



GROUP FOR LEGAL
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STUDIES



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LIMITED PROGRESS:

REITERATED RECOMMENDATIONS

COUNTRY ANALYSIS | KOSOVO

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INTRODUCTION

The country report (2016) and the Enlargement Strategy (2016) highlight and welcome the entry into force of the Stabilization and Association Agreement (SAA) on 1st April 2016. This step shows a continued commitment on both sides to foster EU related reforms and thus pave Kosovo's way to joining the EU. Though, Kosovo remains the only country not included in the Schengen visa-free list. The country report notes that the lifting of visa requirements for Kosovo citizens is pending until the two requirements a) demarcation process with Montenegro and b) fight against corruption and organized crime are fulfilled by the Kosovo government.

For the implementation of the reforms deriving from the SAA, the government has established the National Programme for Implementation of the SAA (NIPSA), while the EU office in Kosovo has developed the European Reform Agenda (ERA), as a complementary mechanism, to assist in that regard. In addition, the government has developed another platform for addressing Kosovo's key challenges entitled National Development Strategy (PLAN). This depicts EU integration euphoria that has led to creation of all these strategies as priorities. These strategies create confusion among all governmental institutions as to what is the real priority that should lead each institution's work to implement EU related reforms. The Enlargement Strategy continues to be built on the approach of the 'fundamentals first' including rule of law, fundamental rights, democratic institutions, public administration, as well as on economic development and competitiveness, for meeting the Copenhagen membership criteria. The overall state of play in the 'fundamentals first' is not characterized with any significant advancement. The strategy also notes that the parliamentary work was adversely affected by fundamental obstruction by different political parties. The increased polarization between the government and the opposition has continued and is highlighted with almost the same wording in the 2016 country report.

As stated in the Enlargement Strategy "this focus on the fundamentals linked to core EU values will be the backbone of enlargement policy under this Commission."

[EU Enlargement Strategy 2015]

The findings of the country report in accordance with the assessment scale indicate a 0.929 (on a scale of 3) level of progress and a 1.464 (on a scale of 5) level of preparedness which are translated into some progress achieved with some level of preparedness to take up membership obligations. Overall, no criterion has been scored a scale higher than two for progress made (on a scale of 3), and no criterion has been scored a scale higher than two for preparedness, apart from customs that has been scored a three (on a scale of 5).

Upon acceptance the country report has been part of the public discourse for weeks, as the EU benchmarks represent the main mechanism against which -not only the government- but also the public at large measures the success of the government. All Kosovo key leaders have reacted after they received the country report, including Prime Minister Mustafa.

“Prime Minister Mustafa expressed the commitment and willingness of the Government of Kosovo for strengthening rule of law and undertaking economic development reforms”¹

Also the head of the Parliament, Mr. Veseli reiterated the unequivocal commitment of Kosovo to EU integration by stating

“Our country has one perspective – EU integration. The progress we have reached and the critics in regards to where we shall improve are in this report. We have to work altogether to advance our path to European integration”²

Taken as a whole, the report was accepted with a positive tone and with a particular focus on the achievements by the government officials. On the other hand, civil society and other independent analysts pinpointed the challenges pertaining to the fundamentals first with a particular focus on the rule of law. Political unwillingness as a critical element to processing policy changes in rule of law³ and anti-corruption policy realms have been continuously highlighted by civil society.

1 “Prime Minister Mustafa received European Commission report on Kosovo” November 2016.

Available at <http://www.kryeministri-ks.net/index.php/en/current-members?page=1,9,6285>

2 “Veseli received the Country Report, takes into consideration the criticism” November 2016.

Available at <http://www.botasot.info/aktuale-lajme/604517/veseli-pranon-raportin-e-progresit-i-merr-parasysh-verejtjet/>

3 “Progress Report :Overview of Achievements or Obstacles?”

Available at <http://telegرافي.com/raporti-i-progresit-pasqyre-e-problemeve-apo-e-arritjeve/>

Political Criteria

Kosovo has made some progress in meeting membership political criteria (score: 1.4 on a scale of 3) and is moderately prepared in the same regard (score: 1.6 on a scale of 5). Both country reports have noted with the same wording “There has been increased polarization between government and opposition” and “polarization between government and opposition continues”.⁴ EU Commission has asked both parties “to show responsibility and re-engage in a constructive dialogue”.⁵

In general, the domestic political problems halted progress on implementation of the EU –related reforms and key areas of governance. The Commission noted with concern that the continued political polarization caused this lack of progress while attention and public discourse was shifted to the demarcation border with Montenegro. Slow progress has also been noted in regard to the normalization of relations with Serbia at the cost of internal challenges, albeit Kosovo remained committed to the implementation of the agreements reached in the dialogue.

Elections

No clear grading has been applied to the democracy criterion including elections, parliament, governance, and civilian oversight of the security forces similar to the report of 2015. The same recommendations in regards to the need for an electoral reform are found in the Commission report from the last year. The Commission has also reiterated its concerns in relation to the lack of audit of political party financing and party electoral campaign. Contrary to the previous report of 2015, the EU Commission has assigned a ‘deadline’ for the audit of political party financing and party electoral campaign. Civil society organizations have continuously put pressure on political parties by organizing roundtables, press conferences, and meeting party officials to discuss political party finances from a transparency perspective. However, no significant progress has been achieved. Following these events, the head of the EU office in Kosovo, Ms. Apostolova has released a statement to the press through which it has noted with concern that the finances of political parties have been hidden from public scrutiny and thus, has asked for more transparency and publication of party finances. Pressure from the EU office has resulted only in the publication of the annual financial reports in their respective web-pages. Nonetheless, it should be noted that financial reports of political parties have not been duly audited for four consecutive years (2013-2016).

This should be done, by the latest, in advance of the next elections. The assembly needs to start an institutional debate, involving all political parties, with a view to ensuring transparency and accountability of political parties’ finances and campaign contributions.

(Country Report, 2016)

⁴ Country Report 2015 & 2016

⁵ Country Report 2016

Parliament

The Parliament has been continuously criticized for its lack of institutional debate and for the violent obstruction of plenary sessions that have adversely affected the parliamentary activities, though no clear grade has been applied to parliament's work. The supervision of independent institutions, more precisely the appointment of competent members to regulatory and supervisory bodies is raised as an urgent concern in the report of 2015. The Commission report of 2016 reiterates the same problems of accountability and lack of a transparent, merit-based, and non-political selection process of the appointment of competent members in these independent institutions. The Commission noted that the Parliament has failed to properly supervise independent institutions and that the absence of clear mandates, suitable reporting and accountability mechanisms, as well as institutional fragmentation, continue to present a problem for oversight and effective reform.

“The assembly failed to properly supervise independent institutions, regulatory authorities and agencies, whose reports were often adopted without, or without fully considering the results of, debates.”

(Country Report, 2016)

The Parliament has also been criticized for using the fast-track procedure to enact several important laws. The Commission reminds the assembly members that such practices are not conducive to comprehensive parliamentary debate and risk diminishing the assembly's oversight role. The same recommendation as that of the last year report in regards to the need for increased capacity of the EU Integration Committee to reflect its key role in advancing EU-related reforms was noted in a similar wording.

Overall, in this category, the predominant wording used is preventing, obstructive, violent, adversely affected, breaches, failed, the absence and similar. This kind of wording has been used also in the previous Commission's report in the category of parliament with slight differences in sentence structures.

Civil Society

The Commission reaffirms the need of an empowered civil society to participate in the design and implementation of public policy. The Commission notes that there has been some progress in the cooperation of civil society and government, in identical wording as the previous report. Similar problems including the lack of transparency in public funding and lack of political will remain as concerns for the functioning of the civil society and are highlighted in both reports. Lack of political will refers to the participation of civil society in policy-making as uneven.

“Some progress was made in improving cooperation between the government and civil society.”⁶

The Enlargement Strategy does not provide any comments on the civil society's role in Kosovo's policy making. On the other hand, an empowered civil society remains key to democratic consolidation of the country. Considering the lack of political will to substantially involve civil society in such processes, the EU should continuously underline the need for civil society to fully engage in national policy and decision-making processes. One also needs to note that the involvement of civil society in such processes should move beyond the -box-ticking- practice.



PUBLIC ADMINISTRATION REFORM

Kosovo has made some progress and has some level of preparation in the reform of public administration. One of the main recommendations, the adoption of a comprehensive public financial management reform, from last year was reported by the Commission as implemented in the report of 2016. The other recommendations were slightly modified and reiterated in the Commission's report of 2016, including the revision of all independent bodies; building of a chain of accountability; elimination of all overlapping competencies to ensure a more streamlined public administration; the need to address the issue of the growing backlog of administrative cases in the Basic Court of Prishtina.

The Commission with a positive tone notes that the legal basis and institutional structures for coordinated policy-making system are largely in place, albeit it criticizes the lack prioritizing at the central level.

The current remuneration system does not ensure equal pay for equal work. In practice, different salary coefficients are applied to similar positions. The EU has pushed forward a single, unitary system of public service at central government and municipal level. Though the current law does formally provide for merit-based recruitment, promotions and dismissals, legal loopholes allow contradictory practices, particularly for conversion of temporary staff to permanent staff. Based on a recent Kosovo constitutional court decision regarding the administrative circular, independent institutions of a constitutional nature are specialized and unique in terms of organization and budget and, therefore are not subject to the new regulations on reforming the public administration. This constitutional court decision that not support the unitary system of public service, the one that the EU has pushed forward. Thus, the civil society has highlighted that the implementation of this court decision implies a fragmented remuneration system of public administration. This depicts the need for EU high-level political engagement to push forward public administration reform.

The Commission also highlights the problem of accountability, similar to last's year report. The Enlargement Strategy depicts the continued politicization of the public administration as a serious concern and the organization of the state administration as a fragmented one where clear lines of accountability are ambiguous.



RULE OF LAW

The Commission notes that rule of law, a fundamental's first element, is at an early stage of preparation and has made some progress. All key aspects of rule of law including Kosovo's judicial system, fight against corruption, and fight against organized crime, apart from the human rights category, are evaluated by the Commission at an early stage of preparation. One should note that the reforms in the rule of law policy are reforms that can challenge their clientelistic networks and incur immense political costs. That given rule of law policy reforms continues to be prone of political interference and prolonged, and, thus, remain at an early stage of preparation.

The Commission reaffirms the Kosovo's judiciary vulnerability to undue political influence. That given the report addresses a number of essential elements like accountability, impartiality, independence, professionalism and competence. The Commission's concrete recommendations are the following

- continue to implement the justice package, including adoption of the remaining secondary legislation;

- strengthen financial resources for the judicial sector and continue to strengthen the capacity of judges, prosecutors and support staff, to ensure proper functioning of the judicial system and the administration of courts;

- replace current provisions included in the laws on the Judicial and Prosecutorial Councils by adopting the law on the Office of the Disciplinary Counsel to strengthen accountability;

- step up efforts to reduce the backlog of cases, including by using alternative dispute resolution tools.

Three out of four Commission recommendations require continuation to implement the same recommendations. Given that, early steps have been taken to implement the required reforms, though results lack and implementation shall continue. This also reflects the complex nature of the rule of law reforms and the need for full commitment of the responsible institutions.

Fight against Corruption

According to the Commission' Report, Kosovo has some level of preparation in the fight against corruption and has achieved good progress over the past years. This success has been attributed to the fulfillment of two last year's recommendations including establishment of the multidisciplinary investigative team, headed by the Special Prosecution Office and the introduction of a tracking mechanism for high-profile corruption and organized crime cases.

“Corruption remains prevalent in many areas and continues to be a very serious problem.”

The undue political influence has been reiterated as a critical issue in the implementation of all rule of law reforms, particularly the fight against corruption. The Law on protection of whistle-blowers needs to meet international standards, same as the Law on Conflict of Interest. The lack of audit of the financing of political parties has been noted and criticized in this part of the Commission's report, as well.

A novelty aspect of this year's report is the mentioning of the corruption in the north of Kosovo, as a wicked problem that is not being tackled by law enforcement agencies. The north of Kosovo has been previously discussed in the report only as part of the bilateral relations between the two countries, Republic of Kosovo, and Serbia. Another new and more specific recommendation introduced was the reversed burden of proof for asset confiscation in order to allow concrete and more effective investigation of inexplicable wealth.

Fight against organized crime

According to the Commission's Report, Kosovo is at an early stage in the fight against organized crime, and has achieved good progress. The progress is attributed to the increased number of high-level cases being investigated and prosecuted, though the number on final convictions and final asset confiscations remains low. In contrary to the fight against corruption, little progress has been made in fulfilling last year's report of recommendations. In this regard, political elite and policy-makers give the impression that they do the talk of the talk reform rather than implement the recommendations toward fighting the phenomena of organized crime.

In this section of the report, the north of Kosovo has also been noted for the first time, as organized crime has not been discussed based on cities or regions, but rather as a whole.

“Organized crime goes unpunished in the north of Kosovo”

Human rights and protection of Minorities

The Commission's report states that Kosovo has made some progress in the protection human rights and minorities. More precisely, the report notes that progress has been achieved in the data protection and high-level political support for the rights of LGBTI persons. The report addresses the legislative framework alignment with the EU Acquis, but notes with concern that this legislation is not sufficiently implemented. It is important to note, from a civil society perspective, that the LGBTI rights are entrenched in the legislation and they have the support of the political elite, but time is needed to embed this policy change in culture and to garner widespread public support.

NORMALIZATION OF RELATIONS BETWEEN KOSOVO AND SERBIA

The Commission marks as *slow* implementation of the agreement reached in August 2015 between Kosovo and Serbia. The Commission argues that this is partly due to the domestic situation in Kosovo and the parliamentary elections in Serbia. Though, it clearly notes that a consolidated dialogue between the two states is essential for advancing the European future. In the public discourse, the dialogue support declines when Serbia has a 'negative' practical approach like the train with provocative slogans that tried to enter the territory of Kosovo or the misuse of the Interpol system. It is crucial that the EU blatantly states that these behaviors are against any movement toward the EU. In addition, high EU officials should castigate these de-stabilizing behaviors.

ECONOMIC CRITERIA

According to the Commission's report, Kosovo is at an early stage in developing a functioning market economy, and has made some progress. Progress was attributed to supporting of export-oriented businesses, improvement of contract enforcement, especially within the financial sector, and access to finance.


The Commission has noted with concern that if implemented, decisions related to war-veterans' benefits can challenge fiscal sustainability and affect Kosovo's relations with international financial institutions.

The main challenges are reiterated and relate to the huge reliance on remittances, widespread informal economy, and high unemployment rates in particular among young and unskilled workers.



COMPLIANCE WITH THE EU STANDARDS

The table below shows a quantitative assessment of the Kosovo's compliance with the EU standards in terms of progress and preparedness made. According to these findings most of the standards has achieved some progress, two have achieved good progress, three no progress. None of the standards has been scored a back-sliding or substantial progress. In regards to level of preparedness achieved, most of the standards are scored as being in an early stage of preparation or some level of preparation. Only one standard has been scored as moderately prepared, while no standard has reached a good level of preparation or high level of preparedness.



	Progress	Preparedness
1. Free movement of goods	1	1.5
2. Freedom of movement for workers	0	1
3. Right of establishment and freedom to provide services	1	1
4. Free movement of capital	1	2
5. Public procurement	1	2
6. Company law	1	
7. Intellectual property law	1	2
8. Competition policy	1	1
9. Financial services	1	1
10. Information society and media	0	2
11. Agriculture and rural development	1	2
12. Food safety, veterinary and phytosanitary policy	1	2
13. Fisheries	1	1
14. Transport policy	1	1,5
15. Energy	1	1
16. Taxation	2	2
17. Economic and monetary policy		
18. Statistics	1	1,5
19. Social policy and employment	1	1
20. Enterprise and industrial policy	1	2
21. Trans-European networks	1	1
22. Regional policy and coordination of structural instruments		
23. Judiciary and fundamental rights		
24. Justice, freedom and security	2	1,5
25. Science and research	1	1
26. Education and culture	0	1

27. Environment	1	1
28. Consumer and health protection	1	1
29. Customs union	2	3
30. External relations	0	1
31. Foreign, security and defence policy		
32. Financial control	1	1
33. Financial and budgetary provisions		
	0.964	1.464

Table1. Findings based on the Commission's report 2016. ⁷

⁷ The coding by the EU Commission is done as follows: Progress : no progress (0), some progress (1), good progress (2); Preparedness: early stage of preparation (1), some level of preparation (2), moderately prepared (3).

CONCLUSION

The report depicts the overall progress of Kosovo as weak (0.929 on a scale of 3) and at an early level of preparedness toward fulfillment of the membership criteria (1.464 on a scale to 5). This quantitative assessment of the benchmarks, introduced last year, provides a more realistic picture of where the country stands. Preparedness wise, according to this assessment, in most of the standards Kosovo has achieved an early stage of preparedness. Public administration although regarded as a key reform has made some progress and there is, amongst others, political unwillingness to push forward the reforms. In addition, all the aspects of fundamental's first including rule of law, fight against corruption and organized crime are marked as reforms with no or very low progress. On the other hand, these recommendations continue to be repeated in the same phrases from year to year.

According to the report, deep internal political divisions and polarisation have obstructed both Kosovo's visa liberalisation process, – with the parliament unable to ratify the all-important border demarcation deal with Montenegro – and progress in the EU-mediated talks between Pristina and Belgrade. Much effort and emphasis has been put to the Kosovo Serbia dialogue, though the dialogue remains poor in terms of implementation and is currently suspended due to several incidents. Though Ms. Mogherini, High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission, hosted a meeting in Brussels, an informal meeting, with the Presidents Aleksandar Vučić of Serbia and Hashim Thaçi of Kosovo, on July 2017. Both Presidents vowed to establish the so-called unity groups aimed at reaching a broader consensus on the dialogue proceeding.

The European Commission should take note of the following:

- Once the recommendations from previous years are not implemented, they should continue to be in the country report, but they should, at least, be paraphrased and be as specific as possible in terms of concrete outcomes. Given that, the government can be more incentivized to push forward the reforms. The more general the recommendations are written, the more space is given to the government officials to interpret them as successful stories.
- Compliance with the EU conditionality on various policy areas can incur political costs to political parties in power, in Kosovo. Particularly, compatibility with recommendations in relation to public administration reform can challenge networks of political patronage, thus reduction of opportunities for abuse of public office. Thus, apart from the country report there is need for consistent pressure by the Commission through domestic channels like civil society, and frequent meetings with PAR coordinating bodies and actors to push forward the reforms.

The Government of Kosovo should take note of the following:

- Closely collaborate with non-state actors to read the report and draw on main achievements and failures. A civil society read of the report produces a more comprehensive picture of the current state. Given that, responsible institutions would be able to keep track of the implemented, unimplemented and the current state of reforms. This would contribute to depicting clear lines of responsibility for the reforms,

leaving less space for justifying the unimplemented reforms and thus enhancing public accountability.

- More seriously address all recommendations deriving from the report and be able to justify- have solid reasons for the lack of implementation of various reforms.

- Ensure that all country recommendations are adequately incorporated into the government national strategies. Given that, recommendations will be prioritized in terms of implementation.

- All responsible institutions for implementing reforms that fall under their respective scope of work should be required to provide reports and justify the unimplemented reforms. This will provide additional pressure on these institutions toward delivering on the policy changes and reforms deriving from the country report. In addition, institutions should be asked to also make public these reports in their own web sites.