crimes and especially on public procurement. In the State Prosecutors annual report, this is not discussed at all as there are no statistics on investigations conducted, indictments filed, nor convictions of those who have abused public funds.

Legal changes

The Law on Public Procurement is one of the laws that has been most amended by the Kosovo Assembly. The Kosovo Government sponsored a Draft-Law through which it provides the preference measure for local bids in all procurement procedures. This way, local bidders are favoured both when the criteria for the tender is the lowest price (up to 15%) and also when the most economically advantageous (10 points) criteria are required. This provision of the Law is in contradiction to the Action Plan on the Negotiation of the Stabilisation and Association Agreement. In this document, the Kosovo Government pledged not to discriminate against European companies while with the current law, Kosovo does discriminate against European companies.

Furthermore, the law does not necessarily protect domestic products because it only protects the domestic offer. Hence, a trade company importing goods may compete with domestic producers and the law would not protect the domestic producer. PPRC officials are concerned with this provision because forthcoming assessments that will be conducted about their work will focus on this issue as well.

In line with this amendment, a governmental working group is working on making some other changes to this law. The Government has foreseen changing the Law, largely in order to bring it closer to compliance with new European directives and the inclusion of electronic procurement as an obligatory measure for all institutions.

The greatest challenge to Public Procurement this year has been the lack of the board of the PRB. This forced institutions to suspend many important projects due to complaints having been filed to the PRB and the inability of the latter to deal with them within legal deadlines. Some progress compared to last year has been noted with the fact that Kosovo Assembly has elected the members of the PRB board, However, there is still a backlog of cases that were not dealt with for almost a year.

Recommendations

- Kosovo Government should approve the permission for the Central Procurement Agency to allow it to start with consolidated/centralised procurement;
- The Ministry of Finances should elect the director of the Central Procurement Agency;
- PPRC must increase its monitoring of budgetary organisations but having as a priority those with greater budgets and bigger number of complaints;
- To initiate the procedures for electronic procurement and to start preparing institutions and businesses for this process;
- Change the Public Procurement Law and create room for defining the level of tolerance of arithmetic errors;
- No discriminatory measures against EU companies should be applied;
- The State Prosecution should pay more attention to public procurement and to provide data in its annual reports that are related to the sector;
- A list of referring prices must be compiled;

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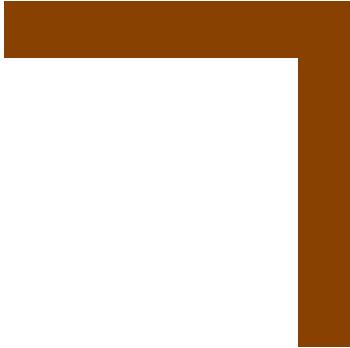
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Action Plan on the Negotiation of the Stabilisation and Association Agreement



**The process of reviewing
of draft-laws by Kosovo
Assembly up to their
approval**

The process of reviewing of draft-laws by Kosovo Assembly up to their approval

Assembly of Kosovo

Problem Analysis

Undoubtedly law-making is one of the vital functions Kosovo Assembly has. The Constitution of the Republic of Kosovo and the Rules of Procedures of the Assembly regulate the process of compiling legislative acts.

The hitherto parliamentary practices prove that the Government initiates about 99% of draft-laws that come for approval to Kosovo Assembly. Despite this, Kosovo Constitution and current legislation in place provide room for legislative initiatives also for the President of the Republic from her field of responsibilities, to the Members of the Parliament and to a group of at least ten thousand citizens.¹⁵

The fact that most draft-laws are sponsored by Kosovo Government, the majority of the responsibility for their content falls with the Government but of course not excluding the Assembly that is responsible for their approval or lack of it thereof. Proposed amendments by parliamentary committees mostly deal with clarification of articles, to regulate legal formulation of laws or to replace words/sentences not complying with the nature of the specific law. This way, it seems that proposed amendments are mostly grammatical or language corrections rather than content additions to the laws. The inability of parliamentary committees to propose more professional and meaningful amendments is a consequence of: lack of professionalism of the committees supporting staff and the lack of professionalism of the MPs themselves.

The quality of approved legislation has been an object of criticism by many local and international actors and reports. The majority of these laws are a translation of laws of the neighbouring countries with the tendency of adapting them to the local needs and local reality. Furthermore, the poor quality of laws is also a consequence of the lack of elaboration of the need for drafting and approving a specific law. However, the origins

15 Constitution of the Republic of Kosovo, Article 79, may be accessed at: <http://www.kushtetutakosoves.info/?cid=1,255>

of the laws are kept in darkness. In addition this seems to be more a matter of routine rather than a need derived from good analysis¹⁶.

The lack of inclusion of citizens, civil society and other stakeholders since the initial phases of drafting laws in the scope of the government, has derived legislation that has great deficiencies in its content and in some cases is un-implementable. The poor quality of laws being approved is further demonstrated by the fact that out of 98 draft-laws planned in the work plan of the Assembly for 2013¹⁷, 65 of them or more than 60% of them were processed as amendments and supplements to existing laws, and some of them were approved back in 2011 or 2012 and even were amended previously as well.

Public hearings are a mechanism that enables the Assembly to gain information and expertise by civil society groups, sectorial organisations, groups of interest and citizens that are related to draft-laws currently in procedure. Civil Society has continuously requested by the Assembly to hold public hearings for each and every draft-law since this would enable greater participation of civil society, groups of interest and citizens that would consequently create room for increased participation in the decision-making, but unfortunately these hearings are held very rarely.

Another evident fact is that parliamentary committees are over-burdened when bearing in mind that some of them cover three different governmental sectors. Handling of all the draft-laws coming from the sponsoring ministries, require strong support by the staff and adequate coordination of activities. A small team of 2-3 officers that parliamentary committees have at their disposal for assistance in organising and managing all the activities of the committee, has not guaranteed proper implementation of the mandate of these important bodies of the Kosovo Assembly.

Previous EC Progress Report Assessment

European Commission on its progress report for 2013, raised concerns on the limited capacities of the parliamentary committees to review draft laws. “The capacity of the committees to scrutinise draft laws remains limited. The Assembly’s secretariat needs to ensure better-coordinated input of its different departments to the committees.

16 Personal Interview with Berat Buzhala, former MP of the Kosovo Assembly (fourth legislature).

17 Kosovo Assembly Work Plan for 2013

Draft laws as well as amendments to legislation need better screening for compliance with the *acquis*.¹⁸" states the report.

The report further states that: "The Assembly needs to improve the existing rules of procedure, especially to clarify the legal effect and meaning of various decisions made in plenary. Decoupling the vote on amendments and the final vote on a law in plenary needs to be considered. During Assembly and committee deliberations, some shortcomings and violations of the rules of procedure were noted (for example, insufficient time between tabling a proposal and its discussion in committee and in plenary)".

The European Commission in this report also requires the Government and the Assembly to strengthen cooperation in harmonising its legislation with the EU. "The government, in close cooperation with the Assembly, still needs to improve its capacity to verify and confirm *acquis* compliance of legislation. Forward planning and cost analysis of implementation of legislation remains a challenge".¹⁹

On the other hand, the Action Plan for Negotiation of the Stabilisation and Association Agreement has addressed some important topics in the context of the law-making process. Among other issues, this document states that "However, there are many challenges that make the better functioning of the Assembly more difficult. The Assemblies Strategic Plan 2013-2018 and the new Rules of Procedure of the Assembly haven't been approved yet. The Assemblies capacities for monitoring and research face shortages, and especially the Department for Legal and Procedural Issues".²⁰

In this document, the increased expertise on harmonising Kosovo's legislation with that of the EU is also requested. "Legislative procedures must be strengthened in order to ensure inter-sectorial expertise and compliance with the *acquis*. There is a lack of legal basis defining the status of civil servants which to some extent would guarantee the independence of civil servant and would regulate the mandate and functions of civil servants of the Assembly" further adds this report.

18 European Commission Progress Report on Kosovo for 2013, page. 7. Available at: [http://www.mei-ks.net/repository/docs/1FINAL-ALB_MIE-Kosovo_Progress_Report_2013_\(alb\)_\(2\).pdf](http://www.mei-ks.net/repository/docs/1FINAL-ALB_MIE-Kosovo_Progress_Report_2013_(alb)_(2).pdf)

19 European Commission Progress Report on Kosovo for 2013, page. 8. Available at: [http://www.mei-ks.net/repository/docs/1FINAL-ALB_MIE-Kosovo_Progress_Report_2013_\(alb\)_\(2\).pdf](http://www.mei-ks.net/repository/docs/1FINAL-ALB_MIE-Kosovo_Progress_Report_2013_(alb)_(2).pdf)

20 Action Plan for the Negotiation of the Stabilisation- Association Agreement, page 15.

Progress/Rgress

Lack of approval of the Rules of Procedure

Even with this fourth legislature having exercised its mandate for more than 3 years, and even though the sub-committee on Mandates, Immunity and Rule of Procedures had worked more than two years in drafting the Rules of Procedures, this document has not been approved in the Assembly yet. This came as a result in one way of the objection of the document by members of the Presidency out of fear “of lowering power”. The draft-document had foreseen a new body of the Assembly to take on many competences, a body called the Conferences of Presidents, that would be composed of the leaders of the parliamentary groups and the chairmen of the parliamentary committees.

Deviances from the Rules of Procedures during the process of approving laws

The fourth legislature was characterized with continues bad practices of law-making which saw deviances of the rules of procedures of the Assembly. The same legislature in 2012, after a request by the Government had processed a single draft-law through which they proposed to amend 21 laws currently into force. Apart from being a practice in contradiction with legal practices of law making, this draft-law easily passed in the Assembly. A similar practice continued in 2013 with the approval of the Law on Amnesty, which within one day passed both readings. Same thing happened with other eight draft-laws related to the process of visa liberalisation between Kosovo and EU. A similar scenario was also encountered with the approval of draft-laws on amendments and additions of laws related to the mandate of the European Union Rule of Law Mission – EULEX that saw a single law changing another eight laws that passed both readings within the day. This wrongful law-making practice installed in Kosovo institutions is contributing to poor legislation that hardly implemented in practice.²¹

21 Kosova Democratic Institute (KDI). 2011. Scorecard. Available at: <http://kdi-kosova.org/publications/FletnotimiCL012011.pdf>

Insufficient cooperation between the Government and the Assembly in harmonising the legislation with the EU

The Government and the Assembly have not cooperated sufficiently in the field of legislation harmonisation with that of the EU. The lack of capacities in verifying and confirming the compliance of local legislation with the *acquis* of the EU, continues to be a serious problem in the field of law-making.

Assembly's capacities on monitoring and research

Despite the EU addressing these shortages in the capacities of the Assembly with an emphasis in the Legal and Procedural Department, this matter has not been resolved yet. Such capacities still remain weak and do not offer professional services to the Assembly's bodies.

The Declaration on the Partnership with Civil Society is approved

In the context of civil society inclusion in law-making some progress has been achieved, such as the approval of the Declaration on the Partnership with Civil Society that got approved in the plenary session of April 3rd, 2014²².

Changes on Issues EC Addressed Last Year

Issues raised by the EC Progress Report concerning the Assembly for 2013, have not received necessary response by the Assembly. The lack of approval of the new Rules of Procedures and the lack of increased capacities in monitoring and research of the Legal and Procedural Issues Department proves that there were no changes or improvements compared to the previous year.

22 http://kuvendikosoves.org/common/docs/proc/trans_s_2014_04_03_12_5550_al.pdf

Recommendations

Kosovo Assembly:

The Assembly should approve the new Rules of Procedures in order to improve its procedures;

- The Assembly should raise its professional capacities in order to support MPs during drafting and amending of draft-laws;
- The Assembly should allocate a specific amount of its budget in engaging external experts to help the Parliamentary Committees when amending draft-laws;
- Parliamentary Committees should hold public hearings for each draft-law falling under their field of work in order to include citizens and other actors in the process of law-making and consultation;
- In the process of drafting legislation pieces, the Assembly should organise wide consultations with civil society organisation, groups of interest and citizens;
- Kosovo Assembly should be more active in initiating legislation;

Sources

Constitution of the Republic of Kosovo, article 79, may be accessed at: <http://www.kushtetutakosoves.info/?cid=1,255>

European Commission Progress Report on Kosovo for 2013, page. 8. Available at: [http://www.mei-ks.net/repository/docs/1FINAL-ALB_MIE-Kosovo_Progress_Report_2013_\(alb\)_\(2\).pdf](http://www.mei-ks.net/repository/docs/1FINAL-ALB_MIE-Kosovo_Progress_Report_2013_(alb)_(2).pdf)

Action Plan for the Negotiation of the Stabilisation- Association Agreement, page 15.

Scorecards on the Assembly of Kosovo, Legislature IV, 2011 – 2014, January – July 2011 f. 6/ KDI publication, available: <http://kdi-kosova.org/publications/FletnotimiCL012011.pdf>

Kosovo Assembly Work Plan for 2013.

Personal Interview with Berat Buzhala, former MP of the Kosovo Assembly (fourth legislature).

Minutes of the plenary session held on April 3d, 2014. Available: http://kuvendikosoves.org/common/docs/proc/trans_s_2014_04_03_12_5550_al.pdf

Electoral Reform

Problem Analysis

The National Elections of 2010 we faced with many problems and irregularities. This process was followed by political disorder where the Assembly of Kosovo violated the Constitution of Kosovo while electing the president of the country, an act later confirmed as a violation by the Constitutional Court. The court verdict left no alternative to Mr. Pacolli, who was forced to resign, risking again an institutional crisis. The crisis was avoided after the agreement of the three political leaders Thaci – Mustafa - Pacolli for the election of the President and the immediate need for constitutional amendment and election legislation reform.

This agreement resulted in the establishment of two early parliamentary committees by the Kosovo Assembly; the committee for the amendment of Republic of Kosovo Constitution and the Committee for electoral reforms. Even though the mandate of these two committees was limited at that time, they were not able to form a consensus, even for three years, on many important issues such as electoral districts, electoral system, the composition of Central Election Commission, and the electoral threshold.

In the draft-amendment prepared by the parliamentary committee for electoral reforms minor changes were adopted, but the key problems of the electoral process were not even touched. The disagreements between the leaderships of the political parties led to a failure of this election legislation reform for the most important issues that the reform covered. The last try of Kosovo Assembly to approve this draft law, which had only superficial changes, failed as a result of the self-dissolution of the Assembly and this also led the country on early national election.

Previous EC Progress Report Assessment

The need to complete the reform of the election legislation was addressed by the EC Progress Report in 2013.

The report decisively says, “Kosovo needs to finalize the electoral reform process that

was launched in 2011. It needs to ensure that the legal framework for elections better reflects best practice in the EU and that implementation is in line with international standards²³.

The report further states that Kosovo must now focus in advancing the identified sectors by the feasibility study in order to fulfill the obligation deriving from the Stabilization – Association Agreement, where along with the rule of law, the judiciary and public administration an important segment is the **completion of the electoral reform**.²⁴

This matter has also been dealt with in the Dialogue document between Kosovo and the EU for the process of the Stabilization – Association, more precisely with the sectorial Committee on Justice and Security. In the conclusions of the Committee presented on January 30th, 2014, it was requested that “during the discussions on the electoral reform, the Committee urges Kosovo institutions to continue and conclude the legal framework in compliance with EU recommendations and the findings of the Election Observation Mission from the last local elections”²⁵.

On the other hand, the Action Plan for Negotiation of the Stabilization-Association Agreement has addressed some important issues in the context of the electoral reform in Kosovo. In this document, it is emphasized that “However, there are challenges that make the adequate functioning of the Assembly more difficult. The Constitutional and Electoral reform are intertwines and struggles in this direction will cause delays in the democratic reform, functioning of the constitutional order and in the reform of the electoral system in Kosovo”²⁶.

23 European Commission Progress Report on Kosovo for 2013, page. 7. Available at: [http://www.mei-ks.net/repository/docs/1FINAL-ALB_MIE-Kosovo_Progress_Report_2013_\(alb\)_\(2\).pdf](http://www.mei-ks.net/repository/docs/1FINAL-ALB_MIE-Kosovo_Progress_Report_2013_(alb)_(2).pdf)

24 Ibid. Page 5.

25 EU – The Dialogue on the Process of the Stabilisation Association (DPSA), Sectorial Committee on Justice, Freedom and Security. Prishtine, January 28th – 30th 2014.

26 Action Plan on the Negotiation of the Stabilisation-Association Agreement. Page 15.

Criticism of EC Progress Reports

The process of the electoral reform saw the inclusion of NGOs, be it in the ad-hoc parliamentary committee or in other forms. Despite their contribution through active participation in the meetings of the parliamentary committee or the organization of various conferences and roundtables, the political decisions of the leaderships to reform the legislation blocked the process from moving forward. It is a general assessment that the lack of willingness of the political leadership to reform the electoral legislation blocked the whole process.

Progress/Regress from Last Year

The work of the ad-hoc committee for electoral reforms was blocked in August 2012, after Democratic League of Kosovo (LDK) withdrew from the committee because they were dissatisfied with the lack of respect of the agreement between political leaders for the electoral reform and constitutional changes that affected the mandate of the current president and the country's institutions.

After the boycott, the leaders of the political parties continued meeting each other. A few months later they stopped discussing this issue. The party leaders did not accept the changes that parliamentary committee brought, not even minor changes. This matter was then moved at the leader's forum because according to the leaders, only political issues were left to discuss.

Unfortunately, even this forum failed, and one of the reasons of the failure was that the Alliance for Kosovo's Future (AAK) decided to withdraw its participation. To justify the failure of the forum, the leaders agreed to return the case in the Kosovo Assembly, even though no consensus was achieved for any of the topics.

However, the functional parliamentary Committee for Legislation and Judiciary, made an effort to approve some superficial changes drafted by the ad-hoc committee, the final approval by Kosovo Assembly failed due to the Assembly declaring its self-dissolution.

Changes on Issues EC Addressed Last Year

The only change compared to last year is that the electoral reform was formally brought back to the Assembly from the leaders forum, which did not result in any concrete outcome.

Recommendations

Primary Relevant Institution(s)

1. The next legislature since its very beginning, should start substantial reform of the electoral legislation which should culminate with drafting the Electoral Code, where some other laws currently missing should also be included (Law on Political Parties, Law on the CEC etc.).
2. Kosovo Assembly should take into account the recommendations of the EU for the inclusion of civil society and other stakeholders in the process of the electoral reform;
3. The electoral legislation reform must have its ultimate goal to ensure free, fair and democratic elections;

European Commission

European Commission should provide assistance to the Assembly of Kosova, be it through provision of expertise on electoral legislation reform or to facilitate the assistance by the Venice Commission.

Sources

European Commission Progress Report on Kosovo, 2013. Page 7. Available at: [http://www.meiks.net/repository/docs/1FINALALB_MIEKosovo_Progress_Report_2013_\(alb\)_\(2\).pdf](http://www.meiks.net/repository/docs/1FINALALB_MIEKosovo_Progress_Report_2013_(alb)_(2).pdf)

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Action Plan on the Negotiation of the Stabilisation-Association Agreement. Page 15.



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This study has been developed by the Kosova Democratic Institute supported by the Kosovo Foundation for Open Society (KFOS). The opinions expressed do not necessarily represent the opinions of the Foundation.

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