Strengthening the Role and Capacities of Kosovo Institutions for Effective Implementation of Legislation

Sadete DEMAJ-KAJTAZI

May 23, 2012
Presentation Outline

- The aim of the Capstone Project
- Problem background
- Current situation
- Project surveys
- Project findings
- Results from the Questionnaires conducted with main stakeholders
- Major Recommendations
- Further Recommendations
The aim of this study has been to assess the role and capacities of Kosovo institutions for effective implementation of legislation and to provide information about the main challenges which Kosovo institutions are facing with regarding implementation of legislation.

The study addresses key issues concerning the role of rule of law in a new country such as Kosovo and provides grounds and arguments that call for immediate action.
Problem background

- Until the Declaration of Independence, leading and final authority on legislative, executive including the administration of justice was under the authority of UNMIK (U.N. Interim Administration Mission in Kosovo).

- The legal system in Kosovo is a combination of legislation adopted by the Kosovo authorities, Regulations and Administrative Directions issued by UNMIK, and Ex-Yugoslav laws (if they are not discriminatory) in place before March 22, 1989.

- The legal infrastructure in Kosovo is in compliance with international standards. However, it still faces obstacles in the implementation.

- Kosovo institutions and International institutions which are acting in Kosovo, have dedicated much more importance to drafting and development of the laws, while very little attention was dedicated to their implementation.
Three main pillars of the state, (legislative, executive and judiciary power) are facing difficulties in carrying out their mission.

**Legislative power** - Assembly lacks the capacity to monitor the implementation of laws, organizing debates, public consultations, the amendment of draft laws, research, etc.

**Executive power** - The Government is operating with limited human, technical and financial resources.

Government has failed to establish effective coordination mechanism of analyzing and assessing the impact of legislation.

**Judiciary power** - Judiciary power still suffers from a number of structural weaknesses.
In order to have a clear understanding of what main stakeholders think about the implementation of the legislation there was a survey conducted with 214 respondents of five different groups:

- Legal Department in the Ministries (33 legal officers)
- Legal Offices in the Municipalities (12 legal officers)
- Judges (73 judges)
- Police Officers (41)
- Kosovo citizens (55)

Survey has been realized through questionnaire sent by e-mail and face to face questionnaire.

Almost all of surveyed respondent’s have expressed concerns about the progress and effectiveness of institutions in the implementation of the legislation.
Project results
Concern about implementation of legislation

<table>
<thead>
<tr>
<th></th>
<th>Legal Department (Ministry)</th>
<th>Legal Officer (Municipality)</th>
<th>Police</th>
<th>Judges</th>
<th>Citizens</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concerned</td>
<td>58%</td>
<td>42%</td>
<td>58%</td>
<td>51%</td>
<td>53%</td>
</tr>
<tr>
<td>Very concerned</td>
<td>10%</td>
<td>8%</td>
<td>7%</td>
<td>7%</td>
<td>31%</td>
</tr>
<tr>
<td>Not concerned</td>
<td>16%</td>
<td>42%</td>
<td>21%</td>
<td>38%</td>
<td>5%</td>
</tr>
<tr>
<td>Not sure</td>
<td>16%</td>
<td>8%</td>
<td>14%</td>
<td>4%</td>
<td>11%</td>
</tr>
</tbody>
</table>
**Project results**

Do you agree that the legislation in force in Kosovo causes confusion in the law implementation?

<table>
<thead>
<tr>
<th></th>
<th>Legal Department (Ministry)</th>
<th>Legal Officer (Municipality)</th>
<th>Police</th>
<th>Judge</th>
<th>Citizen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree</td>
<td>65%</td>
<td>27%</td>
<td>50%</td>
<td>68%</td>
<td>52%</td>
</tr>
<tr>
<td>Fully agree</td>
<td>32%</td>
<td>46%</td>
<td>12%</td>
<td>15%</td>
<td>37%</td>
</tr>
<tr>
<td>Disagree</td>
<td>0%</td>
<td>18%</td>
<td>26%</td>
<td>14%</td>
<td>3%</td>
</tr>
<tr>
<td>Not sure</td>
<td>3%</td>
<td>9%</td>
<td>12%</td>
<td>3%</td>
<td>8%</td>
</tr>
</tbody>
</table>

E-mail: sadete.demaj@rks-gov.net
Main obstacles and problems which have been identified by legal officials during the implementation of legislation within their institutions.

- Legislation in force,
- Collision of laws,
- Insufficient staff, Inadequate professional expertise, Inadequate budget,
- Lack of legal commentaries,
- Not enough training.
Legislation in force
Do you agree that the legislation in force in Kosovo causing confusion in the implementation of laws

Legal Department (Ministry)

<table>
<thead>
<tr>
<th>Agree</th>
<th>Fully agree</th>
<th>Disagree</th>
<th>Not sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>65%</td>
<td>32%</td>
<td>0%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Legal Offices in the Municipalities

<table>
<thead>
<tr>
<th>Agree</th>
<th>Fully agree</th>
<th>Disagree</th>
<th>Not sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>46%</td>
<td>27%</td>
<td>18%</td>
<td>9%</td>
</tr>
</tbody>
</table>
Collision of laws

Is there a collision of the laws related to the scope of your ministry-municipality?

Legal Department (Ministry)

![Bar chart showing responses]

Legal Offices in the Municipalities

![Bar chart showing responses]
Insufficient staff, inadequate professional expertise, inadequate budget

What do you see as key obstacle, problem in implementing of laws

<table>
<thead>
<tr>
<th></th>
<th>Legal Department (Ministry)</th>
<th>Legal Offices (Municipality)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insufficient staff</td>
<td>13%</td>
<td>17%</td>
</tr>
<tr>
<td>Inadequate professional expertise</td>
<td>20%</td>
<td>21%</td>
</tr>
<tr>
<td>Inadequate budget</td>
<td>46%</td>
<td>33%</td>
</tr>
<tr>
<td>With no suitable training</td>
<td>13%</td>
<td>21%</td>
</tr>
<tr>
<td>Unwillingness</td>
<td>8%</td>
<td>8%</td>
</tr>
</tbody>
</table>
Lack of legal commentaries

Do you think that the lack of legal commentaries can be an obstacle for the implementation of law?

[Diagrams showing responses from Legal Department (Ministry) and Legal Offices in the Municipalities]
Not enough training

Do you agree that legal officers have needs for ongoing trainings regarding the drafting of legislation?

Legal Department (Ministry)

- Agree: 65%
- Fully agree: 35%
- Disagree: 0%
- Not sure: 0%

Legal Offices in the Municipalities

- Agree: 92%
- Fully agree: 8%
- Disagree: 0%
- Not sure: 0%

E-mail: sadete.demaj@rks-gov.net
Project results

Results from the Questionnaire conducted with Judges

1. When do you see key obstacles, problems in implementing legislation at your institution?
2. Do you agree that the legislation in force in Kosovo causing confusion in the implementation of laws?

3. Do you think that a collision of the laws can inhibit implementation of the legislation?
4. Do you think that the lack of legal commentaries can be an obstacle for the implementation of legislation?

5. To what extent do courts have adequate human capacity to implement legislation?
1. When do you see key obstacles, problems in implementing of laws at your Institution?

2. Do you agree that the legislation in force in Kosovo causing confusion in the implementation of laws?
3. Do you think that the lack of legal commentaries can be an obstacle for the implementation of legislation?

4. Do you think that a collision of the laws can inhibit implementation of the legislation?
5. Do you agree that the cooperation of the Kosovo Police, with the judicial system and the Citizens is very important in law enforcement?

6. To what extent your institution have adequate human capacities to implement legislation?
7. Are you agreeing that the members of the Kosovo Police have needs for ongoing trainings regarding the implementation of legislation?

8. Do you agree that the Kosovo Police is a highly significant mechanism in the implementation of legislation?
Project results

Results from the Questionnaire conducted with Kosovo Citizens

1. How do you assess the effectiveness of the implementation of legislation?

![Pie chart showing effectiveness of legislation implementation]

- Slightly effective: 52%
- Reasonably effective: 18%
- Very effective: 5%
- Not effective: 25%

2. Are you concerned about the implementation of the legislation?

![Pie chart showing concern levels]

- Concerned: 53%
- Very concerned: 31%
- Not concerned: 11%
- Not sure: 5%
3. Are you satisfied with the progress on implementation of legislation?

4. Do you agree that the legislation in force in Kosovo causing confusion in the implementation of laws?
5. Do you agree that commissions of the Assembly of Kosovo, monitoring well the implementation of legislation by the executive branch?

6. Do you agree that the cooperation of the Judiciary System, with the Kosovo Police and the Citizens is very important in law enforcement?
Major Recommendations

- Reinforcing the capacities of line ministries for policy analysis, law-drafting and public consultation.

- Having a balanced approach in the legal offices of the various ministries, where enforcement of the laws should have a similar priority as the drafting of new legislation.

- Consistent structuring of legal departments in ministries to be in accordance with Administrative Instruction Nr. 13/2007 on the organization and operation of legal services in the Executive Branch.

- Strengthening the capacity of the legal offices within the executive branch.

- Enforcement of the Government decisions from 2008 for the Commission for monitoring the implementation of laws and Commission for identifying and eliminating the collision of laws.

- Receiving continued support from the international community for the Government of Kosovo in preparation of draft laws and in the implementation phase.

E-mail: sadete.demaj@rks-gov.net
Before issuing legal act or a sub legal act that affects the interests of local authorities the municipalities must be consulted.

Legal Office of the implementing institution shall issue an annual report to Office of the Prime Minister (OPM) over the progress in implementing the primary and secondary legislation.

Office of the Prime Minister (OPM) should issue an annual report to Parliament on the implementation process of primary legislation.

Kosovo Government should develop a National Plan for Approximation of Kosovo Legislation with the Acquis communautaire.

Government should obligate its officials to include relevant NGO-s in the early stages of drafting policies and laws and to offer trainings to these officers for this process.

E-mail: sadete.demaj@rks-gov.net
Recommendations for Legislative Power (Assembly)

- Assembly of the Republic of Kosovo through the assembly committees must exercise a regular parliamentary control on the activities of the executive branch.

- Increase administrative and technical capacity of parliamentary committees in order that parliamentary oversight of the executive will become more effective.

- Parliament must functionalize Parliamentary Research Unit.

- The work program of the Assembly should be harmonized with the Legislative Strategy Program of the Government.
Recommendation for Judicial Power

- The judicial system needs reforms in order to ensure the independence, credibility, accountability and professionalism of judges.

- Political and institutional leaders need to stay far away from trial.

- To increase total budget for the Judiciary, so that they are equipped with necessary infrastructure, such as: modern library, courthouse (courtroom) to new, and more highly professional and administrative support staff;

- To increase the number of judges, prosecutors and investigative police officers.

- To ensure that the process of reappointment of judges and prosecutors, is based on meritocracy and without interference and political pressure and influence.
Recommendation for media and civil society organizations

- The media sector in Kosovo should invest more efforts on investigative journalism including sensitive areas of governance (corruption, transparency, justice, rule of law, etc).

- Public and private media should safeguard its independence and impartiality in relations with the government, and not to fall under the influence or pressure from various political circles.

- Through the promotion of different laws, organizing champagnes for raising awareness to citizens for their rights guaranteed by certain laws, media and civil society can play a crucial role for implementation of legislation.

- Civil society must enhance the level of cooperation and regularly contacts with media, and through them to do more pressure on Government for implantation of policies and legislation.

- Capacities of civil society for participating in policy and decision making process needs to be improved and strengthen.

E-mail: sadete.demaj@rks-gov.net
THANK YOU FOR YOUR ATTENTION!

Questions?
Comments