

BUILDING ENVIRONMENTAL CAPACITIES IN KOSOVO AND ITS CHALLENGE TO COMPLY WITH EU ENVIRONMENTAL ACQUIS

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This paper analyses the development of environmental governance in Kosovo, environmental laws, regulations, processes, and their conformity with the EU environmental *acquis*. Kosovo, like other countries in the Balkans trying to join the EU, will, in the process of accession, have to ensure that its legislation conforms to the Copenhagen accession criteria. While Kosovo authorities have progressed in the process of legal harmonization, there has been little progress in executing the legal framework in terms of institutional design, necessary processes and policy developments. The key question posed in this paper is whether the environmental governance approach in Kosovo, in line with EU accession process, represents an appropriate framework for dealing with the country's environmental problems. The current Kosovo legal framework, institutional set-up, and current practice will be evaluated against conformity with the EU *acquis*. The implementation of EU environmental *acquis* in Kosovo is to be seen as an important opportunity to create environmental governance and stable processes of assessing environmental impact and increasing environmental policy integration.

Key words: Kosovo, national legislation, EU environmental *acquis*, environmental governance.

Razvoj kapaciteta u zaštiti okoliša u Kosovu te izazovi usklađivanja s pravnom stečevinom Europske unije. U radu je prikazan razvoj upravljanja okolišem u Kosovu, zakoni i zakonske regulative povezane s istim te njihova usklađenost s pravnom stečevinom Europske unije u području zaštite okoliša. Kao i ostale balkanske zemlje koje namjeravaju postati članice EU-a, Kosovo će u postupku pristupnih pregovora morati osigurati usklađenost zakonodavstva s tzv. Kopenhaškim kriterijima. Iako su kosovske vlasti napredovale u procesu usklađivanja zakonodavstva, došlo je malog napretka u provedbi pravnog okvira u smislu institucionalnog dizajna, potrebnih procesa i razvoja politike. Ključno pitanje postavljeno u ovom radu jest: ukoliko se u Kosovu za upravljanje okolišem izabere model usklađen s pristupnim pregovorima Europskoj uniji, hoće li to omogućiti rješavanje postojećih problema u okolišu. Trenutni pravni okvir, institucionalni ustroj i postojeća praksa u Kosovu vrednovat će se kroz ocjenu sukladnosti s pravnom stečevinom EU-a. Implementacija pravne stečevine EU-a u području zaštite okoliša u Kosovu važna je prilika za definiranje upravljanja okolišem, razvoj stabilnih procesa za procjenu utjecajnosti na okoliš te integraciju okolišne politike.

Ključne riječi: Kosovo, nacionalno zakonodavstvo, pravna stečevina Europske unije u području zaštite okoliša, upravljanje okolišem.

INTRODUCTION

Building environmental governance and capacity in line with EU environmental *acquis* has been a success story for many new EU member countries [1,2]. The process occurred largely across post-socialist European countries and countries seeking EU accession, mainly through fulfillment of the Copenhagen Criteria. The Copenhagen

Criteria are the membership criteria that must be satisfied prior to accession by any country that wants to become a member of the European Union. These criteria have been drawn from the Framework of Stability of Institutions Guaranteeing Democracy, the rule of law; human rights and respect for and protection of minorities. They also

encompass a need for the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; the ability to take on the obligations of membership including adherence to the aims of political, economic & monetary union [1-5]. Accordingly, despite intensive pre-accession negotiations there is general rule that “accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required”. For many years the basic EU approach has been to stabilize the former socialist countries by encouraging them to transform into fully fledged Western style democracies and consolidated market economies [3]. However, the post-socialist candidate countries face great difficulties in restructuring their economic and political institutions according to EU membership criteria. Recent scholarly analysis of the impact of Europeanization in post conflict states with integrative intentions shows that the environmental field remains both a powerful rationale and a challenge in the accession process, particularly concerning attempts to harmonize EU legislation with existing national legal frameworks [6].

The concept of environmental governance has been summarized as a set of regulatory processes, mechanisms and organizations through which international political actors influence environmental actions and outcomes [7, 8]. A number of authors concerned with the link between governance, Europeanization and transformation look to issues of environmental governance in the Western Balkans as a crucial case [3, 4, 6]. In particular, building environmental governance and capacity in post-conflict states is presented as a positive legacy of EU influence and a very important accompaniment to the process of accession [9]. Following Börzel and Fagan [3], we

conceptualize environmental governance as being rooted in multiple locations of power, authority and control that can be both formal and informal, and with the involvement of partnerships between state (public) and non-state (private) actors. Countries that have recently joined the EU, such as Bulgaria, Romania and recently Croatia, are faced with varieties of environmental governance in which domestic and international, state and non-state actors are engaged in a charade of trying to manage environmental protection according to a new set of EU norms. Other accession candidates, such as Albania, Montenegro, Serbia, Macedonia and Turkey, faced with the important task of adopting the EU environmental *acquis*, have, in particular, introduced EU product standards and production process standards for tradable goods. However, the scope of conditions for effective Europeanization in post-conflict candidate countries and the Western Balkans have proven to be more complex and challenging [3]. Kosovo and Bosnia and Herzegovina as a ‘potential candidate country’ (rather than candidate countries) are, at this stage, required by the European Commission to approximate EU environmental norms with national legislation. Even though legal harmonization is not yet being formally enforced, the European Commission has started to report on the reform processes in potential candidate countries. This has undoubtedly occurred as a result of the growing EU influence, as well as an increased level of aspiration to join the currently “28-member club”. In this paper, we seek to further specify the conditions under which such influence is possible in the case of Kosovo. Literature on environmental harmonization and effective Europeanization of post-socialist countries in the EU focuses on the identification of domestic institutional factors that facilitate or impede compliance with rules [3, 10]. However, little attention has been paid to the strategies of the

European Commission in dealing with compliance problems in Kosovo as unique case among post-conflict countries.

This paper aims to analyze the actual and potential role of the EU's involvement in the development of environmental governance in Kosovo as the only European country in which the EU has experimented legally on a state without treating it as an independent and sovereign but rather maintaining a neutral position on its status. In order to do this, the text has been divided into four sections. The following section elaborates on the theoretical framework of environmental governance and the connections between EU and Kosovo in the context of Europeanization. It then discusses

the instruments the EU has introduced to establish new modes of environmental governance and provides a brief history of its evolution in recent years. Presenting a state and non-state actor institutionalism framework similar to the one developed by Dimitrova and Buzogány [10], section three suggests a quantitative approach that defines the position of domestic actors and their role in relation to EU policies. The final section addresses the question of sustainability of environmental governance in line with the EU *acquis*, and draws some general conclusions and recommendations for enhancing the environmental transition processes in Kosovo as a post-conflict country.

THE THEORETICAL FRAMEWORK OF THE ENVIRONMENTAL GOVERNANCE

The term 'governance' has been one of the most popular concepts in the past decade in a variety of scientific fields [11-13]. The term has been used in a range of sciences, including business economics [14], international relations [15], environment [3], among others. The meaning of the term 'governance' has evolved significantly since being used as a synonym for the word "Government" by Stoker [16]. Today the distinction between governance and government attracts significant attention and support, and modes of governance are seen as a process which may operate at any scale: from a company (corporate governance) [17], to EU institutions (European governance) [18, 19], to humanity (global governance) [20] or indeed to environmental governance [1,3].

The key theme within the governance literature has been that networks are at the heart of policy-making [21]. Governance is a process that manages power and policy, while government is an instrument to do so.

Börzel and Fagan [3] describe governance as a coordination process between powers, authority and control, both formal and informal, and as partnerships between state (public) and non-state (private) actors. Theory which sees governance as process focuses on the modes of social coordination by which actors seek to achieve changes in (mutual) behavior. In the same way, environmental governance is focused on the coordination between main state actors as well as non-state actors such as: companies, environmental NGOs, citizen groups concerned with protecting the environment. Several authors have emphasized that environmental governance needs networks, as problems occur on a different scale than in ordinary policy-making: local solutions affect global problems, and global solutions become local challenges [10, 21-23]. Discussions of environmental governance in particular have focused on the official public-private partnerships or public service outsourcing consultations or dialogues about

pollution problems, environmental policy and management, or any other environmental change.

Drawing on the concept of environmental governance, the EU has sought to achieve its objectives of sustainable development and environmental policy integration via new modes of governance with regard to effective and legitimate public policy-making [24, 25]. Therefore, the EU has increased its institutional capacity to pursue environmental objectives and integrate these into every aspect of EU policies, and provides leadership in global environmental governance [3]. At the same time, the EU has placed great emphasis on the new modes of governance, and has offered support for processes of Europeanization and policy transformation in post-socialist countries. Börzel [4] suggests that the new modes of governance support the transformation of post-socialist countries in two ways: firstly, by facilitating the Europeanization of their domestic policies and institutions, and secondly, by encouraging the involvement of societal interests in public policy-making.

THE EU-KOSOVO RELATIONSHIP IN THE CONTEXT OF EUROPEANIZATION

Kosovo's EU relations can be seen as unique in comparison to other Western Balkan countries. Relations between Kosovo and the European Union (EU) continue to be interdependent [27], and are characterized by heavy EU presence and enormous expenditure in Kosovo, as well as the EU's failure to succeed in meeting its aims, both concerning the rule of law and in developing functioning state institutions based on best European principles and standards. From a political perspective Kosovo is the only European country in which the EU has experimented legally on a state without

In their evaluation of the EU's role in the Europeanization of six South East Europe (SEE)/Western Balkans (WB) countries (Romania, Bulgaria, Croatia, Macedonia, Bosnia and Herzegovina and Serbia) the authors present interesting findings. Despite the variation in capacity and proximity to the EU, the six countries reveal noteworthy similarities with regard to environmental governance and overall progress towards EU accession [3]. Furthermore, each case highlights the importance of an administrative or state culture which renders the cooperation with non-state actors an appropriate means to ensure good governance. Indeed, as illustrated in several of the contributions, the EU appears to be exerting a significant impact on environmental governance in post-socialist countries [3, 10, 26]. Despite these commonalities, the effectiveness of the EU's transformative power in the case of Kosovo case remains arguably unique, and offers an interesting opportunity for analysis. And this is the function of the next section.

treating it as independent and sovereign. Compared to neighboring countries, Kosovo lags behind in the integration process because the EU has failed to act upon its unique position regarding the status of Kosovo, and as a result Kosovo has never participated equally in formal relations i.e. in the Stability Pact for South-Eastern Europe, attendance at the regional cooperation council (successor to the Stability Pact), or the Zagreb Summit [27, 28]. In addition, Kosovo authorities have not worked seriously and genuinely towards achieving European standards, especially in the fight

against corruption and organized crime and de-politicizing public services like the judiciary [29]. The EU position on disputed Kosovo statehood resulted with Kosovo having no legal grounds to include a territory with an undefined status in the integration process.

A so-called “magic formula” was devised and the “Tracking Mechanisms of Stabilization-Association” (STM) was launched. It took ten years from the initial outlining of STM for the EU members to agree, at the end of 2011, to support the European Commission in its intention to issue a “Feasibility Study for Stabilization-Association Agreement with Kosovo.” The European Commission issued this “Feasibility Study” in October 2012 in which the possibility to have a Stabilization and Association Agreement (SAA) between Kosovo and the EU was proposed for the first time with strong EU commitment and support. EU guidance finally yielded concrete results for Kosovo’s European Union integration process, with the first formal steps in achieving contractual relations with the EU being undertaken. The Republic of Kosovo and the European Union signed the Stabilization and Association Agreement on 27 October 2015 in Strasbourg. It was subsequently adopted by the Government of the Republic of Kosovo on 30 October 2015, through Decision no. 01/55 on approving the Draft-law on

ratification of the stabilization and association agreement between the: a) the Republic of Kosovo, and b) the European Union and the European Atomic Energy Community and it was ratified by the Assembly of the Republic of Kosovo on 2 November 2015, with approval of the Law no. 05/L-069 on ratification of the stabilization and association agreement between: a) The Republic of Kosovo, b) the European Union and the European Atomic Energy Community.

The concept of ‘Europeanization’ is interpreted and applied in different ways, but most often it is taken as referring to the increasing penetration of EU influence into the public life of the member states potential candidate states. In Kosovo, the degree of ‘Europeanization’ depends on Kosovo’s real commitment to reform and on the EU stance towards so called ‘the specifics’ of Kosovo’s current position in relation to the EU. With several Member States (Spain, Cyprus, Slovakia, Greece and Romania) still not recognizing Kosovo’s independence, the EU-Kosovo relationship remains a complex and unique one. Overall and in terms of the outcome of this process, the signing of the SAA agreement is a major achievement for Kosovo and the EU. However, it is clear that Kosovo can’t apply for EU membership before it is recognized by all the member states.

ENVIRONMENTAL GOVERNANCE IN KOSOVO: CHALLENGES AHEAD

Kosovo as a new state is faced with many environmental protection challenges. Historically it was a territory with no effective environmental management and to a certain extent it continues to be characterized similarly today [29]. One of its biggest challenges after the 1999 conflict was the need to enforce a legal framework

originating from the legislation adopted by the United Nations Mission (UNMIK). From June 1999 until February 2008, the UN administration oversaw economic, social and political development in the territory, And sought to promote a transformation of the former zone of conflict into a peaceful and multi-ethnic society [30]. With no separation

of powers in the framework of the international administration of Kosovo, where the executive, legislative, and judicial authority couldn't be challenged by the local population, the actions of UNMIK were not always considered transparent. During its governance UNMIK was criticized for favoring short-sighted solutions and focusing on imminent security and economic development. Undoubtedly, UNMIK's approach has also had an impact on the development of environmental governance. A comprehensive, long-term strategy to address environmental issues was missing from the UNMIK era. UNMIK's passive stance on environmental issues in Kosovo has been criticized in light of the environmental consequences of the conflict and the requirement that Kosovo adopt EU environmental standards [31, 32].

Over the last ten years, Kosovo has received substantial development support from international donors, but the environment has not been priority for these funders, or for the Kosovo government. As a result of international involvement and Kosovo's intentions to attain EU membership, Kosovo authorities have initiated legal drafting in compliance with EU legal thresholds for environmental protection. In this way, Kosovo adopted a wide environmental legal framework where primary legislation has been complemented and in some cases repealed by new environmental laws that continue to envisage incorporation of the EU environmental acquis imposed by the European Commission through the Instrument for Pre-Accession Assistance (IPA II). From the technical perspective, bringing of the environmental standards in Kosovo into harmony with those of the European Union did not face many problems neither when laws have been drafted by UNMIK, neither in post-independence Kosovo authorities undertook the law making authorities. Under UNMIK law making authorities the

environmental laws have been drafted from the scratch, and supported by international experts. As such the content of the environmental legal framework contains international and European standards. In addition the Constitution of Republic of Kosovo accommodates generously international agreements in to the national legislation [33]. However, the implementation of national legislation in the light of EU standards and requirements in practice presents a daunting challenge for Kosovo government due to the low administrative capacities, weak management, current institutional set-up to mention just a few. The Kosovo Environmental Strategy (KES) represents an important step towards implementing in practice the environmental protections deriving from the existing legal framework. The Kosovo Environmental Action Plan (KEAP) is the outcome of KES, as well as the existing Law on Environment Protection. In the best possible way, obligations deriving from EU laws and international agreements have been taken into account in the development of this document. Article 3 of the Law on Environmental Protection provides that municipalities may exercise responsibilities for those environmental matters, which originate or are likely to originate within the territory of such municipality. This includes harmonization with the Aarhus Convention, which states that "protection of environment is not solely a matter for which central level organs are concerned with" [34]. This gives more responsibilities to municipal authorities in backing environmental protection. Even though that the accommodation of Aarhus Convention has been introduced to the municipal authorities in Kosovo the municipal legislation on environment is yet in a process of approximation with primary legislation and respective international environmental acts. So far the EU, together with other institutions operating in Kosovo such as the World Bank, European Bank for

Reconstruction and Development, and other donor agencies, are assisting in the process of harmonization of the national legislation with EU Directives (IPA II). However, it is important to note that the institutional arrangements, legal frameworks, norms and values aimed to be the critical determinants of the success of the environmental capacity in Kosovo so far have shown slow progress in ensuring compliance with EU acquis at the national and local level. Drawing on broad understanding of environmental governance, the hierarchical steering by state actors, as well as the involvement of non-state actors (companies, environmental NGOs, citizen groups) in protecting the environment through non-hierarchical coordination present an important role that each actor must obey [3]. The contributions to this issue, however, show that all actors need to connect with the EU and use it as a resource to guarantee implementation of rules and procedures. Certainly, we expect that some non-state actors will use the EU to promote better policy-making in areas that extend beyond the implementation of the acquis. However, in many countries the indicators of civil society activism and the environment in which non-state actors (entrepreneurs, NGOs and other citizen groups) operate are representative of the overall strength of the society.

In SEE-WB, both state and non-state actors are particularly weak for reasons including lack of financial and human resources, corruption, and the ethno territorial conflict that has fundamentally undermined the capacity of WB candidate countries to effectively implement EU environmental policies [3, 26].

The situation of these two sets of actors in terms of their power and opportunities is very similar to that of Kosovo. Despite the fact that EU continues to strengthen the capacity of state actors to absorb EU pre-accession funds and adopt EU environmental policies, citizen

participation in decision-making processes and freedom in the availability of information, as seen the EU acquis, have yet to be constitutionally established and procedurally entrenched. In Kosovo, the Ministry of Environment and Spatial Planning (MESP) regularly holds a dialogue with the European Commission regarding the implementation of the Acquis Communautaire on the environment. However, the political and institutional causes of environmental problems are linked to a weak governance structure, including weak institutions, lack of clear responsibilities between central and local level authorities, weak environment management systems and weak mechanisms for law enforcement.

As discussed above, apart from public institutions, additional capacity for environmental protection is located among business entrepreneurs, NGOs, and citizens groups, mostly operating informally. In such a model, where new modes of governance require both strong states and strong societies to emerge, Kosovo lags much further behind. In Kosovo, it was estimated that in 2007 less than 10% of NGOs had the capacity to conduct national campaigns, with the majority only capable of implementing and managing small projects. A project financed by Dutch Ministry of Foreign Affairs, MATRA, was conducted with 10 to 12 organizations in the country that at that time that could potentially sustain a large national campaign and increase environmental awareness for the general public, and receive wider coverage from the Kosovar media. In such cases the organizations were entirely dependent on project grants, but the foreign donor agencies operating across post-socialist Europe, including Kosovo, have generally failed to adequately conceptualize the complex and invariably interlinked nature of the variables identified as potentially having an impact on environmental protection [6].

However, the Environmental Impact Assessment (EIA) process, designed to institutionalize the interaction between investors, citizens and the state in the context of development proposals, offers a great opportunity to enhance the capacities of various actors, including NGOs.

Other external actors in Kosovo (USAID, UNDP, World Bank, European Bank of Reconstruction and Development) can support compliance with EU environmental policies by fostering the emergence of more inclusive modes of environmental governance and strengthening the state actor-society relationship. It has been found, however, that the new modes of governance in Kosovo have been undermined by international actors, which orient state actors towards meeting their demands and priorities rather than the preferences of domestic actors [26]. Despite the efforts of those involved in the reform and accession preparations, Kosovo continues to be weak in two key ways. First, Kosovo is still poor in the area of efficient policy formulation and implementation, as identified in the scholarly literature [3, 26].

CONCLUSION

Kosovo is at a crucial stage of building up its environmental governance capacities, although it continues to be effected by the legacies of the past and overall absence of an environmental-friendly culture. After the declaration of independence, the Kosovo authorities, with their EU integrative intentions, have progressed in the process of harmonization of the legal framework with EU *acquis* through voluntarily assuming responsibilities for guaranteeing environmental protection following the EU environmental standards. The study shows that Kosovo authorities have adopted a wide range of environmental legal instruments. However, the

This is especially evident with regard to strategic policy-making capacity and the implementation and ability to incorporate feedback from other non-state actors (entrepreneurs, NGOs, citizen groups) in policy making. Second, Kosovo also lags behind regarding its capacity for robust or meaningful monitoring and evaluation of policy implementation.

To summarize the Kosovo case study, we find that the Kosovo regulatory system of environmental protection has been approximated to certain extent and balanced with EU requirements. However, the system could be significantly improved if:

- The EU conceives of other means than conditionality and assistance to induce cooperation between state and non-state actors – or become less reliant on new modes of governance.
- There is investment to support training efforts that will increase capacity of state and non-state actors
- Public participation in environmental decision making is improved through access to information, environmental communication, and education.

environmental governance and its EU conformity in practice is hampered by the lack of effective enforcement mechanisms and lack of compliance. Kosovo authorities so far have not made much progression in establishing institutional structures at a central and local level which are fit to monitor and enforce the applicable legal framework. Environmental legislation requires enforcement through the establishment of a coherent institutional structure which involves authorities at the central and local levels, as well as qualitatively involving other relevant stakeholders such as NGOs. Improvement of the current state of affairs as discussed above

depends heavily on the support of international community assistance in Kosovo and usage of the EU programs for enhancing local expertise in order to establish permanent capacities for the implementation of environmental governance which is compliant with EU *acquis*.

However, the implementation and the improvements of Kosovo's new environmental legislation shown to be necessary, in terms of delivering new practices and guidelines, training programs, new funding and the evaluation of the performance of the new instruments.

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