

## Legal Elaboration, Principles and the Process of Integrated Border Management. Observation of the Legal Framework of Kosovo

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### Abstract

The aim of this piece of work is to examine the legal aspect and explain the process of Integrated Border Management as one of the essential criteria of the European Union in the process of visa liberalization dialogue and other integration processes in Europe. Integrated Border Management is a very complex process and this complexity involves: the increased number of immigrants; combat and prevention of terrorist acts in the continent, narcotics smuggling, human trafficking, acts of criminal groups in the form of organized crime, etc. Integrated Border Management in the Republic of Kosovo faces some difficulties making this process complicated in relation to other countries in the region, such as: unwillingness of the Republic of Serbia to establish interstate relations based on good neighborly relations, failure to exert full power in the northern part of the country, failure to define the green line and border demarcation with all its neighbors, etc. In view of this, the topic of this piece of work is to look into the legal and institutional mechanisms which are linked to the process of Integrated Border Management. This paper also strives to carry out a formal analysis of the Integrated Border Management process in order to draw conclusions and recommendations, which will facilitate the implementation of this process in the future. The key issues to be addressed in this paper are: the international legal framework which addresses and regulates the border crossing, the national legal basis for the management of state borders, primary and secondary legislation of Kosovo, the institutions and their responsibilities in this process.

### 1. Introduction

The aim of this piece of work is to examine the legal aspect and explain the process of Integrated Border Management as one of the essential criteria<sup>1</sup> of the European Union in the process of visa liberalization dialogue<sup>2</sup> and other integration processes in Europe, which appears to be a topic of interest and significance for both, researchers on this issue and those who exercise this profession in practice. Parallel to its information aspect, this piece of work strives to contribute to the practical aspect as well. Considering that Kosovo is in the process of implementing the Integrated Border Management with its neighboring countries, as one of the criteria for integration and membership in the European Union.

The Integrated Border Management is a very complex process and this complexity involves: the increased number of immigrants<sup>3</sup>; combat and prevention of terrorist acts in the continent, narcotics smuggling<sup>4</sup>, human trafficking, acts of criminal groups in the form of organized crime<sup>5</sup>, regional cooperation of criminal groups and the use of technology in committing criminal acts, etc. Therefore, being part of the European continent, the Republic of Kosovo is also affected by

<sup>1</sup>European Union Progress Report I year 2010 - 2011

<sup>2</sup>Visa liberalization means free movement within the Schengen area. Liberalization allows for visa free travel only for 90 days (every six months), for free travel and cannot be used for work or for other benefits.

<sup>3</sup>With the term emigrant we mean a person who goes to another country in search for better economic, professional, religious, etc., possibilities, respectively he emigrates from an old country and immigrates into a new country, for more see Joshua S. Goldstein, *International Relations*, printing house Ditura, pg. 523.

<sup>4</sup>With smuggling narcotics we mean an unlawful form of production and circulation, in mediating in unlawful trade of narcotics, in purchasing narcotics in an unlawful manner and in transportation of narcotics in an illegal way, for more see Latifi V. *Criminology*, Pristina, 2011, pg.295.

<sup>5</sup>With organized crime we mean whoever willfully or knowingly, be it the aim and the overall activity of the organized criminal group or group or the intention of the group to commit one or more criminal offenses which are punishable with imprisonment of at least four (4) years, actively takes part in the criminal activities of the group knowing that such participation will contribute to the realization of the criminal activities of the group, is sentenced with a fine up to two hundred e fifty thousand (250.000) Euro, and imprisonment of up to seven (7) years, *Criminal Code of Kosovo*, Article 283, Nr. 04/L-82, 20 April 2012

these phenomena. Integrated Border Management in the Republic of Kosovo faces some difficulties which make this process complicated compared to other countries in the region, such as: unwillingness of the Republic of Serbia to establish interstate relations based on good neighborly relations, failure to exert full power in the northern part of the country, failure to define the green line and demarcation<sup>6</sup> of the border<sup>7</sup> with all its neighbors, etc. In view of this, the topic of this piece of work is to look into the legal and institutional mechanisms which are linked to the process of Integrated Border Management. This paper also strives to carry out a formal analysis of the Integrated Border Management process in order to draw conclusions and recommendations, which will facilitate the implementation of this process in the future.

The key issues to be addressed in this paper are: the international legal framework which addresses and regulates the border crossing, the national legal basis for the management of state borders, primary and secondary legislation of Kosovo, the institutions and their responsibilities in this process.

## 2. International Legal Basis for the Controlled Border Management

The Integrated Border Management is not purely a national issue but a process which implicates two or more countries, and as such it represents a mechanism for cooperation and coordination of actions to ensure a higher degree of security towards potential phenomena and events which could jeopardize the general public safety.

International legal acts which regulate border crossings, also contain provisions which regulate the process of Integrated Border Management. In this regard, especially since 1985 onwards, significant results have been achieved. In view of this, bordering countries have signed bilateral and multilateral memoranda of cooperation, thus defining and regulating the Integrated Border Management. The most important international Conventions and documents on this issue are: the Schengen Convention of 1990 adopted by the European Union<sup>8</sup>; Schengen Border Code 15 March 2006<sup>9</sup>; EC Regulation No. 562/2006 of the European Parliament and Council; Guidelines - the European Parliament Council Commission communique on the Integrated Border Management of member states of the European Union (Brussels, 07.05.2002); Guidelines for Integrated Border Management of Western Balkan countries adopted by the European Commission (October, 2004) and amended and supplemented in 2007, etc.

All these international legal acts (conventions, codes, guidelines, statements, etc.) address legal regulation of interstate border issues, including the definition of the terms: border, inner and outer border of the European Union, border crossing point, border control, and the principles of application by the competent authorities for Integrated Border Management. According to Schengen border Code, the term inner border means common borders such as rivers and lakes, borders of the European Union states, airports for domestic flights and sea, river, lake and ports for regular ferry connections<sup>10</sup>, while the outer borders include land borders of the European Union countries, including the borders of rivers and lakes, sea borders and airports, river ports, sea ports and lake ports, provided that they are not inner borders<sup>11</sup>.

International legal acts define the meaning and the ways of establishing border crossing points between countries. According to the Convention, a border crossing point is any crossing point authorized by the competent authorities for crossing outer borders<sup>12</sup>. However the Convention does not provide the location and the number of border crossing points, this falls under the authority of neighboring countries based on their political and economic interests and other specificities that may have.

In order to ensure a continuous basis for cooperation and in order that this cooperation takes its normal flow regarding the border crossings between states, the Convention defines the meaning of the border crossing, which is "a check made at a border as a single response for the purpose of crossing the border"<sup>13</sup>. The cooperation between neighboring countries is vital for the development of a common understanding and respect for the principles in the

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<sup>6</sup>Defining the overall direction of the state border with documents is called *DELIMITATION*, while drawing the border in the field is called *DEMARCATIION*. This is done by mixed commissions or an international commission, for more see GrudaZejnullah, *International Public Law*, page 167, Pristina.

<sup>7</sup>Until the date of the publication of this piece of work Kosovo has not completed the process of demarcation with Serbia and Montenegro.

<sup>8</sup>Schengen Convention was named after the town of Schengen/Luxembourg where the Convention was signed on 19 June 1990 by countries of Benelux, Germany and France. It entered into force on 26 March 1995, <http://www.hri.org/docs/Schengen90/body8.html>

<sup>9</sup>Schengen Border Code REGULATION (EC) Nr.562/2006of the EUROPEAN PARLIAMENT AND COUNCIL of 15 March 2006, a code of the European community setting up rules on governing the movement of people along borders.

<sup>10</sup>Schengen Border Code approved by the European Parliament, Article 2, paragraph 1

<sup>11</sup>Ibid, Article 2, paragraph 2

<sup>12</sup>Schengen Convention, Article 1, paragraph7

<sup>13</sup>Schengen Convention, Article 1, paragraph8

implementation of the process of the Integrated Border Management. In order to conduct a more effective border management which would enable people to live in a safe and free environment, to move freely, to facilitate and develop cross-border trade, to combat international crime, etc., the international legal acts have defined the concept of the Integrated Border Management, which implies coordination and cooperation between all relevant authorities and agencies involved in the border security and in easing trade, in order to create an effective and efficient management within the integrated border system border to reach the common goal of open borders, but controlled and safe<sup>14</sup>.

The concept of Integrated Border Management defined in international documents means that the process of Integrated Border Management is a multi-dimensional starting with: control and surveillance of borders according to principles and standards set by the Schengen Convention and Code, as well as other legal documents, detection and investigation of national and international crime by undertaking all actions in coordination with the competent authorities based on the applicable laws in this field, mutual cooperation between agencies and the competent authority in managing borders (border guards, customs officers, police and other relevant authorities) including the coordination and coherence of activities of member states in the European Union institutions.

The provisions of international legal acts show that the process of Integrated Border Management is regulated only in principle, whereas the regulation of concrete issues related to the practical implementation of the Integrated Border Management process remains under the jurisdiction of states and their legislation according to international standards.

### 3. Legal Elaboration of the IBM Process According to the Legislation of the Republic of Kosovo

The Constitution of the Republic of Kosovo defines the Republic of Kosovo as an independent, sovereign, democratic, unified and indivisible state<sup>15</sup>, with the right of the competent authorities to control the borders in its territory<sup>16</sup>. As in most modern states, in the Republic of Kosovo the legal elaboration of border control has been regulated through a special law. The Government of the Republic of Kosovo has established the essential legal basis for elaboration of the Integrated Border Management by drafting the law on the integrated management and control of the state borders<sup>17</sup> and by drafting and adopting sub-legal acts which derive from this law. There are also other legal acts containing provisions that indirectly address the border management process such as the Law for the Control and Supervision of the State Border<sup>18</sup>, the Asylum Law (no. 03 / L-073); Law on Amending and Supplementing the Law on Asylum (no. 03 / L089); The Criminal Code of the Republic of Kosovo (No. 04 / L082); Police Law (no. 04 / L-076); Law on Foreigners (no. 04 / L-069, etc.). The legal framework in which the process of Integrated Border Management is directly or indirectly addressed has been complemented by the Government during the drafting and adoption of the National Strategy for the Integrated Border Management of the Republic of Kosovo; Strategy for Combating Terrorism, organized crime, human trafficking, etc.

The Law for the Control and Supervision of the State Borders contains provisions of material, procedural, executive and punishment nature - offenses which satisfactorily regulate the legal elaboration of the Integrated Border Management process and ensures the functioning of the open border movement, safe and well controlled<sup>19</sup>. This law incorporates

<sup>14</sup>Guidelines for integrated management of borders in Western Balkans I, reviewed in 2007, by the European Commission, page 14.

<sup>15</sup>The Constitution of the Republic of Kosovo approved by the Assembly of the Republic of Kosovo and entered into force on 15 June 2008, Article 1, paragraph 1.

<sup>16</sup>Ibid, Article 125, paragraph 1.

<sup>17</sup>Law on Integrated Management and Control of State Borders nr. 03/L065, approved by the Assembly of Kosovo on 21 May 2008, marks, for the first time, a legal elaboration of the Integrated Border Management process through a separate law.

<sup>18</sup>Law on Control and Management of State Borders nr. 04/L-072, approved by Kosovo Assembly on 21 December 2011, declared by the President of Kosovo through a decree nr. DL-001-2012, dated 06.01.2012.

<sup>19</sup>The Law consists of Chapters I – XIII and contains 63 Articles. Chapter I includes general provisions and consists of Articles 1-4; Chapter II includes provisions of powers and authorization to conduct border control and consists of Articles 5-8; Chapter III includes provisions on crossing the state border and consists of Article 9; Chapter IV includes provisions of border control and consists of Articles 10-26; Chapter V includes provisions on border crossing points and the zone of the border crossing point and consists of Articles 27-34; Chapter VI includes provisions on the supervision of the border and consists of Articles 35-39; Chapter VII includes provisions on border line and consists of Articles 40-45; Chapter VIII includes provisions on police measures inside the country and consists of the Article 46; Chapter IX includes provisions on the cooperation of state bodies which have the authority in border management and consists of Articles 47-49; Chapter X includes provisions on cross border police cooperation and consists of Articles 50-53; Chapter XI regulates collection of personal data and consists of Articles 54-58; Chapter XII includes provisions on border offences and consists of Articles 59-62; Chapter XIII includes transitional and final provisions and consists of Articles 63-64.

international standards in developing an effective system of control and management of the state border<sup>20</sup>, which allow free movement of people and goods, prevention of cross-border crime while respecting human rights and freedoms. The general provisions proclaim the goal of regulating border control, police powers within the state, the cooperation among state institutions which have competence in the border management<sup>21</sup>. However if we interpret other provisions of the law, it is evident that the priority has been given to the procedural regulation in the exercise of powers – authorizations as well as the cooperation between the competent authorities in the implementation of the Integrated Border Management process. In order to achieve effective cooperation, to facilitate data and information exchange, and have greater efficiency of the system for the integrated border management, the National Center for Border Management has been established<sup>22</sup>. Blanket provisions of the law imply that the assistance and cooperation of state institutions involved in the border management is carried out through the Strategy for the Integrated Border Management<sup>23</sup>.

In addition to creating and harmonizing primary and secondary legislation with the EU Acquis, the Republic of Kosovo has advanced and functionalized its key Agencies and Institutions involved in the implementation of the IBM process, such as: Kosovo Police - KP; Kosovo Customs - KC; Food and Veterinary Agency of Kosovo - FVAK<sup>24</sup>.

The state Agencies and Institutions of the Republic of Kosovo are guided by some basic principles which directly or indirectly are incorporated in the provisions of the Law on the Control and Supervision of the State Border, as well as in the National Strategy for Integrated Border Management, thus providing guarantees for the implementation and realization of the objectives of the Integrated Border Management process:

- Implementation of relevant legislation for the three pillars ensuring that the authorized agencies for the integrated management and control of the state border will be organized and operate as required by the EU.
- Cooperation and coordination of activities of the agencies involved in the border control and reforms in their organizational and management structure.
- All procedures of the border agencies regarding human resources, training, finance and logistics are determined by internal regulations in joint consultations among them.
- Proper procedures for selection and appointment of staff in the border agencies should be applied in order to increase the professionalism and quality.
- Communication and exchange of information among authorized border agencies should be improved to create an overall information management system.
- Development of infrastructure and adequate equipment to support the efforts of the agencies in providing professional services to citizens and other beneficiaries.
- Ensuring sustainable funds for continued exercise of operations in the integrated border management system and the creation of mechanisms to ensure international donations.<sup>25</sup>

#### 4. Administrative and Territorial Features of the Republic of Kosovo

During history, depending on political and economic changes and overall development of the society, the territory of Kosovo has changed as of February 17, 2008, when the Declaration of Kosovo's independence was adopted by the leaders of our nation, elected in a democratic way, through the declaration they proclaimed Kosovo an independent and sovereign state<sup>26</sup>.

After the declaration of independence of Kosovo, the international borders of the Republic of Kosovo include a territorial area of 10,907 km<sup>2</sup>, which is defined in the border line of the former Autonomous Province of Kosovo within the former Socialist Federal Republic of Yugoslavia<sup>27</sup>.

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<sup>20</sup>State borders are defined as lines separating the territory of one state from the territory of another state or the territory of one state and an open sea or as lines until where the territory and sovereignty of a state stretches, for more see GrudaZenullah, *Pristina International Public Law*, page 164.

<sup>21</sup>Article 1, *Law on control and supervision of the state border nr 04/L-072*, approved on 21 December 2011 by the Kosovo Assembly

<sup>22</sup>*Ibid*, Article 49, paragraph 1.

<sup>23</sup>*Ibid*, Article 49, paragraph 2.

<sup>24</sup>In addition to KP, KC and FVAK in implementing IBM, other relevant institutions play an important role, such as Ministry of European Integrations, Ministry of Transport, Forensic Institute, Ministry of Health, Ministry of Public Administration, Ministry of Agriculture, Forestry and Rural Development, Ministry of Security Force of Kosovo.

<sup>25</sup>National Strategy of the Republic of Kosovo for the Integrated Border Management, pages 11 – 12, approved by the Government of Kosovo, April 2009, Pristina.

<sup>26</sup>Kosovo's Independence Declaration, approved by the Kosovo Assembly, 17 February 2008, Article 1, Pristina.

<sup>27</sup>Kosovo Spatial Plan 2010-20, Pristina, page 20.

The territory of Kosovo is situated in the south-eastern Europe, having a central position in the western part of the Balkan Peninsula and borders with: the Republic of Albania with 113,551 km of border length; the Republic of Macedonia with 170,772 km of border length; the Republic of Serbia with 380,068 km of border length and with the Republic of Montenegro with 79,165 km of border length<sup>28</sup>. The terrain through which the state border line of the Republic of Kosovo passes through consists of generally rugged mountains, hills, fields and lakes<sup>29</sup>. Geographical elements show that Kosovo's territory has an important strategic position connecting central Europe and the Mediterranean Sea. In order to facilitate the movement, competent state authorities of Kosovo authorities have put into function 13 border crossing points of road and rail types with the neighboring countries, by applying physical controls. Between the Republic of Kosovo and the Republic of Albania there are 3 road type border crossing points: Vermica; Qafa e Prushit and Qafa e Morinës. With the Republic of Montenegro the border crossing point Kulla is in function. Between the Republic of Kosovo and the Republic Serbia the largest number of border crossing points – 6 (six) in total are operational and are of road type: Bernjak, Jarinie, Merdare, Mutivode, DheuiBardhë, Muçibabë. Between the Republic of Kosovo and the Republic of Serbia there used to exist tow rail type border crossing points: Merdare and Leshak which are no longer operational<sup>30</sup>. With the Republic of Macedonia there are two border crossing points Hani iElezit and Gllaboqica, which are of a road type, whereas the border crossing point in Hani iElezit is of a rail type.

All border crossing points of the Republic of Kosovo operate according the national and international legislation, and their categorization and standardization has been done according to internal and external factors based on bilateral and multilateral agreements.

## 5. Conclusion

The time, the phases and the process of establishment and transformation of border control institutions in the territory of Kosovo has not been the same, due to particular political effects and the rule of law, the success of the implementation of the law has not been the same in all border crossing points.

Due to the prevailing nationalist ideas regarding the border demarcation and the complicated political situation between the Republic of Kosovo and the Republic of Serbia, it was very difficult to transform the border crossing system according to the rules set forth by the IBM process. Therefore these components did not guarantee progress in the implementation of IBM along the border between Kosovo and Serbia, where as a consequence free movement of people and goods is put into danger, inefficiency in preventing and combating cross-border crime which manifests itself in the form of organized crime by certain groups of interest. Having this situation in mind, competent state institutions have supported the development of IBM process in terms of legal aspect in using international principles and integration criteria set forth for the Western Balkans. The aim of developing and proclaiming liberal integration ideas in order to challenge nationalist ideas and enhance the integration process of the Western Balkan countries have contributed to a large extent to the overall development of institutional relations on border control, but not in eliminating completely the challenges in implementing IBM process.

Creation of the legal framework and strategies required to address the process of IBM, shows the special care state institutions pay in the implementation of IBM as one of the conditions for visa liberalization in the process of integration into the European Union. Alongside the development and harmonization of legal basis with the EU acquis, the state institutions should pay inter-institutional attention and professionalism in the implementation of this legal basis for the full implementation of IBM in all border crossing points.

The Republic of Kosovo is still in need to invest in building and strengthening the mechanisms and institutions in charge of implementing the IBM process according to applicable law. In this regard it is worth noting the insufficiency of the mechanism for border control as one of the factors for the implementation of the IBM process. Formal controls made by state border police, I think represents more of a formal and superficial control and not a border control with stopping, monitoring and with special emphasis on risk assessment and criminal intelligence to ensure the control of persons, vehicles and goods crossing the border, by applying effective monitoring at all border crossing points.

Applicable laws allow key agencies and institutions involved in the IBM process, such as the Kosovo Police; Kosovo Customs; Food and Veterinary Agency of Kosovo, to undertake actions and decisions in a discreet and

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<sup>28</sup>Ibid, page 19

<sup>29</sup> Dr. Rizai. Çavolli, *Kosovo's Regional Geography*, page 319.

<sup>30</sup>Until the date of the publication of this paper, railway traffic between the Republic of Kosovo and the Republic of Serbia through the border crossings of Merdare and Leshak has not been functionalized. Reasons for its non-functioning are of political and objective nature – damages to railroad infrastructure during and after the war, years 1997 – 2000.

autonomous manner in implementing IBM which could be incompatible with the actions and decisions of other institutions. In order to avoid these actions and decisions, operational cooperation and coordination between key institutions involved in the IBM should be developed and professionalized. Likewise, based on the legal provisions of the national and international character these institutions should enhance institutional cooperation in order to reach the full functioning of all border crossing points, be it road or rail type, depending on the border terrain wherever possible to erect joint points of border crossing, through the coordinated operations of monitoring and patrolling of static and mobile units

Finally, I consider that Kosovo despite the fact that it established the legal basis, must constantly undertake political and economic measures to ensure its implementation in the process of IBM, as an aim and an objective to fulfill the preconditions for membership in the European Union institutions.

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