

Post-legislative scrutiny

International principles and oversight in Kosovo

Pristina, September 2020



Post-legislative scrutiny: International principles and oversight in Kosovo

Pristina, September 2020

This publication was made possible through support provided by the Konrad-Adenauer-Stiftung Office in Pristina.

Prepared by:



Copyright © 2020. Democracy Plus (D+)

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without permission in writing from D+. The views expressed in this paper are those of the author and do not necessarily reflect the views of Konrad Adenauer Stiftung.

Table of contents

ACRONYMS	6
1. INTRODUCTION	7
2. PRINCIPLES OF POST-LEGISLATIVE SCRUTINY	8
3. INTERNATIONAL TRENDS IN POST-LEGISLATIVE SCRUTINY BY PARLIAMENTARY COMMITTEES	11
3.1 Four Approaches (Passive, Informal, Formal, and Independent) to Parliamentary Committee Scrutiny in European Countries	11
3.2 Post-Legislative Scrutiny by European Affairs Committees in National Parliaments	12
Case Studies of EU Member States and EU Aspirant States	12
Lithuania - Role of “Seimas” (Parliament) towards EU Integration	13
Moldova - Parliamentary Challenges to EU Membership	15
Montenegro - Functionality of the European Integration Committee in the Montenegrin Parliament	17
4. IMPLEMENTATION OF THE OVERSIGHT ROLE OF THE ASSEMBLY OF KOSOVO THROUGH POST-LEGISLATIVE SCRUTINY	19
4.1 Legal Framework:	19
4.2 Application of Post-Legislative Scrutiny by the Assembly	20
4.3 Post-Legislative Scrutiny Process by the Government	22
4.4 Challenges of the Assembly in Post-Legislative Scrutiny	24
4.5 Analysis of PLS Reports	26
5. RECOMMENDATIONS	29
APPENDIX 1: PRINCIPLES OF POST-LEGISLATIVE SCRUTINY BY PARLIAMENTS DRAFTED BY THE WFD	30
APPENDIX 2: LIST OF EX-POST EVALUATION REPORTS OF ADOPTED LEGISLATION AND ACTS THAT ARE IN THE EVALUATION PROGRAM FOR 2020	32
BIBLIOGRAPHY AND REFERENCES	34

Acronyms

CFAE	Committee on Foreign Affairs and European Integration of the Moldovan Parliament
COSAC	Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
GIZ	German Corporation for International Cooperation GmbH
JPSG	Joint Parliamentary Scrutiny Group
KOMF	Coalition of NGOs for Child Protection
MEST	Ministry of Education, Science and Technology
MLSW	Ministry of Labor and Social Welfare
NGO	Non-Governmental Organization
PLS	Post-Legislative Scrutiny
UNICEF	United Nations Children's Fund
WFD	Westminster Foundation for Democracy

1. Introduction

In Kosovo, the “we have good laws, but their practical implementation is lacking” saying has already become a cliché. However, despite being perceived as a cliché, this saying represents the bitter truth. According to the Official Gazette of Kosovo, currently there are 472 laws in force. For a draft law to be adopted by the Assembly of the Republic of Kosovo, it must pass through several filters, one being compliance with EU legislation (*acquis communautaire*). Additionally, many of these adopted laws, in the drafting stage have been supported by international institutions through their experts, lending quality assurance to the legislative drafting process. As a matter of course, there are cases where a part of the legislation in Kosovo has serious shortcomings, such as non-compliance with the Constitution of the Republic of Kosovo (*the case of the Law on General Elections where some of the criteria for candidate certification were in conflict with the Constitution, as established by the Supreme Court*), or laws that contradict each other (*e.g. the Law on General Elections with the Law on Gender Equality, regarding the representation of women in public institutions*). There are also cases where laws are amended frequently, such as the Law on Public Procurement, which has been amended seven times). For the “good” laws to be implemented in practice, the Assembly must enhance its activities, starting with monitoring their implementation, identifying deficiencies in the laws, engaging in secondary legislation implementation oversight, as well as calling to account the institutions that do not implement the legislation.

The purpose of this brief is precisely to evaluate the work of the Assembly in terms of oversight on implementation of legislation. The highest legislative body in the country has been subject to repeated criticism in the European Commission Country Report on Kosovo, for poor performance in its oversight role. The brief starts with an analysis of the legal framework that vests the Assembly with legislative oversight powers, to establish if there are gaps in this regard, and follows with a comparative analysis

of different legislatures since 2008. Lastly, there is a review of reports adopted by the Assembly covering the oversight on implementation of legislation and an examination whether the provisions that could not be implemented in practice have been identified.

Additionally, this paper examines the international practices in the oversight on implementation of legislation, respectively the efforts being made by parliaments in developed democracies, parliaments in neighboring countries and those aspiring European Union (EU) membership. Such efforts are aimed at advancing their oversight role over the executive, precisely through monitoring the implementation of legislation. This brief also covers the principles and standards being developed by international organizations such as the WFD. These principles represent the pillars underpinning the effective oversight of legislation implementation, ranging from the types of laws that should be prioritized, the methodology to be used, the appropriate time to carry out oversight activities, to consultations with stakeholders, communications with the media and follow-up stage after the end of oversight.

2. Principles of post-legislative scrutiny

In countries with parliamentary systems of government, the Parliament has three key functions: i) legislation (making laws); ii) scrutiny (examining the work of the government); and iii) representation (acting on behalf of citizens). The drafting of laws that meet the needs of the society, namely the citizens of the country, is a long process that goes through several stages and requires the involvement of many stakeholders. The responsibility and role of the Parliament does not end with the act of formal adoption of a law. Among other things, this institution ensures that the law is being implemented by the responsible institutions and is achieving its objectives. In addition, the Parliament oversees the adoption of secondary legislation and identifies shortcomings for potential legislative amendments.

Oversight on implementation of legislation is a key element in enhancing government accountability. The priority of this process is the implementation of legislation, which directly contributes to improve the people's well-being. In this regard, Parliaments around the world are attributing significance to overseeing the implementation of laws by creating specific steps to engage in this process. Post-Legislative Scrutiny (PLS) can be considered as a broader concept consisting of two dimensions: first it is necessary to establish whether the legal provisions have entered into force, and then whether the intended policy outcomes have been met.

The benefits that emerge from the post-legislative scrutiny process:

- 1) It strengthens democratic governance: legislation adopted by parliament should be implemented and applied in accordance to the principles of rule of law, legality and legal certainty;
- 2) It allows the identification of potentially adverse effects of new legislation and the opportunity to act to prevent these;

- 3) It enables the consistent appraisal of how laws respond to the issues they intend to regulate.¹

Below we will focus on the principles for PLS, which have been developed by the Westminster Foundation for Democracy (WFD) as follows:

- **Mandate** (Why?)
- **Scope** (What?)
- **Participants** (Who?)
- **Process** (How?)
- **Timing** (When?)

Mandate: Parliaments put a large part of their human and financial resources to the process of adopting legislation. It is not uncommon that the process of reviewing the implementation of legislation may be overlooked. Implementation is a complex matter depending on the mobilization of resources and different actors, as well as the commitment to the policies and legislation, coordination and cooperation among all parties involved. There are several factors that can affect the course of legislation implementation, including: changes in facts on the ground, diversion of resources, deflection of goals, resistance from stakeholders and changes in the legal framework of related policy fields. Implementation of legislation and policies may also be undermined by power asymmetries, exclusion, state capture and clientelism.

¹ Westminster Foundation for Democracy (WFD), Post-Legislative Scrutiny in the Americas, Ecuador, March 2019. Accessed at: <http://www.parlAmericas.org/uploads/documents/2019-03-06%20draft%20Comparative%20Study%20on%20PLS%20in%20Americas%20-%20English%20Version.pdf>



In countries with parliamentary systems of government, the Parliament has three key functions:

- 1) legislation (making laws)
- 2) scrutiny (examining the work of the government)
- 3) representation (acting on behalf of citizens).

Despite these challenges there are four overarching reasons why parliaments should prioritize monitoring and evaluating the implementation of legislation:

1. to ensure democratic governance and apply the principles of legality and legal certainty;
2. to enable the timely identification of adverse effects of new legislation;
3. to improve focus in terms of implementation and delivery of respective policy aims, and
4. to identify and disseminate good practices.²

In a broader sense, Post-Legislative Scrutiny looks at the impact of legislation; whether the intended policy objectives of the law have been met and how effectively.

Scope: Post-legislative scrutiny is a broad concept and it might mean different things to different parliaments and stakeholders. In a narrow interpretation, post-legislative scrutiny looks at the enactment of the law, whether the legal provisions

of the law have been brought into force, how courts have interpreted the law and how legal practitioners and citizens have used the law. These are two dimensions of post-legislative scrutiny: (1) to evaluate the technical entrance and enactment of a piece of legislation; (2) to evaluate the intended outcomes. It is recommended that parliaments seek to carry out both forms of post-legislative scrutiny.

Participants: The parliament should consider whether to establish post-legislative scrutiny as a permanent process. Post-legislative scrutiny should be an inclusive process in which all party groups are able to participate. While engaging in such scrutiny, it would be best if parliaments cooperate with relevant institutions. Other important matters include: collection of information, obtaining documents in other languages and many similar processes.

Process: To know more about how PLS processes work, we must first learn about the course of each stage and what these involve in implementing relevant legislation. Hence, there are three such stages, **process at the Pre- Inquiry Stage-** involving the identification and review of legislation relevant to the issue being examined, such as: primary legislation, secondary legislation, annual administrative reports, past reports of *selected committees on the entity*, budget documents, strategic

² Westminster Foundation for Democracy (WTF), Principles of Post-Legislative Scrutiny by Parliaments, London, January 2018. Accessed at: <https://www.wfd.org/wp-content/uploads/2018/07/Principles-of-Post-Legislative-Scrutiny-by-Parliaments.pdf>



Oversight on implementation of legislation is a key element in enhancing **government** accountability. The priority of this process is the implementation of **legislation**, which directly contributes to improve the **people's well-being**.

business plan, and academic publications. At the second stage or **Inquiry Stage**, Members are at liberty to ask questions that involve the scrutiny of relevant legislation. *These questions may be* prepared by the Members themselves. Whereas, the third stage or **Reporting Stage**, is where relevant findings are disclosed and the impact of one law on other pieces of legislation on *certain matters* is identified.³

It is wise for legislative institutions to include their oversight activities in the Rules of Procedure. Such a step provides clarity for PLS. The ability of parliament to receive, integrate and process governmental and other available data is of paramount importance. Hence, interconnection with governmental databanks, incorporation of open data and the creation of an administrative apparatus for parliamentary support are prerequisites for an efficient implementation of PLS. Thus, it should mostly focus on the enactment and impact of laws, namely how the laws work in practice. From time to time, the question regarding how has PLS impacted the achievement of intended objectives must be asked. It is suggested that PLS objectives should be pursued based on the legal, political, social and economic impact with due consideration to the implementation of primary and secondary legislation, whether policy objectives are met,

whether there are difficulties in implementation, whether the law is comprehensible to affected parties and other stakeholders, whether it is gender responsive, and if it is still necessary as a law.⁴

Timing: Timing depends on several factors, such as: complexity of objectives, volume and scope of assessment, organization, frequency of meetings, work plan, resources, quality of analysis, experts, etc. All things considering, it can be said that it is hard to establish a general timeframe for review of all types of legislation. However, it is recommended that laws be subject to review after a period of at least three years of their enactment. The new impact assessment model process requires policymakers to provide a summary of objectives and intended effects from the outset of policy development.

In conclusion, it can be said that PLS could bring many benefits, in which case additional efforts should be made for citizens to benefit from its effect and at the same time contribute to the development of legislation.

3 Westminster Foundation for Democracy (WTF), Post-Legislative Scrutiny in the Americas, Ecuador, March 2019. Accessed at: <http://www.parlAmericas.org/uploads/documents/2019-03-06%20draft%20Comparative%20Study%20on%20PLS%20in%20Americas%20-%20English%20Version.pdf>

4 Westminster Foundation for Democracy (WTF), Post-Legislative Scrutiny, Guide for Parliaments, London, November 2017. Accessed at: https://www.wfd.org/wp-content/uploads/2018/07/WFD_Manual-on-Post-Legislative-Scrutiny.pdf

3. International trends in post-legislative scrutiny by parliamentary committees

The burden of Post-Legislative Scrutiny falls on parliamentary committees which have mechanisms to monitor the implementation of laws, their progress and functionality at each stage.

Some parliaments have delegated this oversight responsibility as an operational task to relevant departments in the respective committees, while others have set up special committees to deal with Post-Legislative Scrutiny. In Lebanon, the Speaker of Parliament recently established a Special Committee on Post-Legislative Scrutiny. It is not a permanent committee, and therefore its mandate will expire at the end of the parliamentary term, though the Speaker can reconstitute it in the next parliament.⁵

Some of the techniques and forms used by foreign parliaments for PLS, dwelling on several European countries, are provided below. Further, the focus will be on the committees dealing with European issues, i.e. EU integration matters. Therefore, as case studies, we have selected Lithuania, currently a Member State, Moldova as a non-Member State, but party to several agreements, as well as Montenegro, a Candidate State to join the EU.

3.1 Four Approaches (Passive, Informal, Formal, and Independent) to Parliamentary Committee Scrutiny in European Countries

In Europe, the EU Parliament, especially with the Lisbon Treaty, has pushed forward the effective functioning of the national parliaments of Member States and those aspiring EU membership towards a higher level of scrutiny of laws and decision-making processes in general. A new inter-parliamentary forum, the Joint Parliamentary Scrutiny Group (JPSG), is currently being established based on the revised Europol regulation of 2016. Its purpose is to “politically monitor Europol’s activities in fulfilling its mission, including as regards the impact of those activities on the fundamental rights and freedoms of natural persons.”⁶ Parliaments in Europe have different approaches to parliamentary oversight. In broad terms, these parliaments use the administrative strategy, involving the collection of documentation and the evaluation stage, and the political strategy, involving the liaison and cooperation of the parliament with the government, and the impact of the latter on PLS.

There are four categories of approaches provided below to examine how some parliaments in Europe scrutinize laws.

1. Passive scrutinizers rely on the assessment of the scrutiny conducted by either governmental bodies or external agencies, with little help from parliamentary structures. Notably, this approach is used by the Belgian parliament.

5 Westminster Foundation for Democracy (WTF), “Post-Legislative Scrutiny Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance”, London, 2017, page 8. Accessed at: <https://www.wfd.org/wp-content/uploads/2018/07/Comparative-Study-PLS-WEB.pdf>.

6 Article 51(2) of Regulation (EU) No 2016/794 on Europol, page 39. Accessed at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/583126/IPOL_STU\(2017\)583126_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/583126/IPOL_STU(2017)583126_EN.pdf)

In Belgium the parliament supports the process with appropriate legislation, but there is a limited number of staff.

2. Informal scrutinizers focus on the current structures of the parliament itself that are responsible for implementing legislative and impact analysis. Germany and Italy are examples of countries where the burden falls on the respective parliamentary committee. It should be noted that in Germany, where passive scrutiny is scarce, there is a tendency to upgrade the impact of such scrutiny. Perhaps this is because there is preliminary reliance on government on government information on implementation and impact of legislation, and on the other hand there is limited parliamentary capacity to contribute in this regard.⁷ While in the Italian parliament there is an administrative approach, where two ad hoc units have been established in each of the Houses of Parliament.

3. Formal scrutinizers have specific PLS departments and procedures that operate systematically, which then come up with findings and conclusions. The Swedish and French parliaments have embraced such techniques, making them formal scrutinizers, and it should be noted that both of these countries have a constitutional basis for this. The Swedes implement their constitutional provisions through statutory legislation and parliamentary rules of procedure. On the other hand, the French do the same, where oversight involves formal verification of the implementation of the law and of the effects produced.

4. Independent scrutinizers focus their oversight at high institutional levels, starting with the parliament, and follow up in terms of recommendations and findings. Parliamentary committees decide which laws should be subject to scrutiny with a proactive and transparent approach. Parliaments of the UK and Switzerland use this method, where PLS is one of the main tasks for each committee. Notably, the UK

calls on the service of a large number of experts in relevant fields engaged in different sectors. It is worth mentioning that we are only looking at parliaments themselves, though most parliaments cooperate with other independent oversight institutions, sometimes called 'parliamentary officers' (in Westminster-type parliaments) or 'parliamentary agents' (such as the National Audit Office in Sweden). Their work is often welcomed by parliaments⁸. Additionally, the work of the committees with their findings and recommendations helps hold the British government accountable. Both Britain and Switzerland attach importance to the final evaluation of the analysis, and therefore are the first countries to include in their constitutions provisions related to legislative evaluation policies.

3.2 Post-Legislative Scrutiny by European Affairs Committees in National Parliaments

Case Studies of EU Member States and EU Aspirant States

Depending on the historical and political background of each country, the state of affairs pertaining to legislative scrutiny varies and is at different stages and levels in each of them.

In this regard, the EU itself, since 1989 holds the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC), meeting twice a year, with the participation of MEPs and MPs of national parliaments (six from each country) who mainly come from the committees responsible for issues related to the EU.

From the perspective of the work conducted by the EU on this matter, we can note that in the Treaty of Lisbon, greater attention has been provided to having more effective activities and functioning of

7 Westminster Foundation for Democracy (WTF), Franklin De Vrieze, "Post-Legislative Scrutiny in Europe", London 2020, page 25. Accessed at: https://www.wfd.org/wp-content/uploads/2020/02/WFD_DeVrieze_2020_PLSinEurope.pdf

8 Westminster Foundation for Democracy (WTF), Franklin De Vrieze, "Post-Legislative Scrutiny in Europe", London 2020, page 16. Accessed at: https://www.wfd.org/wp-content/uploads/2020/02/WFD_DeVrieze_2020_PLSinEurope.pdf

the national parliaments of Member States and beyond. One of the articles stipulates that, “National Parliaments contribute actively to the good functioning of the Union: through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union”.

⁹ With regard to integration policies, the EU urges national parliaments to pay attention to legislation that would enable them to integrate more quickly. Therefore, this report strongly recommends the establishment of a European Integration Committee. The relevant committee may be a legacy of the current Foreign Policy and European Integration Committee but may also include representatives from other standing committees.¹⁰

Lithuania - Role of “Seimas” (Parliament) towards EU Integration

The case of Lithuania shows that the powers to deal with European affairs are divided between the government and the parliament, and it could even be said that the government has the crucial role. Efforts made during the ‘90s in pursuit of EU alignment to meet the agreements and criteria set by the Council of Europe were key issues. The responsibility for speeding up the integration process, which finally took place in 2014, had fallen with both the Lithuanian parliament and the government.

The Constitution of Lithuania, adopted in 1992, under item 3 stipulates that: “The Seimas Committee on European Affairs and the Seimas Committee on Foreign Affairs may, according to the procedure established by the Statute of the Seimas, submit to the Government the opinion of the Seimas concerning the proposals to

*adopt the acts of European Union law. The Government shall assess the recommendation or opinions submitted by the Seimas or its Committees and shall inform the Seimas about their execution following the procedure established by legal acts”.*¹¹

Pursuant to the Statute of the Parliament, the European Affairs Committee was established in September 1997, replacing the Economic Reform and Integration Committee. Today, this Committee has 23 members, it requires representative participation from parties but also from other sectors, which makes it the Committee with the largest number of members. Article 44 of the Statute of the Lithuanian Seimas (Parliament) which stipulates the establishment of the Committee, inter alia provides that the Committee shall not have less than 15 and more than 25 members in its composition¹². It is further emphasized that the MP who deals with European affairs, shall take over the task of chairing the Committee.

Therefore, this parliament, since pre-accession and even today, monitors the activities of the government, where the latter initially had the task of informing the parliament and its committees on the legislation, as well as the acts that required alignment. Lithuania had also established the European Information Office for the purpose of assisting with both information and documents related to the integration process, but most importantly with the requirements and tasks ahead. The Lithuanian government and parliament took the issue of integration seriously, completing the ‘homework’ assigned by the EU.¹³ According to the Lithuanian scholar, Mindaugas Jurkynas, “Seimas was so eager to demonstrate “political Europeanization” that some parliamentarians voted for the unchanged document without reading it at all. While political

9 Official Journal of the European Union. “Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community” (2007/C 306/01), Article 8 C, page 15. Accessed at: http://publications.europa.eu/resource/ellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0007.01/DOC_19

10 UNDP Moldova. “Role of Parliament in European Integration”, June 2011, page 25. Accessed at: <https://agora-parl.org/sites/default/files/UNDP%20Moldova%20Final%20Report%20on%20Parliament%20and%20European%20Integration.pdf>

11 The Constitution of the Republic of Lithuania. Accessed at: <https://www.lrs.lt/home/Konstitucija/Constitution.htm>

12 Seimas of the Republic of Lithuania, 1994, Vilnius. Accessed at: https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Lithuania_Seimas%20Statute_1994_amended%20through%20November%202009_EN.pdf

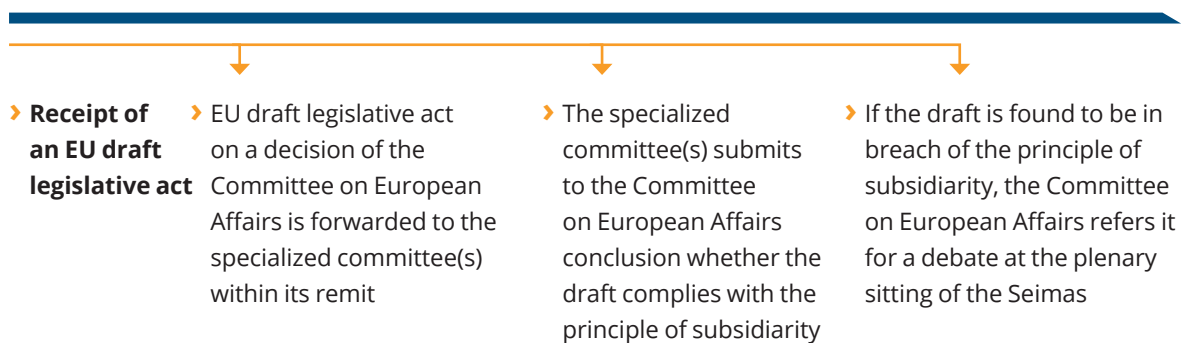
13 Official site of Parliament of Lithuania, “The Seimas and the EU”. Qasur nē: https://www.lrs.lt/sip/portal.show?p_r=35664&p_k=2&p_t=250052

debates about the Lithuanian Constitution were practically non-existent".¹⁴

Since the burden of implementation fell with the government, Seimas and the Committee failed to include secondary stakeholders in this effort. For example, the relationship with the civil society was not quite satisfactory as there were factions and there was not enough involvement by the civil society, although both the Rules of Procedure and the Constitution provide for its participation in the drafting of laws. The principal committee must send the draft law to all interested State institutions and, if necessary, to public organizations, local governments, political parties and organizations, in order that the said institutions and organizations can send their evaluations. The Seimas Board or Assembly of Elders may establish to which institutions or persons the draft must be sent.¹⁵ The discussion, especially of draft laws required to be amended to integrate, was necessary. Finally, the Seimas, in plenary session, would decide whether each article of the law should be adopted, whether the amendments submitted by the persons eligible to initiate legislation should be approved, but not later than 24 hours before the beginning of the Seimas session, and ultimately - whether the whole law should be passed¹⁶.

Subsidiarity Check¹⁷

Today, Lithuania's relationship with the EU is at the stage of implementing the requirements and policies assigned by the EU. For example, in 2015, the European Affairs Committee was given a list of six priorities to include in their agenda over a five-year period; such priorities related to energy, transport, infrastructure, etc. However, today – same as in the pre-accession period, the role of maintaining and strengthening relations with the EU rests with the Government of Lithuania, namely the relevant ministry. However, the role of the Committee and of the Seimas in general, especially in the drafting of legislation, has been crucial and in this regard emerged as very successful.



14 Jurkynas, M, "Lithuania- Life in PostCommunist Eastern Europe after EU Membership: Happy Ever After?", Oxon, Routledge, 2012, page 124

15 Robert Schuman Centre for Advanced Studies, EU Member States' Consultation with Civil Society on European Policy Matters, Florence, October 2011, page 124. Accessed at: https://cadmus.eui.eu/bitstream/handle/1814/19357/eudo_report_2011_04.pdf?sequence=1

16 Public Relations Unit of the Communications Department of the Seimas of the Republic of Lithuania, "Seimas (parliament) of the Republic of Lithuania", Vilnius, page 37. Accessed at: https://www3.lrs.lt/leidiniai/Seimas_kn_en.pdf

17 Source of content: "Seimas, Scrutiny of EU Affairs in the Seimas of the Republic of Lithuania", page 3.

Moldova - Parliamentary Challenges to EU Membership

The Parliament of Moldova, much like the whole country, considers European integration a key priority. Efforts for EU membership are mainly based on the three-year action plan of the ENP (European Neighborhood Policy). Among other things, the ENP considers the role of parliaments as an opportunity to bring closer Member States and neighbors. Support mechanisms are arteries feeding into this goal, where one such mechanism is the EuroNest Parliamentary Assembly. Thus, the EuroNest Parliamentary Assembly has been created as a joint Assembly of the European Parliament and Eastern Partnership countries including Moldova, as well as Joint Parliamentary Committees between the European Parliament and partner countries' Parliaments as important fora for dialogue and increased mutual understanding between decision-makers.¹⁸

The Foreign Relations and European Integration Committee is a functional mechanism of this Parliament that deals directly with the issues of approximation with the EU. In particular, the Parliament deals with the oversight of laws deriving from it. The main task of the Committee on Foreign Affairs and European Integration (CFAEI) is to give the final say or approval to the work of sectoral committees depending on the field; in addition to the home affairs perspective, the Committee also gives approvals and opinions on treaties at the international level. Prior to that, in July 2015, the Parliament had decided to form the Parliamentary Council for European Integration.

The Moldovan Parliament still faces challenges over its limited role concerning integration, mainly in monitoring and review, as the greatest implementing burden falls on the country's government, especially regarding documentation. It should be noted that in

2011, the Prime Minister of Moldova had appointed a Legislation Approximation Coordinator, coming from the Ministry of Justice, which bore the brunt of tasks in terms of reviewing legislation.

There is also the challenge of the lack of secretariat staff, whose responsibilities are administrative and technical in terms of documentation. Until recently, other challenges included the lack of coordination between the parliamentary staff and the committees among themselves, either in meetings or in their work in general. The Committee on Foreign Policy and European Integration currently has nine members and five consultants coming from the Secretariat.¹⁹ Committee meetings are held once a week, the Minister is summoned only when the action plans and obligations towards the EU are implemented. Meanwhile, the role of government officials from the Ministry is to report to the Committee and answer their questions. In 2016, in a survey conducted by UNDP, as provided below in Table 1, this organization ranked Moldova last in terms of staff engaged in integration.

18 UNDP Moldova. "Role of Parliament in European Integration", June 2011, page 16. Accessed at: <https://agora-parl.org/sites/default/files/UNDP%20Moldova%20Final%20Report%20on%20Parliament%20and%20European%20Integration.pdf>.

19 Official site of the Parliament of the Republic of Moldova - Standing Committees, Committee on Foreign Policy and European Integration. Accessed at: <http://parlament.md/StructuraParlamentului/Comisiipermanente/tabid/84/CommissionId/4/language/en-US/Default.aspx>

TABLE 1. Parliamentary staff working on European integration (2016)

Parliament	Number of nonpartisan staff in Secretariat	Staff of Committees on EU integration/ relations	Staff for legal harmonization or EU law	Total staff working on European Integration/ Affairs	Share staff working on European Integration/ Affairs to Secretariat staff
Austria	380	9	7	16	4.2%
Czech Republic	354	7	7	14	3.9%
Estonia	132	11	N/A	11	5.7%
Georgia	840	10	1	11	1.3%
Kosovo	168	4	9	13	7.7%
Latvia	291	5	1	6	2.0%
Lithuania	499	9	6	15	3.0%
Serbia	400	5	-	5	1.2%
Slovakia	385	8	N/A	8	2.0%
Moldova	375	4	-	4	1.0%

20 UNDP Moldova, "Functional and Institutional Analysis Findings and recommendations" prill 2016, faqe 28. Qasur në: https://www.undp.org/content/dam/moldova/docs/Publications/Report_Functional%20Analyses%20of%20Secretariat%20of%20Parliament%202016.pdf.

Pursuant to the Association Agreement, the EU assigns legislative scrutiny tasks to the Moldovan Parliament. When it comes to oversight, the legal frameworks that emerge from the Parliament must also involve the civil society, especially in terms of monitoring and support. Members of civil society, in order to integrate as quickly as possible and improve the path to the EU, had recommended that a parliamentary committee be set up to deal exclusively with European integration issues, much like their ally, Romania. A legislative unit, envisaged to be created as part of the new jobs system for the Parliamentary Secretariat, should have adequate staff to provide MPs with quality legislative research products. The same unit is intended to assist MPs in conducting periodic impact assessments of selected laws. However, even after several years since the issuance of this recommendation, the situation has not changed in terms of administration.

Montenegro - Functionality of the European Integration Committee in the Montenegrin Parliament

The Montenegrin Parliament in 2003 established the European Integration Committee, which three years was renamed as the Foreign Relations and European Integration Committee. In line with the requirements of the EU and the Stabilization and Association Agreement, it was deemed necessary to breakdown this Committee, and as a result as of May 2012, the Committee on European Integration was established.²¹ Its scope extends to the following areas:²²

- monitor accession negotiations between Montenegro and the European Union;
- oversee and assess the course of negotiations

and issue opinion and guidelines, on behalf of the Parliament, on the prepared negotiation positions;

- consider information on the negotiation process and consider and provide opinion on the issues arising in the negotiations;
- consider and assess the performance of the negotiation team.

Currently, in this legislature, the Committee on European Integration has 12 members. The contribution of the Committee is seen through the activity of the Stabilization and Association Parliamentary Committee (SAPC). However, the motivation to do more in post-legislative scrutiny has also been driven by EU-required reforms. Strengthening the legislative and oversight role of the Parliament was one of the seven top priorities the EU identified as a pre-requisite for opening negotiations with Montenegro, as it was assessed that the Parliament's overall capacity to ensure proper government oversight was limited.²³

The process of overseeing the laws, but also their implementation is conducted mainly through consultative hearings, where the committee summons government officials to report on the implementation of the law, and then committee members present recommendations resulting from hearings and meetings to plenary sessions of the Parliament. The Parliament is also obliged to take concrete measures. For example, the Law on the Election of Councilors and Members of Parliament requires the Parliament to monitor this law as well. In addition to the Government-Parliament cooperation, non-governmental organizations or chambers of commerce and other authorities with an interest in a particular field may become involved. Outside of these described practices, it is the Committee for Gender Equality that has so far implemented the most comprehensive and detailed examination of the implementation of legislation.

21 Official site of the Parliament of Montenegro: Assembly in the process of Montenegro's accession to the EU. Accessed at: https://www.undp.org/content/dam/moldova/docs/Publications/Report_Functional%20Analyses%20of%20Secretariat%20of%20Parliament%202016.pdf

22 Legislative Committee of the Parliament of Montenegro: Rules of Procedure, Committee on European Integration Article 42a, page 16. Accessed at: <http://www.skupstina.me/images/documents/3.pdf>

23 Communication from the Commission to the European Parliament and the Council, Commission Opinion on Montenegro's application for membership of the European Union {SEC(2010) 1334}, Brussels, November 2010. Accessed at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2010/package/mn_opinion_2010_en.pdf



The Montenegrin Parliament in **2003** established the European Integration Committee, which **three years** was renamed as the Foreign Relations and European Integration Committee

The conclusions are sent to the plenary session and may also be rejected and returned, and in turn the Committee starts with re-monitoring and implementation. In the last four-year term of parliament, a total of 509 laws have been adopted, with almost one fifth (91) of those having been adopted through urgent procedure. On the other hand, this has undermined the application of the parliamentary function of post-legislative scrutiny, due to lack of resources²⁴. As the Committee's scope also covers international matters, during its activities the Committee visits other countries, EU structures and the European Parliament. Thus, during 2017, it signed the Cooperation Protocol with the European Cooperation Policy Committee of the Italian Senate, followed by two cooperation protocols with Croatia and Bulgaria. Cooperation with these countries is important, as they are Member States of the EU and Montenegro, as a Candidate State, can benefit from their experiences. Protocol on Cooperation between the Committee on European Integration of the Parliament of Montenegro and the Committee on European Affairs and Oversight of the European Funds of the National Assembly of the Republic of Bulgaria, aims to strengthen the close and friendly relations of the two committees, proclaims the European perspective of the Western Balkans, but also notes mutual parliamentary cooperation through the organization of regular thematic

meetings of the two committees and the exchange of professional experiences at the expert level.²⁵

Overall, Montenegro has made significant strides towards integration, however there are still setbacks in some areas. The parliament and the government are obliged to approximate the legislation, first, with the EU legislation. Returning the political debate to the Parliament is the responsibility of all political actors. Active and constructive participation by all parties is required to enhance parliamentary accountability, oversight of the executive, democratic scrutiny, and better quality of the legislation. It should be noted that there were no new developments in the political and judicial follow-up of the alleged misuse of public funds for party political purposes.²⁶

24 Institute Alternativa, "Monitoring and Evaluation of the Rule of Law in Montenegro", November 2016, page 10. Accessed at: <http://media.institut-alternativa.org/2017/01/monitoring-and-evaluation-of-rule-of-law-in-montenegro.pdf>

25 Service of the Parliament of Montenegro, "2018 Performance Report of the Parliament of Montenegro", page 33. Accessed at: http://www.skupstina.me/images/documents/2018_Performance_Report_of_the_Parliament_of_Montenegro.pdf

26 Final Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions 2019 Communication on EU Enlargement Policy, May 2019, Brussels, page, 13. Accessed at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-communication-on-eu-enlargement-policy_en.pdf

4. Implementation of the oversight role of the assembly of Kosovo through post-legislative scrutiny

4.1 Legal Framework

According to the Rules of Procedure of the Assembly of the Republic of Kosovo, the authority to monitor the implementation of laws is under the purview of parliamentary committees (Article 73), defining authorizations for each Committees, within the scope of their authority, to monitor the implementation of laws²⁷. Under their scope, the Committees should also address the effectiveness of laws, with an emphasis on their implementation, including the provision of concrete proposals to improve effectiveness. All reports of parliamentary committees on the monitoring of the implementation of laws are subject to a vote in plenary session. An important aspect provided by the Rules of Procedure of the Assembly is the reporting by the relevant ministers to the functional committees regarding the implementation of laws, at least once a year. However, this provision of the Rules of Procedures remains on paper only, as it is never implemented by ministers, nor are parliamentary committees raising it as an issue in plenary sessions. This is also provided in the Rules of Procedure, where it is stipulated that *“If the Ministry fails to report or if its reporting is deemed incomplete, upon request of the committee the issue shall be put to the agenda of the next plenary session”*.²⁸ Such annual reporting to the plenary meetings of the Assembly is also provided for the committees, which are required to report in writing and orally once a year.

The Constitution of Kosovo, in the framework of the Form of Government and Separation of Powers, has defined the obligations of the government for

implementation of laws and on the other hand of the Assembly to exercise parliamentary control over the executive.²⁹ Further, under the Competencies of the Government, provided in Article 93 of the Constitution of Kosovo, it is stated that, *“The Government [...] makes decisions and issues legal acts or regulations necessary for the implementation of laws”*.³⁰ From these constitutional provisions, one can understand the importance that its framers attached to the implementation of laws and other legal acts supporting their implementation, but also to the parliamentary control over the executive, as a necessary tool to ensure good implementation of laws.

Although the legal provisions on parliamentary oversight of implementation of laws are included in two of the most important acts, the Constitution of Kosovo and the Rules of Procedure of the Assembly, they are insufficient to guarantee effective oversight. The Assembly of Kosovo has failed to issue any other acts, whether any special regulations or guidelines to list the principles of post-legislative scrutiny, forms of oversight or even methodology that would help the committees to strengthen their oversight role. Additionally, there should be provisions to govern the process of holding to account political office holders if they have not fulfilled their obligations set by law. The *“Manual on the Oversight Function of Parliamentary Committees”* published in 2012 by the Assembly, includes a ten-page chapter dedicated solely to monitoring the implementation of laws.

27 Rules of Procedure of the Assembly of the Republic of Kosovo, Pristina, 2010.

28 Ibid., Article 73, item 4.

29 The Constitution of the Republic of Kosovo, Article 93, item 4

30 Ibid., Article 93, item 4

4.2 Application of Post-Legislative Scrutiny by the Assembly

At the beginning of each year, parliamentary committees approve their work plans. These plans also include oversight activities in general, not excluding laws that will be monitored in terms of their implementation. To better manage time and activities, committees can form working groups, both to draft and review draft laws and to oversee the implementation of laws. From the practice to date, such working groups consist of three to five members and operate under set deadlines for conducting the oversight process and preparing the relevant report.

Working groups in charge of monitoring the implementation of the law shall draft an action plan providing for the undertaking of activities, such as: organizing field visits, organizing public hearings, conducting research, consulting with NGOs and other interest groups, identification and review of bylaws (secondary legislation) requiring special attention. The evaluation of bylaws should determine:³¹

1. If the secondary legislation has been issued as required by the primary law?
2. What are the effects of secondary legislation?
 - a. Does the secondary law meet the goal identified by the primary law?
 - b. If it does not, what is the underlying reason?

The evaluation of bylaws is conducted by comparing their provisions with those of the applicable law from which they have derived, i.e. to establish whether they are fully compliant or have contradictions. In many cases, executive institutions have adopted bylaws that exceed their statutory powers. The discrepancies identified between the bylaws and the law represent the first stage of problems in implementation. Bylaws may take the form of administrative instructions, ordinances, regulations, decisions, or guidelines.

The process of implementing oversight activities goes through several stages, which according to the Assembly Manual³² are four as follows:

- **Stage One:** identifying the obligations provided by law for implementers and assessing the compliance of bylaws with the law;
- **Stage Two:** organizing field monitoring visits;
- **Stage Three:** reporting by the minister or responsible official to the committee meeting, organizing the oversight hearing, preparing the report with recommendations from the oversight working group, reviewing the report with recommendations in the committee and reviewing the report with recommendations in the plenary session of the Assembly;
- **Stage Four:** reporting by the minister or responsible official to the committee on the implementation of the recommendations adopted in the plenary session under the deadline determined by the Assembly.

31 Guidelines on Ex-Post Evaluation of Legislation in the Republic of Kosovo, 2014, page 13. Accessed at: https://kryeministri-ks.net/wp-content/uploads/docs/2_Guidelines_on_Ex-post_evaluation_pdf

32 Assembly of Kosovo, "Manual on the Oversight Function of Parliamentary Committees", Pristina 2012.

FIGURE 1: Chart of Post-Legislative Scrutiny Process

PHASE

01



- › Developing an Action Plan
- › Identification of duties of implementing authorities as provided by law
- › Evaluation of bylaws' compliance with the law

PHASE

02



- › Conducting oversight visits in the field

PHASE

03



- › Reporting of a Minister or other responsible official before a Committee session
- › Conducting oversight hearings
- › Preparation of a report with recommendations
- › Review of Recommendations Report before the Committee
- › Review of Recommendations Report before the Plenary session

PHASE

04



- › Reporting of a minister or other official before the Committee on the implementation of recommendations adopted by the Plenary within the timeline designated by the Assembly

After completing the monitoring activities and gathering all the necessary information, the working group writes the first draft of the report, which is discussed and further processed until it becomes final. The report is initially approved by the working group, and then sent for consideration at regular committee meetings.

The appendices of the Manual³³ provide a template of the committee monitoring report. This template requires that the legislation implementation monitoring report should contain the following elements:

- introduction;
- scope of monitoring;
- description of working group activities;
- description of problems identified in the implementation of the law;
- recommendations for implementers of the law;
- appendices with attachments.

The draft report prepared by the working group is sent to the committee for review and approval. Without the approval of the committee the document cannot be called a report, but merely a draft. The committee reviews the document at one of its meetings, where all members, including those who were not part of the working group, have the right to propose amendments or additions. Proposals must be put to a vote and require a majority vote of the members of the committee present, and the same is required for the whole report. In this case, the committee forwards the report to the Presidency of the Assembly, with the recommendation to proceed with the review in plenary session.

The Presidency of the Assembly is responsible to ensure that the review of the legislation implementation monitoring report is included on the agenda for one of the plenary sessions. The minister responsible for the implementation of the law must also be present at this plenary session. Usually the key findings of the report and the recommendations are presented to the MPs by the chairperson of the

working group. Next, the heads of the party caucuses present the positions of their caucuses on the findings of the report. During the review of the report in plenary session, the floor can be given to other MPs who can share their positions and proposals. After the end of discussions, the report with recommendations is put to a vote with all remarks incorporated and is approved by a majority of votes of the present MPs. Legislation implementation monitoring reports and recommendations given by the Assembly represent an obligation for the executive to ensure implementation by the set deadline.

The Assembly should not be satisfied with just approving the monitoring report. Therefore, follow-up activities should be carried out to monitor the implementation of the recommendations, but also to take concrete actions to amend the relevant law, in case it is established that certain parts of it are inapplicable. The ministers or officials responsible for the implementation of the recommendations should be invited to report to the relevant committee precisely regarding the implementation of the recommendations. In case of non-implementation of recommendations within the foreseen deadlines and without any compelling reasons, the committee should raise it as a matter for discussion in the plenary sessions of the Assembly.

4.3 Post-Legislative Scrutiny Process by the Government

Legislation implementation evaluation is not only the responsibility of the Assembly of Kosovo, but the government also holds such a stake. While the evaluation by the Assembly is an exercise of the oversight function, a role defined by the Constitution, the evaluation by the government is more a process of self-evaluation of own policies and achieved outcomes. For this purpose, the government has adopted its Guidelines on Ex-post Evaluation of Legislation in the Republic of Kosovo.³⁴

33 Ibid.

34 The Government of the Republic of Kosovo, Guidelines on Ex-Post Evaluation of Legislation in the Republic of Kosovo, Decision No. 03/38 of 15 July 2014.

With the adoption of these Guidelines, through this bylaw, the executive requires the ministries to engage in analysis of ex-post evaluation as provided in the Guidelines. To coordinate the work on ex-post evaluation of laws by all ministries, the Secretary of the Office of the Prime Minister was tasked with establishing a supervisory group composed of representatives of the legal departments of line ministries. Within the first six months after the entry into force of the Guidelines, it was envisaged that up to two laws would be identified for baseline evaluation.

The Guidelines define ex-post evaluation as an opportunity for the public administration to collect data on the following matters:

- how the legal act was implemented ;
- has the legislation achieved intended policy goals?;
- is the legislation cost-effective; and
- identify any difficulties or unintended effects that may have arisen from the legislation, etc

The collection of such information is intended to help the proposing bodies as well as the government in general to decide whether the legislation assessed through ex-post evaluation should be amended or replaced with new provisions.

The main purpose of ex-post evaluation is to:

- help policy makers and those responsible for implementing the legal provisions (especially ministries and public administration), to measure whether a legal framework is effectively applied by its end-users (public administration, general public, local authorities, businesses); and
- evaluate whether the legislation meets its initial goals and objectives.

The Guidelines also define the methodology for ex-post evaluation of legislation that must go through five main steps:

- **Step 1:** Should legislation be evaluated? At this stage, some of the criteria to be applied for the selection of laws that should be subject to post-legislative evaluation are given. Priority is attached to laws dealing with the protection of fundamental rights or reforms.
- **Step 2:** Timeframe for the evaluation? Ex-post evaluation is generally recommended to be conducted within one or two years after the law is enacted, i.e. after the law has taken effect.
- **Step 3:** What should be evaluated/ the scope of evaluation? At this stage of the evaluation some guidelines are given to help determine whether to evaluate the law as a whole or only a few legal provisions, or perhaps to evaluate several laws that govern the same thematic issue, i.e. laws dealing with public health.
- **Step 4:** Who are the implementers? The implementation of legal provisions involves a large range of implementers, including administrative actors or end-users, i.e. citizens, businesses, etc.
- **Step 5:** Sources of information and data needed for the ex-post evaluation? It is important for line ministries to identify all sources of information to get sufficient data on the implementation issues. At this stage of the evaluation, it is carefully determined what data need to be gathered to give reliable measurements, who will have responsibility for gathering data, what are the timeframes, what format are the data required in, how will the data be verified, etc.

From 2016 to 2019, the Government, namely the Office of the Prime Minister and the ministries, oversaw the implementation of ten laws. The Ministry of Interior Affairs has been more active in this regard, overseeing the implementation of four laws out of ten in total (see Appendix 3 for a list of monitored laws). For 2020, 12 laws are foreseen in the program for ex-post evaluation of legislation.

FIGURE 2. Number of laws subject to scrutiny by year



4.4 Challenges of the Assembly in Post-Legislative Scrutiny

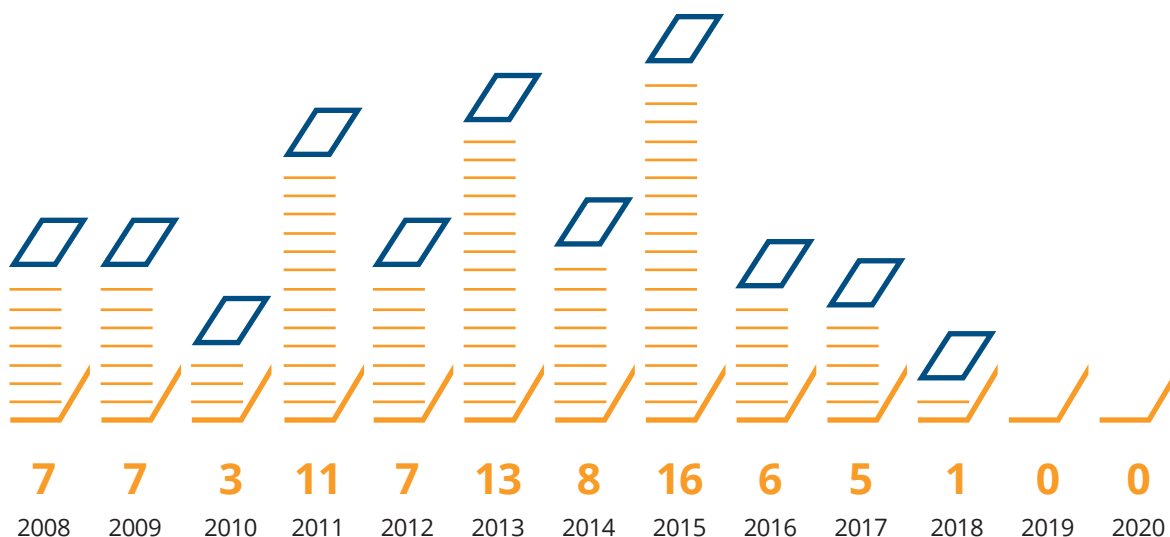
Parliamentary committees have consistently lagged in the implementation of their Work Plans, particularly regarding the monitoring of the implementation of laws. While the Assembly of Kosovo in general has been criticized for not exercising its oversight role in relation to the executive.

Since 2008, the Assembly of Kosovo has adopted 84 legislation implementation monitoring reports³⁵. The most productive year was 2015, when the Assembly managed to review and approve 16 legislation implementation monitoring reports. While the last two years, 2019 and 2020, have not been productive at all for the Assembly. In 2019, despite the fact that the parliamentary committees have monitored the implementation of six laws and approved the reports in the committees, due to the failures of the Assembly to ensure the necessary quorum to hold meetings during the sixth legislature and the dissolution of the Assembly, these reports had failed to be adopted in plenary sessions. Failure to adopt these reports has diminished the work of the committees and as such, lacking adoption by the Assembly, the reports have no legal effect. By the same token, the Assembly has not adopted a single legislation implementation monitoring report. The seventh legislature is facing challenges in many directions. Initially it was the delay in forming the new government after the elections, which took

place only in early February. Then the motion of no confidence in the Kurti Government at the end of March and the voting of the Hoti Government only at the beginning of June, causing the Assembly to be unable to exercise its powers. And the biggest challenge was the COVID-19 pandemic, which complicated everything, and of course the work of the Assembly.

35 KDI, "Kuvendi që (s')mund të mbikëqyrë zbatimin e ligjeve", Report, July 2019. Accessed at: http://kdi-kosova.org/wp-content/uploads/2019/07/Brief_FINAL_per-pdf.pdf

FIGURE 3: Number of Legislation Implementation Monitoring Reports adopted by the Assembly of Kosovo 2008-2020



Challenges faced by parliamentary committees in exercising oversight on the implementation of laws that affect unsatisfactory performance relate to the lack of capacity to address all issues under the scope of committees. The committees dedicate most of their time to the review of draft laws that are sent to the Assembly by the executive, but also to the reports of ministers and leaders of other institutions under oversight by the Assembly of Kosovo. Consequently, reviewing their annual reports, both work and financial, consumes a large portion of Assembly work hours. Therefore, little time is devoted to post-legislative scrutiny. Moreover, parliamentary committees, respectively MPs and support staff, do not always have the necessary expertise to carry out oversight activities on certain topics. Committee budgeted funds are not used to engage external experts who could assist the committee in conducting research and field based analysis. This causes many reports to be superficial, failing to accurately identify the key problems with the non-implementation of legislation and its effects in practice. Consequently, the reports do not contain specific recommendations that would lead to changes in legislation

The drafting of the reports is largely based on findings from working groups field visits, respectively from the interviews conducted with the implementers of the law. Relying on these findings alone risks the production of one-sided reports, especially if not fact-checked and not accompanied by other statistical analyses. This is a risky proposition, because implementers can only give their own point of view, which may not necessarily reflect the real situation.

Another aspect that may affect the failure to exercise oversight activities is the Assembly-Government relationship. The latter exercises control over respective MPs, turning the Assembly into a mechanism to grant the seal of approval to draft laws and other decisions in the interest of the executive, rather than a rigorous scrutinizer and filter of such draft laws and government policies. The reporting of ministers to the Assembly is perfunctory and they are not challenged by the MPs, especially those from the ruling coalition. The government also ignores the recommendations and resolutions issued by the Assembly that require action to be taken by the executive itself.

The legal framework, respectively the Rules of Procedure of the Assembly do not provide in detail for post-legislative scrutiny activities and sanctions against the executive in case of ignoring recommendations and deadlines for their implementation. It should be noted that the lack of a more advanced methodology has adversely affected the quality of reports.

Collaboration with civil society organizations that can provide expertise in legislation implementation monitoring is not at a satisfactory level. This collaboration is sporadic rather than structured. Various NGOs have pro-actively compiled such reports, identifying legal provisions that are not implemented or produce adverse effects in relation to the objectives of the law. Such additional resources should be considered and taken into account by parliamentary committees.

There is often a lack of coordination between the central and local level, which is more noticeable in terms of legislation implementation. Once the laws are passed, municipalities do not have enough information about their obligations under the new law. In these cases there is a vague discrepancy between the two levels that renders legislation implementation impossible. From past experiences and cases, municipalities are not consulted in the law-making stages, although there are many laws that affect their scope.

4.5 Analysis of PLS Reports

As stated above in this brief, the main focus of parliamentary committees is on the review of draft laws, while legislation implementation monitoring remains on the margins of their work. The four standing committees of the Assembly of Kosovo have the lion's share of reviewing draft laws as under their scope of work they must provide assessments for each draft law that is reviewed in the Assembly. From past practice, in their Work Plans, parliamentary committees have envisaged two laws each for implementation monitoring.

For the purposes of this report, we have selected two legislation implementation monitoring reports that have been approved by the Assembly. The reports are from two different legislatures, namely the fifth and the sixth. The purpose of their analysis is to break down the activities carried out by the working groups to monitor the implementation of the law, and to assess whether the findings are clear enough for implementation by the responsible institutions.

Health, Labor and Social Welfare Committee Law on Social and Family Services Sixth Legislature, May 2018

On 24 January 2018, the Health, Labor and Social Welfare Committee established a working group to oversee the implementation of the Law on Social and Family Services. The working group consisted of four members. The main purpose of monitoring the implementation of this law was to assess the extent to which the law and bylaws are being implemented by the responsible implementing institutions, but also the effects and consequences deriving from failure to implement the law. The goals described in the report are very general, thus creating the impression that the working group did not have clear ideas and prior information on the issues to focus on and matters that encounter difficulties in implementation.

To conduct the assessment, the working group conducted meetings and field visits aiming to collect data on the functioning and implementation of the law, as well as to assess whether the government, namely the Ministry of Labor and Social Welfare, but also the municipalities, are fulfilling the obligations arising from this law.

The work of this working group, from its establishment in January until the publication of the report in May 2018, lasted about five months. UNICEF and KOMF also supported the working group in its legislation implementation monitoring efforts. The findings of the working group from the evaluation of the implementation of the law are divided into two parts: 1) achievements, and 2) problems and challenges.



The findings of the working group from the evaluation of the implementation of the law are divided into two parts:

- 1) achievements
- 2) problems and challenges.

In terms of achievements, the working group found that the law enabled the provision of social and family services, managing to ensure the implementation of standards for these services. Also, it is estimated that this law has made it possible to establish coordination mechanisms between the central and local level, but also with international agencies, NGOs, and various donors. Further, in this report, the working group also found that the law has enabled the establishment of licensing mechanisms for institutions and professionals of social and family services, as well as the establishment of oversight and control mechanisms. From this assessment of the working group presented in the report, it can be concluded that the assessment was made only to check whether these mechanisms have been established, but there is no assessment provided on how they work or what are their effects as described in the scope of the report.

While the decentralization of social services is listed among achievements, such decentralization was found to be the main barrier to legislation implementation, as it was done without completing all the preparations and without sufficient coordination with other institutions. The findings of the report are in contradiction. In the part dedicated to achievements, it is said that the decentralization of services has been done, and in the part dedicated to problems and challenges, it is said that the decentralization process has not been finalized yet. It is also concluded that to implement decentralization as provided by law, institutions need to take several steps to improve the quality and sustainability of service delivery. This conclusion is very general and does not help institutions to improve services,

as it does not provide any details regarding the services that should be improved, where were the shortcomings, how these should be improved, etc.

The report does not provide certainty whether social service standards are being implemented either. In the part dedicated to achievements, it is stated that the law has managed to ensure the implementation of the appropriate standards for these services, while in the problems and challenges section, it is said that due to the small number of staff, it was difficult to provide services in accordance with the standards established by the MLSW. Other problems that were identified mainly relate to lack of budget, small number of staff at the CSWs, and lack of infrastructure. Such findings lead to the impression that these conclusions were drawn only from the process of meetings and field visits with legislation implementers, who are prone to raise such complaints.

Despite the fact that the Law on Social and Family Services has been amended twice by the Assembly already, the committee has again recommended to draft a new law which should, inter alia, delineate the competencies between the central and local level. The report contains a total of 16 recommendations, which are generally very reasonable. However, there are two problems with the provided recommendations. First, the institutions responsible for their implementation are not defined, especially because there are many actors involved. Second, the recommendations are not related to the rest of the report and are not described as pertaining to problems or challenges identified by the working

group during the legislation implementation monitoring activities.

Education, Science, Technology, Culture, Youth and Sports Committee

Law on Pre-University Education

Fifth Legislature, March 2016

The Law on Pre-University Education provides the legal basis for pre-university education, defines the duties and responsibilities of the institutions and other participants in pre-university education in the implementation of this law. This law obliges the Ministry of Education to issue bylaws.

The Committee decided to embark on the oversight of this law on 15 April 2015, and for this purpose established a working group consisting of five members. The work of the working group was supported by the GIZ, through the engagement of experts to carry out the legislation implementation monitoring process.

Similar to the report of the Health, Labor and Social Welfare Committee on the monitoring related to the Law on Social and Family Services, the goals of monitoring the implementation of this law are almost identical, save for some minor modifications. It appears they were copied from some report drafting template. The goals provide for a general assessment of the implementation of the law and the fulfillment of relevant obligations by the responsible implementing institutions.

During the evaluation process, the working group conducted several activities, including compiling a questionnaire for MEST, identification and examination of compliance of bylaws with the law and compliance of the law with other laws, in addition to several meetings with MEST officials, inviting the Minister to report to the committee, visiting public and private educational institutions, and organizing public hearings.

In the section of the findings from legislation implementation monitoring, the report lists some of the results enabled by the law, such as

the implementation of the Kosovo Curriculum Framework, and teacher licensing. Most of the findings are dedicated to the identified shortcomings, which are categorized according to the respective articles of the law. This makes it easier to monitor the implementation of the report's recommendations, but also the eventual amendment of the law. The report contains 13 recommendations, all addressed to MEST.

5. Recommendations

1. Parliamentary committees should pay more attention to post-legislative scrutiny activities. They should increase the number of laws planned in their work plans and carry out oversight according to the set deadlines.
2. The Presidency of the Assembly should periodically monitor the implementation of parliamentary committee work plans, requiring Committee Chairpersons to adhere to the plans, in particular with regards to post-legislative scrutiny activities.
3. The Assembly should develop a Guide for Post-Legislative Scrutiny for the needs of parliamentary committees. The development of this Guide will help improve the quality of monitoring reports, providing in detail all stages of the monitoring process. In addition to the Guide, the Assembly should promote the international principles of post-legislative scrutiny, such as those developed by the WFD.
4. Throughout the research and analysis stage of the monitoring process, parliamentary committees should consider the possibility of engaging external experts to assist working groups in their assessments.
5. Recommendations from legislation implementation reports should also specify which institutions are responsible for their implementation.
6. The Assembly should amend the provisions in the Rules of Procedure regarding the reporting of the relevant ministries on the implementation of laws without the request of the committees. This provision is not being implemented, as the ministries are not sufficiently informed about the obligations arising from the Rules of Procedure, nor do the parliamentary committees request that non-reporting be included as an item on the agenda of the plenary meetings. Instead, the Rules of Procedure should provide the requirement that committees must request written reports and reporting by ministers on legislation implementation at committee meetings, as well as provide for the timing, such as within the first month after the start of fall session of the Assembly work.
7. Parliamentary committees should publish all adopted reports related to post-legislative scrutiny. The publication of reports will enable NGOs and the media, as well as other actors, to be better informed about the identified delays in the implementation of laws. They can assist in carrying out monitoring activities related to the implementation of recommendations by the Assembly.

Appendix 1: Principles of post-legislative scrutiny by parliaments drafted by the WDF

MANDATE

- 1) Parliament has a responsibility to monitor that the laws it has passed have been implemented as intended and have had the expected effects. Therefore, Post-Legislative Scrutiny is an important tool for increasing government accountability.
- 2) Three binding instruments typically provide a mandate for Post-Legislative Scrutiny: ministerial undertakings, review clauses in legislation or sunset clauses.
- 3) Even when no binding commitment to Post-Legislative Scrutiny is made during the passage of the bill, Parliament should be able to undertake Post-Legislative Scrutiny on any matter that it so chooses.

SCOPE

- 1) Post-Legislative Scrutiny reviews both the enactment of law and its impact on society, and hence contributes to improve the law itself and people's well-being.
- 2) To make use of time and resources in the most effective way, parliament needs a transparent process for identifying the pieces of legislation that are selected for Post-Leg review.
- 3) To understand the implementation and impact of legislation, it is useful to review secondary or delegated legislation at the same time as reviewing the primary act.
- 4) Post-Legislative Scrutiny provides an opportunity to assess the impact of legislation on issues which cut across different Acts, such as gender or minorities.

PARTICIPANTS

- 1) Parliaments should consider whether the responsibility for Post-Legislative Scrutiny should lie with its standing committee or with a dedicated body. Post-Legislative Scrutiny should be an inclusive process in which all party groups are able to participate.
- 2) For parliament to conduct Post-Legislative Scrutiny inquiries effectively, it needs to empower its human resources and enable them to work with appropriate ICT systems and applications. Parliament may consider whether to establish a specialized Post-Legislative Scrutiny parliamentary service or to outsource this function to an external independent review panel that must report to parliament.
- 3) Public engagement in Post-Legislative Scrutiny enables access to additional sources of information, increases the credibility of the findings and enhances public trust in democratic institutions.

PROCESS

- 1) Inclusion of Post-Legislative Scrutiny in the parliamentary rules of procedures contributes to generating clarity, purpose and resources to Post-Leg activities.
- 2) Post-Legislative Scrutiny processes avoid a simple replay of policy arguments from the time when the merits of the law were debated.
- 3) Effective Post-Legislative Scrutiny requires full and timely access to governmental information, as well as to the views of a wide range of stakeholders, including civil society organizations.
- 4) Parliament should have processes in place to ensure consideration of the findings of Post-Legislative Scrutiny so that, where necessary, changes to legislation and policy can be made in a timely manner.

TIMING

- 1) Post-Legislative Scrutiny should generally take place at least three years after of enactment of the law in question.

Appendix 2: List of ex-post evaluation reports of adopted legislation and acts that are in the evaluation program for 2020

List of Approved Ex-Post Evaluation Reports

No.	NAME OF LAW OR BYLAW WITH COMPLETED EX-POST EVALUATION	Proposing Body - Ministry	Timeframe
1.	Report on Ex-Post Evaluation of Law No. 04/L-139 on Enforcement Procedure	Moj	2016
2.	Report on Ex-Post Evaluation of Law No. 04/L-076 on Police	MIA	2017
3.	Report on Ex-Post Evaluation of Law No. 04/L-003 on Civil Status	MIA	2017
4.	Report on Ex-Post Evaluation of Law No. 04/L-048 on Foreign Trade	MTI	2017
5.	Report on Ex-Post Evaluation of Law No. 05/L-020 on Gender Equality	AGE/OPM	2018
6.	Report on Ex-Post Evaluation of Law No. 04/L-074 on Agriculture and Rural Development	MAFRD	2018
7.	Report on Ex-Post Evaluation of Law No. 03/L-40 on Local Self-Government	MLGA	2018
8.	Report on Ex-Post Evaluation of Law No. 04/L-215 on Citizenship of Kosovo	MIA	2018
9.	Report on Ex-Post Evaluation of Law No. 03/L-037 on Travel Documents	MIA	2019
10.	Report on Ex-Post Evaluation of Law No. 05/L-064 on Driving License	MIT	2019

**List of acts included in the Program for
Ex-Post Evaluation of Legislation for
2020**

No.	NAME OF LAW OR BYLAW SUBJECT TO EX-POST EVALUATION	Proposing Body – Ministry	Timeframe
1.	Law on Ombudsperson	MoJ	30.07.2020
2.	Law on the Bar	MoJ	30.09. 2020
3.	AI GRK 10/2017 on the List of Indicators for Formal Identification of Victims of Trafficking in Human Beings	MoJ	30.11. 2020
4.	Law No. 04/L-022 on Civil Use of Explosives	MIA	15.10.2020.
5.	Law No. 2004/44 on Crafts;	MTI	30.10. 2020
6.	Law on State Matura Exam	MEST	30.11.2020
7.	Administrative Instruction 03/2017 on Medical Treatments Outside the Public Health Institutions	MH	15.11.2020
8.	Law No. 04/L-175 on the Inspectorate of Environment, Waters, Nature, Spatial Planning and Construction;	MEST	30.09.2020
9.	Law on Organic Farming	MARFD	30.11.2020
10.	Law No.05/L-088 on Road Traffic Provisions	MI	30.10.2020
11.	Law on Local Elections	MLGA	28.09.2020
12.	Law No. 04/L-205 on the Employment Agency of the Republic of Kosovo	MLSW	30.11.2020

Bibliography and references

1. Westminster Foundation for Democracy (WTF), Post-Legislative Scrutiny in the Americas, Ecuador, March 2019. Accessed at: <http://www.parlamericas.org/uploads/documents/2019-03-06%20draft%20Comparative%20Study%20on%20PLS%20in%20Americas%20-%20English%20Version.pdf>.
2. Westminster Foundation for Democracy (WTF), Principles of Post-Legislative Scrutiny by Parliaments, London, January 2018. Accessed at: <https://www.wfd.org/wp-content/uploads/2018/07/Principles-of-Post-Legislative-Scrutiny-by-Parliaments.pdf>.
3. Westminster Foundation for Democracy (WTF), Post-Legislative Scrutiny, Guide for Parliaments, London, November 2017. Accessed at: https://www.wfd.org/wp-content/uploads/2018/07/WFD_Manual-on-Post-Legislative-Scrutiny.pdf.
4. Westminster Foundation for Democracy (WTF), "Post-Legislative Scrutiny Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance", London, 2017. Accessed at: <https://www.wfd.org/wp-content/uploads/2018/07/Comparative-Study-PLS-WEB.pdf>.
5. De Vrieze, F., & Fitsilis, F., "Parliamentary Oversight of Sustainable Development Goals and the Application of Post-Legislative Scrutiny Principles", Wroxtton, 2019. Accessed at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3429635.
6. Regulation (EU) No 2016/794 on Europol. Accessed at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/583126/IPOL_STU\(2017\)583126_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/583126/IPOL_STU(2017)583126_EN.pdf).
7. Westminster Foundation for Democracy (WTF), Franklin De Vrieze, "Post-Legislative Scrutiny in Europe", London 2020. Accessed at: https://www.wfd.org/wp-content/uploads/2020/02/WFD_DeVrieze_2020_PLSinEurope.pdf.
8. Official Journal of the European Union. "Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community" (2007/C 306/01), Article 8 C. Accessed at: http://publications.europa.eu/resource/cellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0007.01/DOC_19.
9. UNDP Moldova. "Role of Parliament in European Integration", June 2011. Accessed at: <https://agora-parl.org/sites/default/files/UNDP%20Moldova%20Final%20Report%20on%20Parliament%20and%20European%20Integration.pdf>
10. The Constitution of the Republic of Lithuania. Accessed at: <https://www.lrs.lt/home/Konstitucija/Constitution.htm>.
11. Seimas of the Republic of Lithuania, 1994, Vilnius. Accessed at: https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Lithuania_Seimas%20Statute_1994_amended%20through%20November%202009_EN.pdf.
12. Official site of Parliament of Lithuania, "The Seimas and the EU". Accessed at: https://www.lrs.lt/sip/portal.show?p_r=35664&p_k=2&p_t=250052
13. Jurkynas, M, "Lithuania- Life in PostCommunist Eastern Europe after EU Membership: Happy Ever After?", Oxon, Routledge, 2012
14. Robert Schuman Centre for Advanced Studies, EU Member States' Consultation with Civil

- Society on European Policy Matters, Florence, October 2011. Accessed at: https://cadmus.eui.eu/bitstream/handle/1814/19357/eudo_report_2011_04.pdf?sequence=1.
15. Public Relations Unit of the Communications Department of the Seimas of the Republic of Lithuania, "Seimas (parliament) of the Republic of Lithuania", Vilnius. Accessed at: https://www3.lrs.lt/leidiniai/Seimas_kn_en.pdf.
 16. "Seimas, Scrutiny of the Eu Affairs in the Seimas of the Republic of Lithuania".
 17. UNDP Moldova. "Role of Parliament in European Integration". Accessed at: <https://agora-parl.org/sites/default/files/UNDP%20Moldova%20Final%20Report%20on%20Parliament%20and%20European%20Integration.pdf>.
 18. Official site of the Parliament of the Republic of Moldova - Standing Committees, Committee on Foreign Policy and European Integration.
 19. UNDP Moldova, "Functional and Institutional Analysis Findings and recommendations" April 2016.
 20. Official site of the Parliament of Montenegro: Assembly in the process of Montenegro's accession to the EU.
 21. Legislative Committee of the Parliament of Montenegro: Rules of Procedure, Committee on European Integration Article 42a.
 22. Communication from the Commission to the European Parliament and the Council Commission Opinion on Montenegro's application for membership of the European Union {SEC(2010) 1334}, Brussels, November 2010.
 23. Institut alternativa, "Monitoring and Evaluation of the Rule of Law in Montenegro", november 2016, page 10. Accessed at: <http://media.institut-alternativa.org/2017/01/monitoring-and-evaluation-of-rule-of-law-in-montenegro.pdf>.
 24. Service of the Parliament of Montenegro, "2018 Performance Report of the Parliament of Montenegro". Accessed at: http://www.skupstina.me/images/documents/2018_Performance_Report_of_the_Parliament_of_Montenegro.pdf.
 25. Final Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions 2019 Communication on EU Enlargement Policy, May 2019, Bruksel. Accessed at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-communication-on-eu-enlargement-policy_en.pdf.
 26. Rules of Procedure of the Assembly of the Republic of Kosovo.
 27. The Constitution of the Republic of Kosovo.
 28. Guidelines on Ex-Post Evaluation of Legislation in the Republic of Kosovo, Pristina, 2014. Accessed at: https://kryeministri-ks.net/wp-content/uploads/docs/2_Guidelines_on_Ex-post_evaluation_.pdf.
 29. Assembly of Kosovo, "Manual on the Oversight Function of Parliamentary Committees", Pristina 2012.
 30. KDI. Kuvendi që (s')mund të mbikëqyrë zbatimin e ligjeve. July 2019. Accessed at: http://kdi-kosova.org/wp-content/uploads/2019/07/Brief_FINAL_per-pdf.pdf

