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FOR MINORITY
ISSUES KOSOVO

Kosovo Legislative Process:

Handbook for Community Political Participation Bodies

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I. Introduction

Providing full and effective participation of non-majority communities in public affairs is one of the pre-condition for integration of all communities within one multi-ethnic state. International standards have evolved to nowadays encompass a broad range a measures. Guarantees for participation of non-majority communities – from representation within the highest level of government, civil service, judiciary, but also in elected bodies both at central and local levels – coupled with provision for preservation and further development of identities, "is necessary to offer to their members a sense of shared ownership of the state." Further, conditions shall be in place to ensure that non-majority community views can be conveyed and taken into account within the development of public policies.

The legislative process is a major, if not the most important stage of definition of a state public policy. As such, in Kosovo, various layers of guarantees have been designed to ensure that the rights of non-majority communities are respected in the developing legislation, but also to provide representatives of non-majority communities with the opportunity to have their views considered and integrated within laws and sub-legislative acts.

Among the various layers of guarantees, the existence of three community political participation bodies – the Office for Community Affairs (OCA), the Consultative Council for Communities (CCC) and the Parliamentary Committee on the Rights and Interests of Communities (CRIC), mandated to ensure integration of community interest within the developing legal framework is of significance. This Handbook provides these bodies with a comprehensive overview of the legislative process in Kosovo, identifying respective roles of these political participation institutions for communities, as well as recommendations to enhance cooperation and increase effectiveness of their actions.

II. Background to the Legislative Process in the Republic of Kosovo

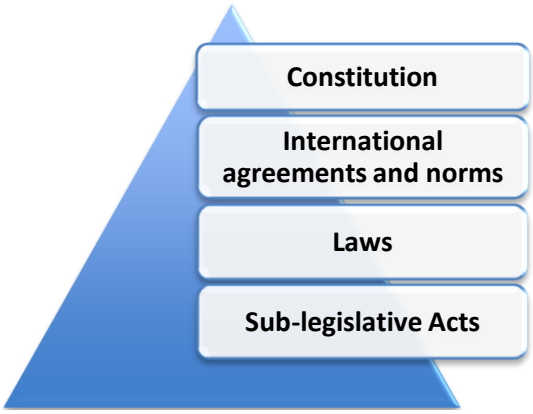
This chapter provides a framework of references for information presented in the following chapters. It outlines specificities of the each type of legal act and hierarchical relations among them. Following, it highlights the role of the relevant bodies involved in the legislative process – both within the legislative and executive branches of the State.

A. Types and Hierarchy of Legal Acts

An essential feature of every legal order is the existence of various types of legal acts, with each of them attributed specific place within a hierarchy of legal norms. This differentiation and hierarchy of legal acts/norms preserves the logic of the legal order and prevents confusion that might arise from conflicts between two or more norms with contradicting content.[1]

The Constitution determines the hierarchy of norms as follows:

1. The Constitution
2. Ratified international agreements and legally binding norms of international law
3. Laws (primary legislation)
4. Sub-legislative acts of the Government of Kosovo (secondary legislation)



1. Constitution

In the Republic of Kosovo, and other domestic orders, the Constitution is the highest norm[2] Every physical person and legal entity in the Republic of Kosovo, including states bodies, is subject to its provisions.[3] The sovereignty of the Republic of Kosovo

[1] Towards a Hierarchy of Legal Acts in the European Union? Simplification of Legal Instruments and Procedures
[2] Constitution of the Republic of Kosovo, Article 16
[3] Constitution of the Republic of Kosovo, Article 16

stems from its citizens, belongs to them and must be exercised in compliance with the Constitution.[4]

The constitutional order of Kosovo is based on the principles of peace, democracy and equality.[5] The Constitution, in its second chapter, establishes human rights and fundamental freedoms as indivisible, inalienable and inviolable basis of the Kosovo legal system.[6] Everyone enjoys fundamental rights and freedoms and must respect these of others.[7] The third chapter of the Constitution deals with the rights of communities and their members. Article 59 contains the list of communities' rights, which must be granted to their members and secured by the state.[8]

2. Ratified international agreements and legally binding norms of international law

According to the Constitution international agreements are ratified by two thirds vote of all deputies of the Assembly if they deal with:

- Territory, peace, alliances, political and military issues;
- Fundamental rights and freedoms;
- Membership of the Republic of Kosovo in international organizations;
- The undertaking of financial obligations by the Republic of Kosovo;[9]

International agreements that are aimed at governance of different matters then those listed above are ratified upon signature of the President of the Republic of Kosovo.[10]

International agreements, that Kosovo has subscribed to, become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo.

Legally binding norms of international law refers to rights and prohibitions, which, due to historical and political developments, as well as their importance, are nowadays recognised as applying to every state, even if the state as not expressively agreed to be bound by with these norms. A well-known example is the prohibition of torture.

Both international agreements ratified by Kosovo and legally binding norms of international law have, in the Kosovo domestic order, precedence over the laws of the Republic of Kosovo.

[4] Constitution of the Republic of Kosovo, Article 2.1
[5] Constitution of the Republic of Kosovo, Article 7.1.
[6] Constitution of the Republic of Kosovo, Article 21.1.
[7] Constitution of the Republic of Kosovo, Article 21.3.
[8] Constitution of the Republic of Kosovo, Article 59.
[9] Constitution of the Republic of Kosovo, Article 18.1.
[10] Constitution of the Republic of Kosovo, Article 18.2.

3. Laws and Sub-legislative Acts

All domestic legal acts – Laws and sub-legislative acts, are subordinated to the Constitution and therefore must be in accordance with principles defined by it. They also have to be consistent with international provisions by which the Republic of Kosovo shall abide.

Laws are the principal type of primary legislation. A law can only be adopted by the Assembly of the Republic of Kosovo – elected body representative of Kosovo citizens.

Legislation of Vital Interests

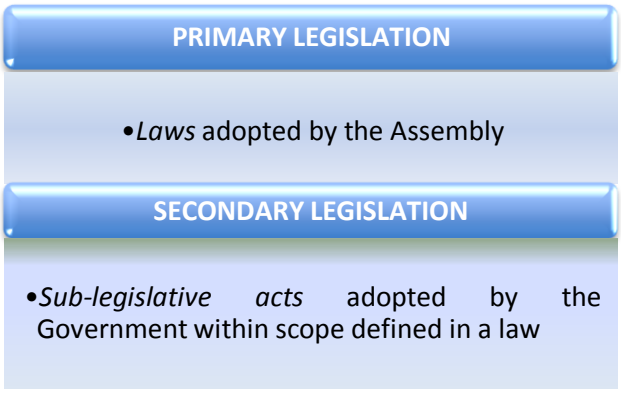
Among guarantees for protection of community interests is the qualification of certain laws as Legislation of Vital Interest.[1]

These laws are the one related to:

- use of languages;
- protection of cultural heritage;
- education; and
- changes to municipal boundaries.

To adopt, amend or repeal these laws, a double majority is required: majority of all deputies (the 120 seats) and majority of non-majority communities' representatives (the 20 reserved seats).

Sub-legislative acts – also referred to as secondary, delegated or subordinate legislation – are adopted by executive bodies. Sub-legislative acts can only be enacted by an executive body in order to implement a law, i.e. if a legal basis for such act exists. Sub-legislative acts must therefore strictly comply with provisions of primary legislation. We can therefore conclude that, while sub-legal acts are adopted by the executive branch, the authority to enact is de facto delegated to the executive by the legislative.



4. Special Status of Acquis Communautaire

Acquis Communautaire (Acquis) is the entire body of European Union (EU) rights and obligations applicable to every EU member states. This term includes all treaties, legislation, EU Court judgements, all types of decisions from the field of foreign and security policy and justice and home affairs, as well as so-called soft law.[11]

The integration of the Acquis in the domestic legal order, in the legislation, institutional framework and public administration, is the precondition for accession into the EU. Each state that aims to become an EU member is obliged to progressively apply the Acquis.

The progressive integration of the Acquis into the Kosovo legal system is governed by the European Union Integration Programme and the European Partnership Action Plan for Kosovo (EPAP). These documents define objectives and actions that Kosovo needs to fulfil in imparted deadlines. They are divided between in types of criteria that need to be met by Kosovo in the fields of politics, economy and EU standards. The political criteria include democracy and rule of law, which deals with the functioning of the executive, legislative and judicial institutions, as well as fight against corruption. The second element within political criteria concerns protection and enforcement of human and non-majority community rights.

B. Institutions involved in the Legislative Process

The institutions involved in the legislative process of the Republic of Kosovo can be divided into two groups. The first group is the legislative branch of the state, including the Assembly, its Presidency, parliamentary groups and parliamentary committees. The second is the executive branch – the government and its constituencies.

1. The legislative branch: the Assembly and its constituents

The Assembly is the highest legislative institution of the Republic of Kosovo directly elected by its citizens.[12] The good functioning of the parliament[13] is a prerequisite for democracy in any society.[14]

The Assembly performs three main functions: representing the interest of its electorate, overseeing the work of the government (scrutiny) and adopting laws. Within these three categories, the Assembly has the following competencies:

[11] The term soft law means non-binding legal acts of the European Union (for example a declaration).
[12] Constitution of the Republic of Kosovo, Article 63.
[13] The term 'Parliament' is synonymous with the term 'Assembly'
[14] National Democratic Institute for International Affairs (NDI), New Mandate, New Opportunities: Evaluation of the work of the Assembly of Kosovo and recommendation for further development, Prishinë/Priština, October 2008, p. 8.

- Overseeing the work of the Government and other public institutions that report to the Assembly[15]
- Electing the Government and expressing no confidence in it
- Electing and dismissing the President
- Approving the yearly budget of the Republic of Kosovo
- Adopting laws (primary legislation), resolutions and other general acts (sub-legislative acts)
- Ratifying international treaties
- Announcing referenda

The Assembly consists of 120 deputies elected by secret ballot on the basis of open lists.

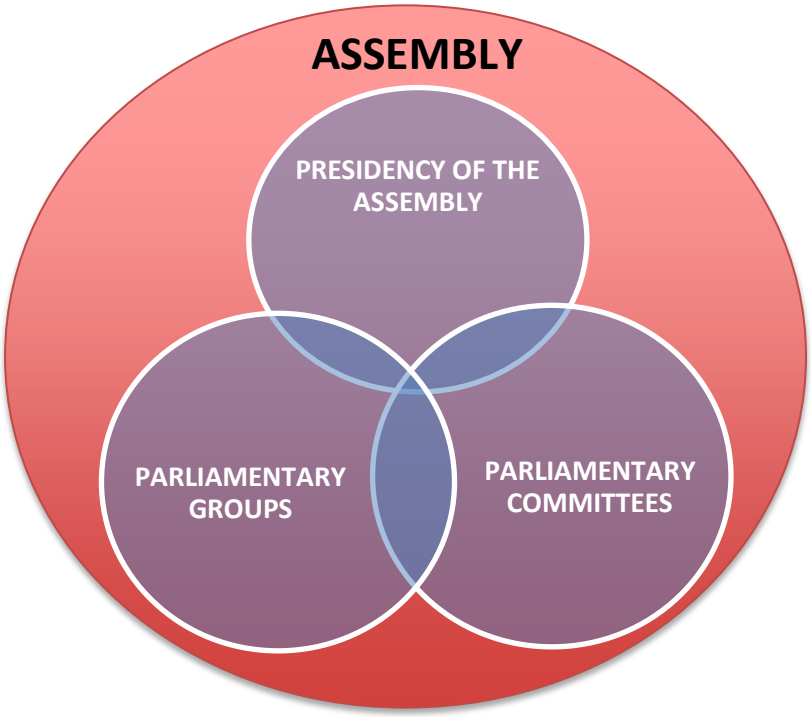
For election of the Assembly – or general election, Kosovo is considered as one electoral district.[16] Kosovo electoral system is based on proportional representation. Voters express support to one political party and, within it, one candidate. Seats are then attributed according to the percentage of votes received by each political entity that has at least gotten 5% of total valid votes. Within seats won by a political entity, candidates that have received more popular support in the vote get to represent the party.

However, in order to guarantee political participation of all communities in the Assembly, out of hundred and twenty (120) seats, twenty (20) are guaranteed to non-majority communities. These seats are attributed according to proportional representation, but only among political entities representing interests of a specific community. Accordingly, ten (10) seats are reserved exclusively for political entities having declared representing the interest of the Serbian community, three (3) for the entities representing the Bosnian community interests, two (2) for the Turkish, one (1) respectively for political entities representing the Ashkali, Egyptian and Roma communities. An additional seat is also reserved for the political entity that has won the most votes among the ones representing the interest of the Ashkali, Egyptian or Roma communities. Finally, if the 20 seats are not all allocated as previously explained, the Gorani community will be granted one (1) seat as well.[17] This ensures the minimum representation of Kosovo non-majority communities within the Assembly. However, representation of non-majority communities is not limited to these 20 seats and can increase based on the elections results.

The Assembly is elected for a mandate of four years. Only under special circumstances, such as state of emergency, danger to Constitutional order or to public safety, can the mandate of the Assembly be extended.[18]

[15] Constitution of the Republic of Kosovo, Article 65.
[16] Law on General Election in the Republic of Kosovo [No. 03/L-073], Article 110.1.
[17] Constitution of the Republic of Kosovo, Article 64.2(2).
[18] Constitution of the Republic of Kosovo, Article 66.

The Assembly proceeds through the sessions (meetings), which are public and can be closed only upon the request of the President of Kosovo, the Prime minister or one third of the deputies of the Assembly.[19]



a. The Presidency of the Assembly

The Presidency of the Assembly is responsible for the administrative operations of the Assembly. As such, the Presidency ensures the respect of the Rules of Procedures of the Assembly.

The Presidency prepares the work programme of the Assembly, including ensuring its compatibility with the Government legislative strategy[20], proposes the number and structure of parliamentary committees,[21] for approval by the Assembly, after consultation with all parliamentary groups,[22] and ensures that any substantial motion[23] is put on the agenda of the Assembly meeting in the imparted delay.[24]

The Presidency is composed of a President and five Deputy Presidents. Members of the Presidency are elected by a majority vote of all deputies. The largest parliamentary group always proposes the candidate for the presidency. In order to provide for representation of non-majority communities within this organ, three of

[19] Constitution of the Republic of Kosovo, Article 68.
[20] For information about the legislative strategy, please refer to chapter XX below.
[21] Information on the parliamentary committees is presented in chapter XX below.
[22] The role of parliamentary groups is explained in the next section.
[23] For a definition of substantial motion, please refer to p.xxx
[24] Rules of Procedure of The Assembly of the Republic of Kosovo, Article 15.

the five deputy presidents are elected among the candidates proposed by the three largest parliamentary groups and two deputy presidents represent non-majority communities in the Assembly.[25]

b. Parliamentary Groups

A parliamentary group is a political formation consisting of at least six deputies (5% of the Assembly members) who share a common political aim. Usually, parliamentary groups are organised along political party lines. Each group has a head, which represent the group's position during proceedings of the Assembly, a secretary, one expert assistant and an administrative assistant.[26]

Current representation of parliamentary groups at the Assembly:[27]



c. Parliamentary Committees

The Assembly of Kosovo proceeds through plenary sessions and parliamentary committees.[28]

Committees fulfil an important role in all aspects of the Assembly work. They can be considered as "the lifeblood of parliamentary life allowing the legislature to perform numerous important functions simultaneously."[29] They fulfil tasks which the Assembly could not perform in plenary sessions. "Committee proceedings operate under less formal rules,"[30] therefore allowing for more debates and discussions.

[25] Constitution of the Republic of Kosovo, Article 67. Rules of Procedure of The Assembly of the Republic of Kosovo, Article 12.5.
[26] The Guidelines of the Presidency of the Assembly, Rule 6.8
[27] Website of the Assembly, of Kosovo, Members, Groups, http://www.assembly-kosova.org/?cid=2,107 (Accessed on 1 October 2010).
[28] Constitution of the Republic of Kosovo, Article 77.
[29] National Democratic Institute for International Affairs (NDI), New Mandate, New Opportunities: Evaluation of the work of the Assembly of Kosovo and recommendation for further development, Prishinë/Priština, October 2008, p. 28
[30] Manual: Organisation of Work in Parliamentary Committees, Assembly, Republic of Kosovo, Prishtinë/Priština, May 2010, p.6.

Committees can also summon members of the government and ministers to attend their hearings in order to question them, and organise public hearings in which invited guests, such as experts, public organizations, representatives of interest groups and civil society, can provide them with facts and opinions on delicate matters.

Each committee possess a specific scope of competencies, organised by sector, often mirroring areas covered by ministries or executive agencies.[31] The sector of competencies or functional scope of each committee is defined in Annex on Committees forming integral part of the Rules of Procedures of the Assembly.

The Constitution establishes three types of committees: 1) *permanent, standing* or *main committees*; 2) *operational* or *functional committees*; and 3) *ad hoc committees*.[32]

Permanent and operational committees are created for the duration of one or more legislature,[33] while ad hoc committees are temporarily created in order to review of a specific issue.[34] Ad hoc committees can be created upon support from one-third of Assembly deputies.[35] The difference between permanent and operational committee appears in relation with the legislative process: permanent committees review every draft law in consideration at the Assembly, while operational committee review only draft law falling within their specific scope of competencies.



[31] Manual: Organisation of Work in Parliamentary Committees, Assembly, Republic of Kosovo, Prishtinë/Priština, May 2010, p.6.
[32] Terminology used by the Constitution differs from terminology used in the Rules of Procedure of the Assembly of Kosovo. The term 'Permanent committees' the Constitution is identical to the term 'main committees' in the Rules of Procedure of the Assembly of Kosovo. The same applies to the 'operational committees' used in the constitutional provisions and 'functional committees' in the provisions of the Rules of Procedures of the Assembly of Kosovo.
[33] Manual: Organisation of Work in Parliamentary Committees, Assembly, Republic of Kosovo, Prishtinë/Priština, May 2010, p.6.
[34] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 72.1.
[35] Constitution of the Republic of Kosovo, Article 77.2, Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 70.2.

Committees also have the possibility to establish sub-committees and working groups to perform a specific task. Support from two-third of the committee members is required for the creation of a sub-committee or working group.[36] Every Sub-committees and working groups report their work to the committee and decisions are taken through voting.[37]

The number, competencies and procedures of permanent and operational committees are defined within the Rules of Procedures of the Assembly.[38]

In the current (third) legislature, there are 16 committees, among which four are permanent:

1. Committee on Budget and Finance;
2. Committee on the Rights and Interest of Communities (CRIC);
3. Committee on Legislation and Judiciary; and
4. Committee on European Integration.[39]

Determination of committee membership is a consensual decision of all parliamentary groups. Parliamentary groups express interest in specific working groups to the Presidency, which examine the requests and make a final proposal subject to the decision of the Assembly. As a result, membership in committees usually reflects the diversity of the membership of the Assembly.[40]

Each committee shall have a Chairperson and two Deputy Chairpersons. One of the Deputies shall always be from a community, which is not the one from the Chairperson.[41]

Committees shall meet at least once a month.[42] Committees can also meet upon request from one-third of the committee's members.[43]

Committee meetings are open to the public, except where a committee is debating sensitive issues, such as state security.[44]

With regards to the legislative process, committees fulfil an extremely important role. When the Assembly examine a law, a committee is appointed Lead – or

[36] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 71.
[37] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 71.
[38] Constitution of the Republic of Kosovo, Article 77.4. There is no timeframe for validity of the Rules of Procedures of the Assembly. The Constitution, in its Article 76, only provides that two-third of deputies' votes are required for adoption of the Rules of Procedure, while review and amendment falls under the competency of the Committee on Mandates, Immunities and Rules of Procedure.
[39] Rules of Procedures of the Assembly of Kosovo, 29 April 2010, Article 70.3.
[40] National Democratic Institute for International Affairs (NDI), New Mandate, New Opportunities: Evaluation of the work of the Assembly of Kosovo and recommendation for further development, Prishinë/Priština, October 2008, p. 28.
[41] Constitution of the Republic of Kosovo, Article 77.3.
[42] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 65.5.
[43] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 65.3.
[44] Rules of procedure of the Assembly of Kosovo, 29 April 2010, Article 66.

Reporting, Committee.[45] Decision to appoint one or the other committee is made on the basis of the scope of the draft law and the competencies of each committee. Being the Lead Committee means to have the primary responsibility for the review of the draft law, but also having the coordination duty between the committees and other stakeholders entitled to propose amendments to a draft law. The Lead Committee consider the draft law and draws recommendations for amendment and compiles amendments, identifying conflicting amendment proposals (mainly to determine the order in which amendments should be considered when they arise at the same place in the text[46]) and recommending solutions.[47] Finally, the Lead Committee is the one reporting to the Assembly plenary session, presenting the compiled proposals of all stakeholders entitled to comments with justifications, as well as dissenting opinions and comments.[48] Without their reports, discussions in the plenary sessions would be impossible.[49]

2. The executive branch: the Government

This section deals with the executive organ of the state – the Government, as well as its administrative components relevant to the legislative process, the Office of the Prime Minister, ministries and working bodies.

The Government of Kosovo is the organ of the state exercising executive power. The Government is accountable to the Assembly of Kosovo on its work and performance.[50]

The Government, in a parliamentary system like Kosovo's, is issued from the legislature: the political party – or coalition of parties, with majority of seats in the Assembly forms the Government.

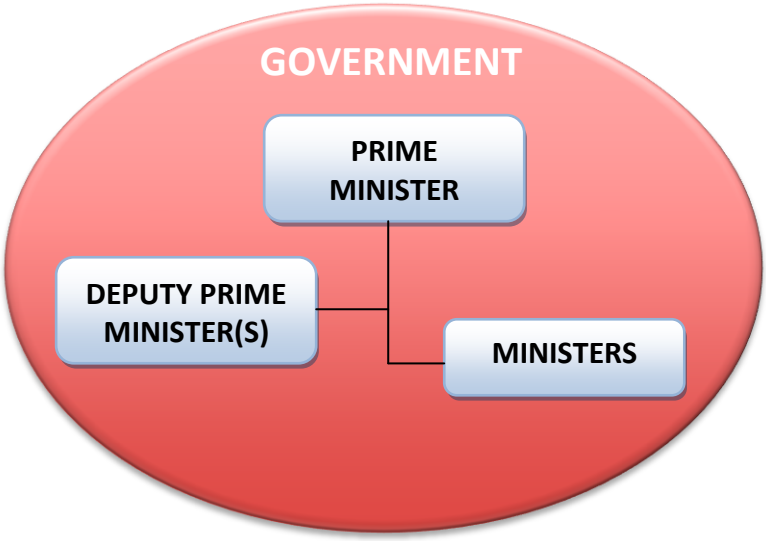
The Government of Kosovo's functions include enforcing law and order, conducting foreign policy, promoting economic development, and ensuring provision of public services.[51]

Within the framework of the Constitution, the Government defines its policies – what it wants to achieve and how. The Government can use the following means to achieve its policy objectives: initiating the drafting of a law; proposing a draft to the Assembly; producing sub-legislative acts, such as decisions, regulations, and administrative instructions. The Government proposes the yearly budget needed to fulfil its objectives to the Assembly. The Government also guides and oversee the

[45] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 69.
[46] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 69.
[47] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 69.
[48] Rule 47 Rule of Procedure
[49] Rule 47 Rule of Procedure
[50] Constitution of the Republic of Kosovo, Article 97.
[51] Constitution of the Republic of Kosovo, Article 93.

work of the public administration with the aim to implement the Government policies.

The Government consists of the *Prime Minister*, at his head, *Deputy Prime Minister(s)* and *ministers*. Members of the Government are elected by the Assembly. Candidates are selected either from the deputies or proposed because of their high qualification in a particular field.[52]



In order to provide for political participation of non-majority communities, representation is guaranteed in the Government. If the Government comprises up to 12 ministries, there shall be at least one minister from the Serb community and one minister from another non-majority community. If the number of ministries exceeds 12, an additional minister position shall be fulfilled by a member of a non-majority community.[53]

a. The Office of the Prime Minister

The Office of the Prime Minister, headed by the Prime Minister, has for main functions to coordinate the work of Ministries and act as focal point for relations between the Government and the Assembly.[54] In its governmental coordination role, the Office of the Prime Minister is tasked with developing and monitoring the implementation of the programme of the Government and annual work plans, and assumes responsibilities for public relations.

The Office of the Prime Minister also coordinates the governmental legislative drafting process through the Office of Leal Support Services (OLSS). The OLSS also

[52] Constitution of the Republic of Kosovo, Article 96.
[53] Constitution of the Republic of Kosovo, Article 96.3.
[54] UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government, as amended by UNMIK Regulation 2002/5, provides for the mandate of the Office of the Prime Minister. A draft Law on Government is currently under consideration by the Assembly.

reviews all draft laws before they are sent to the Assembly to make sure of their consistency with other laws, including through consultation with other offices within the Office of the Prime Minister tasked with ensuring that the developing legal framework is in accordance with human and community rights. The OLSS ensures the respect of standards and procedures for legalisation drafting.[55]

Among offices located within the Office of the Prime Minister, the Office for Community Affairs (OCA) is mandated to mainstream community concerns within the work of the government. The OCA coordinates and contributes to information sharing among all stakeholders, within or outside state institutions, and develops, monitors and evaluates policies, including through ensuring that developing legislation integrates community concerns.

b. Ministries

Ministries are an essential component of the Government administration and are lead by a Minister. While the Government as a whole determines overall policy framework, each ministry develops and implements legislation and policies within its specific area of intervention. Pursuant to the competencies of the Government described above, ministries can, within the sector under their remit initiate a legislative idea and produce draft laws, develop strategies within their sector, and produce sub-legislative acts, among others. Ministries also act as expert on certain matter related to their field for other governmental bodies, providing research and opinions.

The minister and his/her cabinet[56] form the political level of the ministry, by opposition to the administrative level composed of civil servants. The minister provides the political direction, while the administrative level, led by a Permanent Secretary, implements the policies.

Within the administrative structure of each ministry is a Legal Office responsible for the drafting of laws and sub-legislative acts falling within the ministry's responsibilities.

Two ministries play a significant role when it comes to the legislative process: the Ministry of European Integration (MEI) and the Ministry of Economy and Finance (MEF). The MEI is guarantor that the developing legislation is in compliance with the EU Acquis, while the MEF assesses the financial implications of the implementation of new laws.

[55] Rules of Procedure of the Government of Kosovo, Article 30.

[56] In addition to guaranteed representation among ministers, within the Cabinet of each ministry – deputy ministers, two positions shall reserved for the Serb community and two for other non-majority communities when there is 12 or less ministries, while an additional deputy minister position is granted to both Serb and other non-majority communities when the number of ministries is more important than 12 (Constitution of the Republic of Kosovo, Article 96.4).

b. Working bodies

The Government can establishes working bodies in order to carry-out a specific mandate, such as developing a particular policy, coordinating, monitoring and evaluating a policy, or drafting a legislative or sub-legislative act.

These groups may operate as committees, commissions, working groups, council of experts or other.[57] They can be permanent – i.e. constituted for the duration of the Government mandate, or provisional.

Members of working bodies usually are experts from governmental institutions, but can also include representatives from international or non-governmental institutions and other stakeholders. Composition of a working body is defined within the resolution on the founding of such body. Every working group shall have a chairman and a deputy chairman.

Working bodies can be created by the Government – governmental working body, or by a ministry – ministerial working body. In the later case, the working group competencies shall be strictly limited to the scope of the ministry's mandate.

A working body can be vested decision-making powers, which means that its final decision shall be considered decision of the Government. In such working bodies, the decision is taken at the majority of ministers members of the body. There is however a possibility for the responsible minister to object such decision and refer it for debate in government meeting.[58]

As explained in introduction, one of the cases in which the Government makes use of working bodies is to produce a draft law. The working body is in this case a working group.

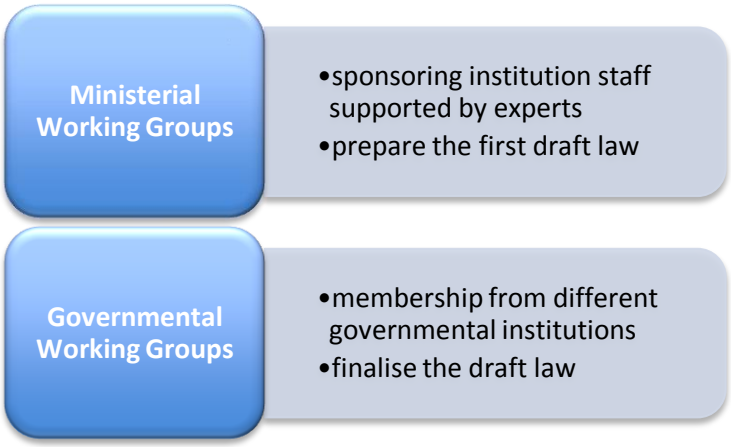
There are two types of working group intervening in the drafting of a law: ministerial and governmental working groups.

The first type of group intervening in the legislative drafting process from the governmental side is a **ministerial working group**. Ministerial working group means that it is created by a Ministry (or the Office of the Prime Minister) – sponsor of the law, and primarily consist members working for that institution. The ministerial working group is formally created by decision of the sponsor institution's Permanent Secretary.[59] With regards to membership, the ministerial working group shall consist of at least five but not more than seven members, with one member graduate lawyer representing the legal office of the sponsor institution.[60] External experts can also support the working group.

[57] Rules of Procedure of the Government of Kosovo, Article 5.
[58] Rules of Procedure of the Government of Kosovo, Article 7.
[59] Rules of Procedure of the Government of Kosovo, Article 6.
[60] Rules of Procedure of the Government of Kosovo, Article 26.1, 26.2.

The objective of the ministerial working group is to produce a first draft law, which will then be shared with other governmental institution for comment, through the second type of working body intervening in the legislative process: the governmental working group.

The **governmental working group** is created by the Permanent Secretary of the Office of the Prime Minister. The governmental working group shall consist of not less than five and not more than ten, exceptionally fifteen members. Each member should be chosen on the basis of his or her expertise or interest in the draft of the law. Every group should have one representative of respectively the OLSS, Government Coordination Secretariat, Ministry of Economy and Finances and Ministry of Justice. The sponsoring institution cannot have more than two representatives in the working group. If a draft law impacts on the interests and right of non-majority communities, a representative of such community shall be included in the working group.[61]



3. Consultative Mechanism: the Consultative Council for Communities

The Consultative Council for Communities (CCC), located within the Office of the President, is one of the mechanisms enabling political participation of non-majority communities. The aim of the CCC establishment is to provide non-communities with the opportunity to shape governmental policies and programmes and therefore making them more adequate to communities' needs.

The mandate of the CCC is established by the Constitution in its Article 60 and the Law on the Protection and Promotion of Communities and their Members in the Republic of Kosovo (Law on Communities) in its Article 12. Accordingly, the CCC:

1. provides a mechanism for regular exchange between the communities and the Government;

[61] Rules of Procedure of the Government of Kosovo, Article 32.

2. assists in the organization and articulation of the views of communities and their members;
3. affords to the communities an opportunity to comment at an early stage on legislative or policy initiatives;
4. suggests the initiatives;
5. seeks to have their views incorporated in the relevant project and programs;

The CCC membership includes approximately two-third of representatives from communities and one-third from governmental institutions. Communities can choose to be represented only by members of civil society organisations or to include political representatives as well. The Serb community is represented with five (5) members among which two (2) may also be member of the Assembly. Bosniak and Turkish communities have respectively three (3) representatives and one (1) may be political. The Roma, Ashkali, Egyptian and Gorani communities have respectively two (2) members out of which one (1) may be from the Assembly.[62]

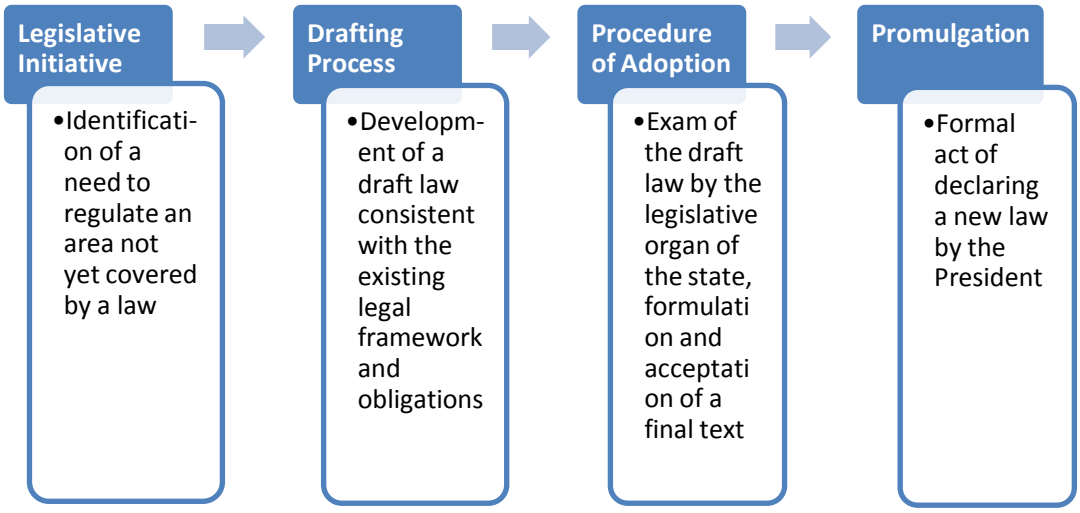
The CCC shall hold monthly meetings and, twice a year, extraordinary sessions to review of the implementation of legislation and policies pertaining to communities and its own achievements. The extraordinary sessions are chaired by the President.[63]

The CCC can also establish working bodies in order to consider a specific issue.[64] Each working body shall have a Chairperson and Deputy Chairperson appointed for a one-year mandate with possibility of extension for one more year.[65] The Chairperson and its Deputy shall not be from the same community or from parties that form the government coalition.[66]

[62] Law on the Protection and Promotion of Communities and their Members in the Republic of Kosovo [Law No. 03/L-047], Article 12.6. The CCC also has the right to include representatives from other communities in the council. Currently, the Montenegrin community has been entitled to one representative from civil society. It should also be noted that the Law on Communities is currently being amended and that changes might be introduced in the membership.
[63] Law on the Protection and Promotion of Communities and their Members in the Republic of Kosovo [Law No. 03/L-047], Article 12.6.
[64] Rules of Procedure of the Consultative Council for Communities, Section I, I. General Rules, Rule 3.
[65] Rules of Procedure of the Consultative Council for Communities, Section I, III. Chairmanship of the Council, rule 14.
[66] Rules of Procedure of the Consultative Council for Communities, Section I, III. Chairmanship of the Council, Rule 10.

II. Legislative Process

The legislative process can be described by the following steps, which are further detailed in this chapter respectively under II.A, II.B, II.C and II.D:



A. Legislative Initiative

The first step of the legislative process is the legislative initiative. With the development of a new practice or an invention, existing laws might not be sufficient to regulate the emerging issue. This results in a need for a new piece of legislation. We can mention for example the creation of internet, which resulted in the development of legislation protecting privacy of its users or intellectual property rights of authors. In Kosovo, as new state having recently gained independence and undergoing profound transformations, such as EU integration or decentralisation processes, several areas are not yet normalised or are still regulated by UNIMK legislation that needs to be replaced to be in conformity with the Constitution.

The right of legislative initiative – the power to propose a new law, is afforded by the Constitution of the Republic of Kosovo to:

- the President of the Republic of Kosovo;
- the Government;
- deputies of the Assembly; or
- at least ten thousand citizens.[67]

Through their work, these entities, being from the executive or legislative branch, identify an area which is not yet regulated by the legislation in force and can propose a new draft law.

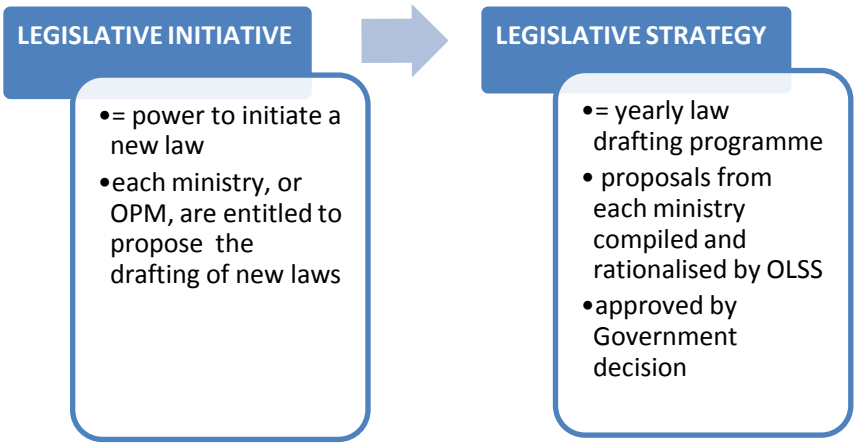
[67] Constitution of the Republic of Kosovo, Article 79.

1. At the executive level

Every ministry, as well as the OPM, have the right to initiate the drafting of new laws[68] falling within in their respective field of competences. When a proposal concerns more than one specific field, legislative initiative can be exercised by several ministries. In such a situation the Permanent secretary of the relevant ministry coordinates the process of initiation of this particular law under the supervision of the OLSS.

Within ministries and the OPM, the following entities have the right to make such proposals: *the Minister, the Permanent Secretary, Director of Departments and the Director of the Legal Office*.

The main output of the legislative initiative exercised by the executive branch is the *legislative strategy*. The legislative strategy is a yearly programme of law drafting. In December of every calendar year, in the time frame set by the Prime Minister, the ministers present their proposals for new draft laws and submit them to the OLSS. The OLSS compiles the proposals from all ministries, rationalise the compiled proposals in accordance with realistic workload,[69] and proposes a draft legislative strategy for Government approval in a Government meeting held at the beginning of the calendar year.[70]



The proposals to initiate a new draft laws shall be presented in the form of a concept paper.[71] Through the concept paper the institution proposing the initiation of a new law explains what issue it aims to address, as well as the impact on various group of society. In addition, each law included within the legislative strategy shall be accompanied by initial assessment of the regulatory and financial impacts.

[68] Rules of Procedure of the Government of Kosovo, Article 25 (1).
[69] Rules of Procedure of the Government of Kosovo, Article 31.
[70] Rules of Procedure of the Government of Kosovo, Articles 24 (1) and (3), 30 (2).
[71] The drafting of a concept paper is currently regulated by Annex 3 of the Rules of Procedure of the Government of Kosovo, Instructions on Preparation of Concept Papers.

2. At the legislative level

Several entities in the legislative branch of the state have the right to propose the development of new laws:

- an Assembly Member;
- Committee; or
- a Parliamentary Group.

The initiative proposed by one of these entities shall be reviewed in plenary session of the Assembly "within two months from the day of its introduction."[72]

In practice, it has so far only been exercised once with regards to the Law on the Rights and Responsibilities of Deputies. There are no systematic procedures in place for the initiation of new laws that would compare to the legislative strategy of the Government.

B. Drafting Process

The main goal of drafting process of every primary law is to create a complete regulation that is clear and understandable. It should directly impose rights and obligations to its subjects.[73]

1. In the Government

Once the legislative strategy is approved by Government decision, each sponsoring institution – a ministry or the OPM, is responsible to implement its components in the imparted deadlines.

The initial draft law is produced by a ministerial working group set up to this effect. The Legal Office of the sponsoring institutions proposes to the relevant Permanent Secretary the mandate and composition of the ministerial working group through the drafting of a decision. Once the Permanent Secretary of the sponsoring institution adopts the decision, the ministerial working group is created and the drafting process starts.

The Legal Office of the sponsoring institution is responsible for the advancement of the ministerial working group's task and reports regularly to its Permanent Secretary on progresses.[74]

[72] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 56.2.
[73] Subject of the law are persons (for example the citizens of the republic of Kosovo) as well as legal entities to whom the law is dedicated.
[74] Rules of Procedure of the Government of Kosovo, Article 26.

When the initial draft is completed, the sponsoring institution needs to assess the regulatory and financial impacts of the introduction of the new law. This is done through producing two documents: the Regulatory Impact Assessment[75] and Financial Impact Assessment.[76] The Permanent Secretary of the sponsoring institution then reviews the initial draft law produced by the ministerial working group and the two assessments[77] and can request a redraft.[78] Upon his/her approval, the initial draft law can be submitted to the OLSS. The initial draft shall be in the two official languages and English, and be accompanied by a letter informing the OLSS about formation of the internal working group, evidence of compliance with the Acquis communautaire, as well as the drafts Regulatory Impact Assessment and Financial Impact Assessment.

The OLSS need to review the initial draft in order to proceed any further. Upon OLSS approval, the initial draft is examined in a governmental working group created for this purpose within five (5) working days upon submission of the initial draft to the OLSS.[79]

Similarly than with the ministerial working group, mandate and composition of the governmental working group is proposed by the OLSS to the OPM Permanent Secretary through a draft decision.[80] If the draft law affects interest of a non-majority community,[81] the governmental working group must includes within its membership a representative of such community.[82] The governmental working group is then created by decision of the Permanent secretary of the OPM.

The governmental working group shall start its work within five (5) working days from the decision of its creation. The governmental working group has twenty (20) days to accomplish its task. This timeframe can only be prolonged upon justified request from the governmental working group.

Once review by the governmental working group is finalised, two more actions need to be undertaken: the final financial assessment and a compliance check for compliance with the Acquis communautaire. The Chairman of the governmental

[75] Rules of Procedure of the Government of Kosovo, Annex 1 on Regulatory Impact Assessment. The aim of the Regulatory Impact Assessment is to conduct an evaluation of the impact of the proposed legislation, comparatively to other options available. The cost-effectiveness of the various options are analysed in order to ensure the maximum effect of the new law at minimum cost.
[76] The Financial Impact Assessment, which objective is described in Annex 2 on Instructions on Preparation of Financial Impact Assessment Form, provides an estimation of the costs that will arise from the implementation of the new law.
[77] Rules of Procedure of the Government of Kosovo, Article 29.
[78] Rules of Procedure of the Government of Kosovo, Article 29 (3).
[79] Rules of Procedure of the Government of the Republic of Kosovo, Article 32 (1).
[80] For further details about structure and the main role of the governmental working groups please refer to chapter XXX.
[81] The Rules of Procedure of the Government of Kosovo use the term 'national minority' referring to communities. They should be understood as having the same meaning.
[82] Rules of Procedure of the Government of Kosovo, Article 32.

working group shall submit the final draft law[83] to the Ministry of Economy and Finances (MEF) for production of the Financial Impact Assessment and to the Ministry of the European Integration (MEI) for the Statement of Compatibility with the EU Legislation[84]. The final draft,[85] together with the two documents is then submitted to the OLSS.[86]

The Director of the OLSS responds from the compliance with the procedures for the drafting of laws. The Director of OLSS is also ultimately responsible to ensure that the draft law is coherent with the legal framework in force, including international obligations and Acquis communautaire. If any incoherence or error is still present in the text after completion of the governmental working group's work, the OLSS can request modifications to the sponsoring institution and make minor modifications if they don't affect the substance of the draft law.

Finally, the OLSS prepares recommendations for approval of the final draft law by Government decision for the Permanent Secretary of the OPM.[87] The OPM Permanent Secretary then instructs the Government Coordination Secretariat, within the OPM, to include consideration of the draft law in the next Government meeting agenda and to prepare all materials for the meeting. Materials include: the final version of the draft law; the explanatory memorandum;[88] the Statement of Compatibility with EU Legislation; the Financial Impact Assessment; the Regulatory Impact Assessment; the Certificate of Procedural Compliance;[89] and Recommendation of the OPM Permanent Secretary. If one of these documents is missing, the Coordination Secretariat cannot propose the draft law for consideration in Government meeting and the draft may return back to the OLSS.[90] The Government will review the final draft of the law in its meeting and then take a decision. It can:

- Approve the final draft;

[83] The draft law as finalised by the governmental working group.

[84] This statement is issued by the Ministry of the European Integration. The Ministry has fifteen working days to provide the Legal Office of the responsible ministry with its statement on the draft's consistency with the EU Acquis and to prepare a memorandum specifying any additional modifications, if it is needed. The Chairman of the governmental working group should cooperate with the Ministry of European Integration to adjust the resulting draft as necessary to incorporate all comments and suggestions. The Chairman of the working group and the Ministry should complete their work in five working days.

[85] The draft of the law accompanied by both assessments submitted to the director of the OLSS and then, after his/her review, to the Government for the final approval.

[86] This documents are: a cover letter, the final version of the draft law, the explanatory memorandum of the draft law, the Ministry of European Integration's statement of compatibility, the statement of incorporation remarks made by the Ministry of European Integration and responsible ministry, Assessment of Regulatory Impact on Laws and Assessment of Financial Impact.

[87] Rules of Procedure of the Government of Kosovo, Article 33.

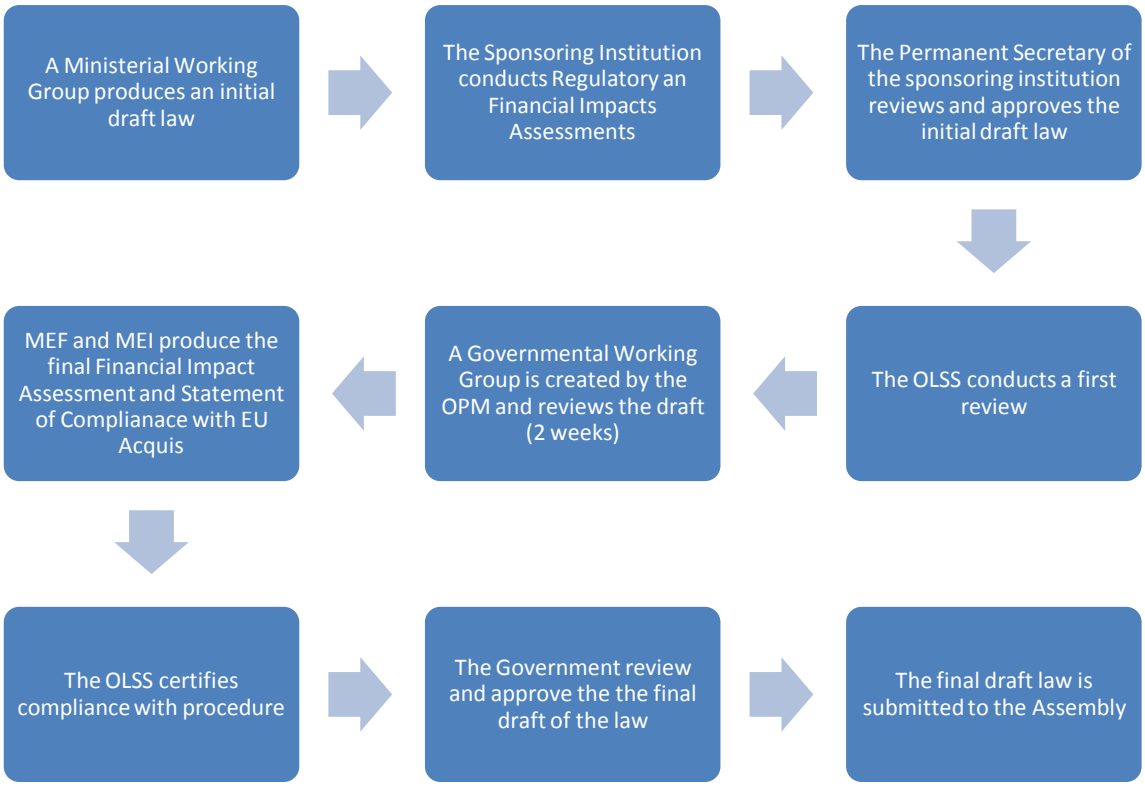
[88] An explanatory memorandum is a short explanation of the objective and content of the draft law. It will be used by the representative of the sponsoring institution to present the draft in the Government meeting.

[89] The Certificate of Procedural Compliance is produce by the OLSS. By that statement, the OLSS certifies that the draft law has been produced according to the legal procedural requirements.

[90] Rules of Procedure of the Government of Kosovo, Article 34.

- Approve the final draft with amendments;
- Postpone the matter for later review;
- Request review of the draft, but it has to motivate its request; or
- Reject the final draft.

Upon approval of the final draft by Government decision, the Government Coordination Secretariat submits the draft law along with necessary documents to the Assembly.[91]



2. In the Assembly

The Assembly, after having approved the initiation of a new law, shall refer to the government, which has 3 months, from the day of approval of the initiative by the Assembly to prepare a draft.[92]

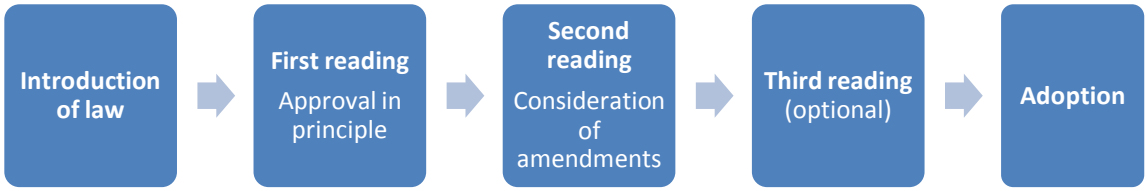
Similarly to the initiation of a new legislation, there is only one example of a law having been drafted by the Assembly, in that case by a committee, the Law on the Rights and Obligations of Deputies.

[91] Rules of Procedure of the Government of Kosovo, Article 35.
[92] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 56.3.

C. Procedure of Adoption of Laws by the Assembly

Once the drafting process has been completed and decision on the text of a final draft law reached, the Assembly becomes fully responsible for the rest of the process – from amending the draft law to adoption of the law.

The process leading to the adoption of the primary laws can be divided into five stages, which are described below and can be illustrated by this schema.



Stage 1: Introduction of a Draft Law into the Assembly

The drafts of the primary laws are always introduced to the Assembly for further discussions. The following bodies are entitled to introduce such draft:

- The Government[93];
- a parliamentary committee[94];
- a member of the Assembly supported by five other members that have signed the draft law;
- a parliamentary group[95];

In order for a draft law to be considered by the Assembly, a number of procedural requirements need to be fulfilled. Every draft law introduced to the Assembly must be provided in the two official languages, Albanian and Serbian, as well as in English. The draft needs to be submitted in written, preferably in electronic version.[96] A request for consideration of a question or document by the Assembly is called a motion.

Motion

A motion is:

- a written substantive proposal submitted to the Table Office; or
- a written procedural proposal

presented in the Assembly for debate and vote.

Substantial motion applies to resolution, amendment or other acts.

[93] For further details about the role of the Government see chapter XXX.
[94] The function of committees in the legislative process is described in chapter XXX.
[95] For detailed characteristic of the function of parliamentary group please refer to chapter XXX.
[96] Rules of Procedure of the Assembly of Kosovo, Article 53.1.

Table Office
- Administrative office within the Assembly;
- Focal point for collecting and distributing request for consideration by the Assembly.

The substantive motion (request for consideration of the draft law by the Assembly) needs to be submitted to the Table Office of the Assembly. Hereafter the Table Office is obliged to register and distribute the draft law to the deputies immediately.[97]

Stage 2: The First Reading

The second stage consists of first reading of a draft law. The first reading aims at:
- providing general information to the Assembly members on the draft law; and
- obtaining and approval in principle on the development of a law in a given area.

In consequence, during the first reading no amendments to the draft law can be proposed.[98] The draft law is not examined in details. Deputies only consider whether the scope of the draft law corresponds to a need.

The first reading should take place ten (10) working days at the earliest and no later than three (3) working weeks from the day of its distribution by the Table Office to the deputies.[99] If the sponsor decides to withdraw the draft law during the first reading, he can do so before the procedure of voting it.[100]

Stage 3: Second Reading

At the third stage of the legislative process the second reading of draft law takes place. It consists mainly of consideration and voting on proposed amendments and articles.

Firstly discussions are conducted in parliamentary committees,[101] where an active participation of external experts is possible. A committee is appointed as lead committee according to the scope of the law and of the committee's responsibilities. The lead committee is tasked to compile amendments within two (2) months from the first reading. Any of the following entities are entitled to propose amendments:
- a member of the Assembly;
- a parliamentary committee;
- a parliamentary groups; or
- the Government.[102]

[97] Rules of Procedure of the Assembly of Kosovo, Rule 33 (3)
[98] Rules of Procedure of the Assembly of Kosovo, Rule 35 (2)
[99] Rules of Procedure of the Assembly of Kosovo, Rule 35 (1)
[100] Rules of Procedure of the Assembly of Kosovo, Rule 35 (3)
[101] The function of the CRIC in the process of adoption of primary laws is described in the first subchapter of this chapter
[102] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 58.3.

The main committees, including CRIC, receive and comment on the compilation of amendments prepared by the lead committee. A report is then presented by the lead committee in the plenary session. The presentation of the report is technically called the second reading.

Amendments are always considered individually and in the order in which they arise in the text. In case that a group of amendments have an impact on more articles of the particular draft law, they are considered where they first arise in the text.[103] If two contradicting amendments are proposed for one single article, the amendment receiving the highest number of vote will be adopted.[104] When all selected amendments have been approved or rejected, the text amended in all languages, the final text of the draft law is finally adopted.[105]

If final consideration of all proposed amendments took place at the second reading and a decision is reached, the process jumps directly to stage 4, the adoption.

Stage 3: Third Reading

The Assembly decides to present a draft law for the third reading only if it failed to receive the necessary votes during the second reading.

Usually the third reading servers to correct all possible mistakes occurred during approval of amendments in the second reading.[106] However amendments that were considered and rejected in the second reading cannot be proposed again as well as amendments that are closely similar to those rejected ones.[107] If any other amendments have been approved during the third reading, the same procedure considering further amendments will take place as at the third stage of legislative process defined above.[108]

Stage 4: Adoption and Entry into Force

The adoption of a law is the final approval of the text of the law. In practice, the act of adoption – the voting, takes place at the same parliamentary session than the second or third readings.

Primary laws are adopted by the Assembly by a majority vote of deputies present and voting,[109] except in the case of laws qualifying as legislation of vital interest,

[103] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 59.3.
[104] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 59.4.
[105] Rules of Procedure of the Assembly of Kosovo, 29 April 2010, Article 59.5.
[106] National Democratic Institute for International Affairs (NDI), New Mandate, New Opportunities: Evaluation of the work of the Assembly of Kosovo and recommendation for further development, Prishinë/Priština, October 2008, p. .
[107] Rules of Procedure of the Assembly of Kosovo, Rule 38 (1)
[108] Rules of Procedure of the Assembly of Kosovo, rule 38 (2)
[109] Constitution of the Republic of Kosovo, Article 80 (1).

which requires for adoption double majority of deputies present and voting from the Assembly as a whole and from deputies holding reserved seats for non-majority communities.

In order for a law to enter into force – produces effects and give rights and obligation to the subjects of law, the law needs not only to be adopted by the Assembly but also published in the Official Gazette of the Republic of Kosovo. Fifteen (15) days from publication in the Official Gazette, the law enters into force.[110]

D. Promulgation of Law by the President

Promulgation of law is the formal act of declaring a new law, which in Kosovo is performed by the President. By promulgating a law, the President recognised that the law has been adopted by the Assembly in respect of the constitutional provisions.

In practice, promulgation is accomplished by the President who signs off the law within eight (8) days upon receipt of law. Thus every primary law becomes promulgated by the signature of the President of the Republic of Kosovo.[111]

The President has the right to reject to sign and return a law to the Assembly.[112] If he does so, he always has to state the reason of return. The Assembly then decides to adopt a law returned by the President by a majority vote of all its deputies and such law must be considered as promulgated. The President can exercise this right only once per law.[113]

[110] Constitution of the Republic of Kosovo, Article 80 (6).
[111] Constitution of the Republic of Kosovo, Article 80 (2).
[112] Constitution of the Republic of Kosovo, Article 80 (3).
[113] Constitution of the Republic of Kosovo, Article 80 (4).

III. The special role of the Community Political Participation Mechanisms in the legislative process

A. Office for Community Affairs

The Terms of Reference of the Office for Community Affairs (OCA) state that the OCA shall "pursue policy on community related issues." It includes both developing a policy, for example though initiating a draft law, and regularly analyse whether developing legislation is in accordance with community rights and interests.

In practice, the OCA fulfil its responsibilities in this respect in the following ways:

- conducting once a year a major evaluation of one area of community rights protection and develop recommendations for development of new of amendment of expositing policies, including through legal amendment; and
- analysing the governmental legislative strategy immediately after its adoption at the beginning of the year, selecting draft laws which might potentially impact on communities and participate into ministerial or governmental working groups in which it proposes amendments.

B. Committee on Rights and Interests of Communities

The Committee on Rights and Interests of Communities (CRIC) is one of the permanent committees of the Assembly of Kosovo and performs an essential role in the legislative process.[114]

On the contrary of other permanent committees, the CRIC is mandated directly in the Constitution of the Republic of Kosovo to "ensure that community rights and interests are adequately addressed."[115] This demonstrates the emphasis on and importance of the protection of the rights of non-majority communities.

While article 78.2 of the Constitution provides that any draft law can be submitted to the CRIC upon request of one of the Assembly Presidency's members,[116] the Rules of Procedures of the Assembly go beyond. The Rules of Procedure give CRIC, as well as other permanent committees, automatic review of every draft law.[117]

The CRIC has the competency to propose the development of laws necessary to address and secure the concerns of communities on its own initiative.[118]

[114] Article 48 Rules
[115] Constitution of the Republic of Kosovo, Article 78.3.
[116] Constitution of the Republic of Kosovo, Article 78.
[117] Rules of Procedures of the Assembly of Kosovo, 29 April 2010, Article 58.1.
[118] Constitution of the Republic of Kosovo, Article 78.4.

C. Consultative Council for Communities

As explained above, the CCC can influence the Government and its approach to communities by providing comments and recommendations on legislation and policies during the early stage of the legislative process.[119] The early stage of the legislative process clearly refers to the process of drafting the laws at the governmental level. The CCC should in addition formalise its relation with the legislative branch through a Memorandum of Understanding.

The CCC has, during its second term, created a Working Group on Legislation, which is tasked with the formulation of comments on draft laws. However, this working group has so far experience difficulties mainly in receiving the drafts.

[119] Presidential Decree: The Consultative Council for Communities in Kosovo