

CHALLENGES OF PUBLIC ADMINISTRATION IN KOSOVO IN THE CONTEXT OF EUROPEAN INTEGRATION

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Abstract

The purpose of this paper is to analyse the current situation in the field of public administration in Kosovo in the context of European Integration. This paper presents a reflection of the challenges faced by the public administration in Kosovo, in the context of the requirements for advancement and reform of public administration arising from the European integration process, respectively the requirements related to the public administration arising from the criteria Copenhagen and Madrid, on one hand, and the Stabilization and Association Agreement (SAA) on the other. The paper is mainly based on analyses of the legislation in force, which regulates public administration issues and analyses of the way that SAA regulates public administration issues, scientific literature and other important data. Result of studies show that reformation of public administration in Kosovo in accordance with the models and standards adopted and applied by other democratic states, especially the EU member states, has been and remains a crucial challenge for our country, because in addition to positive developments, various negative phenomena have also appeared, which have hindered the advancement and development of public administration in Kosovo. The article formulates recommendation the advancement of public administration represents one of the major challenges and remains the focus of ongoing reform in order to meet the EU standards, to advance further in the other stages of membership, until full membership, as a goal of the Kosovo.

Keywords: *administraton, public reforms, European integration, democratic institutions, institutional infrastructure.*

JEL Classification: F12, H83, R11, R58

1. Introduction

Administration represents a phenomenon without which the society cannot be thought of. With the administration, we meet almost in every step and in each day⁴. The administration has a double historical role in the society, where at the same time it is an instrument of power and bearer of useful works that satisfy the citizens⁵. Public administration is one of the main segments through which relations among the state, civil society and the private sector are realized⁶. Each country (state) must make every effort to modernize, among other things, its public administration system, to economize, to make it more efficient, to increase regulatory capacity, to make the elastic the principle of global inevitability⁷.

Public administration in Kosovo, namely reforming, advancing and building administrative capacities at the levels of European Union (EU) standards, has always been one of Kosovo's goals, on one hand, and one of the criteria established by the EU for advancement in the road to European integration of Kosovo, on the other hand. In this sense, the reformation and advancement of public administration in Kosovo has been at the center of other reforms in general, and a challenge of the institutions of Kosovo in achieving the criteria for European integration.

The European system space means the administrative space which represents the relative compliance of certain principles and minimum standards in which the organizations, the activity and functioning of the public administration bodies are led on the basis of “acquis

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⁷ Pusić, E. 2002. *Modernization of Large European Administrative Systems*. Hrvatska Javna Uprava, br. 2. Zagreb, p. 260.

communautaire”⁸.

Exercise of state executive power through an apolitical, transparent, accountable public administration and which supports its organization and function in the most advanced international standards is one of the criteria for membership of the Kosovo in EU. The European model of public administration requires the use of innovations, digitalisation and e-governance, economization and efficiency of public administration (The European Agency for Reconstruction in Kosovo, 2002).

Now that the Republic of Kosovo has signed the Stabilization and Association Agreement SAA (Law No. 05/L-069, 2015) and is at its stage of implementation, the public administration has been and remains in the focus of ongoing reformaton in order to meet EU standards to advance then in the other phases of membership, until full membership, as a goal of the Kosovo. Precisely because of this, the reform in public administration in Kosovo⁹ has been a requirement that has emerged from each European Commission Progress Report on Kosovo (Commission Staff Working Document, Kosovo 2018 Report). Based on Kosovo's aspiration for EU membership, almost all of the legislative and institutional frameworks that have been built from post-war Kosovo in Kosovo have been done in harmony with EU principles and standards.

Moreover, based on the remarks and requirements of the EU for public administration advancement, which are usually expressed in the progress reports of the European Commission on Kosovo, our state has continuously tried to implement reforms in the public administration, in accordance with the requirements of EU, in order to meet the criteria pertaining to public administration. This way, the Kosovo institutions have undertaken a number of concrete steps towards advancing the public administration. Thus, new laws have been issued and existing laws related to public administration have been amended in line with EU legislation, followed by the establishment of public administration bodies and bodies only for the purpose of implementing public administration reform. In addition, a series of strategies, action plans and other relevant acts have been issued that foresee the actions that the institutions of Kosovo should undertake in order to advance the public administration.

The advancement of public administration is a challenge itself, while other issues related to this advancement also pose a challenge to the public administration itself. Moreover, when we add to this component the role of the public administration in the integration of Kosovo into the EU, it seems that the advancement of the public administration in terms of achieving the fulfillment of the EU criteria for administration, respectively towards EU integration, is actually a very challenging process.

It is clear that in the process of EU membership, besides the criterion related to public administration, a number of other criteria from different fields are required, but the criteria related to public administration have a wider scope, both in political and legal terms. Therefore, irrespective of the role and importance of other criteria in terms of meeting the EU membership criteria, the focus of the following discussion will only fall on issues related to the challenges of public administration seen from the aspect of European integration.

2. Public administration within Copenhagen and Madrid criteria

Meeting the criteria for EU membership, namely, the Copenhagen and Madrid criteria related to public administration, presents a challenge for each country aspiring to EU membership. Therefore, fulfilling these criteria by the Kosovo is one of the challenges faced by public administration.

Besides the criteria proclaimed by the European Union Treaties and the Charter of Fundamental Rights of the European Union for EU membership, there are also foreseen the so-called Copenhagen and Madrid Criteria for EU membership. The Copenhagen criteria are the membership criteria that a country that wants to become a member of the European Union must

⁸ Kavran, D. 2004. *European Administrative Space*, „Reform and Education of the State Administration” Issue 9. Beograd, p. 1064.

⁹ Batalli, M. 2012. *Reform of Public Administration in Kosovo*, Thesis Kosova, University Education Institution AAB, <http://www.universitetiaab.com> (consulted on June 1, 2020).

meet prior adherence¹⁰.

With the fall of communism in Eastern Europe, the European Union took legal action to make it possible to expand the Communities with the former communist countries. He defined the criterias to be fulfilled by new members of the comunity to join. The Copenhagen criteria were approved by the Copenhagen European Council in 1993 and reinforced by the decisions of the Madrid Council of 1995¹¹. In this way, the Copenhagen criteria are the political criterion, the economic criterion and the legal criterion.

Fulfilling the standards with the goal of EU integration, nowadays is one of the key challenges to be achieved. All efforts in this regard have focused on meeting the three Copenhagen criteria. Generally, they require that the aspirant country should have democratic institutions based on respect for human rights (political criteria), be based on a functioning market economy (economic criterion) and accept the obligations for EU membership, implying approximation of legislation and strengthening administrative capacity for its implementation. The latter is known as the administrative criterion or the approximation of legislation¹².

In June 1993, the Copenhagen European Council recognized the right for the countries of Central and Eastern Europe to join the EU after meeting three criteria. Political Criteria: Sustainable Institutions that Guarantee Democracy, Rule of Law, Human Rights and respect for minorities. Economic Criteria: Functional market economy; Approximation of domestic legislation with *acquis communautaire*, alignment with EU political, economic and monetary goals. These criteria for adherence were confirmed in December 1995 at the European Council of Madrid, which stressed the importance to undertake the administrative structures of applicant countries in the EU in order to create the conditions for a gradual and harmonized integration. Nonetheless, the European Union has the right to decide when it will be ready to accept new members (Ministry of European Integration - Glossary for European Integration).

In order to meet these criteria, all EU strategic documents, on one hand, and documents of the Government and other institutions in the Republic of Kosovo, on the other hand, have as their main goal the implementation of reforms to meet the obligations arising of these criteria.

Within the three criteria listed above, the advancement of public administration is found in the political criterion and within the legal criteria.

Regarding the political criterion, one of the political criteria is stated the rule of law, and the rule of law as a principle and value of society is of great importance for the functioning of public administration, for the fact that public administration namely the public services that are realized by the state through public administration, implies nothing more than functions of the state power, the purpose of which is to create and offer the conditions for realizing the citizens' rights in relation to the state.

These services mainly have an administrative character and as such are part of the concept of the rule of law¹³. In this regard, the conection that the public administration has with the rule of law reflects also within this EU criterion, as results within the rule of law are dependent, *inter alia*, on the advancement and reform of public administration. While for the legal criterion related to the approximation of legislation and the strengthening of administrative capacity for its implementation, it is worth pointing out that, in addition to strengthening the administrative capacity for implementation of legislation, the advancement of public administration is embedded within the framework of the approximation of Kosovo's legislation with the legislation of EU. This is due to the fact that, as it will be elaborated futher, a large part of Kosovo's general legislation

¹⁰ Rezler, P. 2011. *The Copenhagen Criteria are they helping or hurting the European Union*, "Touro International Law Review", Vol 14, no. 2.

¹¹ Kocaqi-Levanti, E. 2015. *Copenhagen Criteria and Albania's Integration into the European Union*, KDU: 33 (05) - 34 (05), p. 313 - 318.

¹² Gollaj, E. 2012. *Support to the European Union for Strengthening the Capacities of Public Administration in Albania*, Department of Public Administration, Capacity Building in Public Administration, Magazine, 35-41.

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needs to be approximated with EU legislation, precisely the legislation that regulates the activity and organization of public administration in Kosovo.

All the criteria are important and must be cumulatively fulfilled, but it can be freely stated that the criterion related to public administration, the administrative criterion, has a wider scope than the other criterias, for the fact that from this criterion are dependent the fulfillment of other criterias. Therefore, one of the most important criteria is the strengthening of administrative capacity.

Strengthening of administrative capacity, not only represents an independent criterion, but also is an obligation in itself, and serves the fulfillment of obligations within the political and economic criteria. For this reason, a large part of EU financial support to Kosovo has focused on the sector of strengthening public administration.

This support focuses on two main directions: first, in reviewing the current structures in order to restructure them to meet the obligations arising from the stabilization and association process, especially now that the SAA is in the implementation phase, and secondly, in strengthening the administrative capacities in order to implement the obligations arising from this process.

3. Public administration in Kosovo within the Stabilization and Association Agreement (SAA) framework

In addition to the criteria related to public administration known as the Copenhagen and Madagascar criteria, which, as stated, pose challenges for public administration in Kosovo in terms of European integration, as well as the requirements for advancement and reform of public administration in Kosovo arising from the Stabilization and Association Agreement (SAA) represent a challenge in itself. Therefore, the requirements for advancement and reformation of public administration arising from SAA are the subject of the following.

The SAA process started in October 2011, when the European Commission, through the Progress Report, recommended the initiation of the SAA Feasibility Study.

The advancement of public administration in Kosovo, namely reformation in line with European principles and European standards, has been the reference point of the EU in the Communication from the European Commission to the European Parliament and the Council on the Feasibility Study for the Stabilization and Association Agreement between the Union European and Kosovo (Communication from the European Commission to the European Parliament and the Council, COM (2012) 602, Brussels, 10.10.2012). Following the completion of this study (2012), the feasibility study for the Stabilization and Association Agreement between the European Union and Kosovo was published in October 2012, stating that Kosovo was ready to start SAA negotiations after meeting the short-term criteria (which concerned the rule of law, public administration, minority protection and trade). Following the fulfillment of these criteria, this proposal of the Commission was approved by the EU Council on 12 December 2012.

Subsequently, in April 2013, the European Commission published a monitoring report on the implementation of short-term criteria and confirmed that Kosovo had met all short-term criteria for initiating SAA negotiations. Even in the Feasibility Study, the advancement and reformation of public administration in Kosovo presents a special EU request for Kosovo. According to this study, public administration is one of the four short-term criteria to be met before the SAA negotiations started (Decision No. 06/64, 2015).

The SAA negotiations started on October 28, 2013, and continued until October 27, 2015, in which case in Strasbourg the Republic of Kosovo, on one hand, and the European Union and the European Atomic Energy Community, on the other hand, signed the Stabilization Association Agreement (SAA).

SAA after its signature was approved by the Government of the Republic of Kosovo on 30 October 2015, by Decision no. 01/55 on the adoption of the Draft Law on the Ratification of the Stabilization and Association Agreement between Kosovo, on the hand, and the European Union and the European Atomic Energy Community, on the other (Decision no. 01/55). Then, on 2nd of

November 2015, SAA was ratified by the Assembly of Kosovo, with the approval of Law No. 05/L-069 on the Ratification of the Stabilization and Association Agreement between Kosovo, on one hand, and the European Union and the European Atomic Energy Community, on the other (Law No. 05/L-069, 2015).

The Law on Ratification of the Stabilization and Association Agreement between Kosovo, on one hand, and the European Union and the European Atomic Energy Community, on the other hand, stipulates that the Stabilization and Association Agreement, signed on 27 October 2015, is considered ratified upon entering into force of this law. While it is foreseen that an integral part of this law is the Stabilization and Association Agreement, including its Annexes and Protocols (Article 2 of the Law on ratification of SAA).

According to the SAA, as an integral part of the Law on SAA Ratification, the advancement of public administration in Kosovo presents a special focus, starting with the preamble of the SAA to the latest provisions.

Thus, public administration reform is an intended goal to be achieved, which is proclaimed in the preamble to the SAA, *“CONSIDERING the commitment of the Parties to contribute by appropriate means to the political, economic and institutional stabilisation in Kosovo as well as in the region, through the development of civil society and democratisation, institution building and public administration reform, regional trade integration and enhanced economic cooperation, wide ranging cooperation, including in justice and home affairs, and the strengthening of security”*.

Further, under Article 9 of the SAA, it is foreseen that: *“The association shall be progressively and fully realised over a period of ten years. The Stabilisation and Association Council (hereinafter referred to as “SAC”) established under Article 126 of SAA shall review, on an annual basis, the implementation of this Agreement and the adoption and implementation by Kosovo of legal, administrative, institutional and economic reforms. [...]”* In title VII [Freedom, Security and Justice], precisely article 83 of SAA, in which the institution's empowerment and the rule of law are discussed, it is also proclaimed the strengthening of institutions in the field of administration. The provision in question stipulates that: *“In their cooperation in the field of freedom, security and justice, the Parties shall attach particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular [...]”*. Nonetheless, Article 120 of the SAA [Public Administration] is a fundamental deception within the SAA, which determines the achievements and goals of public administration in Kosovo. Paragraph 1 of this provision has decisively determined that: *“Cooperation and dialogue shall aim at ensuring the further development of a professional, efficient and accountable public administration in Kosovo, building on the reform efforts undertaken to date in this area, including those related to the decentralisation process and to the establishment of new municipalities. Cooperation shall notably aim to support the implementation of the rule of law, the proper functioning of the institutions for the benefit of the population of Kosovo as a whole, and the smooth development of relations between the EU and Kosovo”*.

Whereas, according to paragraph 2 of Article 120 of the SAA it is foreseen that: *“Cooperation in this area shall mainly focus on institution building, including the development and implementation of merit-based, transparent and impartial recruitment procedures at both central and local level, human resources management, and career development for the public service, continued training and the promotion of ethics within the public administration. Cooperation shall also include the improvement of efficiency and the capacity of independent bodies that are instrumental for the functioning of public administration and for an effective system of checks and balances”*.

While Article 123 of the SAA provides that financial assistance may cover all sectors of cooperation, paying particular attention to the area of freedom, security and justice, approximation of legislation with the EU *acquis*, socio-economic development, good governance, public administration reform, energy and agriculture.

These are the provisions of the SAA in which the issues related to the achievements,

conditions for advancement and reform of the public administration in Kosovo are proclaimed from the standpoint of fulfilling the membership criteria set out in the SAA. At the same time, the requirements arising from the SAA regarding the advancement and reform of public administration in Kosovo represent a challenge that Kosovo institutions must pass successfully in order to advance in the other stages of membership.

4. Negative behaviors as a challenge for advancing the public administration in Kosovo

Despite the reforms and advancement to the current level, the path that the Kosovo has passed in terms of reforming public administration and advancing public service delivery through an advanced administration has been quite challenging.

On the path of reforming public administration and advancing public service delivery through administration, besides positive developments, various negative phenomena have also appeared which have prevented the advancement and development of public administration in Kosovo.

A part to the positive factors that have accompanied the development of public administration in Kosovo over the years, various forms of negative phenomena have prevented the advancement of public administration.

These negative phenomena, which have become more and more sophisticated day by day, and against which the countries of the region and even the most developed countries have not remained immune, have had a negative impact on the development of public administration. Moreover, these phenomena have hindered the development of public administration, both organizationally and functionally.

Negative behaviors, such as corruption in public administration, conflicts of interest, nepotism, bureaucracy and non-transparency, politization of public administration, failure to implement the principles of professional ethics by administration officials, the size of the administration, the lack of digitalization of services (the slow process of digitization), and many other phenomena have made public-state administration in Kosovo as such. Indeed, all these phenomena, the evolution of which has probably progressed before the evolution of the administration's development, have hindered in the past and still hinder the organizational and functional development of public administration to date, and as such pose the greatest challenge of public administration.

At the same time, fighting these phenomena is an unsurpassed requirement that emerges from all EU documents, so in the context of European integration, the fight against these negative phenomena plays an important role, which pose challenges for public administration in terms of meeting EU integration-related requirements.

However, based on the obligation of the state to provide its citizens with public services in the most advanced form, and based on the intentions of the state to exercise state executive power through an advanced public administration, with this case fulfilling one of the key EU integration criteria, our country has not stood idly against these negative phenomena but has created the relevant legal and institutional infrastructure in order to overcome the challenges for advancement of public administration, respectively in order to prevent and fight the negative phenomena that hinder the advancement of public administration; by adopting a number of laws that foresee the prevention and fighting of these phenomena, and by establishing relevant institutions.

5. Conclusion

Public administration represents a very important segment, both for the state as well as for the subjects (primarily citizens) who through the administration realize their rights in relation to the state. Reformation of public administration in Kosovo in accordance with the models and standards adopted and applied by other democratic states, especially the EU member states, has been and remains a crucial challenge for our country. Now that the Kosovo has signed the Stabilization and

Association Agreement (SAA) and is at its stage of implementation, the advancement of public administration remains the focus of ongoing reform in order to meet the EU standards, to advance further in the other stages of membership, until full membership. Meeting the criteria for EU membership, namely Copenhagen and Madrid criteria related to public administration by the Republic of Kosovo is one of the challenges faced by the public administration. The requirements for advancement and reform of public administration, arising from the Stabilization and Association Agreement (SAA), pose a challenge to itself, as well. The provision of Article 120 of SAA is fundamental in terms of the requirements for public administration.

On the path of reforming public administration, in addition to positive developments, various negative phenomena have also appeared, such as corruption in public administration, conflicts of interest, nepotism, bureaucracy and non-transparency, politicization public administration, failure to implement the principles of professional ethics by administration officials, administration size, non-digitization of services (slow digitization process) many other phenomena, which have hindered the advancement and development of public administration. Kosovo, in order to prevent and fight the negative phenomena that hinder the advancement of public administration, has created the respective legal and institutional infrastructure by adopting a number of laws and by establishing relevant institutions.

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