



Non-Governmental Organization Emancipimi Civil Ma Ndryshe
EC MA NDYSHE

EC Ma Ndryshe contribution to the European Commission Report on Kosovo
Sustainable Development, Planning and Construction Challenges in Kosovo

November 2018, Prizren

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I. Entrance

Sustainable Development defines a development that meets the needs of the present without compromising the ability of future generations to meet their needs.¹ The concept of Sustainable Development has emerged as a need for a global long-term development guideline and relies on 3 main pillars: Social Development, Economic Development and Environmental Protection.

In this line, on 25 September 2015, the United Nations General Assembly endorsed the 2030 Sustainable Development Agenda, along with 17 Sustainable Development Goals (SDGs) and 169 specific targets.

Adopting the Agenda 2030 aimed at changing the global policy model for increasing the international cooperation towards development. The European Union (EU) is committed to implementing the SDGs, both in its domestic and foreign policies.

In the 2030 Sustainable Development Agenda, Goal 11 aims to make inclusive, safe, sustainable and resistant cities and settlements.

The EU's urban development policies specifically focus on supporting developing countries in the field of urban mobility, infrastructure systems, affordable housing and energy efficiency.

EU promotes sustainable urban development as one of the main pillars of the effective functioning of local governance.

At the United Nations Conference on Housing and Sustainable Urban Development, on October 20, 2016, in Kuito, Ecuador was approved the new Urban Agenda. The implementation of the New Urban Agenda contributes to the implementation of the 2030 Sustainable Development Agenda, in an integrated manner, and to the achievement of Sustainable Development Goals (SDGs), including Goal 11 to make cities and human settlements inclusive, safe, resistant and sustainable.

Sustainable development is one of the commitments of the European Union and therefore legal norms, public policies and enforcement practices constantly promote goals for smart, sustainable and inclusive development.

Kosovo in its legislation, has embraced the norms promoted by the EU, yet in terms of implementing good planning, construction and environmental practices still fails, challenging even the basic principles of sustainable and inclusive development. Thus, constructions in certain areas instead of providing the best living conditions have added problems that will accompany the community for a long time.

¹ World Commission on Environment and Development, 1987, link: <http://www.un-documents.net/our-common-future.pdf>, accessed on September 22, 2018

II. SAA fulfillment in the field of environment

Approximation of Kosovo's legislation with that of the EU in the field of environment has a dynamic of transposition on the medium level. Completely transposed are the directives on: Strategic Environmental Assessment; Environmental Impact Assessment and Public Participation. Directive on the Establishment of Infrastructure for Spatial Information is still being transposed. The implementation of directives on Environmental Responsibility and Environmental Crime are in the early stages.

Since SAA was signed, the Government of Kosovo each year prepares the National Program for the Implementation of SAA, according to the chapters and MESP prepares the part for Chapter 27, the Environment. For this year, according to MESP for implementation of Chapter 27 of the SAA, 21 measures are planned, out of which 47.62% or 10 are legislative measures (6 laws, 4 of MESP and 2 of MAFRD and 3 AI) and 52.38% or 11 are implementing measures (1 measure of MAFRD). According to MESP reporting on the fulfillment of the NPISAA for the 3rd quarter of 2018, it results that up to this period, MESP has met more than 60% of the planned measures.²

III. Eurocodes and Kosovo Construction Code

The construction sector in Europe has a strategic importance for member states, as it provides buildings and infrastructure that are needed for the economy and society. The value chain in construction includes a wide range of economic activities, from raw material extraction, construction materials production, to designing, constructing, management and

² E-mail Answer by Bajram Kadriu, Senior Communications Officer, MESP, 13 November 2018

controlling of construction works, maintenance, renovation, demolition as well as recycling of inert waste of construction. As such, the construction sector plays an important role in EU goals for smart, sustainable and inclusive development, and has a direct impact on the quality of life. EU policies on buildings aim at an integrated approach covering sustainability, in terms of energy and resource efficiency, health and safety issues.³

Safety of buildings and works in construction is of utmost importance. Eurocodes play an important role in this regard. They are a set of European standards that provide a common approach to the structural design of buildings and other construction works and are preferred references to technical specifications in public contracts. European standards provide tools for assessing and reporting the performance of buildings related to social, economic and environmental sustainability, covering the entire life cycle. They are used across the EU and are internationally promoted to set indicators and harmonized methods in different certification schemes.⁴

The Law on Construction of Kosovo entered into force in 2012. In this law, Article 6 foresees the drafting of the Kosovo Construction Code, in the spirit of EU technical standards, best international practices and existing circumstances in Kosovo.

³ "The European construction sector", Brochure 2016, European Commission, Internal Market, Industry, Entrepreneurship and SMEs Directorate General, Energy Directorate General, Joint Research Centre (JRC), qasur me 1 shtator 2018

⁴ Right there

It is further underlined that the purpose of the Code is to establish minimum requirements for the protection of public health, safety and general well-being through the necessary resistance to the structure of emergency spaces, balance and stability, sanitation, construction waste management, adequate lighting and ventilation, for energy efficiency and saving, and safety of life and property from fire and other hazards attributable to the construction environment as well as to provide safety for firefighters and other responsible persons in emergencies.

But MESP officials have acknowledged that the Unique Construction Code has not yet been approved. However, they have claimed that main parts of the Uniform Construction Code will be Eurocodes, together with national annexes, and as such may be complete for approval and implementation.⁵

IV. Implementation of legislation in the planning and construction sectors during 2018

Even though Kosovo is applying the approximation of its legislation to that of the EU, however, should increase efforts to apply planning and construction standards as practiced in EU member states.

a) *Illegal constructions*

The Law (Expired) on the Treatment of Illegal Constructions (No. 04 / L-188) was in force from February 2014 to February 2017, during which over 352 thousand illegal constructions were registered, which are included in the national

register and that only nearly 8,000 and 500 applications have been made for legalization.

The problems that have arisen during the implementation of this law (No. 04 / L-188) are aimed at being addressed into the new Law (No. 06 / L-024) on the Treatment of Illegal Constructions, which entered into force at the end of August this year.

According to MESP, the objective of this law is to improve the legalization process through increasing the effectiveness of the legalization process by reducing the number of documents required during the application for legalization and lowering the cost of the application.

Among the Kosovo professional community there are opinions that the Draft Law on dealing with illegal constructions has serious defects. According to them there are certain articles that are totally unacceptable.

As a problematic issue in the new law there is a provision concerning the "Waiting List".

Law no. 04 / L-188 ON TREATMENT OF ILLEGAL CONSTRUCTIONS, Article 12 defines that applications for legalization permits will be refused, upon inspection, if the competent body finds that: it is constructed on public property, respectively in the area of public interest, complying with the applicable laws; is built in the protected nature area and national parks; is built on the infrastructure corridors in the field of energy, transport and hydrosystem; is built in protected areas and special areas of cultural heritage.

Meanwhile, in the NEW LAW (No. 06 / L-024) FOR THE TREATMENT OF ILLEGAL CONSTRUCTIONS, Article 10 requires that within the waiting list to be included the illegal constructions erected in: public property; social

⁵ E-mail Answer by Bajram Kadriu, Senior Communication Officer, MESP, 13 November 2018

property; agricultural land under commasation and under irrigation system; specific areas, protected areas, special protected areas and special areas, including national parks; and infrastructural corridors, and for more the inclusion of a building in the waiting list does not prejudice the final decision to treat that construction under this Law.

The content of the new Law on Treatment of Illegal Constructions gives the impression that everything has been adapted to the needs of the National Property Rights Strategy in Kosovo (September 2016). But in addition to the National Strategy on Property Rights in Kosovo, the Government has also adopted the National Strategy for Cultural Heritage 2017-2027, with which cultural heritage is defined as an important pillar of sustainable development of the country. In this line, the new law on treatment of illegal constructions seems not to have consulted this strategy to the extent it has consulted the one on property rights in Kosovo.

a) Kosovo without Zonal Maps

The Ministry of Environment and Spatial Planning (MESP) as the central authority remains to implement the legislation that regulates the spatial planning. This ministry in April 2018 initiated the drafting of the Kosovo Zonal Map, a document that lacks in the planning sectors of central level. According to MESP officials, the compilation of Kosovo Zonal Map is foreseen to be completed within two years. In parallel with the establishment of the Kosovo Zonal Map in the process are the creation of the Municipal Zonal Maps (in 22 municipalities), for which according to the Law on Spatial Planning (LSP) are responsible municipalities, although according to this law the drafting of the Municipal Zonal Maps should be based on Kosovo Zonal Map, Municipal

Development Plan and Technical Spatial Planning Standards.

LSP provisions require municipalities to "encourage and ensure public participation in the process of drafting and implementing spatial planning documents". The Mayor of Prizren municipality in September publicly admitted that the process of creating the Municipal Zonal Map was characterized by a small number of meetings with the public. But public meetings for mapping the Zonal Map in Prizren have intensified since the end of October.

b) *Outdated and unimplemented plans*

Prizren Municipality officials at the same time stated that the General Urban Plan of Prizren is outdated and does not match the reality on the ground. According to them, this plan has been implemented at a low level, because where the roads have been foreseen, buildings have been built and where the dwellings are foreseen, industrial constructions have been made. However, EC monitoring shows that neither the Prizren Municipal Development Plan that is in force has been implemented in high percentage by the Municipality and needs to be revised.

c) *Low involvement of citizens in planning and decision-making*

The principles for transparency and accountability of public authorities as well as those of their obligation to involve citizens in decision-making and planning are standardized in the legislation of the Republic of Kosovo, taking into account both EU standards and good international practices. However, in practice, there are still significant problems with the implementation of this legislation, which results

in low transparency of Municipalities and bodies of the Government of Kosovo, which is then translated into low awareness and low participation of citizens in public hearings on different policies of local and central level, particularly in the sphere of planning and construction.

A major challenge in this regard are the plans for the construction of mini-hydropower plants in the Prizren region, which have prompted the reaction of the citizens of the Lumëbardh Valley (Zhupë), a zone inhabited mainly by members of the Bosnian community, whose representatives worried in this regard have also presented them to the leaders of the Government of Kosovo. Similar concerns from the community have also been addressed in the Gora area, by members of the Gorani community. Citizens of these areas have expressed the view that they have no knowledge of these plans and that institutions have not included them in the public consultation process. These plans, which remain non-transparent to the public, must at the same time ensure respect for nature protection obligations.

At the same time, Prizren municipal authorities in this mandate have voiced opposition to the construction of mini-hydropower plants in the Lumbardh Valley area. They have even pointed out that the mayors agreed to ban some harmful processes on this side, such as the construction of hydropower plants, as according to them they would destroy the environment in this area, while the community is also against.⁶

⁶ Discussion of Mayor of Prizren, Mytaher Haskuka in Public Debate: "Inclusion of Sustainable Development Principles within Communities in Kosovo", organized by the Municipality of

In mid-November, municipal authorities in Prizren, after talks with community representatives, have made public the stance that they will not issue construction permits for mini-hydro power plants in Zhupë.⁷

d) *Legal violations relating to construction permits*

Mini-hydropower plants are not the only concern expressed by Prizren municipal authorities on defects inherited from past government in planning and construction.

In April this year, Prizren Municipality officials identified 34 suspicious cases of legal violations related to construction permits, surpassing permits and illegal constructions, and these cases were handed over to the prosecutor's office to initiate investigations into potential misuse. According to them there are suspicions that there have been violations of the provisions of the Law on Water, then the Law on Historic Center of Prizren, the Law on Cultural Heritage, the Law on Railways.⁸ This number of cases according to the latest information has gone to 40.

According to local authorities, the Municipality of Prizren for more than six months could not

Prizren, [Balkan Green Foundation](#) and [Kosid](#), on 12 September 2018.

⁷ Post at FB, Mayor of Prizren, Mytaher Haskuka, link: <https://web.facebook.com/mhaskukaa/photos/a.276065886198262/560035537801294/?type=3&theater>, accessed November 17, 2018.

⁸ Statement by the Mayor of Prizren during the press conference held on 10 April 2018 in the Municipality of Prizren.

issue any construction permits as a consequence of the court decision to suspend the implementation of the MDP, GUP and 2 RP related to the usurpation claims of the properties of the Railways, respectively construction in its belt without a legal basis. For the drafting of spatial planning documents, the former government in Prizren did not involve the "Infrakos" process at all.

To unblock this court decision, the municipality has been forced to enter into an agreement with the Infrakos company, which manages the railways, obliging them, together with their field team, to release the railroad track. In September 2018 the Inspectorate's action in the area for the release of occupations has started in cases where there are constructions on the property of the Railroad. While in terms of high constructions, most of them are built outside the property of "Infrakos" and the Municipality has emphasized that they will not be interfering with them, but stressed that for these constructions the previous government issued permits contrary to Law on Railways, as by legislation it is foreseen that the construction line should be 25 meters away from the railway axis.

According to Mayor Haskuka, some former executive directors and other officials of the Municipality of Prizren are being investigated by the Basic Prosecution in Prizren on suspicion of misuse of official duty in connection with this issue.⁹

⁹ Post at FB, Mayor of Prizren, Mytaher Haskuka, link: <https://web.facebook.com/mhaskukaa/photos/a.278298095975041/529319354206246/?type=3&theater>, accessed on October 11, 2018

In July, the Basic Prosecution of Prizren announced that they filed 18 indictments against persons suspected of usurping the property of Kosovo Railways in this city. This body of prosecution emphasized that it is working in 31 other cases of this nature. The Prosecution Officers in Prizren claimed that in addition to occupancy cases, the officials of public institutions that have allowed those illegal constructions or have issued construction permits in the area contrary to legislation are now being investigated,

e) Mixing of central and local level competences

At the end of August, Prizren municipal authorities considered several decisions of the Legal Office of the Ministry of Environment and Spatial Planning as unilateral and in defense of the parties that violated the law, as in the area of the Historic Center of Prizren as well as in other parts of the city. They have considered them impracticable and undermining to the the public interest. According to the Municipality, this Office of MESP has intervened in some cases when the Municipality has attempted to implement law and order in the construction sector, enabling the parties to continue activities contrary to the legislation in force.

The last case was the intervention at the shopping center, under construction, on the "Tirana" road. Despite the fact that in the record, the investor stated that he would demolish the part of the building that was built in the area foreseen for municipal roads, MESP officials sent a decision to the Directory of Inspectorate of the Municipality, which annuls the decision where the party has accepted itself to demolish. The municipality has considered that non-consultation of the MESP with municipal authorities before the decision is

taken, makes it impracticable and undermines the public interest. This decision, according to the press release of the Municipality there is no legal basis that prevents the municipal officials to act on the case in question.

The Municipality has accused the MESP legal office that in recent cases has acted unilaterally against the decisions of the Municipality of Prizren, attempting to amnose the misdemeanor caused in the last decade and has requested that investigative bodies initiate investigations against the Legal Office in MESP for interference in the decisions of the Municipality.

f) *Low Transparency for Spatial Planning Document*

On the other hand, the transparency of municipal bodies regarding public disclosure of spatial planning documents that are at local level responsibility for their design and implementation is low. Moreover, it has created problems for the living environment of residents in different parts of the city. During the monitoring, EC has encountered cases where the Regulatory Plan has been fully adopted for the needs of construction businesses, without taking into account the needs of the surrounding residents and not involving them at all in the process.

All this situation has had a negative impact on the development of civic activism. Meanwhile, urban concerns of Prizren citizens remain at baseline levels, mainly related to freedom of movement, damage to cultural heritage and the environment, which should be addressed so far from the local level.

g) *Workplace fatalities, mainly in the construction sector*

Meanwhile, the situation in the construction sector is extremely unfavorable for the workers engaged there, in terms of safety at work. Incidents of workers in the workplace result in serious bodily injuries and up to fatality cases. The media reported that in 2018, 22 workers were killed in the workplace, mainly in the construction sector.¹⁰ This number is higher than in 2017. The organization has tried to confirm the data from the Labor Inspectorate and MLSW, but has not received an official response.

V. Cultural heritage suffers from disunification of institutional actions

Incidents of demolition of cultural heritage buildings have continued. Local and central level institutions have not unified the actions between themselves to stop these cases. The actions of the justice system organs in this respect have remained stagnant.

The Task Force established in 2014 to deal with illegal constructions at the Historic Center of Prizren was not efficient. In the current mandate of the Government of Kosovo were appointed new members of this Task Force, who held two meetings.¹¹

¹⁰ "101 employers in the construction sector stopped working, no conditions", koha.net, link: <https://www.koha.net/arberi/129627/101-punedhenesve-ne-sektorin-e-ndertimitise-u-responsive-work-ska-condition/>, accessed on November 18, 2018.

¹¹ E-mail Answer by Bajram Kadriu, High Command Officer, MESP, 13 November 2018

More efforts are still needed to ensure adequate protection and management of cultural heritage throughout Kosovo.

MCYS at the beginning of this year has functionalized the Cultural Heritage Inspectorate. This Inspectorate at the country level has filed 6 penal reports (5 in Prizren and 1 in Pejë).¹²

The MCYS budget for the CH conservation, protection and promotion program has increased since 2016 in all budget categories, respectively in the line of subsidies and capital investments (over 3 million in 2016, close to 4.9 million euro in 2017 and over 5.7 million euros in 2018). This budget supports the activity of subordinate institutions of cultural heritage (Kosovo Institute for the Protection of Monuments, Kosovo Museum, Kosovo Archaeological Institute and 6 regional cultural heritage centers).¹³ MCYS has invested funds for emergency interventions in Prizren's cultural heritage buildings. On May 28, 2018, a Letter of Agreement was signed in Prizren for the drafting of the project "Revitalization and socio-economic integration of the local community on the Marin Barleti road" at the Historic Center of Prizren. The agreement was signed by the Minister of Culture, Youth and Sports, Kujtim Gashi, Head of EU Office in Kosovo, Nataliya Apostolova, Mayor of Prizren Municipality, Mytaher Haskuka, representative of the British Embassy, Chablise Stoner and Executive Director of EC Ma Ndryshe Mr. Edon Mullafetahu. The main purpose of the project is to create a positive example of urban

regeneration that will affect the preservation of the historic character of the city and provide optimal conditions for preserving the values of cultural heritage and sustainable local development. The project consists of two main components, that of conservation and local development.

MCYS has estimated that 2018 was followed by some damages to cultural heritage assets as a result of the lack of law enforcement for CH and HCP from the Municipality of Prizren, including the majority of municipal directories. The Directory of Urbanism, although based on the provisions of the Law on HCP, is obliged that all requests for urban planning projects, construction, demolition or alteration of buildings, for changing their destination, development of temporary activities or any other development within the Historic Center of Prizren, to hand over RCCH Prizren and the Council for Cultural Heritage, the same has skipped this procedure many times, thereby caused damage to the cultural heritage assets of the Historic Center.

Also, according to MCYS, the Municipality of Prizren, by exceeding its authorization has taken actions to intervene with HCP, by regulating the infrastructure without the consent of the competent bodies of cultural heritage.

MCYS has supported the drafting of the Management Plan, which has been compiled by civil society representatives with broad involvement of all other stakeholders, and has also warned for the support of the unique Marin Barleti project (within the Historic Center). But was emphasized that the adoption and implementation of the Management Plan

¹² E-mail Answer by Samir Hoxha, Advisor to MCYS Minister, November 6, 2018

¹³ Po aty

for the Historic Center of Prizren in these circumstances seems to be difficult.

VI. Statistics of Justice System Bodies for Illegal Construction and Destruction of the Cultural Heritage in Prizren

The number of cases handled by the justice system authorities regarding illegal constructions and destruction and damage to cultural heritage remains small.

Statistics of the Basic Prosecution in Prizren for January-September 2018 cases involving illegal constructions, exceeding permits and damage and destruction of cultural heritage monuments in the Historic Center of Prizren show a small number of indictments against the suspects for these criminal offenses.

According to the Prosecution, the number of transferred cases from the previous period amounts to 6 criminal charges with 6 persons, received at work (January-September 2018) 2 criminal charges with 5 persons, which means that the total of cases at work are 8 criminal charges with 11 persons. Investigations have started with 2 criminal charges with 2 persons, while 3 indictments have been filed for 4 persons, whilst at work remain 5 criminal charges with 7 persons.¹⁴

According to media reports, the Basic Prosecution Office in Prizren has filed a total of 18 indictments for 31 persons for the period from January 2013 until September 2018 for

damaging the cultural heritage monuments in the Historic Center of Prizren.¹⁵

The Basic Court of Prizren has announced that during 2018 (time period until the end of October) regarding Article 364 of the Penal Code (Unauthorized Works and Acquisition of Cultural Monuments) there are no cases in the procedure.

Meanwhile, according to Article 363 of the Penal Code (Damage, destruction and unauthorized issue of protected monuments or objects outside the Republic of Kosovo), 1 case was transferred from the previous year, whereas by October 2018 3 more cases other appeared, with a total of 4 cases. Of these, 1 case was solved and 3 cases are under way.¹⁶

According to media reports, in the Basic Court of Prizren during 2013 and 2014, no case has been addressed regarding the damage to cultural heritage assets. In 2015 there were two cases at work, whereas in 2016 two cases were transferred, a new case was registered, no case was solved and three cases remained for the following year 2017, all related with Article 363 of the Penal Code. In 2017, three cases were

¹⁵ "Nobody punishes the Cultural Heritage Destroyers in Prizren, kallxo.com, link: https://kallxo.com/gjnk/shkaterruesit-e-trashegimise-kulturore-ne-prizren-si-ndeshkon-askush/?fbclid=IwAR2x-onynugZujQW7xoMWNyuy06F8x8d66Q1_RRyRneyuoxKC8KUWkr_HCO, accessed on 20 November 2018.

¹⁴ Response by email from the Office of Information on Basic Prosecution of Prizren, 9 November 2018.

¹⁶ Response by email from the Information Office of the Basic Court of Prizren, 30 October 2018

transferred, of which two were solved with a fine and one case remained unsolved.¹⁷

These statistics also point the low implementation of sanctioning provisions. This approach of institutions has created and developed the culture of impunity in relation to cultural heritage in the Historic Center of Prizren.

VII. Challenges for the Protection of Natural Heritage in Kosovo

Beside the Cultural Heritage, there are many challenges in Kosovo for the protection of natural heritage. Protected areas face the risk of degradation, where illegal constructions should be prevented.

According to MESP, the current challenges for the protection of natural heritage in Kosovo are: Lack of Spatial Plan and Management Plan for the National Park "Bjeshkët e Nemuna"; Lack of regulatory plans for third areas in National Parks; Lack of professional staff for nature protection; Lack of management bodies for (some) protected areas; Construction, hunting and illegal logging in protected areas; Lack of funds for nature protection, etc.¹⁸

¹⁷ Nobody punishes the Cultural Heritage Destroyers in Prizren, kallxo.com, link: https://kallxo.com/gjnk/shkaterruesit-e-trashegimise-kulturore-ne-prizren-si-ndeshkon-askush/?fbclid=IwAR2x-onynugZujQW7xoMWNyuy06F8x8d66Q1_RRyRneyuoxKC8KUWkr_HCO, accessed on 20 November 2018.

¹⁸ E-mail Answer by Bajram Kadriu, High Command Officer, MESP, 13 November 2018

VIII. Recommendations

- Central and local level authorities efficiently implement legislation on the environment, planning, construction and protection of cultural heritage;
- The Unique Construction Code shall be approved in the shortest possible timeframe;
- Increase citizen participation in planning and decision-making, in the environment, planning, construction and protection of cultural heritage;
- Harmonize central and local level competencies in the environment, planning, construction and protection of cultural heritage;
- Legal violations relating to construction permits and destruction of cultural heritage buildings to be addressed by the judiciary more efficiently;
- The Task Force for the Historic Center of Prizren should intensify its engagement and be transparent to the public;
- Approval and implementation of management plans for Kosovo's Historic Centers
- To increase the measures that raise the safety at work, especially in the construction sector;
- Address existing challenges for the protection of natural heritage and prevent illegal constructions in protected areas.



This study was drafted by EC Ma Ndryshe, with the support of the Kosovo Foundation for Open Society. The views expressed in this publication do not necessarily reflect the views of the Kosovo Foundation for Open Society (KFOS).