

Kosovo 2015 report

THE “CARROT” APPROACH

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“The EU’s enlargement policy is an investment in peace, security and stability in Europe”¹

This paper will provide an analysis of the main findings of the European Commission’s (EC) 2015 Kosovo report; it will identify the key challenges outlined by the EC and the expectations the Commission has from the authorities of Kosovo.

The highlight of the reporting period is the signing of the Stabilisation and Association Agreement (SAA) on 27 October, which was referred to as “a milestone on Kosovo’s path towards a European future”.² It could be inferred that what tilted the balance in favour of Kosovo was the agreement reached in the EU-facilitated dialogue with Serbia, which paved the way for the establishment of the Association/Community of Serb majority municipalities (A/CSM) and the Specialist Chambers. The SAA can be viewed as a “carrot” offered by the European Union (EU) to Kosovo, as a sign of appreciation for the efforts undertaken in addressing sensitive issues and also as an incentive to continue the reform process.

The signing of the SAA also displays remarkable commitment on the part of the EU and its Member States, which demonstrated flexibility in accommodating the special situation of Kosovo. The EU departed from its customary practice of establishing the stabilisation and association process as a contractual relationship between each individual Member State and the potential candidate; instead, in order to avoid the obstacles posed by the non-recognition by five Member States, the SAA was signed by the EU, as a separate legal entity.

The new enlargement strategy builds upon the approach of “fundamentals first”, namely prioritising reforms in certain sectors, which constitute the backbone for EU accession.³ The EC established four priorities (rule of law, fundamental rights, economic development and competitiveness, functioning of democratic institutions and public administration reform) as well as specific areas of particular interest in each of these priorities.⁴

The EC approaches enlargement with conscientiousness and commitment and expects the same on the part of the enlargement countries, by pursuing genuine and sustainable reforms.⁵ For this reason, throughout the progress report the Commission repeatedly calls upon the authorities in Kosovo to tackle the core of the problems identified and properly implement the legislation and strategies.

¹ EU Enlargement Strategy, at 2

² Kosovo 2015 Report, at 4

³ EU Enlargement Strategy, at 5

⁴ EU Enlargement Strategy, at 5-9

⁵ Kosovo 2015 Report, at 4

The findings in the Kosovo report are delivered on a positive tone, with a particular emphasis on achievements. The EC repeatedly refers to the “commitment” demonstrated by Kosovo in various areas and the “important decisions” taken.

However, the analysis of findings made in accordance with the assessment scales draws a somewhat worrisome picture of the situation in the country. Overall, Kosovo did not achieve considerable **progress** (score: 0.82 on a scale to 3)⁶ and is only at an **early stage of preparedness** (score: 1.32 on a scale to 5)⁷ to take up on membership obligations. The EC determined that Kosovo had made some progress in the great majority of areas and even good progress in the reform of public administration and statistics. However, all other areas were characterised by a lack of progress.

Also, overall, Kosovo is only in an **early stage** of preparedness in the **priority areas** mentioned above. In terms of progress, in the rule of law sector which, in the words of the EC, is “a fundamental value on which the EU is founded and is at the heart of the accession process”,⁸ the EC found that Kosovo only achieved **some progress**. The situation is similar for fundamental rights, although in the important area of freedom of expression there was **no progress** at all. In the fundamental area of economic development Kosovo achieved **some progress** with regards to the establishment of a functional market economy, but **no progress** regarding competitiveness and the capacity to cope with market forces. The reform of public administration is the only priority area in which the EC noted **good progress**.

“We welcome the Progress Report, since it not only gives an evaluation of our work, but also serves as a roadmap for our work towards EU membership.”

*Deputy Prime Minister
Hashim Thaçi*

The report was received positively in Kosovo, with key politicians referring to the substantive developments outlined by the Commission. The Minister of European Integration, Mr. Bekim Çollaku, expressed his appreciation towards “the methodology and professional approach of the European Commission”.⁹ Prime Minister Isa Mustafa referred to the report as “[a] messenger of the intensification of the process of integration into the EU”; he praised the collaboration within the ruling coalition and gave assurance that the implementation of the EC recommendations will be a priority for the Government.¹⁰ However, the civil society was significantly more reserved, noting that many of the recommendations from the 2014 Progress Report on Kosovo were reiterated in current report and requesting that the institutions take the findings and recommendations of the EC seriously.¹¹

⁶ See coding matrix

⁷ See coding matrix

⁸ EU Enlargement Strategy, at 5

⁹ <http://www.mei-ks.net/en/news/minister-collaku-received-from-the-ec-the-annual-report-on-kosovo-for-2015>

¹⁰ <http://www.kryeministri-ks.net/?page=2,9,5363>

¹¹ <http://legalpoliticalstudies.org/2015/11/ec-progress-report-2015-for-kosovo-what-about-a-more-responsible-rejoinder/>

POLITICAL CRITERIA

The Commission noted with concern that, for a considerable part of the reporting period, Kosovo was engulfed in a political crisis, due to the inability to establish an Assembly following the elections in June 2014.¹² The crisis had overarching effects and halted progress in other areas which were dependent upon the reforms that the Assembly was expected to adopt, such as the judiciary,¹³ the functioning of the market economy,¹⁴ economic growth¹⁵ and budget deficit.¹⁶

In general, the EC drew attention on the fact that many institutions in Kosovo were affected by **unclear mandates and overlapping tasks**, which hampered progress in a number of key areas, such as public administration reform,¹⁷ the fight against corruption¹⁸ and the functioning of the judiciary.¹⁹ Another matter of concern for the Commission was the **undue political interference**. This was noted to have serious effects on the functioning of the judiciary,²⁰ the reform of the public administration system,²¹ the fight against corruption,²² freedom of expression²³ and the energy sector.²⁴

Democracy

The Commission's assessment of the state of democracy encompasses five elements: elections, parliament, governance, civil society, and civilian oversight of the security forces. With this choice, the EC places the idea of checks and balances at the heart of democracy, whereby all relevant actors have to supervise each other and are accountable to one another. These links of accountability which are established show that institutions have to function as a whole and that any malfunction in one of them will also destabilise the others.

The Commission has warned that democratic institutions remain fragile in the Western Balkans and that the countries in the region have yet to fully address the proper functioning and stability of core institutions.²⁵ The situation in Kosovo is an eloquent illustration of this observation.

At the very beginning of the section, the EC expressed satisfaction as to the establishment of the **Specialist Chambers**.²⁶ The EC thereby wished to emphasise the importance it places on the

¹² Kosovo 2015 Report, at 16

¹³ Kosovo 2015 Report, at 13

¹⁴ Kosovo 2015 Report, at 31

¹⁵ Kosovo 2015 Report, at 32

¹⁶ Kosovo 2015 Report, at 31

¹⁷ Kosovo 2015 Report, at 11

¹⁸ Kosovo 2015 Report, at 16

¹⁹ Kosovo 2015 Report, at 12

²⁰ *Id.*

²¹ Kosovo 2015 Report, at 10

²² Kosovo 2015 Report, at 16

²³ Kosovo 2015 Report, at 22

²⁴ Kosovo 2015 Report, at 51

²⁵ EU Enlargement Strategy, at 9

²⁶ Kosovo 2015 Report, at 6

“fundamental principles of justice and accountability”.²⁷ In its views, ending impunity, especially in the case of serious crimes, is an essential step on the path to EU membership.

The other achievement for which the Commission commends the government of Kosovo is the progress made in the **situation in the north of Kosovo** and the **Association/Community of Serb majority municipalities (A/CSM)**. The signal sent by the EC is strong and complex. First, the Commission considers that the Kosovo government needs assert control over the entirety of its territory in order to properly exercise its functions; parallel structures such as those present in the north undermine stability in the region. Second, the Commission emphasises the importance of cooperation with the Serb community, which is an integral part of Kosovo and cannot be ignored. This A/CSM is an invitation to Kosovo to deal with the past and promote reconciliation. Third, this is a restatement of the idea that the European perspectives of Kosovo and Serbia/Serbs are interlinked,²⁸ and neither will be able to advance unless they display respect for and cooperation with the other. Lastly, the report enforces the idea that integration is important, but so is differentiation. While the EC sets clear guidelines for all countries that want to accede to its structures, it remains mindful of the differences of these countries and prepares tailored assessments, reports, and recommendations. Likewise, Kosovo needs to exercise effective authority over its entire territory and the entirety of its population, but should also allow for certain communities to decide for themselves on certain matters.

Unfortunately, as the Commission noted with utmost concern, the important development of the A/CSM is currently at the core of a serious political crisis, with the opposition parties blocking the work of the Assembly and posing threats to the health of the MPs present by throwing tear gas in the main Assembly room on repeated occasions, in an attempt to see the A/CSM relinquished.²⁹ While the presence of a strong and active opposition marks the existence of democracy itself, the manner in which opposition parties exert their rights is equally important for the preservation of genuine democracy.

Moreover, on the day the Kosovo Report was released, the Constitutional Court of Kosovo decided to suspend the application of the law on the A/CSM until January 2016, pending an analysis on its compliance with the Constitution. This measure, in itself, may not pose threats to the viability of the agreement reached in Brussels. However, the context in which it was taken, following strong political

The decision of the Kosovo Constitutional Court regarding the Community of Serb Municipalities “is not good”, “because it is important that the responsibilities undertaken are respected”.

Wolfgang Petritsch, president of the Austrian Marshall Plan

“I do not think it’s act a hostile act towards Serbia. It needs to be seen what the Constitutional Court will finally decide.”

Ulrike Lunacek, Vice-President of the European Parliament

²⁷ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2015/833, 3 November 2015, para. 44

²⁸ Kosovo 2015 Report, at 30

²⁹ Kosovo 2015 Report, at 4

and social opposition shows that the A/CSM does not enjoy general support across the political and social spectrum, which raises questions as to its future implementation.

We cannot yet speculate on the future developments or on the weight the Commission will assign to each of them. It may seem inexplicable that the EU refused to comment on the situation,³⁰ despite the fact that the agreement was a key element on the agenda of the dialogue it facilitated for the past several years. Nevertheless, we must keep in mind that the Commission clearly stated that “the assembly should be allowed to hold a free and open debate on all issues affecting Kosovo, in accordance with democratic procedures. Obstruction of the assembly and violence for political purposes are not acceptable”,³¹ while the United Nations Secretary-General warned that such acts undermine “confidence in these institutions, as well as Kosovo’s image in the wider world”.³²

Solving these sensitive issues in a manner consistent with European values will be a unique opportunity for Kosovo to reaffirm in an unequivocal manner its commitment towards the EU, an opportunity which should be seized.

Elections

The Commission noted with satisfaction that in January well-managed municipal elections were held in Gračanica/Gračanicë without incident.³³

The EC shows that free and fair elections are the prerequisites for any democratic system, therefore reform of the electoral system in Kosovo is of vital importance. Unfortunately, the Kosovo government displayed a worrisome lack of commitment towards this area, by not enacting the required reforms, despite being called for by the Commission since 2012.³⁴

Parliament

Overall, the Commission registered a setback in the work of the Assembly. In 2014, the EC commended the Assembly for its support for European integration, its demonstrated political and institutional unity, as well as for the improvement of its role in democratic governance.³⁵ The 2015 report, however, notes delays, obstruction of activity³⁶ and a polarised atmosphere³⁷ and the fact that the delay in establishing a new Assembly hindered the reform process in Kosovo.³⁸ A number of recommendations from previous reports went unaddressed; they refer to the internal functioning of the Assembly, its supervision over other institutions, budgetary and legislative functions.

³⁰ <http://www.balkaninsight.com/en/article/belgrade-pristina-row-over-brussels-agreement-suspension-11-11-2015>

³¹ EU Enlargement Strategy, at 15

³² Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2015/833, 3 November 2015, para. 45

³³ Kosovo 2015 Report, at 6

³⁴ Kosovo 2014 Report, at 7; Kosovo 2013 Report, at 7; Kosovo 2012 Report, at 5

³⁵ Kosovo 2014 Report, at 7

³⁶ Kosovo 2015 Report, at 6

³⁷ Kosovo 2015 Report, at 7

³⁸ Kosovo 2015 Report, at 6

The Commission voiced concern over the **fast-track procedure** under which certain laws were adopted.³⁹ While it is true that the purpose of parliament is to pass legislation, one must also keep in mind that its function is essentially deliberative. The parliament is a core institution of the democratic system and it needs to assume its role of forum for substantive debates, whereby all views are heard and decisions are made by an informed majority. Fast-track procedures are not conducive to concrete debates and the situation is even more problematic since the laws passed during the reporting period regulated the functioning of the judiciary and human rights. Therefore, the Commission emphasises for Kosovo's institutions that it does not only seek the formal implementation of its recommendations, but also expects that the principles of democracy and the rule of law be respected. It is not sufficient for the Assembly to pass legislation; it needs to become a fundamentally democratic institution. Moreover, one needs to also be mindful of the fact that the legal measures in question were among the ones the EC had recommended in the previous progress reports; it is difficult to declare with a high degree of certainty whether the fast-track procedure was preferred due to the pressure the Assembly perceived on the part of the EC or in an attempt to formally adopt the required reforms. Nevertheless, neither explanation can serve as a justification for the Assembly not exercising its genuinely deliberative and democratic functions.

The Commission also addressed the **internal functioning** of the Assembly, calling for an immediate improvement of the regulatory framework. The EC thus underlined that, for a parliament to be able to promote democracy and the rule of law, it must first adhere to these principles itself. For this, it needs to have appropriate rules of procedures in place, apply them strictly and demand the same respect from the other institutions. As the Commission noted, by allowing the government to arbitrarily withdraw draft laws, in violation of its own rules of procedure, the Assembly is currently acting as a mere extension of the government. Instead, the Assembly should in fact exercise oversight of the government and independent institutions. It can be concluded that there much more effort is needed before the parliament can truly assume its legislative and oversight functions.

Governance

The Commission acknowledged the progress made by Kosovo in continuing to implement EU-related reform priorities;⁴⁰ however, it also repeated most of its recommendations from last year's report, thus suggesting that these important issues have not yet been addressed – the communication with the Assembly, implementation of legislation and policies and efforts to increase transparency.⁴¹

From the very start of the analysis, the Commission states that the "executive should ensure that legislation and policies are **implemented** in practice".⁴² This is a strong reminder of the role of government and executive power in a democratic society, namely to ensure the proper implementation of legislation. Therefore, the executive should not interfere in the work of the Assembly or the judiciary. By mentioning this at the beginning section on governance, the EC places a tremendous importance on this aspect and considers it essential for a democratic society.

³⁹ Kosovo 2015 Report, at 7

⁴⁰ *Id.*

⁴¹ Kosovo 2015 Report, at 7; Kosovo 2015 Report, at 8

⁴² Kosovo 2015 Report, at 7

The EC also requested improved **communication between the government and the Assembly**.⁴³ The most assertive way in which this can be done is by regular replies to parliamentary inquiries. With this, the Commission underlines that the government not only is equal to other institutions, but also that it is accountable to the Assembly. It is the Assembly that approved the government and it is also the Assembly which has the power to revoke its mandate (through a motion of no confidence).

The Commission also draws to the attention of Kosovo institutions that simply passing legislation is not enough; there also has to be proper **implementation**. In spite of the fact that the Assembly passed the law on the Ombudsperson, the Government undermined the entire achievement by not providing it with suitable premises.⁴⁴ The Commission demands that Kosovo display true commitment to the reforms it adopts. This is an observation which is repeated throughout the progress report, to underline that the EC rejects claims that recommendations were implemented when the first benchmark was reached, but instead requests that reforms be carried out until they have achieved their objective.

Civil society

By analysing civil society alongside the parliament and government, the EC places it on the same footing as the fundamental institutions of the state. The EC also sends a strong message to enlargement countries that civil society plays a pivotal role in democracy; it enhances political stability, social cohesion, deepens understanding and inclusiveness of accession-related reforms and supports reconciliation in societies divided by conflict.⁴⁵ Unfortunately, most transitional societies do not have this idea embedded in their collective consciousness.

Consultations with the civil society in Kosovo “anchor reforms across society”,⁴⁶ therefore, in the view of the Commission, they need to be timely and conducted with the intention to effectively engage the civil society. By referring to the practice of not reserving sufficient time for real consultations,⁴⁷ the EC shows that it is dissatisfied with the practice of Kosovo authorities to only conduct such consultations as a mere formality, without any real interest to involve the civil society in the decision-making or implementation processes.

Public administration reform

This is the only area in which the EC noted **good progress**, as a result of the development of a comprehensive strategic framework for public administration reform and the legislative improvements; it also found that the area has achieved **some level** of preparedness. The Commission observed with satisfaction that high-level support and commitment were given to this area,⁴⁸ which led to an acceleration of the progress rate compared to 2014.⁴⁹

⁴³ *Id.*

⁴⁴ Kosovo 2015 Report, at 8

⁴⁵ EU Enlargement Strategy, at 9

⁴⁶ EU Enlargement Strategy, at 3

⁴⁷ Kosovo 2015 Report, at 9

⁴⁸ Kosovo 2015 Report, at 10

⁴⁹ Kosovo 2014 Report, at 10-11

In the view of the EC, public administration has to undergo a process of professionalization and depoliticisation of public service.⁵⁰ Overall, the most stringent challenge identified by the Commission refers to the implementation of legislation and strategies.

The Commission starts its analysis by first commending the adoption of adequate **strategy and legislation**,⁵¹ showing that any reform in Kosovo requires a solid foundation, one that ensures coordination, coherence and transparency. However, strategies and legislation are never sufficient and need to be followed by proper implementation.

Concerning the **recruitment** of civil servants, the Commission pointed out that merit-based recruitment was enshrined in legal provisions, but was systematically disregarded in the case of senior civil servants.⁵² The Commission reaffirms that reforms in Kosovo need to be performed from top to bottom, otherwise the entire process can be compromised.

By referring to the over **70 government agencies with overlapping powers**,⁵³ the Commission again emphasised that Kosovo's commitment to reforms needs to be real and not only declarative. Simply passing legislation and setting up institutions is not sufficient, but these measures need to be taken with the aim of ensuring a functional administrative system. The current situation shows that the reforms were implemented without a clear vision and without proper consultations between the Assembly and the government. The Commission signals that the situation needs to be redressed, since these institutions consume the already limited state resources and overburdens the administrative apparatus.

The remarks of the Commission with regards to **transparency** in the adoption of the budget⁵⁴ are meant to emphasise that it is not sufficient for the institutions to perform their tasks properly, but it also needs to be seen that they perform their tasks properly. Not only does information have to be provided, but it also needs to be delivered in a manner which allows the average citizen to assimilate it easily. Transparency is important in order to foster trust and improve the relationship between the state and its citizens. In this way, the EC draws attention on the fact that state authorities cannot function in an "ivory tower", but need to communicate and have a constructive relationship with the citizens whereby the authorities offer complete and easily accessible information and in return receive input.

Rule of law

The Commission found that Kosovo achieved **some progress** in this area and is in an **early stage** of preparedness. In general, Kosovo, as other enlargement countries, set up the necessary legal frameworks and institutional structures, but has still to ensure their implementation.⁵⁵

The Commission chose to analyse four issues when addressing the area of rule of law: functioning of the judiciary, fight against corruption, fight against organised crime, and fight against terrorism. The

⁵⁰ EU Enlargement Strategy, at 9

⁵¹ Kosovo 2015 Report, at 10

⁵² Kosovo 2015 Report, at 10

⁵³ Kosovo 2015 Report, at 11

⁵⁴ Kosovo 2015 Report, at 12

⁵⁵ Kosovo 2015 Report, at 12-13

last three issues are phenomena which pose the most serious threats to the rule of law principle. These are highly complex crimes, which require a remarkable degree of organisation and usually have a cross-border nature. Aside from affecting individuals, they also have a negative effect on communities and state structures. They often intersect, with corruption fostering the environment for organised crime to flourish, and organised crime ensuring the essentials for terrorism (finances through drug trafficking, arms etc.). Many countries acknowledge and try to remedy the negative effects of such serious crimes to the respective communities, by seizing criminal assets and reusing them for the development of the communities most affected by them.

At the forefront of the fight against these serious crimes is the functioning of the judiciary, which ensures that those associated with such practices are sanctioned and their assets seized and returned to the communities.

Functioning of the judiciary

The Commission determined that Kosovo made **some progress** in this area, continuing on the trend set in the previous reporting period;⁵⁶ however it remains in an **early stage** of preparedness.

It appears that the judiciary system is preparing for the imminent exit of EULEX, which had been active both at the executive level, through the appointment of judges and prosecutors to sensitive cases, and also at the strengthening level, by conducting mentoring, monitoring and advising activities, especially for the KJC and the KPC. Some of the main issues that the EC identified as problematic concern the **independence and efficiency** of the judicial system as a whole and the **impartiality, accountability** and the **appointment and promotion** of judges and prosecutors.⁵⁷

Among the first issues that the EC referred to are the **slow administration of justice and lack of accountability**.⁵⁸ By this, the Commission underlined that justice needs to be delivered in a timely manner in order to achieve its reparatory function; also, justice has to be delivered by persons who are accountable for their actions. Both requirements are meant to ensure trust in justice. On the issue of accountability, we noticed a lack of consistency on the part of the Commission. In 2014, the EC recommended that the laws on courts, state prosecutor, KJC and KPC be harmonised in order to address the discrepancies on a number of issues such as dismissal, appointment, transfer.⁵⁹ These shortcomings not only were not addressed in the May 2015 amendments to the respective laws, but the EC report dismissed them in a superficial manner.⁶⁰ This raises certain questions as to the ability of the Commission to follow up carefully on the implementation of its recommendations and to its commitment towards its assessments and the reform process in the enlargement countries.

The Commission also addressed the need for the majority of the members of the **Kosovo Judicial Council (KJC)** to be **elected by their peers**,⁶¹ in order to ensure the independence of the judiciary. An effective separation of powers is incompatible with a judicial council where eight out of 13 members are elected by the legislative. The Commission thus emphasises that independence should be

⁵⁶ Kosovo 2014 Report, at 12-14

⁵⁷ Kosovo 2015 Report, at 15

⁵⁸ Kosovo 2015 Report, at 13-14

⁵⁹ Kosovo 2014 Report, at 13

⁶⁰ *Id.*

⁶¹ *Id.*

guaranteed to all the actors in the justice system and should first be sought in those which have a coordination function. It is also noteworthy that the composition of the KJC is provided for in the Constitution of Kosovo. Therefore the EC is in fact asking the government to change the fundamental law of the country in order to accommodate this recommendation. This is a bold statement on the part of the Commission. On the one hand, it shows that the internal legal order cannot be used as an excuse to disregard an international principle. On the other hand, the EC draws attention on the fact that it is the fundamental law that needs to first be aligned with the rule of law principle, only then can the rest of the legal framework be brought in line.

The EC also mentioned that judges and prosecutors are initially appointed for an **initial term of three years**. The Commission found that this aspect is relevant enough to be included in the progress report, but did not develop further on its implications. The Council of Europe (CoE) however has voiced serious concerns regarding this matter. The Venice Commission⁶² clearly stated that, in its views, “setting probationary periods can undermine the independence of judges”⁶³ and the CoE recommended that the government of Kosovo review the probationary system of appointments of judges and prosecutors.⁶⁴

Finally, the Commission also referred to **mediation**,⁶⁵ in order to draw attention on the fact that justice is not delivered only in courts of law; there are also alternative measures for dispute settlement which may even be more appropriate in some cases. The frequent recourse to mediation, in turn, will likely reduce the backlog of cases.

Fight against corruption

According to the EC, Kosovo has made **some progress** in the past year in the fight against corruption, recording an improvement compared to last year’s progress which was “limited”;⁶⁶ however it still finds itself in an **early stage** of preparedness. The Commission attributed the much of the progress to the work of the **Anti-Corruption Agency** and the commitment of the **judicial system**.⁶⁷

One of the most important issues raised refers to the need to address **high-level corruption**.⁶⁸ This once again reiterates the position of the EC of requesting the implementation of reforms on sensitive issues in Kosovo from top to bottom, in order to ensure long-lasting effects. Given the high profile and visibility of those involved in high-level corruption, this approach is likely to also have a deterring effect. Moreover, such cases require complex investigations and tremendous political will. Only when Kosovo authorities demonstrate the investigative capacity and political commitment to properly address high-level corruption can it be claimed that they conduct a genuine fight against corruption.

⁶² The European Commission for Democracy through Law - better known as the Venice Commission as it meets in Venice - is the Council of Europe’s advisory body on constitutional matters

⁶³ European Commission for Democracy through Law (Venice Commission), Judicial Appointments, Report adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007), Opinion No. 403 / 2006, CDL-AD(2007)028’, para. 40

⁶⁴ Organization for Security and Co-operation in Europe Mission in Kosovo, Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions, January 2012, at 29

⁶⁵ Kosovo 2015 Report, at 15

⁶⁶ Kosovo 2014 Report, at 16

⁶⁷ Kosovo 2015 Report, at 15

⁶⁸ Id.

Human rights and the protection of minorities

The EC noted that Kosovo continued the positive trend set in the previous year and achieved **some progress** in this area; unfortunately, the EC did not make an assessment of the level of preparedness.

The EC identified certain issues that and require special attention from the government:

Gender-based violence and the limited access of women to property;⁶⁹

Persons with **disabilities** – their rights continue to be hindered by inadequate institutional support and health services, combined with poor accessibility;⁷⁰

LGBT – the verbal and physical assaults are rarely investigated;⁷¹

Detention - prisoners awaiting trial and those convicted of minor offences are housed alongside long-term prisoners; corruption and contraband goods are prevalent in detention centres and some correctional centres; there is a widespread practice of offering privileges for high-profile detainees;⁷²

Gender equality - women remain under-represented in decision-making positions; no progress was made to combat domestic violence; many women still have their right to inheritance restricted⁷³

Roma, Ashkali and Egyptian communities continue to face difficult living conditions, social exclusion and frequent discrimination; child labour and early marriages continue to be prevalent.⁷⁴

The progress report also referred to the adoption of the law on the **interception of telecommunications**, which provides for “appropriate investigation measures to help identify and prosecute suspects involved in serious criminal offences”.⁷⁵ The Commission noted that the law is in accordance with the relevant human rights, thus reiterating that security and the fight against serious crimes can never be used as a justification to disregard human rights, but instead human rights considerations have to lead the discourse on applying such restrictive measures.

Freedom of Expression

The EC marked this area as “**no progress**”, which represents a setback from the positive developments registered in the previous report;⁷⁶ the EC only found **some level** of preparation.

The two main recommendations in the progress report reveal the two facets of the freedom of expression, namely journalists and the mass-media industry. These are closely interlinked and freedom of expression can only be guaranteed if pressure against journalists is prevented and media broadcasters have sustainable financial solutions and information on their ownership is available.⁷⁷

⁶⁹ Kosovo 2015 Report, at 20

⁷⁰ Kosovo 2015 Report, at 20

⁷¹ *Id.*

⁷² Kosovo 2015 Report, at 21

⁷³ Kosovo 2015 Report, at 24

⁷⁴ Kosovo 2015 Report, at 26

⁷⁵ Kosovo 2015 Report, at 19

⁷⁶ Kosovo 2014 Report, at 17

⁷⁷ Kosovo 2015 Report, at 22

The report identified the gravest threat to the freedom of expression in the form of **physical attacks against journalists and other forms of pressure**.⁷⁸ The EC calls for a more systematic response from the authorities, which should include public denouncement, prompt investigations and timely adjudication.⁷⁹ By this, the Commission urges the Government of Kosovo to accept the seriousness of these forms of pressure against journalists and to affirm it in public. Even though the pressure often amounts to less serious crimes, such as threats or intimidation, it is the infringement upon the freedom of expression that is worrisome. Through public denouncement, the Commission also seeks to remove the public perception that aggression is “part of the job”⁸⁰ and instead replace it with public condemnation.

Regional issues and international obligations

It can be observed from the outset that this issue is afforded a considerable amount of attention in the Enlargement Strategy, due to the fact that the situation of each individual country needs to be analysed and understood in light of the entire regional context and the EU enlargement priorities.

On the matter of **trans-boundary and international crimes**, the Commission noted that in most pending war crimes cases the suspects are either ethnic Serbs living in Serbia or ex-KLA members.⁸¹ The ability to investigate these cases is affected by the political situation in the case of the former and the capacity and willingness of law enforcement in the latter.⁸² This shows that Kosovo needs to overcome its past in order to have a constructive cooperation with Serbia and also ensure that those who committed heinous crimes are held accountable.

NORMALISATION OF RELATIONS BETWEEN KOSOVO AND SERBIA

The Commission praised, albeit in a moderate tone, the continued efforts of Kosovo and Serbia to remain engaged in the dialogue and their commitment to the implementation of the “First agreement of principles governing the normalisation of relations”. The EC mentioned the positive and concrete impact they will have on the everyday lives of citizens of both Serbia and Kosovo.⁸³

The Commission underlined that the progress in area is essential in defining the European perspective of both Kosovo and Serbia,⁸⁴ in an attempt of fostering an environment of mutual respect and active engagement in the dialogue between the two countries.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Human Rights Watch, *A Difficult Profession: Media Freedom Under Attack in the Western Balkans*, July 2015, at 13

⁸¹ Kosovo 2015 Report, at 27

⁸² *Id.*

⁸³ Kosovo 2015 Report, at 5

⁸⁴ Kosovo 2015 Report, at 30

ECONOMIC CRITERIA

The existence of a functional market economy

The Commission assessed that Kosovo finds itself in an **early stage** of preparedness of a functional market economy, having achieved **some progress** in the past year.

The report outlined the commitment displayed by the government of Kosovo in pursuing economic reforms, as well as the improvements brought to the legal system and those strengthening the stability of the financial sector.⁸⁵ The EC identified as a key weakness of the current economic system the persisting trade deficit, which results in a weak production base and a lack of international competitiveness;⁸⁶ it also referred to the inefficiency of the public sector and the ad hoc fiscal policy as significant fiscal risks.⁸⁷ As was predicted in 2014,⁸⁸ the EC now reported a reduction of economic growth, which is the effect of a lack of long-term sustainable sources of growth; this led to the qualification of the macroeconomic situation as “stable but challenging”.⁸⁹

The report emphasised the **interdependency** of the economic sector to other areas, thus urging the government to adopt a comprehensive approach on economic development. This approach should include the sectors on which economy relies the most, such as employment and fiscal policies.⁹⁰

Moreover, the EC encourages the authorities to broaden the **domestic tax base** and modernise **revenue collection**, instead of relying on customs duties.⁹¹ The Commission therefore calls on the Kosovo authorities for sustainable reforms and not quick solutions. These measures are needed to place the fiscal policy on a solid basis and ensure a constant flow of revenues to the budget.

The Commission also refers the decision of the government to commit **32 % of the overall capital spending** in the next four years to highway construction.⁹² The EC warns that this is a risky decision, since it limits fiscal space in the following years.

The capacity to cope with competitive pressure and market forces within the Union

The Commission did **not** report **any progress** in this sector and it determined that Kosovo is at an **early stage** of preparedness.

The EC noted a slight shift in the policy on physical capital; even though the imbalance caused by directing investments exclusively towards the development of road infrastructure persisted, in the past report period there were investments in other sectors as well.⁹³ The Commission once again

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Kosovo 2015 Report, at 31

⁸⁸ Kosovo 2014 Report, at 25

⁸⁹ Kosovo 2015 Report, at 32

⁹⁰ Kosovo 2015 Report, at 32-33

⁹¹ Kosovo 2015 Report, at 31

⁹² Kosovo 2015 Report, at 33

⁹³ Kosovo 2015 Report, at 36

drew attention to the fragmented state of the private sector, which is the reason for which it cannot benefit from efficiency gains.⁹⁴

The EC identified **education** as the driving force for long-term economic growth and competitiveness⁹⁵ and recommended that the government invest more of its resources into ensuring high quality education. The strategy needs to address all levels of education, not only high education, since that would lead to an imbalance of the education system and dilute the education standards. Therefore, the Commission urges the government to anchor the education system into the labour market to prevent unemployment and ensure economic development.

EUROPEAN STANDARDS

Internal market

The EC concluded that in the past reporting period, Kosovo had not implemented the required reforms, therefore the progress in this area remained unsatisfactory. Only half of the areas under consideration achieved **some degree** of progress (free movement of goods; movement of persons, services and right of establishment; free movement of capital; customs and taxation; public procurement; intellectual property law), while **no progress** was registered in the others.

It is difficult to compare in a definite manner this year's progress with the one in the previous year since the EC used different assessment scales. What can, however, be noticed is that in 2014 the Commission noted at least some degree of progress (be it "limited", "very limited" or "slow") in all the areas, including those which are now marked as having "no progress". Therefore, it is reasonable to conclude that in the past year the rate of progress has been diminishing. The likely explanation for this trend is the political crisis, which paralysed the work of many institutions, starting with the Assembly. This conclusion is confirmed by the fact that the recurring recommendations that appear in the reports from the past two years call for the adoption of legislative measures (e.g. "further align the law with the EU[...] directives",⁹⁶ "further harmonise existing regulations and procedures with EU practice",⁹⁷ "step up the fight against the informal economy and tax evasion"⁹⁸) or institutional cooperation (e.g. "improve inter-institutional coordination"⁹⁹).

In general, the recommendations of the Commission referred to either the **implementation** of current legislative framework or its **alignment with EU *acquis***. Therefore, the EC acknowledged that there is no legal vacuum in this sector. However Kosovo needs to now take the next step and ensure that its laws are harmonised with the EU legal framework and the legislation is properly enforced.

⁹⁴ Kosovo 2015 Report, at 37

⁹⁵ Kosovo 2015 Report, at 36

⁹⁶ Kosovo 2015 Report, at 39

⁹⁷ *Id.*

⁹⁸ Kosovo 2015 Report, at 40

⁹⁹ Kosovo 2015 Report, at 38

Sector policies

The overall situation is better than that registered in the case of the internal market; the report noted that Kosovo achieved some degree of progress in almost all areas, with environment and climate change and statistics as the exception – in the former there was no progress and in the latter the progress was “good”. Kosovo appears to have maintained the progress trend in the previous year, when the Commission concluded that there was some or (very) limited progress.

Many of the recommendations from the previous report are repeated in this year’s report. It is worrisome to observe that in 2014 the Commission emphasised that certain measures had to be taken as a matter of **urgency**, but this has not been done (e.g. setting up the internal audit unit in the Agriculture Development Agency,¹⁰⁰ implementing the digital switchover and develop a solution for sustainable funding of the public service broadcaster¹⁰¹).

The main shortcomings identified by the Commission referred to the institutional framework and the implementation of current legislation. Therefore, in order to ensure the sustainability of these sectors, the authorities of Kosovo are called upon to strengthen the current institutions and ensure their independence. The EC expects from enlargement countries strong and efficient institutions; it favours an integrative approach, whereby efforts are focused on ensuring that existing bodies fulfil their mandates in the best possible way and function harmoniously in the greater system.

Justice, freedom and security

The progress trend appears to have attenuated slightly; it is now evaluated as “**some progress**” overall, while in the previous year the individual areas achieved **limited progress**, **some progress** and even **good progress** (Visa, border management, asylum and migration). It appears that the area of visa, border management, asylum and migration is most advanced, with most legal and institutional structures in place and appropriate response from the authorities.

The EC determined that the steps that remain to be taken concern the implementation of an intelligence-led policing approach, applying tools for financial investigation and asset confiscation, and enhancing the capacity and expertise of police, prosecution, and judges.¹⁰²

CONCLUSION

The new assessment scale introduced by the European Commission makes the evaluation of the situation of the situation in Kosovo much easier to evaluate and to monitor. This year’s report shows that the overall progress of Kosovo was very weak (0.82 on a scale to 3) and the country finds itself in an early stage of preparedness to assume membership obligations (1.32 on a scale to 5). In spite of the positive tone of the report and the optimistic reactions of Kosovo statesmen, one must keep in mind the greater picture and not have unrealistic expectations from the EU or the Kosovo government. The road towards EU membership is long and tedious. The reforms recommended by

¹⁰⁰ Kosovo 2015 Report, at 47

¹⁰¹ Kosovo 2015 Report, at 52

¹⁰² Kosovo 2015 Report, at 56

the EC to Kosovo demand fundamental changes to the legal and institutional frameworks and adequate implementation, which cannot be achieved without true commitment and real engagement from all levels of the political spectrum and civil society. Certainly, the signing of the SAA represents recognition of the positive steps that have been undertaken so far; it has to be regarded as an incentive to continue the reform process with renewed vigour, as it marks the beginning of a new phase in the relations between Kosovo and the EU. This new phase will bring about increased expectations from the EU which need to be met with increased professionalism on the part of Kosovo authorities.