Op-ed

SAA Implementation as a Process of Europeanisation of Institutions: Public Administration Reform

Provisions of the EU – Kosovo Stabilisation and Association Agreement in the area of public administration reform are part of Title VIII, on Cooperation Policies. Unlike areas related to internal market, trade and the rule of law, in which, pursuant to Article 74, adoption of the EU acquis/legislation (its approximation and enforcement) is required during the first three – five years of its implementation, in these areas the SAA does not set binding timeframes for acquis adoption. Their nature varies, from those strictly regulated by acquis, such as environment, to those mainly regulated by ‘soft’ acquis, such as public administration. Nevertheless, public administration reform constitutes one of fundamental areas under the SAA, with contractual obligations whose fulfilment is continuously evaluated through legally binding dialogue between the parties.

Since there are no strict acquis rules, in the area of public administration Kosovo is obliged to gradually adopt EU standards, with a view to establishing functional and stable institutions with adequate capacities to meet the formal, governance obligations deriving from the SAA in all areas and to contributing to the country’s overall socio-economic development. Specifically, pursuant to the SAA Article 120, the purpose of EU – Kosovo cooperation on public administration is the establishment of a professional, efficient and accountable public administration, in particular to promote the rule of law, proper functioning of institutions at the service of citizens and further development of relations between the parties. As far as the scope is concerned, reforms both levels of government (including independent institutions) will focus on institution-building (in particular transparent, impartial and merit-based recruitment in the whole public service), human resource management, career development in the public service, training, as well as promotion of ethics.

As part of the concept of conditionality, public administration reform plays a central role in fulfilment of the Copenhagen membership Criteria, and therefore in the effect of this EU enlargement policy instrument. Viewed politically vis-à-vis the goal of Kosovo’s European integration policy (accession to the EU), fulfilment of SAA obligations in this policy area directly contributes to the fulfilment of political criteria: creation of stable institutions guaranteeing democracy, the rule of law and respect for human and minority rights. On the other hand, seen in terms of functionality of institutions, i.e. vis-à-vis state-building and EU membership, implementation of the respective provisions directly contributes to the fulfilment of European standards: development of adequate institutional capacities to implement EU legislation and to assume obligations of membership.

This implies two things. On the one hand, public administration reform as a function of political criteria implies that the sooner and more proper the fulfilment of SAA obligations in this area, the more stable institutions guaranteeing democracy, rule of law and respect for human and minority rights. On the other hand, public administration reform as a function of European standards implies that the sooner and more properly we fulfil these obligations, the more capable we will be to enforce the EU legislation, as part of the domestic legal order, and to assume obligations as an EU member state following the accession.

Therefore, seen from the perspective of implementation of the SAA and furthermore up to the actual accession and afterwards, public administration reform can be analyzed in three dimensions: politically, in terms of institutional reforms in all acquis areas, and as a public policy area. While the former two are functional aspects, the third one has to do with the content. The first two demonstrate the reason
behind the existence of public administration reform as a policy area, while the third one shows concrete reforms to be undertaken to fulfil obligations arising from Article 120.

Këto tri përmasa refleksionen në të gjitha nivelet dhe segmentet ku procesi i zbatimit të MSA-së merr formën konkrete, sikur në të gjitha fushat e tjera të acquis-së dhe më gjerë. Zbatimi i reformave për përmbushjen e detyrimeve të MSA-së në këtë fushë zhvillohet përmes dy instrumenteve: organëve të përbashkëtë BE – Kosovë të krijuara nga kjo marrëveshje (strukturave të stabilizim-aseshimit) dhe planifikimit të politikave. Të dyja këto instrumente kanë të integruar funksionin e monitorimit dhe raportimit, i cili kryhet nga institucione vendore dhe ato të BE-së përgjegjëse për këtë fushë. Organi kryesor i përbashkëtë i stabilizim-aseshimit për këtë fushë është Grupi i Veçantë për Reformën e Administratës Publike, ndërsa në nivel më të lartë të vendimmarrjes Komiteti dhe Këshilli i Stabilizim-Asesiimit gjithashtu luajnë rol të rëndësishëm. Planifikimi i politikave zhvillohet përmes dy dokumenteve kryesore: Agjendës për Reforma Evropiane (ERA) dhe Programi Kombëtar për Zbatimin e MSA-së. ERA trajton prioritetet kyçe me rëndësi politike për zbatimin e MSA-së (aktualisht 22 syres), ndërsa Programi përben kornizën për planifikim afatshkurtër dhe afatmesëm deri në fillimin e negociatave për anëtarësim dhe pas kësaj. These three dimensions are reflected at all levels and segments where the SAA implementation process takes its concrete form, as in all other acquis areas and beyond. Implementation of reforms to fulfil SAA obligations in this area takes place through two instruments: joint EU – Kosovo bodies established by this Agreement (stabilisation and association structures) and policy planning. Both these instruments have the monitoring and reporting function within them, which is carried out by domestic and EU institutions responsible for this area. The main joint stabilisation and association body in this area is the Public Administration Reform Special Group, while, at higher decision-making levels, the Stabilisation and Association Committee and the Council also play an important role. Policy planning takes place through two main documents: European Reform Agenda (ERA) and the National SAA Implementation Programme. ERA addresses key priorities of political importance to the implementation of the SAA (currently 22 of them), while the Programme constitutes the short- and medium-term planning framework up to the commencement of membership negotiations and thereafter.

The political dimension of public administration reform is based on the ‘fundamentals first’ guiding principle, according to which this area is treated by the EU as one of the three cross-cutting pillars of the accession process (in addition to the rule of law and economic reforms). The formal instance of the reform dialogue at the political level is the High Level Dialogue on Key Priorities, established last year, while ERA is its planning instrument. The latter contains six priorities that are relevant for public administration reform (as part of the first pillar, titled Good Governance and the Rule of Law), which essentially require the following: prevention and fighting of corruption and conflict of interest in the entire public service; improvement of accountability of independent agencies and other related institutions and of regulators, including through depoliticisation of their governing bodies (and those of public-owned enterprises); establishing the basic legal framework on functioning of the public service (governing their organisation, wages and the Civil Service); and implementation of e-procurement.

The political importance of these priorities lies in implementation of reforms for establishment of good governance and the rule of law in the functioning of public administration, without which there can be no successful implementation of the SAA in the 35 acquis areas. With the streamlining of organisation and functioning of the entire public service, including compliance with the ‘equal pay for equal work’ principle, public institutions will become functionally more rational, and therefore with less discretion for arbitrariness outside the law vis-à-vis citizens and the use of public resources. Another positive result of these reforms will be the narrowing of space for manoeuvre for political parties to take advantage of
public institutions for narrow interests that are directly and exclusively related to obtaining political power (be it through wage increases as an election campaign tool, in disproportion with state budget revenues). This will prevent any entrenchment of interests between policy-makers and administration outside of mutual obligations defined by law (including through transition from conventional to e-procurement).

On the other hand, the second dimension of public administration reform – as a process of institutional reforms with a view to ensuring preparedness for adoption of the EU legislation and assumption of membership obligations, namely as a precondition for implementation of European standards – is determined by the third dimension: that of the public administration reform as a policy area. More specifically, successful implementation of the SAA and the conclusion of membership negotiations require that all institutions responsible for implementing reforms in the 35 acquis areas operate in full compliance with the principles of public administration reform, as well as concrete reforms deriving from these principles.

Specifically speaking, the third dimension contains six principles, developed and implemented by the SIGMA (Support for Improvement in Governance and Management) facility, a joint initiative of the EU and the Organisation for Economic Cooperation and Development (OECD). These principles are the following: (1) strategic framework, (2) policy development and coordination, (3) public service and human resource management, (4) accountability, (5) provision of services, and (6) public financial management.

The first principle requires that the reform be effectively led and that the strategic framework serve as a basis for implementation of priority reforms in all areas, in line with financial capacities available to the Government. The second principle requires that the ‘centre of Government’ institutions (which include the Office of the Prime Minister, Ministry of Finance and the Ministry of European Integration) perform all functions that are critical to a system of well-organized, consistent and competent policy-making system. The third principle requires a clear definition of public service and practical application of this definition, as well as setting of the legal, policy and institutional reforms in line with this. The fourth principle requires establishment of appropriate mechanisms to ensure accountability of state administration bodies, including their liability and transparency. The fifth principle requires that public administration is citizen-oriented and ensures the provision of public services in a qualitative and accessible way. The last principle requires that the budget be formulated in accordance with transparent legal provisions and within a multi-year umbrella framework, ensuring stability of budget balance of the entire government and of the ratio between debt and gross domestic product.

The significance of these principles for implementation of SAA provisions on public administration reform is that they constitute an instrument through which Kosovo's progress (along with that of all other accession countries) in fulfilling them is evaluated.

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