

Harmonization of Kosovo's Legislation with EU's Legislation in the Field of Security

Msc. Basri Shabani

PhD Student, Military Academy "Spiro Moisiu",
Operations Department, Tirana, Albania
Email: basrishabani@yahoo.com

Doi:10.5901/mjss.2013.v4n10p399

Abstract

In Kosovo, the drafting of laws in the field of security requires a complete review of existing legislation and the inclusion of a number of new areas and legal institutions that did not even exist before the declaration of independence in February of 2008. Drafting of laws in Kosovo, is done in full compliance with laws and standards of the European Union and this will facilitate and accelerate Kosovo's integration into the European Union. In Kosovo there is space for approach from new concepts of analysis of the issue of uniformity and standardization of their laws with EU legislation in the field of security. Necessary reforms in the field of security are of double importance from the fact that they are necessary internal functioning as well as for the integration in the EU. Also during compilation, we will verify that drafting of laws in the field of security, based on EU standards, is being made in accordance with the actual situation and the reality created in the country. This provision ensures that drafted laws are fully implemented and meet the requirements and existing needs in the field of security in Kosovo. Simultaneously it will eliminate laws that have never reached the intended applicability as a result of not harmonizing with the situation in the country of implementation.

Keywords: reforms, legislation, uniformity of laws, security, integration.

1. Introduction

Kosovo is the last country in the Balkans that has emerged from the wars in former Yugoslavia and as a result it is the only country following the steps towards the integration in EU. Development of policies and laws in the field of security continuously is followed and supported by EU representatives, European Commission and NATO; which are present in our country. They are helping and advising the local authorities in drafting contemporary laws in full accordance with European legislation. Compilation of laws according to EU standards and requests facilitates and accelerates the integration of our country in these structures.

For developing countries and especially for countries in the process of state-building such as Kosovo, existence of a clear path to follow towards the development of the state is facilitating for the state and its leaders. For the countries of West Balkans, countries in category of developing countries, integration in EU has become a target and a motive for undertaking internal reforms in order to fulfill the conditions that enable them to become members of the club of developed European countries.

European integration process requires first and foremost the harmonization of domestic legislation ascuis communautaire and the fulfillment of the Copenhagen criteria.

2. Methods

The study includes one deep and versatile survey as far as security field of Kosovo concerns as well as harmonization of domestic legislation with EU legislation.

Working methods are adapted to the requirements of this research:

Descriptive method-we describe the situation in which Kosovo is today in legal aspect,

Research method-we research the possibility and ways through which we could make the necessary reforms to fulfill required requests from EU, as a condition for integration.

Analysis method-through which we analyze the benefits and shortcomings of the current legal system in the sphere of security and the need for necessary and needed changes to be done in order to raise the level of security.

Comparative method-we analyze the current situation and compare it with the norms and EU standards, by giving our recommendations on the necessity of reforming the legislation and his adaptation with EU legislation.

3. The aim of the study

The need for a reform in the legal aspect is thus necessary. Kosovo's attempts for integration in Euro Atlantic structures spread the need for necessary reforms in the sphere of security and approximation of Kosovo's legislation with the international one, reforms and changes which have to be adapted to required standards from EU and NATO; completion of which will enable the country rapid and easy integration.

4. Literature review

During the research of this subject, it has been observed that there is a large lack of literature if not at all. All work is developed based on monitoring reports, guidelines and other laws and regulations undertaken by Kosovo institutions, in order to determine the mode of adoption of the Acquis in domestic legislation.

Based on the article 5.7 of the UNMIK/REG/2001/9 the legal basis for aligning Kosovo's legislation with *acquis* is defined in the Constitutional Framework for Provisional Institutions of Self-Government of Kosovo. It requires that legislation for Provisional Institutions of Self-Government of Kosovo and practices from all fields of the responsibility to be harmonized with standards and relevant European criteria.

According to the administrative order of UNMIK no.2006/6 the European Integrations Agency is responsible institution for coordinating and supervising the approximation of Kosovo's legislation with *acquis communautaire*. But Kosovo's legislation however is not fully aligned with *Acquis*. Kosovo's legislation is going through the procedure of checking the compliance with the general principles of *acquis communautaire*.

EU's *acquis* is divided in primary and secondary legislation. Primary legislation includes in particular treaties and other agreements which have similar status. Primary legislation is adopted through direct negotiation by governments of member states. These agreements are laid down in the form of treaties which are then subject to ratification in accordance with internal constitutional rules. Much of the *Acquis* is secondary legislation in the form of directives, regulations and decisions. Regulations and decisions need not to be incorporated into national laws of the member states, as they are applied and executed directly. Non-member states should incorporate in their legal national systems all kinds of EU secondary legislation (Handbook on approximation of Kosovo's legislation with the EU *Acquis*, 2011). Approximation of legislation is of primary importance and should be treated seriously. In order to unify the practice of drafting laws and bylaws, as well as to ensure high quality of legislation, on July 2008 has been issued an Administrative Instruction 14/2008 to draft Laws and Subsidiary legislation acts in all Government ministries and all their subordinate agencies.

Approximation of legislation is part of the process of EU integration, and should be considered as such. In this sense of legislative of legislative process, there is a need for the adoption of a national plan approximation of legislation in Kosovo, that will serve as a tool for coordination, planning and reporting the process of approximation.

5. Harmonization of Kosovo's legislation with EU legislation in the field of security

It is an advantage for Kosovo that drafting of new laws is done in full harmony with laws and standards of EU, but because of the economic and social situation, enforcement of these laws often encounters problems as well as obstacles in its implementation. However, the path to EU integration requires that laws must be tailored and consistent with the *acquis communautaire*. Since 1999, Kosovo had specific cooperation with EU and this has served as a great contribution for local institutions when they have drafted the new national legislation to be in accordance with EU legislation.

6. Harmonization of legislation

Harmonization of legislation is a unique obligation for EU membership. This means that countries aspiring to join the European Union must align their national laws, regulations and procedures in order to make effective all the legal structure of the EU, within *acquis communautaire*. Since approximation obligation continues even after, the pre-accession process of approximation becomes an opportunity for these countries to organize better their institutions and procedures and to train their staff on daily processes and responsibilities of making laws modeled on the EU, their implementation and enforcement.

Firstly, there should be approval or amendment of national laws, regulations and procedures to ensure that the

requirements of the relevant EU law to be fully incorporated into the national legal order. This process is known as "transposition". It should be noted, that although countries have considerable leeway in selecting the most appropriate national mechanisms which are reflected EU obligations, in some respects this freedom is limited by the general law of the European Union. In most cases, it is necessary that domestic legislation should be adopted by the Parliament. Term transposition means any legislative, regulatory or administrative measure undertaken by the competent authorities of a Member State, in order to incorporate into the national legal order obligations, rights and duties enshrined in the Acquis. So transposition does not simply include reproduction of the words of a directive into national law, but also any additional provisions, such as the amendments or abrogations of the contrary national provisions, which are necessary to ensure that national law as a whole, reflects the provisions of acquis.

Secondly, necessary institutions and budgets must be ensured for the implementation of these laws and regulations (known as "implementation" or "practical application" of the directive) (Handbook of Kosovo with the EU Acquis, 2010).

The practical application is defined as the incorporation of EU law in particular decisions by the competent authorities, for example issuing of licenses for the execution of a plan or program. In case of regulations and provisions that are directly applicable, then EU legislation applies directly. However, once a directive is correctly transposed, then it is applied by national transposing measures. Here, too, is included the provision of necessary infrastructure and tools so that competent authorities are able to fulfill their obligations under EU law and to take appropriate decisions. To be a bill drafted by European norms and standards and to be successfully implemented correctly in our country, to assess and analyze the adequacy of laws and normative acts, to examine these in terms of constitutionality and legality, there is a Committee on Legislation and Justice, within the Assembly of Kosovo as a measurement and assessment institution of domestic legislation.

7. The adoption of new national legislation

International law is an essential element of the rule of law in Kosovo. International relations have broad effects on the state activity and ultimately affect the processing of domestic legislation. Most international agreements are incorporated directly in the Kosovo's Constitution and as such are mandatory for implementation by Kosovo institutions, with priority to the legal provisions of local institutions.

Kosovo can use existing national laws or amendments to existing laws to implement the acquis of the EU. But rarely happens that an existing law fully complies. Experience has shown that it is unwise to rely on existing legislation, unless its adaptability is demonstrated based on a detailed comparison of provision for provision type of national law relevant to Acquis in the EU (Manual on approximation of legislation in Kosovo with the EU Acquis, 2010).

Passing laws in the accelerated procedure, without the possibility that the general public but also members of the Assembly to debate them and make recommendations for amendments, has made these laws, even two or three years after their adoption, be seen as imposed laws and foreign laws. Since laws stemming from the Ahtisaari Package are most important laws of Kosovo, those laws must not be seen as imposed and foreign (Institute for Policy Analysis, 2010).

Moreover, the unwillingness of local institutions to take into account the opinions and suggestions of civil society and experts outside government has made these laws to be adopted by numerous substantive defects. And for that, immediately after their approval, several laws have been introduced in the procedure for amendment.

Providing guidance on how and what procedures should be followed in drafting laws and regulations in Kosovo, the Government of the Republic of Kosovo, with the aim of standardizing practices for drafting laws and regulations, and to ensure quality high legislation, has issued Administrative Instruction 14/2008, to draft Bills and subsidiary legislation.

8. Conclusion

The Republic of Kosovo has already been introduced in a dynamic process for the future. The integration process of Kosovo to its full membership in the European Union requires a dedicated commitment to the development of democracy, protection of human rights and freedoms, establishing the legal infrastructure and creating a sustainable security for all citizens Kosovo under international standards and the European Union.

Kosovo has made great progress in all areas of social life, in particular in the field of security. Safety is one of the main pillars of the state and society as ensuring the rights of man, his life and property is one of the primary things that the state should pay special attention.

Kosovo has drafted a legal basis in the field of modern security system, which serves as a guarantee of functionality and efficiency of these bodies in view of the interests of Kosovo and its citizens.

What should be definitely praised as a great achievement is the fact of construction of contemporary legal basis according to international standards, since adopted laws are in full compliance with EU standards, ie fully harmonized with the *acquis communautaire*. Drafting of laws in the field of security is done with the ongoing help of European Commission representatives and NATO. This fact represents a mitigating circumstance and a first step towards the integration of the Republic of Kosovo in the EU structures.

References

- Institute for Policy Analysis. Available at: <http://www.institutigap.org/publikime>
- Manual on Kosovo's approximation of legislation with the EU Acquis (2010). Pristina. Available at : <http://eeas.europa.eu>
- Manual on approximation of legislation Acquis Kosovo with the EU (2011). Prishtina. Available at : <http://eeas.europa.eu>
- Regulation no. 2001/19 on the executive branch of the provisional institutions of self-government in Kosovo. Available at: <http://www.unmikonline.org/regulations/2001/reg19-01.pdf>
- Administrative Instruction no. 14/2008 for the Compose of Draftlaws and Sublegislative. Available at: http://www.kryeministri-ks.net/repository/docs/UA_14-2008_per_Hartimin_e_Projektligjeve_dhe_akteve_nenligjore.pdf
- The Assembly of the Republic of Kosova. Available at: www.assembly-kosova.org
- The United Mission in Kosovo – UNMIK. Available at: www.unmikonline.org