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Abstract

In this article is presented a summary analysis of the approximation and harmonization of Kosovo’s legislation with primary and secondary legislation of the European Union, specifically with the EU acquis. As a potential candidate country, in its preparations to approach the integration, Kosovo should focus on examining and analyzing the legislation on bilateral and multilateral level. This paper aims to analyze the perspective of approximation and harmonization of Kosovo’s national legislation with the EU acquis within the frame of tools or methods and other acts that a candidate country should use and create an institutional structure for adoption of the acquis. The process of legal approximation will be very challenging for Kosovo given the complexity of the process and the needed capacities for local institutions. Nevertheless, a comparative advantage for Kosovo in this process should be regarded the fact that the drafting and reviewing process of the legislation is supported by experts from international and local organizations, although it is obvious that there lack of coordination among them, which often creates also ambiguities and difficulties.

Keywords: approximation and harmonization, Kosovo, European Union (EU), legislation, EU acquis, European integration.

Introduction

The aim of the assignment is to explain the approximation and harmonization of national legislation with EU acquis, which is a long and difficult process of European integration. But the approximation and harmonization of legislation is a unique obligation for joining European Union. Kosovo has considered the approximation of legislation as a part of the EU integration and has begun adoption of legislation in compatibility with EU legislation (not fully) since the time when Kosovo was under the international administration by UNMIK.1 UNMIK or United National Interim Administration Mission in Kosovo was the officially mandated mission of the United Nations in Kosovo by Security Council resolution 1244 (1999).

Indeed, the adoption of the EU acquis encourages candidate countries and potential candidate countries like Kosovo to revisit the compatibility of their national legislation and standards to those of the EU, in order to share the Union’s common values (Lisbon Treaty, Article 2, 2009).

With the signing of the Stabilization and Association Agreement, Kosovo has entered the first contractual relationship with EU. This development has now made clearer and concrete Kosovo’s aspiration to move towards integration process. Eventually,

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1 UNMIK or United National Interim Administration Mission in Kosovo was the officially mandated mission of the United Nations in Kosovo by Security Council resolution 1244 (1999).
Kosovo has taken over concrete obligations now and, such obligations are directly related to the drafting and adoption of legislation in full harmony with EU acquis. The legal approximation process was defined with different terms by different countries: adoption of EU norms, European integration of legal system, harmonization of legislation with acquis, adoption of EU acquis, legal approximation of national legislation with the legislation of the EU, exporting the Acquis Communautarie into the legal system of third country, etc. But the legal approximation process of the EU is largely known as approximation of national legislation with EU legislation.2

This paper will discuss the process of approximation and harmonization of the national legislation with EU acquis, difficulties and challenges faced by candidate countries with focus on Kosovo’s experience.

**Legal approximation of national legislation with EU legislation**

The approximation and harmonization of national legislation with the EU legislation is one of the three main criteria for accession of the countries which aspire to join the European Union (Copenhagen criteria, 1993). EU acquis3 is the body of common rights and obligations which bind all the Member States and the applicant countries which have to accept the EU acquis before they can join the EU (Z. Horvath, 2011, p 226). The integration in the European Union obligates the applicant countries to transpose the acquis into their national legislation and implement it from the moment of their accession. This also applies in cases for potential candidate countries like Kosovo. The Lisbon Treaty has reshaped the structure of the EU legislation, which has created a new stage towards an ever closer union. Negotiations for the fulfillment of these criteria are difficult and imply a rather long thorough screening process of needed legislation and its harmonization with the EU acquis. Kosovo legislation is considered in the right line or track approximation and harmonization with acquis. According to the Rules of Procedure the conditions for presenting a draft-law in the Assembly of Kosovo should have a declaration on approximation and harmonization with the EU legislation and with the comparative table of acts it refers to (Rules of Procedure, Article 54, 2010, Paragraph c).

In terms of legislation, Kosovo’s new history could be divided into three periods: right after the war in 1999, Kosovo has implemented, to the possible extent, ‘the non-discriminatory legislation of former Yugoslavia, prior to 1989’; second period includes the legislation (regulations) adopted by UN interim international administration mission (UNMIK Regulations)4; and third, the legislation adopted by the Provisional Institutions of Self-Government in Kosovo. According to the

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2 The term was coined by the EU and its institutions. Example was used for their requirements for approximation of the national legislation of Eastern Partnership countries with EU legislation in the different fields. For discussion of the issues, see infra EU’s Glossary of definitions.

3 In accordance with the EU’s Glossary of definitions: The EU acquis is the body of common rights and obligations which bind all the Member States together within the European Union. It is constantly evolving and comprises not only EU primary, secondary binding and non-binding legislation but also the ECJ’s cases law: europa.eu/scu/dplus/glossary.

4 After the war in Kosovo 1999, UNMIK created the system of the regulations, which were normative acts with legal power, issued by the Special Representative of the Secretary General, and based on the authorization, given to him UN Security Council Resolution 1244/99, as the highest legislative authority.
Constitutional Framework for Provisional Self-Government in Kosovo, the Provisional Institutions of Self-Government have been responsible for aligning their legislation and practices in all areas of responsibility with relevant European and international standards and norms (Constitutional Framework for Provisional Self-Government, Chapter 5, 15). Consolidation of the EU acquis were completed in 2003 and after that carried out automatically whenever existing legislation is amended.

The legal basis for the accession of Kosovo is the EU’s Stabilization and Association Agreement between the European Union and Kosovo, which was initiated in 2014 and signed on October 2015. The SAA is implemented as of 1 April 2016 after its ratification by the Kosovo Assembly and the EU Parliament.

EU acquis and influence to the non-EU countries

The EU acquis includes general principles of EU law, primary legislation (Treaties), secondary legislation (Regulations, Directives, and Decisions), European Court of Justice decisions, and Ratified International Agreements. EU acquis influences not only the EU Member States but also the non-EU countries aspiring integration into the family. As mentioned above, for any country intending to join EU the primary obligation remains harmonization of their national legislation with EU acquis in order to ensure full compatibility of the legal framework.

In the Kosovo case, the approximation and harmonization process – obligation of country like other countries that intends to join EU, means transposition, implementation or “practical application” and enforcement of the EU legislation into the national legislation, or in domestic legislation. Transposition means incorporation of the spirit and text of EU legal acts in national legislation of the candidate country. Implementation or “practical application” means establishing of institution and providing of budget necessary for executing transposed legal acts. Enforcement means creation of adequate control and enforcement measures as a system aimed to ensure full implementation of legal acts. The practical approximation of the legislation means elimination of differences between EU legislation and legislation of candidate countries (or potential candidate countries), given that the differences negatively impact unique market functioning, and also establishment of implementation and enforcement mechanisms for full application of harmonized legislation.

EU candidate and potential candidate countries identify their own priorities and distribution of tasks, preparing a Program of the approximation of legislation, infrastructure, etc. Like other countries, Kosovo has established the structure for the harmonization and approximation of national legislation with EU legislation, in the following manner: within the government – the responsibility falls with the Ministry of European Integration and Directorate for European Integration in the line ministries; within the Assembly the Committee on European Integration and Directorate of legal standardization, alignment and harmonization. But, unlike others countries in the Western Balkans, Kosovo is the last country following the steps towards the integration in EU, and in the future should be adopted the National Plan for the adoption of the EU acquis, as a condition for the implementation
of the SAA after its signing (Practical Guidelines for Legal Approximation, 2014, p 21).

Indeed, the adoption of the EU acquis encourages Kosovo to revisit the compatibility of its national rules and standards to those of the EU in order to first, create opportunities for a sustainable democratic and economic development, hence increase its competitiveness capacities within the EU market; and second, it is important to raise the capacities in order to absorb the technical and financial assistance from EU funds⁵ (DG-EXPO, Approximation of the national legislation of Eastern Partnership countries with EU legislation in the economic field, 2013, 5). The EU operates through a comprehensive approach for all candidate countries and potential candidate countries such as Kosovo providing financial as well as technical support to develop local capacities in their efforts of doing necessary reforms and becoming ready to join the family. The accession, however, is possible only after the country is able to demonstrate that it reached the level where: complying with all the EU’s standards and rules, having the consent of the EU institutions and EU member states, and having the consent of the citizens – as expressed through approval in their national parliament or by referendum.⁶ The EU had introduced and maintained a particular approach for the countries in Western Balkans the “Stabilisation and Association process” as a process to prepare the countries in all respects. Kosovo is the last country in the Western Balkans to have signed and ratified the Stabilisation and Association Agreement.⁷

The EU acquis comprises all the EU’s treaties and laws (directives, regulations, and decisions), declarations and resolutions, international agreements and the judgments of the Court of Justice (V. Miller, The EU’s Acquis Communautaire, 2011, 1). The methodology of approximation of the national legislation and adoption with the EU acquis could distinguish as following:

**Transposition** of the legislation means a process aimed at transposing of the legal system or a part thereof of legal acts of another Member States or Union into the legal system of candidate or potential candidate countries (Transposition Guidance: How to implement European Directive effectively, 2013, 27). Whereas the Member States when transposing acts, in particularly must, observe two key conditions: the transposing must be correct and carried out within the time limits laid acts.

**Legal approximation** is the process of drafting and adopting legal acts and creating conditions for their application with a view to the gradual attainment of full compatibility of legal acts of the national legislation with the law of the EU. The first step in the approximation process is considered analysis and comparison of EU and existing national legislation and which also determine the existing state of conformity and the appropriate national response to the EU legislation. This initial evaluation has two steps, as are: first, is there national legislation covering this subject matter, and second, if there is national legislation, each article of the EU law must be compared to the relevant national laws or acts.

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⁷ The EU and Kosovo chief negotiators initialed the Stabilisation and Association Agreement between the EU and Kosovo 25.07.2014, in Brussels, and European Commission on behalf of the EU signed the Stabilisation and Association Agreement between the EU and Kosovo 30.04.2015, in Brussels.
The approximation of laws (according to Guide to the approximation of EU legislation) should be viewed through the following process: a. transposition is a process aimed at attaining identical legal effects of legal acts with those of relevant legal acts through adopting, amending, supplementing or abolishing legal acts; b. adoption is the process aimed at adapting legal acts to reach conformity with legal acts with a view to creating conditions for implementing the regime of the EU through adopting, amending, supplementing or abolishing legal acts; c. coordination is the process of aligning either the legislation or administrative practices where adaptation or transposition is not possible or required; and d. implementation is the process of transposing legal acts and issuing implementing rules which includes also interpretation, application, enforcement of and compliance with legal acts that are in agreement with the law of the EU.  

Kosovo’s legal approximation and harmonization with EU legislation

With respect to the issue of legal approximation and harmonization with EU legislation, the EU acquis is provided in primary and secondary legislation. The primary legislation also known as the primary or original source of law, is called as the supreme source of law in the European Union. It consists mainly of the founding treaties of the EU. Primary legislation is adopted through direct negotiation by Member States. The second major sources law comprises unilateral acts and agreements. But the secondary legislations comprise by the EU institutions and it is the third major sources of community law after the treaties (primary legislation) and international agreements. It comprises binding legal instruments (regulations, directives and decisions) and non-binding instruments (resolutions, opinions) (K.D. Borçard, The ABC of European Union law, 2010, 080 - 083). Sometimes the secondary legislation otherwise called as binding (regulations, directive, decisions, recommendations and general decisions of Justice), and much of the EU acquis is secondary legislation in the form of regulations, directives and decisions.

In accordance with the Constitution of Kosovo and the Assembly Rules of procedure Kosovo’s national legislation should be adopted in accordance with the EU legislation. The institutions of Kosovo should prepare a National Plan for the Adoption of the EU acquis, which clearly definition the national priorities and responsibilities for the approximation and harmonization of national legislation according to the chapters of acquis (Practical Guidelines for legal approximation, 2014, 21).

The approximation and harmonization of legislation are terms, developed in the course of the evolution of the EU legislation (before known as European Community). The approximation as “the process of removing undesired or unwarranted differences in national legislation within the context example of internal market, while harmonization is “process whereby national policies and standards are brought more closely in line with one another.” Although the term of
harmonization it is synonymous with the term of approximation, but in general it involves a greater degree of integration. But the Approximation refers the objectives while the harmonization refers the measures.

**EU acquis in the internal and external dimension**

It is clear that the EU acquis has effects in two different dimensions: internal and external dimensions. Its internal dimension is to enable the consistent development of the EU countries while preserving EU patrimony by Member States, principles and practices that distinguish the Union and the EU intergovernmental legal orders from other international and national legal systems. As a product, acquis also was engendered by Member States of the EU, and the latter has an obligation to ensure its implementation and to guarantee its unity within the EU.

And its external dimension it to push third countries but also for the candidate (or potential candidate) countries to the forefront of the acquired level of economic, political and legal cooperation achieved by the EU. In the case of Kosovo it is a good opportunity to advance and uses instruments to build the capacities and national legislations compatible with EU acquis and for perspective and potential join the European Union.

In general, the EU in case of Kosovo has requesting to create the standards which must guarantee the quality of economic and social life, and other to creates the public authorities which must ensure the protection of safety (or other requirements envisaged) on its territory regarding with EU standards (Progress Report for Kosovo, 2014).

Completion of standards and approximation of legislation is of primary importance and should be treated seriously by the institutions of the Kosovo. The practice of drafting laws and bylaws should be unified and implemented positively.

**Conclusions**

Undoubtedly, the approximation and harmonization of national legislation with EU acquis is essential to the integration process which represents mitigating steps towards the integration of Kosovo in the European Union. The process of approximation and harmonization of the national legislation with the EU acquis is a long, difficult and costly process. Acquis should be translated into the official language of the candidate and potential candidate countries. In this case Kosovo could benefit from the other countries in the Western Balkans, which have already translated the Acquis such as Albanian and Serbian languages. Kosovo has an agreement with Albania to providing the EU acts which were translated. It should also exploit by other Western Balkans countries.

Based on the discussion above, the legal approximation of Kosovo’s legislation with the EU acquis is not only an instrument for deepening long European integration process, but it encompasses important measures to enhance further development of Kosovo in general, and to simplify the path of integration. Despite all the difficulties, making Kosovo a unique case in the region, the post 99 period was marked with continuous efforts of adopting the legislation which is compatible
to the EU acquis although not being officially part of that process until recently. A good support was provided by international presence since 99. International presence was a great advantage to Kosovo in this process, as both the UNMIK and now EULEX Missions have supported Kosovo institutions in doing laws in line with EU and International standards. However, Kosovo has a long way ahead in approximating and harmonising the legislation with acquis. Kosovo should adopt annual and multi-annual plans for legal approximation adoption with EU acquis. With the signing of the SAA, Kosovo has attained a clear picture and promising future in its efforts to join the EU family. Hence, it is expected that the efforts by the institutions will increase in order to ease and accelerate the process of approximation and harmonization of the legislation.

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31 Stabilisation and Association Agreement (SAA) between the European Union and Kosovo entered into force on April 1, 2016, and the SAA has established a contractual agreement that entails mutual rights and obligations and covers a wide variety of sectors.