



Strasbourg, 29 August 2019

CDL-REF(2019)018

Opinion No. 958 / 2019

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

KOSOVO

DRAFT LAW ON LEGAL ACTS

Assembly of Republic of Kosovo,

Pursuant to Article 65 (1) of the Constitution of Republic of Kosovo,

Adopts the following:

LAW ON LEGAL ACTS

CHAPTER I GENERAL PROVISIONS

Article 1 Purpose

The purpose of this law is to further define the types of legal acts, in accordance with the Constitution of the Republic of Kosovo, and determine the principles and standards for the drafting, issuance, approval, consolidation, correction and publication of legal acts.

Article 2 Scope

1. Provisions of this law shall apply to all public institutions of the central and local level of the Republic of Kosovo, which are competent authorities to draft, issue, approve, consolidate, correct, publish and implement legal acts in accordance with the Constitution and laws in force.
2. Provisions of this law shall not apply to administrative acts determined by the relevant Law on Administrative Procedure.

Article 3 Definitions

1. Terms used in this Law shall have the following meaning:
 - 1.1. **Legal act** - shall mean the entirety of the mandatory general rules for regulating a complex of relationships which apply to an undetermined and unlimited number of individuals, covering certain areas, which have multiple effects and are adopted or issued by the competent authority;
 - 1.2. **Decree** - shall mean a legal act issued by the President or the Prime Minister, within the authority granted by the Constitution and the law;
 - 1.3. **Decision** - shall mean a legal act issued by a competent authority, within the authorizations granted under the law and / or secondary legislation deciding on an issue, which requires a relevant decision;
 - 1.4. **Secondary legislation** - shall mean a legal act issued by the competent authority for the implementation of the law and on the basis of legal authorizations;

1.5. **Regulation** - shall mean a legal act issued by the competent authority on the basis of, and in accordance with the purpose of the Constitution and / or the law for further regulation of a working method, decision-making procedures, functioning, organization and internal systematization and scope of the competent authority;

1.6. **Administrative Instruction** - shall mean a legal act issued by the competent authority for the implementation of the law, in accordance with the purpose of the relevant law, in order to determine in detail matters regulated by the relevant law;

1.7. **Order** - shall mean a binding internal legal act, issued by an individual body in accordance with the law, which is addressed to a number of certain subjects;

1.8. **Directive** - shall mean a legal act issued by a collegial body, for implementation of the law, based on a legal authorization, and issued for a fixed term and for a specific matter;

1.9. **Legal act of Independent Institutions and Agencies** - shall mean a legal act issued by an independent institution and law enforcement agency and in line with the authority granted by the Constitution and / or the law;

1.10. **Legal act of municipal bodies** - shall mean a legal act issued based on the authority and powers defined in the respective law on local self-government and / or other laws, and shall apply within the territory of the respective municipality.

1.11. **Statute** - shall mean the main legal act approved by a legally authorized body, which shall regulate the implementation of powers and responsibilities of the relevant institution as provided for by the law;

1.12. **Consolidation** - shall mean the incorporation into the text of the legal act of subsequent amendments to the legal act and correction with a view to providing easier and more transparent access to the legal act;

1.13. **Correction** - shall mean the process of correction of linguistic and technical errors which shall not cause any change in the substance of the legal act.

CHAPTER II PRINCIPLES OF DRAFTING LEGAL ACTS

Article 4 Principles of drafting legal acts

1. The drafting of legal acts shall be subject to the following principles:

1.1. **Constitutionality**: laws and all other legal acts shall be in accordance with the Constitution;

1.2. **Legality**: secondary legislation shall be issued on the basis of an authorization expressly provided for by law and must be in accordance with the law;

1.3. **Transparency:** legal acts shall be drafted in an open and inclusive manner and shall at the same time address comments and suggestions by the public and interested parties. They should be published in accordance with this law and the relevant law on the official gazette;

1.4. **Proportionality:** legal acts shall not exceed the requirements and scope in addressing the issue or the problem which the legal act aims to regulate;

1.5. **Necessity:** the legal act must be required by a prevailing circumstance or to make an action for the implementation of a legitimate objective mandatory;

1.6. **Compliance:** provisions of the legal act, as a whole, must have a logical connection and be compliant with one another;

1.7. **Standardization:** The legal act is drafted on the basis of standards defined by the legislation in force on the drafting of legal acts.

Article 5

Interrelation between legal acts

1. If a legal act of a general nature and a legal act of a special nature of the same level regulate the same matter differently, the provisions of the special legal act shall prevail.

2. If one legal act of the same level is in contradiction with another legal act of the same level, and both legal acts are of the same general or specific nature, the legal act which was issued later shall prevail.

3. The interrelation between legal acts of different levels must be determined on the basis of the issuing authority, as per the hierarchy of the state bodies, as defined in Article 6 of the present law.

4. If a non-competent authority issues a legal act, the legal act in question shall have no legal effect and shall be revoked by the authority competent for its issuance, or by a higher competent authority.

5. The issuance of a legal act that is related to the scope and responsibilities of two or more institutions shall be approved by a higher authority.

6. If a legal act is issued by a competent authority which ceases to exist or has been merged with another competent authority, the legal act in question shall remain in force and shall be implemented by the successor competent authority.

**CHAPTER III
TYPES OF LEGAL ACTS**

**Article 6
Types of legal acts**

1. Legal acts adopted by the Assembly are:
 - 1.1. Constitution and amendments thereof;
 - 1.2. International agreements;
 - 1.3. Laws;
 - 1.4. Rules of Procedure of the Assembly;
 - 1.5. Regulations;
 - 1.6. Decisions;
 - 1.7. Statutes.

2. Legal acts issued by the President are:
 - 2.1. Decrees;
 - 2.2. Decisions;
 - 2.3. Regulations.

3. Legal acts approved by the Government are:
 - 3.1. Decisions;
 - 3.2. Regulations;
 - 3.3. Administrative Instructions;
 - 3.4. Statutes;
 - 3.5. Directives.

3. Legal acts issued by the Prime Minister are:
 - 4.1. Decrees;
 - 4.2. Decisions;

4.3. Regulations;

4.4. Administrative Instructions;

4.5. Orders.

5. Legal acts issued by the Minister are:

5.1. Decisions;

5.2. Regulations;

5.3. Administrative Instructions;

5.4. Orders.

6. Legal Acts of Independent Constitutional Institutions are:

6.1. Independent constitutional institutions shall issue legal acts based on authorizations granted by the Constitution and / or the law.

7. Legal acts of independent agencies are:

7.1. Decisions;

7.2. Regulations;

7.3. Rules.

8. Legal acts of local government bodies are:

8.1. Legal acts of the Assembly:

8.1.1. Statutes;

8.1.2. Rules of Procedure of the Assembly;

8.1.3. Decisions.

8.2. Legal acts of the Mayor are:

8.2.1. Decisions;

8.2.2. Directives.

CHAPTER IV CONSOLIDATION AND CORRECTION OF LEGAL ACTS

Article 7 Consolidation of legal acts

1. Consolidation of legal acts shall be carried out after the entry into force of amendments to the basic legal act.
2. The relevant legal unit of the proposing body shall propose the consolidated text of the legal act to the relevant unit of the Office of the Prime Minister which, after verifying the text, shall forward it for publication to the Official Gazette.
3. The legal act's consolidated text shall serve as an effective documenting tool for internal use and shall have no legal power.
4. For legal purposes, all persons must refer to basic legal acts published in the Official Gazette.
5. In case of discrepancies between the legal act and consolidated text, the provisions of the legal act shall prevail.
6. The procedure envisaged in this article shall also apply for legal acts which are partially abolished by the Constitutional Court.
7. Standards and procedures for consolidation of legal acts shall be determined in the Administrative Instruction proposed by the Office of the Prime Minister and approved by the Government.

Article 8 Correction of Legal Acts

1. Correction of legal acts shall be done in cases when linguistic and / or technical mistakes are noted in the legal act, as well as in cases of discrepancies between official languages.
2. The proposing body of the legal act shall propose the edited text, with a corresponding reasoning, using the same procedure for adopting it.
3. When correcting the legal act, the source text shall be the text in which the legal act was drafted.
4. The competent body for the approval of legal acts shall approve it formally without discussing the edited text of the legal act.
5. The edited legal act shall be published on the Official Gazette of the Republic of Kosovo and shall supersede the original version of the legal act.
6. Standards and procedures for the correction of legal acts are established by an Administrative Instruction, proposed by the Office of the Prime Minister and approved by the Government.
7. Rules regarding the consolidation and correction of legal acts, established in Article 7 and 8 of the present Law, shall be applied mutatis mutandis to cases of legislative initiatives by the President of the Republic of Kosovo within his scope of activities, members of the Assembly, or at least ten thousand (10.000) citizens with the right to vote, as established by the relevant Law on legislative initiatives.
8. The procedure for the consolidation or correction of legal acts pursuant to Article 7 and 8 of the present law shall be conducted by the relevant body whose scope covers the legislative initiative.

Article 9 Legal Acts Drafting Standards

1. The drafting of legal acts shall be conducted according to the established standards for drafting, issuing and adopting legal acts applied by all institutions of the Republic of Kosovo.

2. Standards, procedures and forms for drafting legal acts shall be established by an Administrative Instruction, proposed by the Office of the Prime Minister and approved by the Government.

Article 10

Legal Opinions

1. Relevant legal units may, within their scope and authority, provide legal opinions only in cases of ambiguities in legal norms.
2. The legal opinion shall express a legal position, which shall not have a binding legal effect on the requesting entity.
3. The entity requesting a legal opinion shall not be excluded from legal responsibility to implement the legal act.

Article 11

Repeal, amendment and supplementation

1. The legal act can be amended and supplemented through a specific provision in the legal act, through which the amendment and the supplementation takes place.
2. A legal act can be repealed, amended and supplemented only by a legal act of same or higher level.
3. A legal act can abolish, amend and supplement one or more legal acts of the same or lower level.
4. Legal acts issued on the basis of repealed laws shall have no legal effect, unless prescribed otherwise by the new law.
5. Upon a request by authorized parties stipulated in the Constitution, the Constitutional Court shall, by a decision, repeal the legal act which is partially or fully in collision with the Constitution.

Article 12

Signing of a Legal Act

1. The legal act shall be signed by the highest ranking officer of the competent authority, established by the Constitution and / or law, to issue or approve the act.
2. In absence of the highest ranking officer as per paragraph 1 of this Article, the signing of the legal act shall be done by the authorized person pursuant to the applicable legislation.
3. The signed legal act is the original text which is kept in the archives of the relevant institution, while all other texts shall be considered copies.

CHAPTER V

PUBLICATION AND ENTRY INTO FORCE OF LEGAL ACTS

Article 13

Publication

1. All legal acts under this law shall be published in the Official Gazette based on the relevant law on Official Gazette and the relevant law on the use of official languages.
2. The legal acts shall be published also in the official webpage of the institution issuing the legal act.
3. The relevant unit of the authority approving or issuing a legal act shall keep a register of all legal acts and publish it on the official webpage of the relevant authority.

Article 14

Entry into force

With the exception of Constitutional amendments, legal acts shall enter into force fifteen (15) days following their publication in the Official Gazette of the Republic of Kosovo, unless otherwise established by the act itself.

CHAPTER VI

TRANSITIONAL AND FINAL PROVISIONS

Article 15

Secondary legislation

1. In order to implement this Law, upon the proposal of the Office of the Prime Minister, at latest one (1) year after entry into force, the Government shall issue:

- 1.1. Administrative Instruction on Standards of Drafting Legal Acts;
- 1.2. Administrative Instruction on Standards and Procedures for Consolidation of Legal Acts;
- 1.3. Administrative Instruction on Standards and Procedures for Correction of Legal Acts.

Article 16

Preparation Period

The obligation of institutions to publish legal acts on their official webpages and / or Official Gazette shall be effective at latest six (6) months after this law enters into force.

Article 17

Entry into force

This Law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

Kadri Veseli

President of Assembly of the Republic of Kosovo