

Harmonisation of Kosovo labour legislation with that of the EU

Abstract

This article analyses the development of labour relations law in Kosovo and in the EU, and the integration process of Kosovo with the EU, specifically the harmonisation of labour legislation. Rights from work and the relations arising from them represent one of the fundamental rights guaranteed in ILO Conventions as well as the treaties of the European Union and are included in the basic legal acts (constitutions) of most countries, including the Republic of Kosovo. The article raises questions related to the nature and importance of EU legislative acts in the labour field, as well as their reflection within national legislation, particularly in Kosovo. The receipt of any model from one or more countries for implementation in another has the chance of being successful, but the implemented model needs to be capable of adapting to the economic conditions and state of democracy, as well as the actual reality, of the respective country. The work and commitment of institutional stakeholders in the construction and implementation of an efficient legal system remains of vital importance in contributing to the peace and stability of society.

Keywords: European Union, European labour law, harmonisation, *acquis*, Stabilisation and Association Agreement

Introduction

The need for sustainable and functional legislation is indispensable across entire areas of social life, but surely the area in which the interests of citizens and particularly employees is most important is that of work relationships as well as the processes that arise from such relations.

The main focus of this article is an examination of the need for the harmonisation (or approximation) of the labour legislation in Kosovo in relation to EU labour law, as well as the integration process of Kosovo on its route towards the EU, the challenges our country will face in heading towards this harmonisation and the roadmap we should follow to reach this objective.

More than ever in its history since independence, Kosovo needs sustainable practically implementable legislation in this phase in which it has formally signed the Stabilisation and Association Agreement (SAA) with the European Union and has taken on the contractual responsibility to approximate its national legislation with that of the EU.

Following the experience of the new EU member states, we can undoubtedly conclude that readiness for EU membership is not only a political and economic

question but, above all, a legal one. The legal approximation process is the biggest and most comprehensive task during the accession process.

Therefore, each future EU member state has to harmonise its own legal system in all areas affected by the internal market – and there are no exceptions in the long run: rarely can transitional periods be agreed in accession negotiations. The EU cannot function if key legislation is not harmonised among its member states.

The process of approximation includes the methods and techniques for transposing EU legislation into national law, its incorporation into national legal systems and the process of implementation, which is individually manifested through the realisation of individual rights founded on the assumption of specific obligations.

Article 4(3) of the Treaty on European Union provides that:

The EU Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising from the Treaties or resulting from the acts of the EU institutions.

The EU founding treaties use different terms such as harmonisation, approximation and co-ordination. It should be stressed that the term most commonly used in relation to countries not yet being an EU member state is *approximation*. However, in the texts of the Stabilisation and Association Agreements with western Balkan countries (including Kosovo), the term *harmonisation* is also used.

In the broadest sense, legal approximation means the transposition of the provisions of EU law into national legislation, the implementation (application) of such provisions by the national competent public authorities and their enforcement by the courts and law enforcement agencies.

Drafting a national legal act and transposing the requirements of EU legislation requires team work among lawyers, translators and sector experts in specific policy areas. In order to draft a law harmonised with EU legislation, it is crucial to be familiar with the relevant EU law. In this respect, special emphasis should be put on the proposals of the European Commission, the opinions of the European Parliament and the Council in the course of EU legislative procedures, as well as the decisions of the European Court of Justice.

The public discourse in Kosovo thus needs to pay attention to these criteria in order to assign capable people to these processes, since this surely represents the most important step in achieving successful results.

The Stabilisation and Association Agreement signed between Kosovo and EU, more specifically Article 83, foresees that:

Kosovo shall progressively harmonise to that of the EU in the fields of working conditions notably on health and safety at work, and equal opportunities.

In order successfully to implement the Stabilisation and Association Agreement and all of the reforms it entails, the Kosovo Assembly, through Decision No. 05-V-246 of 10 March 2016, has created a National Programme for the Implementation of the Stabilisation and Association Agreement (NPISAA), which constitutes the

main national policy document for EU membership. Moreover, the same comprehensive mid-term framework applies to all the reforms necessary to fulfil the obligations of the Agreement; namely, those measures and priorities for the gradual approximation of national legislation with the EU *acquis* through the transposition of the latter, as well as for implementing the approximated legislation.

Furthermore, the *acquis* in the social and employment field includes minimum standards in the areas of labour law, equality, health and safety at work and anti-discrimination. The Stabilisation and Association Agreement requires co-operation in this field in its aims to facilitate harmonised employment policy in Kosovo. It will also seek to promote social dialogue as a fundamental driver of economic growth as well as the gradual legal approximation of legislation in labour, health, safety at work and equal opportunities for women and men, for people with disabilities and for people belonging to minorities and other vulnerable groups.

With regard to the labour field, mention should be made that the Ministry of Labour and Social Welfare (MLSW) is tracking its progress in harmonising the legislation, particularly via its formal document *Harmonisation of Kosovo Legislation in the Field of Working Conditions with EU Legislation* which will be evaluated in this article.

EU integration process – legislative aspects

European integration is consistently founded on a process of political and economic access for all countries of the old continent (Europe) which are ready to accept the founding treaties and to adopt the entire package of EU legislation. In accordance with Article 237 of the Treaty of Rome, every European country can apply for membership of the European Union while Article 49 of the Treaty on European Union (Lisbon Treaty) sets out the conditions for states willing to become EU members. According to this legal provision, any European state which respects the values of human dignity, the rule of law and respect for human rights may apply to become a member of the European Union.¹

In addition to the economic and legal criteria and acceptance of the *acquis*,² in 1993 the European Council, in accordance with the requirements of former communist countries to join the Union, laid down three criteria that candidate countries must meet before they become members.³ Therefore, countries aspiring to membership must have:

- 1 Lenaerts, Koen and Piet van Nuffel (2005) *Constitutional Law of the European Union* London: Sweet and Maxwell, p. 357.
- 2 The term *acquis* contains the principles and political objectives set out in the treaties establishing the EU as well as subsequent amendments; the legislation issued under these treaties; the case law of the European Court of Justice; the declarations and resolutions adopted in the EU Framework; and the international treaties and agreements signed between a number of EU countries that are related to European Union activities.
- 3 Cremona, Marise (2001) *Variable Geometry and Setting Membership Conditionalities: A Viable Strategy* p. 4, available at: www.kas.org.za/Publications/SeminarReports/SAIIA/cremona.pdf.

- stable institutions guaranteeing democracy, the rule of law, human rights and respect for the protection of minorities
- a functioning market economy and ability to cope with the competitive pressures and market forces within the Union
- ability to take on the obligations of EU membership, including support for Union objectives. They must have a public administration capable of implementing and practising EU laws.

The European Union Summit on the Western Balkans, held in Thessaloniki in 2003, confirmed that the future of the western Balkan countries is in the EU.⁴ On the other hand, despite the promises of integration, heads of state or governments of the member states of the EU have made it clear that the ‘progress’ of each country towards the EU will depend on their results in meeting the Copenhagen criteria as well as the conditions set out in the Stabilisation and Association Process (SAP) confirmed in a statement in November 2000 in Zagreb.

It should be noted that the EU has two parallel policies for its relations with neighbouring countries depending on whether or not they are on the current list of potential candidates. Stabilisation and Association Agreements open up the possibility for a country to become a candidate for EU membership after the completion of negotiations on the Agreement. The EU has, however, as part of its neighbourhood policy, signed agreements with countries that are candidates for the EU. Concerning western Balkan countries, stabilisation and association agreements with countries that are candidates for membership include provisions for the approximation of legislation in various fields, such as public procurement, the judicial system, labour rights, etc.

From states seeking EU membership is required both the adoption of legislation which is compatible with the EU as well as its implementation in practice. It must be mentioned that the EU is very strict regarding these conditions and only when it is considered that these are met can accession be expected within its framework. The dialogue between Kosovo and the EU has been developed through the Tracking Mechanism for the Stabilisation and Association Agreement (STM).⁵ Up to 2009, this process was named the ‘Stabilisation and Association Dialogue’ (DSA). DSA meetings, which are high-level discussions of political and technical co-operation issues between the European Commission and Kosovo, are regular and held in different formats in Pristina and Brussels.

In October 2009, the European Commission published its communication *Kosovo – Fulfilling its European Perspective* in which it proposed deepening and strengthening the European perspective of Kosovo. The main new initiatives for Kosovo were as follows: upgrading the political and technical dialogue into the Stabilisation and Association Process Dialogue (SAPD); initiating visa dialogue with the perspective

4 The Summit Declaration is available at: http://europa.eu/rapid/press-release_PRES-03-163_en.htm.

5 See National Programme for Implementation of the Stabilisation and Association Agreement (NPISAA), p. 15. Available at: https://www.mei-ks.net/repository/docs/3_pkzmsa_miraturar_n_ga_kuvendi_final_eng_.pdf.

of eventual visa liberalisation; reaching a framework agreement with Kosovo on the general principles of its participation in Community (EU) programmes; and activating the IPA cross-border co-operation component (CBS).⁶

The process towards the SAA commenced in October 2011, when the European Commission via a Progress Report, recommended the initiation of a Feasibility Study for an SAA.⁷ In 2013, Kosovo opened its path towards EU accession via negotiations on an SAA, which were concluded by the time of the European Council in June 2014, marking the start of a significant new phase in EU-Kosovo relations. Furthermore, Kosovo has now signed the Stabilisation and Association Agreement (SAA) with the European Union,⁸ in February 2016, an agreement which, apart from the economic benefits, carries the added obligation of implementation.

Therefore, in order to build on the progress of these reports (the contractual relationships), Kosovo must necessarily fulfil the priorities that have emerged from the SAA dialogue, the European Partnership process and the various progress reports. The priorities arising from these processes require Kosovo to adopt its own legislation in accordance with the EU *acquis*. Indeed, Kosovo, and in particular its institutions through government regulation No. 01/2007, has voluntarily taken on the obligation to align its legislation with that of the EU in all spheres (i.e. before the SAA was signed), to the best of its ability.

EU labour law – Kosovo in the process of harmonisation

Prior to evaluating EU labour law and the process of the harmonisation of Kosovo's labour legislation with that of the EU, it is necessary first to outline briefly the chronology of the development of the employment relationship in Kosovo.

In the past, Kosovo based work relationships on different labour laws, depending on the constitutional adjustments which, historically, have followed our country. Employment relationships in Kosovo, as a part of ex-Yugoslavia until the beginning of 90s, were built through the Basic Law on the Employment Relationship. During the 90s (after the suspension of Kosovo's autonomy) most Kosovo citizens were prevented from building employment relationships.

After the establishment of the United Nation Mission in Kosovo (UNMIK) in June 1999,⁹ the UN Administration produced few regulations in the labour field; the Labour Law Regulation (UNMIK Regulation 2001/27) and the Civil Servants Regulation (UNMIK Regulation 2001/36).

In co-ordination with the international community, Kosovo declared independence on 17 February 2008 and, on 15 April 2008, the Kosovo Assembly approved a

6 *ibid*, p. 15.

7 The European Commission Progress Report is available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.

8 The Stabilisation and Association Agreement (SAA) signed between the Government of Kosovo and the European Union on 27 October 2015, in Strasbourg, France; in force from 1 April 2016.

9 Security Council Resolution 1244, available at: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/1244.pdf>.

Constitution. Currently, Kosovo has in force several laws in the labour field, including the Law on Labour (Law No. 03/L-212), approved by the Assembly on 1 November 2010 and in force from 1 January 2011.

We have seen that Kosovo aspires to join the EU, with a condition for successful accession being the transposition and enforcement of the EU *acquis* in the Kosovo legal system prior to the date of membership.

If the Stabilisation and Association Agreement¹⁰ represented a new phase of political relations between Kosovo and the EU, its implementation requires a more comprehensive and long-term preparation, heralding yet another new phase in the EU accession process. This requires the advancement of the current European integration policy framework, in terms of making it more ambitious, inclusive and integrated.

Furthermore, this will bring all the special dimensions of the membership process to a much more complicated level; hence, the period up to obtaining full membership will require a higher level of institutional capacities and preparation because implementation will set in train a large number of deep and sensitive political and economic reforms which will affect all public stakeholders and all spheres of life.

In this respect, the responsible ministry for drafting policy related to the field of labour and social affairs, i.e. the Ministry of Labour and Social Welfare (MLSW), needs to adopt policies which are in line with the National Programme for the Implementation of the SAA, which seeks to harmonise labour legislation with EU law.

At this point, we should present the most critical aspects of EU labour law as regards the harmonisation process of Kosovo's national labour legislation with EU law.

Until the late 1970s, international labour law was made up almost exclusively of International Labour Organisation (ILO) standards. This is still the case in many countries, but it is no longer the case in the European Union (EU) because EU law in the field of labour and employment has, nowadays, a significant bearing on the shaping of domestic law in the 28 EU member states and beyond. It is also widely used by several other states in Europe which, even if not EU members – refer to the *acquis communautaire* when they review and revise their domestic law, including labour law.¹¹ Labour was posited in the Treaty of Rome as one of the factors for which free movement was guaranteed, along with capital, goods and services.¹² Furthermore, the European Social Charter of 1961 (revised in 1996), and the European Convention on Human Rights, also contain provisions regarding labour and social affairs.

During the 1970s, the European Community adopted legislation in matters which were related to collective dismissals (Council Directive 75/129/EEC), equal treatment between men and women (Council Directive 76/207/EEC), protection of work-

10 Stabilisation and Association Agreement, available at: https://eeas.europa.eu/sites/eeas/files/stabilisation_and_association_agreement_eng_0.pdf.

11 Bronstein, Arturo (2009) *International and Comparative Labor Law, Current Challenges* 1st Edition, p. 195.

12 Bercusson, Brian (2009) *European Labour Law (Law in Context)* 2nd Edition, p. 5.

ers in the case of the insolvency of the employer (Council Directive 80/987/EEC), and other related matters.

The EU's competences generally follow the principles codified in the Community Charter of Fundamental Social Rights of Workers on 9 December 1989,¹³ and then introduced in the 'social chapter' of the Treaty of Maastricht (known as the Treaty on European Union) signed on 7 February 1992.

Later, the Charter of Fundamental Rights of the European Union, signed by the members of the EU in Nice in February 2001, also included an important chapter on the rights of workers.¹⁴ The most significant feature of the EU Charter is the inclusion of social¹⁵ and economic rights as fundamental rights alongside more traditional civil and political rights. In fact, European labour law is at the core of the social concept of European integration and the social dimension of EU law.

EU labour law is, in the first place, the law of its different member states. Only as an exception (this case is France) is it unified in a Code of Labour Law. For the most part (as is the case in Germany), it is contained in several single statutes.¹⁶

Each EU member state has the responsibility for the regulation of issues within their jurisdiction and each has their own laws, but harmonisation aims to create a consistency of laws, regulations, standards and practices. This is so that the same rules will apply to businesses that operate in more than one member state and so that businesses in one state do not obtain an economic advantage over those in another as a result of different rules or reduced compliance and regulatory burdens for businesses operating nationally or transnationally.¹⁷

Under the Treaty on the Functioning of the European Union (TFEU)¹⁸ the EU is able to use the ordinary legislation procedure on a list of labour law fields. The EU aims to promote social progress and improve the living and working conditions of the peoples of Europe. As regards labour law, the EU complements the policy initiatives taken by individual EU countries by setting minimum standards. In accordance with the Treaty (Art. 153), it adopts directives that set minimum requirements for working and employment conditions – for example on informing and consulting workers.

Individual EU countries are free to provide higher levels of protection if they so wish. The European Working Time Directive (2003/88/EC) entitles workers to twenty days annual paid leave, but many countries have opted for a more generous right to the benefit of workers.

13 The Charter's text available at: <http://www.eesc.europa.eu/resources/docs/community-chart er--en.pdf>.

14 The Charter's text is available at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf. See also Di Federico, G (Ed.) (2010) *The EU Charter of Fundamental Rights: From Declaration to Binding Instrument (Ius Gentium: Comparative Perspectives on Law and Justice)* 1st Edition, Springer, pp. 166-167.

15 Bercusson, Brian *op. cit.* p. 9.

16 Lowisch, Manfred (2003) *Labor Law in Europe*, p. 102.

17 Nygh, P and P. Butt P (Eds) (1997) *Butterworths Australian Legal Dictionary*, p. 543.

18 Article 153(2) *Treaty on the Functioning of the European Union*.

The EU adopts directives which its member countries incorporate in their national law and thus implement, which means that it is national authorities (labour inspectorates and courts) that enforce the rules. The commitment of member states to the objectives of the European Union leads to the obligation of their courts to participate in the implementation of Community law as far as it is within their competencies. In practice, this results in an obligation to interpret law in a way that is consistent with European law, especially with respect to directives. Moreover, when it is incorporated into national law, a directive has to be interpreted as closely as possible to its wording and purpose. The principle of an interpretation consistent with European law applies even when a directive has not been implemented in national law in an appropriate amount of time.¹⁹

Whenever a dispute before a national court raises a question over how to interpret an EU directive, the court can refer the issue to the European Court of Justice of the EU, as a result of which the European Court gives the national court the answers it needs to resolve the dispute.²⁰

The European Court of Justice has recognised the changing profile of the EU in cases concerned with the equal pay provision in the original EEC Treaty (Art. 119; subsequently Art. 141). Initially in the infamous *Defrenne* decision, Article 119 was characterised as having not only an economic but also a social objective.²¹

Another very important aspect is defined in the Treaty on the Functioning of the European Union, of which Article 45(1) stipulates that:

Freedom of movement of workers shall be secured within the Union.

Article 45 (2) goes on to provide that:

Such freedom of movement shall entail the abolition of any discrimination based on the nationality between workers of the Member States as regards employment, remuneration – payment and other working conditions of work and employment.

However, there may be limitations in the realisation of these rights in cases when these are justified on grounds of political, security or health policies. Furthermore, Regulation No. 1612/68 (amended by Directive 2004/38/EC), and Article 3(1) provides that:

Any legal provisions, administrative action or administrative practice of a Member State shall not apply where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals...

19 Lowisch, Manfred *op. cit.* p. 105.

20 ECJ case C-354/13, Karsten Kaltoft v Billund Municipality (Denmark), 18 December 2014.

21 Bercusson, Brian *op. cit.* p. 6.

This provision shall not apply to conditions relating to any linguistic knowledge required by reason of the nature of the post to be filled. Regarding this issue, it ought to be pointed out that the ECJ has, in several cases, felt compelled to interpret the provisions of the Treaty relating to employment.²²

The current position in national legislation

In the area of social policy and employment, Kosovo has created a basic legal framework which regulates the areas of labour and employment, health and safety at work, the labour inspectorate, trade union organisations and the social dialogue, as well as forms of inclusion and social protection.

Kosovo legislation regulating employment and social affairs policy is partially harmonised with the EU *acquis* and the main principles of EU law. The level of alignment which has been achieved so far is at an initial stage, taking into consideration that EU legislation in this area is broad and voluminous.

In all sectors of working conditions, the transposition process of the respective directives has been launched. However, deeper analysis in specific sectors of such legislation indicates that the extent of alignment is high in some sectors, very low in others and, at times, barely even in existence. We focus our attention here on the most important issues.

Starting from the employment relationship, the current legal framework is partially aligned with the relevant EU directives. In labour law and its sub-legal acts, up to now ten of the relevant Directives have been aligned.²³ Mainly, work has been aligned such as the scope (preclusion provisions) and establishment of the employment relationship; the employment contract; prohibition of discrimination at work and employment; prohibition of forced or compulsory labour; working hours and leave; health and safety at work, including the protection of young people at work, as well as women and people with disabilities; maternity leave, wages and benefits; termination of the employment relationship; procedures arising from a realisation of rights from the employment relationship; the social dialogue; and other relevant provisions.²⁴

Out of these ten directives, two have been partially aligned i.e. EC Directive 2003/88 dated 4 November 2003 on certain aspects of the organisation of the duration of work; and Council Directive 94/33 EC of 22 June 1994 on supporting young people at work.²⁵

Other main principles of the relevant chapters/fields have been aligned to existing directives, such as Directive 97/80/EC of 15 December 1997 on the argumentation of

22 ECJ case C-281/98, *Roman Angonese v Casa di Risparmio di Bolzano SpA*, 6 June 2000.

23 See National Programme for the Implementation of the Stabilisation and Association Agreement (NPISAA), p. 249. Available at: https://www.mei-ks.net/repository/docs/3_pkz_msa_miratuar_nga_kuvendi_final_eng_.pdf.

24 *EU Project in Kosovo – Harmonisation of Kosovo Legislation in the Field of Working Conditions with EU Legislation* EuropeAid/136561/DH/SER/XK.

25 *ibid.*

liabilities in cases of discrimination based on sex;²⁶ the directive of 14 October 1991 on the duties of employers to inform employees on the applicable terms of employment contracts (91/533 EC); the directive of 10 February 1975 on harmonising member states' national laws on applying the principal of equal pay for men and women (75/117/EEC); and Directive 2001/23/EC of 12 March 2001 on developing member states' laws on the protection of employee rights in the case of transfers of enterprises, businesses or part of a business. Such directives are due to be transposed in full over a longer period of time during the next three years.

Directives which have not yet been tackled in the legal framework on the employment relationship are: Directive 96/71/EC dated 16 December 1996 concerning the posting of workers in the framework of the provision of services; Directive 2002/74/EC of 23 September 2002 on improving Directive 80/987/EEC on the approximation of the laws of the member states relating to the protection of the employees in the event of insolvency of their employer; and Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and on the protection of self-employed women during pregnancy and motherhood.²⁷

In specific sectors regulating working hours, leave and other benefits arising from the employment relationship, some of the relevant directives have been transposed, e.g. Directive 2000/79/EC was transposed into Regulation No. 02/2008 on the Organisation of the Working Time of Mobile Workers in Civil Aviation, issued by the Civil Aviation Authority of Kosovo.²⁸ In the field of the social dialogue, current legislation regulates the general framework of the dialogue between the social partners and is regulated by the Law on Social Economic Council No.04/L-2008.²⁹

Further in the field of employment, there is legislation which regulates the employment and vocational training of people with disabilities (Law No. 03/L-019), and the recording and registration of the unemployed and jobseekers and programmes setting out active labour market measures. These laws are partially aligned to Directives 2002/73/EC and 2006/53 of 23 September 2002, the improved Directive 76/2007/EEC on the application of the principle of equal treatment between men and women relating to access to employment, vocational training and working conditions, and Directive 2000/78/EC of 27 November 2000 on establishing the main frameworks for equal treatment in employment and occupation.³⁰

26 Article 1.17 of Law No. 03/L-212 gives the legal definition regarding discrimination while Article 5 (1, 2) proscribes all types of discrimination.

27 EU Project in Kosovo – *Harmonisation of Kosovo Legislation in the Field of Working Conditions with EU Legislation* EuropeAid/136561/DH/SER/XK.

28 *ibid.*

29 The Law is aligned to the main principles of the EU legislation on social dialogue, chiefly Council decision 2003/174/EC of 6 March 2003 on establishing a tripartite social summit for growth and employment, and Council decision 2000/98/EC of 24 January 2000 establishing the Employment Committee.

30 The respective Directives are tackled in the Law on Gender Equity No. 05/L-020 and the Law against Discrimination No. 05/L-021.

One area which is not regulated sufficiently is that on temporary work agencies.³¹ However, Kosovo has made progress in this, by approving the Law on Employment Agency (Law No. 04/L-205), while the agency has also been made operational.

In the field of health and safety at work, progress has been achieved in launching a process of legislative alignment in this most voluminous and complex area. The Law on Safety and Health at Work (04/L-161), adopted in 2013, is aligned to Directive No. 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work. This Directive has been transposed to a large extent in the Law on Safety and Health at Work, which facilitates the transposition of the 19 individual directives which are derived from it.³²

Based on this analyses, it could be noticed that, in general terms, there is no lack of legislation regarding each respective area. Despite the legal sanctions, however, the safety of the work place (especially in the private sector) is not in a good state and is not appropriate compared to EU standards. The result of this is that the number of injured workers and workplace deaths has substantially increased and remains particularly disturbing.³³

In this respect, the state has failed in its commitments and has contributed largely towards the failure to extend its own influence in industry sectors (and perhaps deliberately so), by not empowering the Labour Inspectorate³⁴ (Law No. 03/L-017), the institution responsible for overseeing the implementation of the labour law. In contrast to the private sector, the situation with regard to employees in the public sector is much more favourable (though still insufficient), among whom Labour Law No. 03/L-122³⁵ refers.

Protection of the rights of civil servants during any eventual process is carried out, in line with Law No.03/L-149 referring to civil servants and their working relationship in central and local public administration, initially through the internal mechanisms of the institution they work for (via an Appeals Commission); and then the next stage is through the Independent Oversight Board for the Civil Service, which is regulated under Law No.03/L-192. However, the implementation of Board decisions still remains a challenge as institutions and managements are compelled to observe the respective decisions. Here, it should be highlighted that Article 13 of Law No.03/L-192 sets down clearly that the:

Decision of the Board shall represent a final administrative decision and shall be executed by the senior managing officer of the person responsible at the institution issuing the original

- 31 This field is regulated with Directive No. 2008/104/EC of 19 November 2008.
- 32 EU Project in Kosovo – *Harmonisation of Kosovo Legislation in the Field of Working Conditions with EU Legislation* EuropeAid/136561/DH/SER/XK.
- 33 During 2017 alone, the number of deaths of employees in the workplace reached fourteen.
- 34 Pristina, the capital city of Kosovo, where thousands of private companies operate, has only five inspectors.
- 35 Under Article 3 (1.3), the public sector refers to employees in the education and health sectors as well as in enterprises which are publicly-owned by the Republic of Kosovo or any other of its municipalities.

decision against the party. Execution shall be affected within fifteen days (15) from the day of the receipt of decision.

During the course of procedures before the regular courts (when the parties have failed to agree with a decision of the Board), practice has proved that such decisions have failed the test of efficiency; negligence in dealing accordingly and on the basis of merit in this cases has led to dissatisfaction among the parties and, in the worst cases, to a loss of trust in the professional handling of such cases. This has not been a good experience for public sector employees either, since they will have had to refer to the Labour Inspectorate³⁶ and then to the competent Court for the Protection of Labour Rights.

Such practice in the non-enforcement of decisions, as well as the failure of the competent courts (not in all cases), continued to be present up until 2012 when the Kosovo Constitutional Court issued its first judgment³⁷ regarding this matter. The conclusions of the Court given here, as well as in other judgments, has contributed to the creation of precedent such that, in subsequent periods, the decisions of the Board find their practical application.

Based on the ongoing reform of public administration in Kosovo, it is considered that greater efforts should be focused on the civil service system. This objective is provided in the *Strategy for the Modernisation of Public Administration 2015-2020*. In this regard, the Ministry of Public Administration is to focus on several priority policies for the civil service, such as: strengthening the monitoring of the implementation of civil service legislation; finalising the law on the salaries of public servants, and then implementing this law; systemising the classification of jobs, and thus making the new salary system operational; functionalising the human resource management system; etc.³⁸

Following the adoption of the Law on Civil Servants and the Law on the Salaries of Civil Servants in 2010, administrative instructions and other bylaws concerning the implementation of these laws have been adopted one after the other without any analysis of the capabilities and capacities of the administration to implement them. Therefore, the process of implementation has not been followed up either with a clear and inclusive roadmap or financial support.

Consequently, the main objectives of the new strategy are related to the system of job classification and the new payroll system, addressing the delays in the functionalisation of the information management system, re-defining the recruitment and promotion process, dealing with the lack of a strategic approach and developing training programmes which are based directly on the needs of the civil service.

36 Article 82, Law No. 03/L-212.

37 See Judgment of the Constitutional Court of Kosovo, KI 04/12, submitted by Esat Kelmendi in the constitutional review of the decision of the District Court of Pristina (Ac. No. 647/2011) dated 30 November 2011.

38 See the *Strategy for the Modernisation of Public Administration 2015-2020*, Ministry of Public Administration, Kosovo.

Implementation in practice will be accompanied by an Action Plan for implementing the above-mentioned strategy and an Action Plan implementing the strategy for civil servant training. Expenditure in this area is based on a detailed estimate of the needs of each Action Plan while the government, together with the donor community, will review the possibilities of financing those activities for which there is a financial vacuum.

Another worrying aspect in the protection of workers at the workplace is that, despite the Kosovo Assembly having approved the Law on Health Insurance (Law No. 04/L-249), this is yet to be implemented. Undoubtedly, this undermines the prospects for social justice as well as an effective guarantee of the fundamental rights of workers at their place of work.

Alongside many other similar instances, this clearly demonstrates that, in practical reality, the availability of legal sanctions alone is not sufficient and that the legislation must also be implemented in practice. Therefore, the Kosovo Government and the relevant institutions need to make the standardisation of labour rights in relation to ILO Conventions, especially those which have fundamental character,³⁹ and in particular those which form EU law, i.e. the *acquis*, a national priority.

The challenges of our country in achieving these objectives are indeed not easy, but they are not impossible. Hence, a commitment by the government to target this area as a crucial goal, on top of constant pressure from the unions, has the potential to produce the necessary effects towards appropriate legislative reform in accordance with EU practice.

Conclusion

From the research work carried out specifically for this article, we have noted that the rights of labour and the relationships arising from it represent one of the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, as well as the legal acts establishing the European Union, European labour law and the fundamental acts (constitutions) of most countries of the EU, including the Constitution of the Republic of Kosovo.

We have outlined that the national interest and strategic goal of the government of Kosovo is to fulfil the conditions for full membership of the European Union. The approximation of Kosovo legislation with the EU *acquis* is one of the pre-requisites for Kosovo to accede to the European Union.

Our ordinary day-to-day work has also brought to our attention the numerous complaints of workers in the area of labour relations, either concerning the lack of labour law or its non-implementation, or the lack of accurately-defined regulations and many other issues. Therefore, we consider that the necessary steps towards these reasonable requirements should be taken.

- 39 After the Copenhagen Declaration, adopted in 1995 at the World Summit for Social Development, the Governing Body of the ILO decided that eight of its Conventions should be declared as fundamental. The list of fundamental conventions is available at: <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

The adoption of the Labour Law has, to a certain degree, regulated the issue of employment; however, its high financial costs remain a challenge. Practice has shown that the implementation of this law is not satisfactory and, therefore, that it should be changed, in particular with regards to employment contracts, maternity leave and sick leave as well as other relevant areas.

In this regard, apart from amending and supplementing the Labour Law which is underway (and which may imply other changes to be made to the existing legislation), it is also necessary to draft a new Law on the Labour Inspectorate concerning the implementation of the legislation, as well as reflecting issues to do with the timeliness and professionalism of the courts in their respective fields.

Furthermore, the Labour Inspectorate should further increase the number of its staff which, in turn, should reduce the number of deaths and injuries in the workplace and which should target the country's informal economy (and especially in construction).

Forms of the rule of law which are based on the concept of sustainability need also to incorporate adequate legislation to protect the rights of citizens against violations, while the guarantee and protection of these are essential issues in achieving objectives in the context of a stable and functional state. We need also to bear in mind that national law in EU member states is, essentially, limited to building on top of the minimum standards set down at EU level in the field of employee protection.

It is understood that there will be no satisfactory results without a proper legal infrastructure and implementation in practice, not only in terms of the specific rights arising from the law but also in the general legal system. Hence, there is an inevitable interconnection between these two spheres: one cannot function one without the other. Therefore, the enhancement of human resources and reforms in these sectors are extremely necessary to create the desired level of stability.

In addition, the social partners need to co-operate closely so as to facilitate the reform of employment policy in Kosovo in the context of strengthened economic reforms and EU integration, and with a view to supporting inclusive growth. In this respect, Kosovo needs to abide by international conventions and other instruments in this area.

Ultimately, the primary priority for responsible institutions should be the harmonisation of labour legislation in accordance with EU law and the implementation of such legislation in practice. It is worth mentioning that the right ratings in this sphere, as well as the applicability of the decisions of competent institutions, represents a vital basis of the European Commission progress reports which are regularly made to the Republic of Kosovo. The labour and social field is a constitutional category and these are among the main indicators determining the stability of a country aspiring to join the European Union.

References

- Brunstein, A (2009) *International and Comparative Labour Law, Current challenges* ILO.
- Bercusson, B (2009) *European Labour Law (Law in Context)* Cambridge.

- Charter of Fundamental Rights of the European Union, 2001, available at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf.
- Community Charter of Fundamental Social Rights of Workers, 1989, available at: <http://www.eesc.europa.eu/resources/docs/community-charter--en.pdf>.
- Copenhagen Declaration adopted in 1995 – World Summit for Social Development.
- Council Directive No. 2008/104/EC, 19 November 2008.
- Council Directive No. 2003/88/EC, 4 November 2003.
- Council Directives No. 2002/73/EC and 2006/53/EC, 23 September 2002.
- Council Directive No. 2000/78/EC, 27 November 2000.
- Council Decision No. 2003/174/EC, 6 March 2003 on establishing a Tripartite Social Summit for growth.
- Council Decision No. 2000/98/EC, 24 January 2000 on establishing the Employment Committee.
- Council Directive No. 97/80/EC, 15 December 1997.
- Council Directive No. 89/391/EEC, 12 June 1989.
- Cremona, M (2001), ‘Variable Geometry and Setting Membership Conditionalities: A Viable Strategy?’, in C. Clapham, G. Mills, A. Morner and E. Sidiropoulos (Eds.) *Regional Integration in Southern Africa: Comparative international perspectives* Johannesburg: South African Institute for International Affairs, pp. 193-222. Available at: www.kas.org.za/Publications/SeminarReports/SAIIA/cremona.pdf.
- Di Federico, G (2011) *The EU Charter of Fundamental Rights From Declaration to Binding Instrument Ius Gentium: Comparative Perspectives on Law and Justice*, p. 166-167.
- EC Progress Report, 2011, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf.
- European Union Summit on the Western Balkans, Thessaloniki, 2003, available at: http://europa.eu/rapid/press-release_PRES-03-163_en.htm.
- ECJ case 281/98, *Roman Angonese v Casa di Risparmio di Bolzano, SpA*, 6 June 2000.
- ECJ case C-354/13, *Karsten Kaltoft v Billund Municipality (Denmark)*, 18 December 2014.
- EU Project in Kosovo Harmonisation of Kosovo Legislation in the Field of Working Conditions with EU Legislation EuropeAid/136561/DH/SER/XK.
- Judgment of the Constitutional Court of Kosovo, KI 04/12, dated 30 November 2011.
- Law on Labour of the Republic of Kosovo, No. 03/L-212.

- Law on Labour Inspectorate, No. 03/L-017.
- Law on the Civil Service No. 03/L-149.
- Law on Independent Oversight Board of Kosovo Civil Service, No. 03/L-192.
- Law on Social Economic Council, No. 04/L-2008.
- Law on Gender Equity, No. 05/L-020.
- Law against Discrimination, No. 05/L-021.
- Lenaerts K and P. van Nuffel (2005) *Constitutional Law of the European Union* London, Sweet and Maxwell.
- Lowisch, Manfred (2003) 'Labor Law in Europe' *Ritsumeikan Law Review* 20: 101-115.
- Nygh, P and P. Butt (Eds.) (1997) *Butterworths Australian Legal Dictionary* Butterworths: Sydney.
- National Programme for Implementation of the Stabilisation and Association Agreement (NPISAA), available at: https://www.mei-ks.net/repository/docs/3_pkzmsa_miratuar_nga_kuvendi_final_eng_.pdf.
- Security Council Resolution 1244, available at: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/1244.pdf>.
- Stabilisation and Association Agreement (SAA) between Kosovo and EU, available at: https://eeas.europa.eu/sites/eeas/files/stabilisation_and_association_agreement_eng_0.pdf.
- Strategy for Modernisation of Public Administration, 2015-2020, Ministry of Public Administration, Kosovo.
- Treaty on the Functioning of the European Union.