



EUROPEAN COMMISSION

DIRECTORATE GENERALE FOR ENLARGEMENT

Civil Society Contribution to EC Progress Report for KOSOVO 2013

Name of organisation: **Kosovar Civil Society Foundation (KCSF), Prishtina, Kosovo**

Contribution to:

2.1 Democracy and the rule of law, Government, Public Administration

2.2. Human Rights and the protection of minorities, Civil and political rights

2.3 Regional issues and international obligations

Kosovar Civil Society Foundation (KCSF) provides its input to the EC Progress Reports on the field of civil society development, as well as on main issues on Relations between the EU and Kosovo, including regional cooperation. KCSF input will cover only the developments for the reporting period beginning of October 2012 – end of July 2013.

2.1 Democracy and the rule of law, Government / Public Administration

Administrative structures established to run EU integration process in Kosovo

Major developments

The **National Council for European Integration (NCEI)** established last year by the President of Kosovo also includes representatives of civil society. The regular members from the sector in the Council are representatives of CIVIKOS Platform, Kosovar Civil Society Foundation (KCSF), Kosovo Chamber of Commerce (OEK) and Association of Kosovo Municipalities (AKK). Since its establishment, the Council has met four (4) times.

By mandate given from NCEI, the Ministry of European Integration launched the process of drafting the National Strategy for European Integration. This task is led by the **Task Force for European Integration (TFEI)**, established specifically for this purpose. The TFEI within its seven (7) thematic round tables invited civil society representatives for consultations and contributions during diagnosis phase, whereby some of the thematic tables are chaired by prominent civil society representatives.

EU has decided to start SAA negotiations with Kosovo. The government of Kosovo has established a **negotiating structure for SAA** leaving possibility to invite experts and civil society members to negotiating groups upon need.

Main challenges

Despite few positive developments, this reporting period has been marked by a number of challenges which can be summarized as the following:

- **National Council for European Integration (NCEI)** has been established in order to ensure broad national consensus and increase transparency and communication with the public in the EU integration process. The Council has failed to gather all the actors of the opposition. Whereas during council meetings the issues and policies of major public interests have been also kept out of public debate and closed for the media.

- The Council meetings lack sufficient preparations and follow up. Meetings are scheduled in short notice and lack consistence and rather serve daily politics. This results into general discussions and far from obligations vis-à-vis EU reforms. This practice of work does not provide a fruitful ground for civil society contribution, involvement and monitoring of the EU integration process for Kosovo.
- The **draft National Strategy for European Integration** has been finalized in June 2013, however the draft strategy has not been sent yet for discussion and approval to NCEI, neither has it undergone a public consultation process in accordance with the legal provisions in force.
- Inclusion of all stakeholders into **SAA negotiations** as per adopted Rules of Procedure is not mandatory. The experience of other countries of the region which have undergone SAA negotiations in the past years shows that, having all stakeholders on board including civil society, academia, trade unions and individual experts within SAA negotiation rounds ensures inclusive and participatory approach and secures additional sources of needed expertise.

2.2. Human Rights and the protection of minorities, Civil and political rights

The current state of play in civil society development and civil dialogue

Major developments

Civil society has been successful in engaging government to support its initiatives for establishing a structured cooperation between two sectors.

A governmental strategy for cooperation with civil society has been initiated in late 2011 and has been adopted on 5th of July 2013. The 2013-2017 Strategy provides the main directions for government policies and mechanisms with regards to civil society participation in policy-making, service provision from CSOs and public funds for civil society. The drafting process was inclusive and numerous CSOs led the process and contributed to the document.

In early 2013, drafting of the **Administrative Instructions deriving from the Law on Freedom of Association in NGOs** has been initiated, in close cooperation with civil society organizations.

Based on the obligation for **public consultations** deriving from the Rules of Procedures of the Government, many Ministries have invited CSOs to provide their written contributions to the draft-laws and other documents. During 2012, more than 80 draft-documents have been published for public consultations,

The Constitutional Court declared non-compatible with the Constitution a number of provisions of the Law on Banks, Microfinance Institutions and Non-bank Financial Institutions, thus preventing the transformation of Microfinance NGOs into joint stock companies. This Law was adopted by the Assembly of Kosovo on 12th of April 2012, without any formal involvement of civil society, which expressed serious concerns on

transformation of non-for-profit capital to private capital. Following an intensive advocacy and public campaign in opposing the transformation, and after exhaustion of all legal remedies, a number of NGOs used the institution of the Ombudsman to file a request to the Constitutional Court.

Main challenges

Despite few positive developments, this reporting period has been marked by a number of challenges, which hamper development of civil society. Most of the challenges derive from the **lack of political willingness** to constructively engage with civil society, causing serious deficiencies of transparency and accountability, and poor implementation of existing legislation. Yet, one of the most important consequences is the **lack of capacities** of institutions responsible for cooperation with civil society. Moreover, government and other public institutions have been unwilling to address the issue of human and financial capacities for many years now. The outcome of these deficiencies directly impacts the following:

The Governmental strategy for cooperation with civil society adoption was shadowed by the proceedings of the Government with regards to the Law on Amnesty that was happening in the same period – the breach of consultation for such an important law immediately endangered the implementation of the main component of the Strategy, which aims to promote participation of civil society in drafting and implementation of public policies and laws.

- **A lack of ownership** on the adopted documents and **difficulties in implementation** are evident, since most of the progress achieved was based on the civil society input solely. This was the case on the requirements for public consultation, governmental strategy for cooperation with civil society, administrative instructions of the NGO Law, etc. Since the Governmental Strategy for cooperation with civil society includes most of the necessary measures for improving the environment for civil society in Kosovo, its timely and full implementation is of crucial importance. Only with a substantial change of the political willingness and increase of capacities of responsible institutions such an implementation can be expected.
- The level of implementation of the **Law on Access to Public Documents** is low, making the access to public documents difficult for all interested parties. Currently, the provision of information from public institutions is selective without any standard or criteria, in particular with regards to issues considered of high political and economic interest. In addition, the issue of Classified Documents, although regulated by law, is often misused by civil servants and politicians who are unwilling to provide specific information or unjustifiably delaying timely provision of information to the public.
- Only few of **public consultations** conducted by the Government have respected the legal requirements of timely and adequate information, period for contribution, institutional setup and feedback on the results of consultations. Furthermore, the breach of Rules of Procedures of the Government and Assembly in passing the Law on Amnesty with regard to the requirements for public

consultations (see attached open letter by KCSF on that matter) has sent an extremely negative signal as per the real political will to participatory policy making including in the areas of high importance such as laws pertaining to the constitutional category.

- Public consultation is not only a legal requirement, but it is a basic and necessary tool for reflecting the interests of citizens in policies and laws drafted by their elected representatives. Absence of proper consultation has often resulted with poor quality legislation and harmed its implementation. In Kosovo, laws and policies of major political and economic interests are often kept out of the public debate and scrutiny, due to the lack of mechanisms of implementation, monitoring and evaluation for the **process of public consultations at central level**. The Law on Banks, the Law on Amnesty and the entire package of Laws for Visa Liberalization process are only some of many examples of non-transparent and non-inclusive decision-making on important legislation, despite the legal requirements to conduct public consultations.
- **The financial reporting for NGOs** remains identical to private businesses. This is due to the low understanding of specific nature of the non-for-profit sector on the side of Tax Administration and decision-makers, exposing NGOs to difficulties in their daily operation with regards to taxes and reporting. The financial reporting requirements need to be amended so to take into account the specific nature of the NGOs and be proportionate to the size of the organization and its type/scope of activities.
- **The benefits of CSOs with public benefit status** are not specified in the Law on Freedom of Association in NGOs, and concrete tax exemptions have to be clearly provided in respective tax and custom laws. In the respective tax laws, the few existing benefits are quite ambiguous, making the tax deductions for individual and corporate donations to CSOs almost inexistent and subject to interpretation of officials.
- Kosovo institutions officially do not have any **state or public funding for civil society**. However, recent studies show that around 8% of civil society funds come from governmental sources¹, while no criteria and procedures on disbursing and using these funds exist. Law on Freedom of Association in NGOs requires all public institutions that cooperate and financially support civil society to have pre-determined and transparent criteria for this support. So far, this requirement has produced no effects in practice, neither in developing legal instruments, nor in developing administrative and human capacities. Thus, a specific framework for principles and standards of public funding for civil society needs to be initiated, based on a wide debate and contribution from all parties involved.

¹ http://kcsfoundation.org/repository/docs/KCSF_CIVICUS_CSI_Analytical_Country_Report_Kosovo.pdf

2.3 Regional issues and international obligations

Major developments and challenges with regards to regional participation

Major developments

Kosovo's main achievement on the **regional cooperation** fora is the decision of the Regional Cooperation Council (RCC) Board to amend the statute and the list of participants of the organization, reflecting the results of the EU-mediated dialogue between Belgrade and Prishtina. Hence, Kosovo becoming one of the 27 participants of the RCC Board, on February 28, 2013.

Main challenges

- **Regional cooperation** momentum built up lately for Kosovo is not being advanced effectively by the government for Kosovo's participation/membership and ultimately benefit from other regional initiatives and task forces. Kosovo's RCC participation risks being an open-ended objective in itself without a proper follow-up for membership in other regional structures and activities.
- The government of Kosovo should devote administrative resources and most importantly appoint a **National Coordinator for RCC**, who will be able to actively contribute as well as make the appropriate link between Kosovo and RCC, in order to benefit from structures and projects of RCC and its regional initiatives.