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AMERICAN UNIVERSITY IN KOSOVO
In partnership with
ROCHESTER INSTITUTE OF TECHNOLOGY
Center for Multidisciplinary Studies
Master of Science Degree in Professional Studies
Public Administration

**Strengthening the Role and Capacities of Kosovo Institutions for
Effective Implementation of Legislation**

Sadete DEMAJ
May 14, 2012

**Submitted as a Capstone Project in partial fulfilment of a Master's of Science
Degree in
Professional Studies at the RIT Center for Multidisciplinary Studies**

Acknowledgements

I wish to express sincere thanks to my Mentor Professor Doctor Brian Bowen for his guidance, motivation, advises, patience and support provided throughout my capstone project.

I would like to express my gratitude to USAID and Government of Kosovo for awarding scholarship for my Master studies.

I wish to extend my warmest thanks to my family, for all their support and motivation; my sincere thanks to my Director, office colleagues, the AUK staff and to all those who have helped during my capstone project.

I am also grateful to my capstone consultants, Professor Doctor Valon Murtezaj, International Professor of Negotiation, International Relations and Diplomacy and Mr. Ruzhdi Halili Director of the Strategic Planning Office in the Kosovo Prime Minister's Office, for unreserved professional support in providing advice, suggestions and comments during the development of my capstone project.

I would like to express my special thank to my AUK college from master studies Mr. Mentor Bislimi, for his support and advises.

And finally I'm particularly grateful to my husband for encouraging and supporting me all the time during my master studies.

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Abbreviations

SRSG	Special Representative of the Secretary-General
UNMIK	United Nations Mission in Kosovo
PISG	Provisional Institutions of Self Government
EULEX	European Union Rule of Law Mission in Kosovo
ICO	International Civilian Office
OPM	Office of the Prime Minister
EU	European Union
MEI	Ministry for European Integration
NGOs	Non Governmental Organizations
GLS	Government Legislative Strategy
IPAP	European Partnership Action Plan
OLSS	Office of Legal Support Services
MLGA	Ministry for Local Governance Administration
KJC	Kosovo Judicial Council
KPC	Kosovo Prosecutorial Council
KJI	Kosovo Judicial Institute

Executive Summary

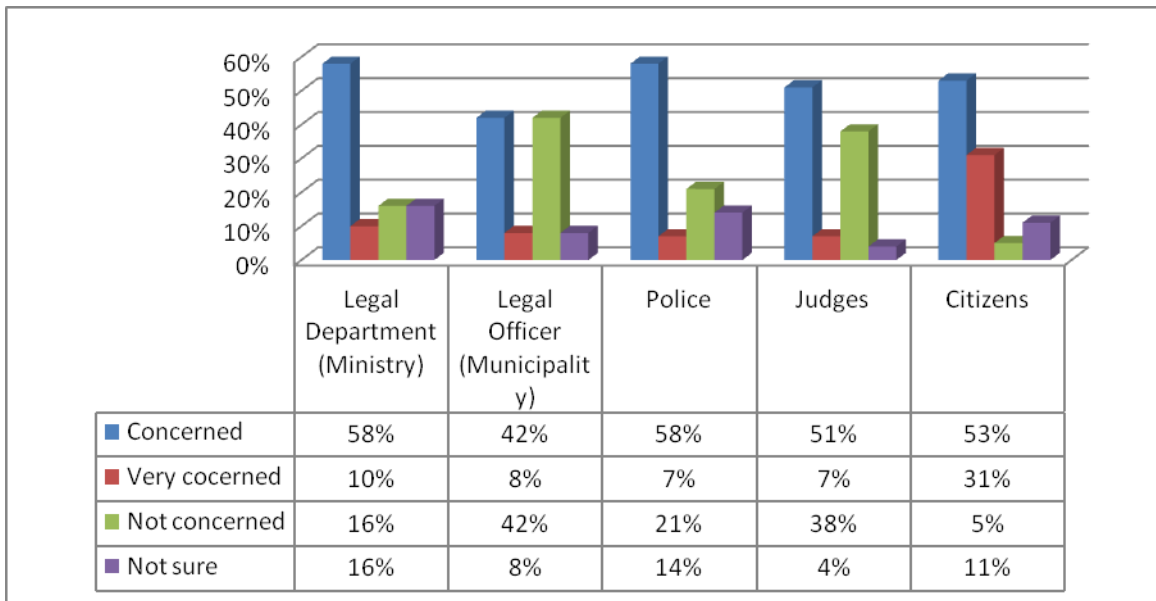
This capstone project addresses the challenges of Kosovo institutions for implementation of legislation with focus on strengthening the role and capacities of the Kosovo institutions for effective implementation of legislation.

The Republic of Kosovo in recent years has been passing through and facing a dramatic phase in the development of its political, social, economical and cultural life. The consequences of the war inhibit development, consolidation, strengthening and normal functioning of Kosovo governing institutions. During the last decade, Kosovo institutions and International institutions which are acting in Kosovo, have dedicated much more importance to drafting and development of the laws, while very little attention was dedicated to their implementation.

The legal infrastructure in Kosovo is in full compliance with international standards. It still faces obstacles for implementation. This is due to the lack of financial and human resources, administrative obstacles and sometimes lack of adequate political will. The implementation of the legislation requires more financial support, human capacity with sufficient expertise and more efforts on coordination cooperation. Information sharing among main stakeholders’ who are in charge for drafting and implementation of legislation is essential.

The capstone project survey related to five different groups of surveyed respondent’s it showed, almost all of them have expressed concerns about the progress and effectiveness of institutions in the implementation of the legislation (see figure.1).

Figure 1. Concern about implementation of legislation?



The survey results from the project show that 68% of the legal departments being concerned and very concerned about the implementation of the legislation. The levels of concern of the police are very similar at 65%. There were 58% of judges concerned and

very concerned ,while 50% of legal officers in municipalities are concerned and very concerned. The most concerned and very concerned about the implementation of the legislation are citizens at approximately 84%.

Questionnaires were addressed to five groups of stakeholders including: Legal Department in the Ministries, Legal Offices in the Municipalities, Judges, Police Officers and Kosovo citizens. In the survey conducted there were 73 judges, 41 police officers, 33 legal officers in the ministries, 12 legal officers in municipalities and 55 citizens including NGO-s. This provided a total of 214 respondents. This report offers evidence based recommendations for improving implementation to decision-making Institutions in the Government, Parliament and to other relevant authorities. Detailed recommendations are provided, for, legislative, executive, judiciary brunch, including media and civil society.

The major project recommendations include:

- (1) Having a balanced approach in the legal offices of the various ministries, where enforcement of the laws should have a similar priority as the drafting of new legislation.
- (2) Consistent structuring of legal departments in ministries to be in accordance with Administrative Instruction Nr. 13/2007 on the organization and operation of legal services in the Executive Branch. Each Legal Department must have two divisions; the division for the development and harmonization of legislation and division for monitoring the implementation of legislation, legal support, and interagency cooperation for legislation.
- (3) Strengthening the capacity of the legal offices within the executive branch in two ways. These will include increased numbers of staff members in legal offices as well as providing additional professional training in their respective fields.
- (4) Reinforcing the capacities of line ministries for policy analysis, law-drafting and public consultation. The overall quality of the legislation will not improve if laws are drafted without previous and accurate policy analysis.
- (5) Enforcement of the Government decisions from 2008 for the Commission for monitoring the implementation of laws and Commission for identifying and eliminating the collision of laws.
- (6) Receiving continued support from the international community for the Government of Kosovo in preparation of draft laws and in the implementation phase.

Chapter I

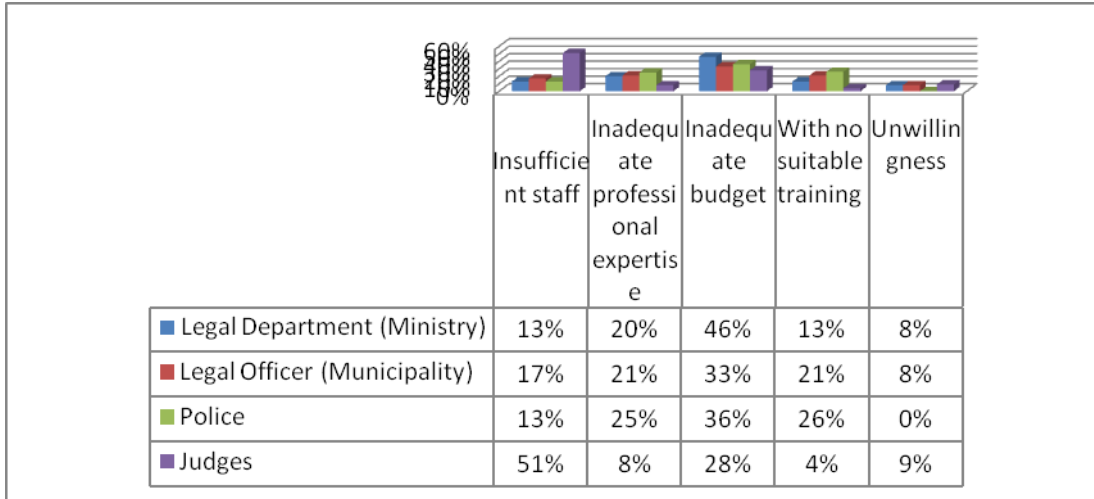
General overview of the implementation of the legislation

In recent years, Kosovo has made evident progress on drafting and approving appropriate legislations which is in accordance with the international human rights standards and *acquis communitare*. However, there is a problem in the process of their implementation. A real difficulty in implementing the laws is the legal uncertainty which exists regarding the legislation applicable in Kosovo. The legal framework in Kosovo is complex and inadequate in implementation.

The Republic of Kosovo has declared its independence on 17th February 2008, and the Assembly of Republic of Kosovo on 9th April 2008 adopted the Constitution of Republic of Kosovo which entered into force on 15th June 2008. Before entry into force the Constitution of the Republic of Kosovo, the law applicable in Kosovo include: Regulations promulgated by the Special Representative of the Secretary-General (SRSG) and subsidiary instruments issued in accordance with them and the legislation in force in Kosovo on 22 March 1989. In case of conflict, will prevail regulations and subsidiary instruments issued in accordance with them. If a court of competent jurisdiction, a body or a person who should enforce a provision of law, determines that an issue or a situation cannot be covered by the legislation set up, but covered by another law in force in Kosovo after 22 March 1989, which is not discriminatory, then the court, body or person, as an exception, will apply that law. Legislation applicable on the date of the entry into force of this Constitution shall continue to apply to the extent it is in conformity with this Constitution until repealed, superseded or amended in accordance with this Constitution.

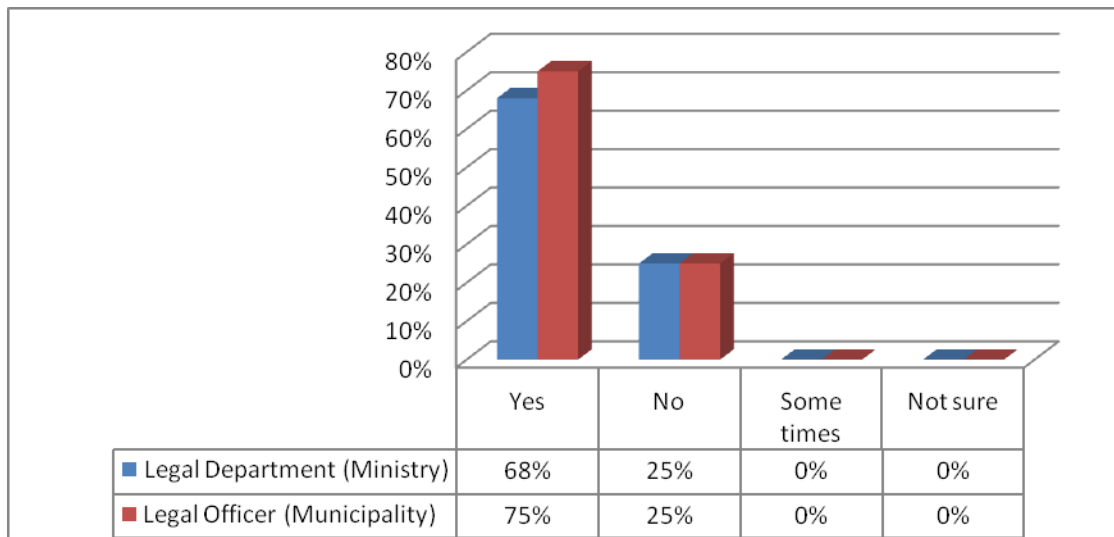
The Kosovo administration was built on an ad-hoc manner after the war (1999). Some ministries have responsibilities which overlap one another; others have a structure that is not appropriate to their mandate, while human resources are not allocated where they really need to be. Most of the laws are developed with the help and support of international experts from different countries without doing proper analysis of policies and needs, and with higher budgetary costs. The development of legislative policy in Kosovo was largely unplanned. Policies have been developed quickly, in response to crisis or urgent needs, as a reaction to unexpected political demands, which affects the poor quality of the laws. Even results stemming from the questionnaires developed for the realization of this project, pointed out, a number of factors which obstruct the implementation of legislation (see figure 1.1).

Figure 1.1. When you see key obstacles, problems in implementing of legislation at your institution?



Preparation of the draft laws reveals a number of serious deficiencies. The main problem lies in that law (like paper) is treated almost as a matter on itself, and not as a means to change an existing practice or to introduce a new one. The two links of law with public policy are not functioning: (a) policy analysis which should precede the issuance of laws before the law is adopted, and (b) implementation and monitoring of the effects of laws. Moreover, there is no assessment of the laws already in force while the ministries that make less law are blamed for this. This shows the tendency to focus on the preparation of many laws without prior review of policies which law will address. It does not happen anywhere, even in Anglo-Saxon tradition or in the countries of continental tradition (civil law) which also Kosovo belongs to.

Figure 1.2. Have you done any analysis of policies and needs, before you initiate the drafting of a law?



Fortunately results from the Questionnaire conducted with legal departments in Ministries and legal offices in Municipalities related to Question (see figure 1.2.), show us that approach of Kosovo institution in this regard has been changed in a positive way.

Compared to designing and building the legal infrastructure, enforcement of laws and other legal acts is a considerable delay due to many factors which are of importance for the implementation of legislation. Difficulties in implementing the law may be partly credited priority to the relevant institutions have paid drafting primary legislation; therefore this approach in the future should be better balanced .As Kosovo institutions are relatively new and as a result of the complex system of government, law enforcement has had serious shortcomings. Legal offices in the ministries are facing many challenges. At the moment there is something unusual for the legal offices with human capacities which that are available to be confronted with tasks that require more capacity. Therefore cannot avoid the fact that some laws and sub legal acts in some cases, were even issued a year after the prescribed period. Municipality officials lack clear understanding of primary and secondary legislation issued by the relevant ministries and government during the implementation process of law .The process of publication of laws by the executive is at an unsatisfactory level. Institutions from the executive branch have not taken necessary measures to ensure that Kosovo residents are informed of subsidiary legislation issued by them through the publication of such acts.

Existing institutional mechanism which monitoring the implementation of laws has not fulfilled its mandate. There is no forum where you can discuss legislative issues that involve the relationship between central and local level. A forum would clarify the roles and powers of both levels of government in service delivery, and also could be used as a forum to discuss important political issues and those affecting the long-term development of relations between the center and municipalities.

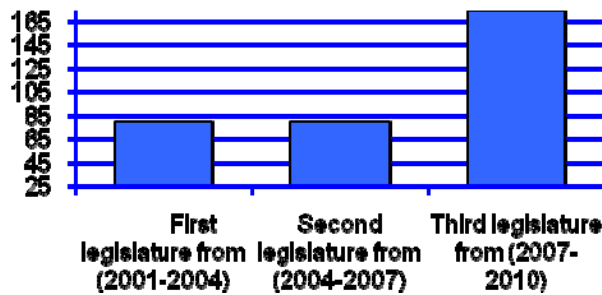
1.1 Building Kosovo Institutions- supervised by international institutions to the independent state institutions

Following the end of the war, in June 1999, an international administration was established in Kosovo through U.N. Security Council Resolution 1244, which administered the territory until early 2008- United Nations Mission in Kosovo (UNMIK). During the UNMIK administration, with the adoption of the Constitutional Framework, dated May 15, 2001, has been created the Provisional Institutions of Self Government (PISG).Kosovo established democratically elected institutions of self-government, but despite the establishment of self-governing institutions and the transfer of certain responsibilities but limited, the SRSG (Special Representative of the Secretary-General) of the U.N. retained so-called reserved powers and was still the supreme authority in Kosovo. Although the Assembly of Kosovo enjoyed authority and jurisdiction in adoption of laws, law enter in force only when is signed by the SRSG.

Until the declaration of independence leading and final authority on legislative and executive including the administration of justice had UNMIK. Kosovo institutions were more provisory and temporary bodies and their powers were limited and restricted.

Indeed, UNMIK governance over this period has slowed the development of Kosovo institutions in many ways. Adoption of laws is a good example of this. Every law that was passed in Parliament had to be approved by UNMIK authorities. This happened with a slow process, in which the first Parliament approves the law, and then law was sanded for review at the Office of Legal Affairs in UNMIK. After that law was send in the Office of Legal Affairs in UNMIK for final review and whether he complied with their recommendations, than was sanded for final approval to UNMIK chief. This was a slow process which often needed several months.

Figure 1.3. Laws adopted by the Assembly of Kosovo (2001-2010)



Source; Assembly of Kosovo

In February 17, 2008, Kosovo declared its independence .From 27 EU countries, 22 of them have recognized independence of Kosovo. Until now (May 2012), 85 (eighty five) countries in all have recognized Kosovo as independent state. When it declared independence, Kosovo pledged to implement the Comprehensive Proposal for the Kosovo Status Settlement, drafted and proposed by U.N. envoy Marti Ahtisari. In March 2007, the United Nations Special Envoy for Kosovo, former Finnish President Martti Ahtisaari, presented his plan for Kosovo’s final status to the U.N. secretary-general. This plan comprised two documents: the Report of the Special Envoy of the Secretary-General on Kosovo’s Future Status and the Comprehensive Proposal for the Kosovo Status Settlement. Ahtisaari recommended that “Kosovo’s status should be independence supervised by the international community.”The plan envisaged the end of U.N. Resolution 1244, provided for the departure of the U.N. Interim Administration Mission in Kosovo (UNMIK) and the transfer of its remaining competences to the Kosovo government. It also mandated the European Union to deploy a political mission- the International Civilian Office/European Union Special Representative- to oversee the settlement’s implementation, a police and justice mission to strengthen the rule of law and a continuing military mission to guarantee overall security under a NATO-led international military presence¹ .

On 9 April 2008, the assembly adopted the Constitution of the Republic of Kosovo. This necessitated a reconfiguration of the international civil presence UNMIK in Kosovo. In

¹ See BTI 2010 | Kosovo Country Report

August 2008, the UN mission transferred its authority to the government of Kosovo and to the European Union entity, the European Union Rule of Law Mission in Kosovo (EULEX). As a result of the transfer, the UN mission maintains a supportive, rather than directive, role observing and guiding the government and EULEX. UNMIK has moved back from an executive role to one of monitoring and support to local institutions and cooperates with the EU in order for it to assume an enhanced operational role in Kosovo in the area of the rule of law under EULEX. The European Union Rule of Law Mission in Kosovo (EULEX) aims at assisting and supporting the Kosovo authorities in the rule of law area, specifically in the police, judiciary and customs areas. The reconfiguration of the international presence in Kosovo met with many problems in 2008. Three different international institutions – UNMIK, ICO and EULEX – kept functioning with different mandates. On 24 November 2008, the U.N. Security Council issued a presidential statement calling for EULEX's deployment in Kosovo under U.N. Security Council Resolution 1244. However, the legal mandate of EULEX from the European Union Joint Action Plan of 4 February 2008 gives EULEX the mandate to support the implementation of the final status of Kosovo when it comes to the rule of law. EULEX deployed successfully on 9 December 2008 throughout the entire territory of Kosovo and, on that day, UNMIK transferred all of its legal authority to the new EU mission.

Although independent and sovereign state from February 17, 2008, Kosovo is still governed. In Kosovo there is a significant international presence that automatically makes its independence and sovereignty incomplete and limited. Kosovo has not yet taken all the responsibility to govern itself, still has not extended its legislative, executive and judicial powers, in its entire territory, still doesn't enjoys full political, legal, constitutional and international subjectivity.² Kosovo institutions are not the sole governing structures of the state. The International Civilian Office (ICO) is mandated with overseeing the implementation of the Ahtisaari Plan, while EULEX is in charge of assisting, monitoring and advising institutions in charge of implementing the rule of law. Kosovo still faces daunting challenges, aside from those posed by its struggle for international Recognition. According to a November 2010 European Commission report on Kosovo, the country suffers from weak institutions, including the judiciary and law enforcement.

The legal system in Kosovo is a combination of legislation adopted by the Kosovo authorities, Regulations and administrative directions of the UNMIK, and Ex-Yugoslav laws in place before 22 March 1989. The need to draft new legislation is constantly stressed by representatives of the international administration and of Kosovo's institutions, with the aim of crossing the gap between the inherited Yugoslav legal system and the new social, economic and political reality. Implementation of the new legal framework of Kosovo didn't have the full attention of the international administration and the Provisional Institution of Self Government (PISG) due to other existing priorities they do not paid proper attention to the law enforcement process. At the same time, the concept of good governance is characterized not only by making the necessary legal regulations but also through its proper implementation

²<http://www.esat.stavileci.com/index.php/artikujt/71-relativizim-i-pavaresise-dhe-sovranitetit>

1.2 Form of Government and separation of power in Republic of Kosova

Since the end of the war in 1999, and until today, in Kosovo is still controversial and debatable, whether there are established the grounds for the functioning of a democratic state. This is among others, due to challenges about the separation of powers and their independently functioning. Since then, the confusion about the mandate for governance and decision-making process in Kosovo, has led to a lack of accountability of international institutions as well as those of Kosovo, leaving room for "guilt jumps" from one party to another party.

Declaration of independence and adoption of the Constitution brought a new reality in Kosovo regarding separation of powers and their independence, but still these powers are supervised and influenced by international actors acting in Kosovo, which often diminish the independency of these powers. The Republic of Kosovo is in the process of establishment and consolidation of state democratic institutions which will operate on the basis of separation of powers guaranteed by the Constitution of the Republic of Kosovo.

Article 4, of the Constitution of the Republic of Kosovo determined that:

- Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution.
- The Assembly of the Republic of Kosovo exercises the legislative power.
- The President of the Republic of Kosovo represents the unity of the people. The President of the Republic of Kosovo is the legitimate representative of the country, internally and externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution.
- The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentary control.
- The judicial power is unique and independent and is exercised by courts.
- The Constitutional Court is an independent organ in protecting the constitutionality and is the final interpreter of the Constitution.
- The Republic of Kosovo has institutions for the protection of the constitutional order and Territorial integrity, public order and safety, which operate under the constitutional Authority of the democratic institutions of the Republic of Kosovo³.

1.2.1 Legislative Power

The Assembly is the legislative institution of the Republic of Kosovo directly elected by the people. The Assembly of the Republic of Kosovo: adopts laws, resolutions and other general acts. Also the Assembly oversees the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the

³Constitution of the Republic of Kosovo, Article 4

law⁴. The Assembly of Kosovo appoints permanent committees, operational committees and ad hoc committees reflecting the political composition of the Assembly.

Despite the existence of a legal framework which defines and explains the constitutional role and importance of the legislative body, there are practical difficulties in implementing and carrying out the mission of the Assembly. The Constitution provides enough power to the Assembly enabling it to perform its legislative, oversight and representative functions. However, the parliament has clearly been dominated by the government and co-operation between both institutions is not the rule⁵. The composition of the new Assembly changed following the recent legislative elections and there is hope that the new political parties will positively contribute to changing the functioning of the parliament, in particular by reinforcing its oversight function. Professional staff, for the support of the Assembly, is currently limited in number and in quality, operating with considerable budgetary and physical constraints. Parliament has significantly failed to meet legislative strategy. As the main actors of democratization, the capacity of members of the Assembly to meet their representative roles, legislative and monitoring is not yet in the desired level. Assembly lacks the capacity to monitor the implementation of laws, organizing debates, public consultations, the amendment of draft laws, research, etc. In all Progress Reports of the European Commission for Kosovo, the administration of Parliament is one of the vulnerabilities and the most criticized.

Also the process of the adoption of legislation by the Assembly has problems and delays. For 2009 of 127 draft laws set in the draft legislative strategy, the Assembly adopted 31 laws; of which 18 belong to the Government Legislative Strategy of 2008, while only 13 were from the 2009 Legislative Strategy. For 2010, the Kosovo government had foreseen to adopt 146 draft laws, and 23 other forward from previous years that the total catch figure of 169 bills. Of these, the Assembly adopted 71, in the two readings or only 42% of them. In 2011, Kosovo Government had foreseen to adopt 142 draft laws, at the end of the year 2011 Government has adopted 106 draft laws. Of these the Assembly adopted 65 laws. Assembly in this case has shown that doesn't plan well its work plan, no proper coordination in the adoption of its work plan with the Government's legislative strategy, for this reason from year to year, has never managed to fulfil this plan as for 50%.⁶

However, greater functional work within Parliament passes through parliamentary committees, which have mandate and legal authority, based on the Rules of Procedure of the Assembly, Rule 53, to oversee the implementation of laws by the Kosovo government. What lacks in well functioning and better performance of Kosovo Assembly is functioning of a unit-service for parliamentary research which, through analysis and research could improve lawmaking process in Kosovo Assembly and at the same time will help and increase effectiveness of deputies during exercising their function of supervising executive branch. Deputies must have access to information and

⁴Constitution of the Republic of Kosovo, Article 9, point (9)

⁵ Sigma Assessment, Kosovo (under UNSCR 1244/99), 2011

⁶Instituti për Studime të Avancuara GAP, Fakte rreth Strategjisë Legjislative, (Prishtinë, GAP, 2010), pp. 9.

in correct data, updated on time to be able to exercise effectively their competences that are granted for the Assembly with Constitution. This information is usually offered by specialized service for parliamentary research and function under the jurisdiction of parliaments. As Keith Cunningham, head of library in British Parliament, says 'most powerful weapon of parliament is information. So parliaments have need for special services which help in managing and systematization of information thus enabling exercising their essential role in democratic systems⁷.

1.2.2 Executive power

Kosovo is a parliamentary democracy, where Executive power is exercised by the Government of Kosovo. Kosovo's constitution stipulates that the Government, for its work, responds to the Assembly of Kosovo(Article 97).On the other hand, Kosovo's constitution gives the right to international institutions, to have influence in the decision making process of the state institutions(Chapter 14, the transitional provisions). This can be regarded as a form of restriction (interference) in the work of Kosovo institutions, including the work of the Government.

- The Government consists of the Prime Minister, deputy Prime Minister (s) and ministers.
- The Government of Kosovo exercises the executive power in compliance with the Constitution and the law.
- The Government implements laws and other acts adopted by the Assembly of Kosovo and exercise other activities within the scope of responsibilities set forth by the Constitution and the law.
- The Government makes decisions in accordance with this Constitution and the laws, proposes draft laws, proposes amendments to existing laws or other acts and may give its opinion on draft laws that are not proposed by it.⁸

The Prime Minister represents and leads the Government and has the following competencies: ensures the implementation of laws and policies determined by the Government; sign all legal acts adopted by the Government and ensures their implementation.

Although a law on Government is necessary for increasing transparency and improving the overall quality of the organization and functioning of the Government, one still has not yet been adopted⁹. On the other hand, in Kosovo Government are some positive developments. Government of the Republic of Kosovo in the meeting held on 25.08.2011 has approved the new Regulation of rules and procedure of the Government of the Republic of Kosovo, No. 09/2011 (Decision No. 04/34).This regulation shall regulate: the conduct of the work and the decision making procedures of the Government of the Republic of Kosovo; the rules and procedures on the drafting of legislation and policy recommendations by the Government and ministries, and the organization of the meetings of the Government and the work of Ministerial Committees.

⁷ The effective functioning of the Parliamentary Research Service, GAP 2011

⁸ See Article 92 and article 94 of the Constitution of the Republic of Kosovo,

⁹ Sigma Assessment, Kosovo (under UNSCR 1244/99), 2011

The Kosovo government is paying great importance to public administration reform which is one of the main links for the normal functioning of the state. The Kosovo government is operating with limited human, technical and financial resources. While the quantitative resources, mostly are there, but the quality remains problematic in some sectors, especially in public administration. Although the Government's financial resources are limited, and in many cases insufficient for effective actions, many economic analysts, evaluate how disturbing is the fact that each budget year begins with institutional complaints and dissatisfaction, accompanied with an explanation that Kosovo does not have sufficient budget to implement projects including the legislation, but always happens at the end of the year that Kosovo Government have (200-250) million Euros sufficient. The Kosovo government is showing poor performance of government, and is one of the most criticized addresses of all the institutional system. According to the latest UNDP Early Warning (Fast Facts), the level of citizen satisfaction with government is at 29% (in May), which is 7% lower than in January 2010.¹⁰

1.2.3 Judicial power

Kosovo society in general and the judiciary system in particular, those 10 years after the war in Kosovo is facing the biggest challenge in its recent history - the building of democratic order and establishing the rule of law. The justice system remains weak, vulnerable to political interference and inefficient. Challenges remain in further reducing the backlog of cases, especially in municipal courts. Concerning issue remains ensuring the sufficient budget for proper functioning of the courts. This situation is related to 10-year period before the war began in Kosovo, this was the period when Kosovo was suffering from a general lack of professionalism because of exclusion and separation of local Albanian prosecutors and judges from the judicial system for a decade. This inherent situation in the judiciary system resulted with problems and delay in establishing an advancement system of the rule of law in the country.

Although progress has been made in reforming the judiciary of Kosovo, he still suffers from a number of structural weaknesses. The legal infrastructure for the functioning of judicial system has been improved significantly, when the Kosovo Assembly, in 2010 approved several important laws, such as Law on courts, Law for Prosecution Council, and the Law on Judicial Council of Kosovo. Although legislation in force provides integrity and independence for justice system, in practice, the judiciary is not able to maintain its independence from political pressure and influence. The judiciary has failed to control the Executive Branch and not any high-profile case that is investigated or brought to court¹¹. There is a lack of a unified system of justice throughout the country, and there is a low level of trust in the judiciary among the population. A large number of cases are pending before the courts, which impede the timely administration of justice. Currently the Judiciary system has been considered one of the weakest links of the rule of law in Kosovo. This continues to hamper the administration of justice, since

¹⁰ See The System II Integriteti pp. 91.

¹¹ See Studimi I integritetit të sistemit institucional Kosova 2011.

judges are not always sure about the legal basis of their decisions, and in other hand it has negative impact on law enforcement.

Kosovo Judiciary consists of: the Supreme Court, High Court of Minor Offences, five District Courts, Commercial Court, 26 Municipal Court, 25 Municipal Court Offences . Prosecutors are organized in a Public Prosecutor of Kosovo, five of the District Public Prosecutor, and seven Municipal Public Prosecutor.

Despite the appointment and reappointment of some judges and prosecutors, the number of pending cases continues to be high in the Kosovo courts. There are about 224.000 (two hundred and twenty-four thousand) unsolved cases of different nature, a problem that is inherited from year to year. The judicial system continues to deal with other problems, but delays in the resolving of cases are the biggest problem. Kosovo Judicial Council (KJC), has already approved a new strategy to reduce the large number of pending cases, and as a result of implementing this strategy, for the first three months of 2011, the number of pending cases has fallen to 11 percent.

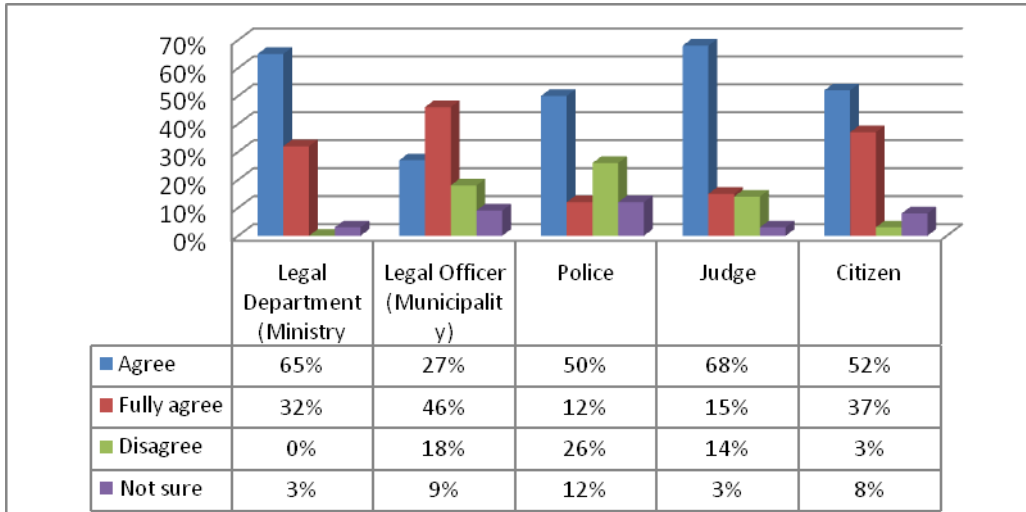
The backlog of outstanding cases seems to have influenced the closure of courts in north Kosovo, which a few days after declaring independence in February 2008, were occupied by Serb protesters. The judges in the justice system say that one of the problems that are facing, outside of the lack of judges, is the lack of sufficient working space in the courts.

The Judicial System continues to be the most critical sector in Kosovo, not only for non-resolution of cases, but also for the presence of corruption. Currently, lawsuits have been convicted in some court employees who are suspected for official misconduct. Judiciary system is facing with problems related to security of court buildings and judges. While judges rarely worry about their safety in court buildings, many of them have received personal threats, while some of them have even been subjected to physical violence, psychological pressure or crimes against their property. Also concern issues, remain the political influence in the judiciary and judicial processes. This fact doesn't justify judges or prosecutors, who are affected by these political pressures, or even without such effects, to give up them by sharing justice. There are deficiencies in the judicial support staff. These shortcomings are particularly lack of legal assistants for judges, most judges are assisted by a small number of practitioners and this fact has a negative impact on their performance. Despite recent advances, the quality of legal education in Kosovo continues to have poor quality and lack of the practical training specifically for new judges.

1.3 Legislation in force in Kosovo

Before entry into force the Constitution of the Republic of Kosovo, the law applicable in Kosovo include: regulations promulgated by the Special Representative of the Secretary-General (SRSG) and subsidiary instruments issued in accordance with them and the legislation in force in Kosovo on 22 March 1989. In case of conflict, regulations and subsidiary instruments issued in accordance with them, would prevail. According to the United Nations Mission in Kosovo (UNMIK), Regulation Nr.1999/24, the laws applicable in Kosovo are UNMIK regulations, legal instruments derived from them, and non-discriminatory laws that were in force in Kosovo on March 22 1989. Presently, the legislation in force in Kosovo is confusing, because the laws in force are the laws from former Yugoslavia before 1989, regulations and administrative instructions issued by UNMIK authorities, and the laws passed by the Assembly of Kosovo after the declaration of independence February 17, 2008.

Figure 1.4. Do you agree that the legislation in force in Kosovo causes confusion in the law implementation?



A significant percentage of respondents, consider and are agree that the legislation in force in Kosovo, causes confusion in the law implementation.

According to Article 145 of the Constitution of the Republic of Kosovo, Legislation applicable on the date of the entry into force of this Constitution shall continue to apply to the extent it is in conformity with this Constitution until repealed, superseded or amended in accordance with this Constitution¹². It is worth mentioning that despite the adoption of the laws of the Republic of Kosovo, some of UNMIK regulations continue to be still in force or not all regulations issued by UNMIK authorities are repealed.

¹² Article 145 [Continuity of International Agreements and Applicable Legislation], of the Constitution of the Republic of Kosova

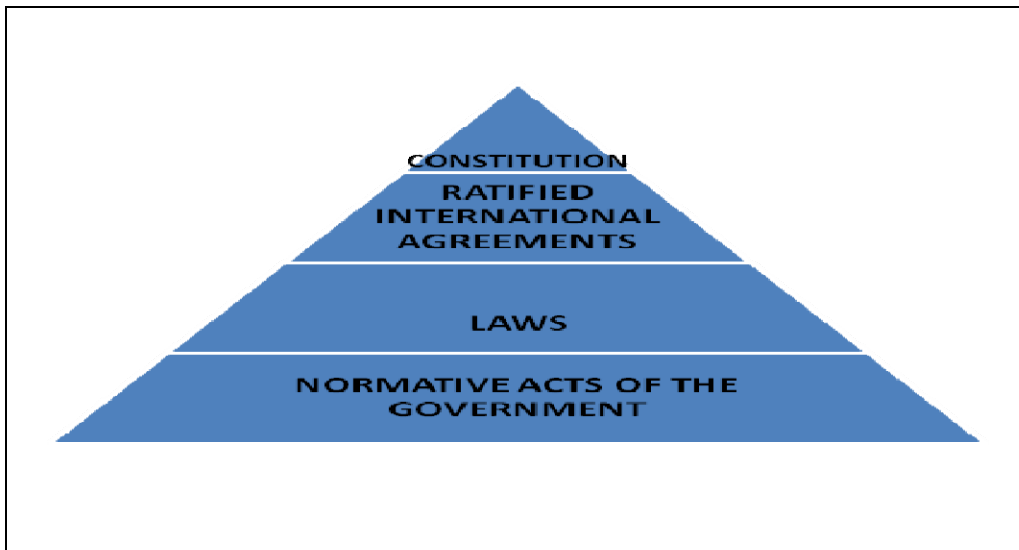
The Constitution of the Republic of Kosovo provides Supremacy of the Constitution. In particular, Article 16(1) declares that “The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts shall be in accordance with this Constitution.” International agreements come after the Constitution in the ranking of norms and they have an important place in our legal system. Article 19 emphasizes this idea by providing that International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo. They are directly applied except for cases when they are not self-applicable and the application requires the promulgation of a law. Ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo.

Article 93 (4) of Constitution provides that the Government has the competencies to makes decisions and issues legal acts or regulations necessary for the implementation of laws. Having in mind this, Hierarchy of legal norms in Republic of Kosovo that are effective in the entire territory of the Republic of Kosovo are:

- I. The Constitution;
- II. Ratified international agreements;
- III. Laws;
- IV. Normative acts of the Government.

All laws, however, have an equal hierarchical status regardless of the procedure for their enactment. The Constitution does not give any consequential special status to legislation that requires an enhanced majority to be enacted under Article 81 or otherwise.

Figure 1.5. Hierarchy of legal norms in Republic of Kosovo



Chapter 2

Legislative Initiatives of drafting the legislation

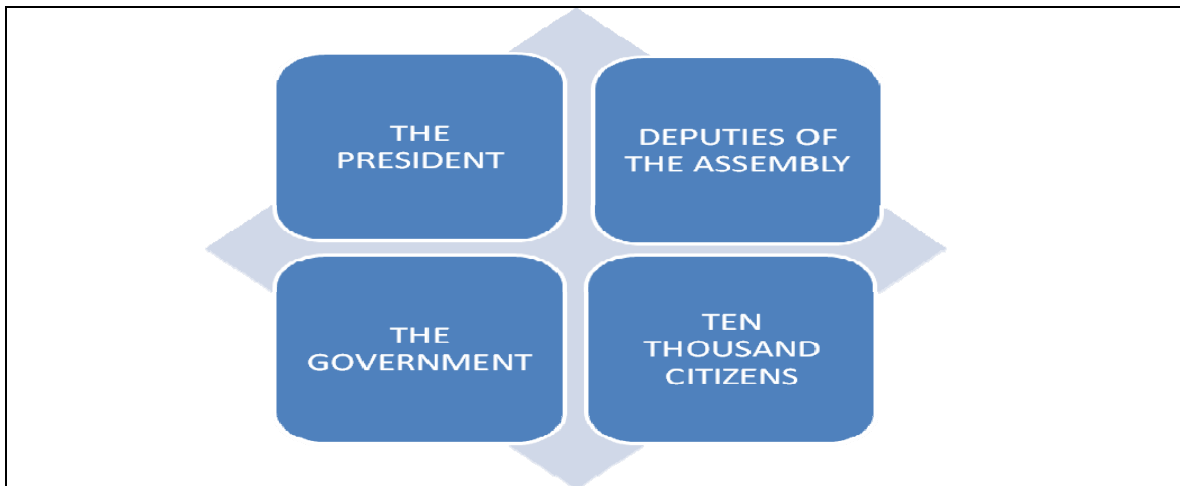
Competencies for initiative to propose laws are defined and guaranteed by the highest legal act of the state, the Constitution of the Republic of Kosovo. Article 79 of Constitution provides that the initiative to propose laws may be taken by the President of the Republic of Kosovo from his/her scope of authority, the Government, deputies of the Assembly or at least ten thousand citizens as provided by law.

A Draft Law may be introduced to the Assembly by the President of the Republic of Kosovo within his/her scope of activities, Government, Members of the Assembly, Parliamentary Committee, Parliamentary group or by at least six (6) Members of the Assembly, and by ten thousand voters, in accordance with the manner established by the Law¹³.

Law no.04/L-025 on Legislative Initiatives establishes rules and procedures for legislative initiatives. Article 5 of Law No.04/L-025 on Legislative Initiatives provides that Legislative initiative may be taken by:

1. President of Republic of Kosovo from her/his scope;
2. Members of Parliament;
3. Government; or
4. At least ten thousand (10.000) citizens with the right to vote¹⁴.

Figure 2.1. Subject entitled with the right for legislative initiative



2.1 The initiative to propose laws by the President of the Republic of Kosovo

President of the Republic of Kosovo has the right to propose a legislative initiative from his/her scope. The President addresses the legislative initiative to the Presidency of the Assembly of Kosovo. ¹⁵

¹³Article 53, Rules of procedure of the Assembly of the Republic of Kosovo,

¹⁴ Article 5, Law No.04/L-025 on Legislative Initiatives,

The Draft-Law introduced by the President, shall be sent to Government, through the Presidency of the Assembly, for an opinion. The Government shall present its opinion in writing within one month from the day of receipt of such Draft-Law. After this deadline, the Draft-Law shall be preceded to the assembly for review.¹⁶

2.2 The initiative to propose laws by the deputies of the Assembly

At least six (6) members of the Assembly have the right of initiative to propose laws as provided in the Rules of Procedure of the Assembly.¹⁷ When the Assembly undertakes the initiative for drafting a Draft-Law, the Presidency of the Assembly shall seek the opinion of the Government. The Government shall declare on the Draft-Law within one month. The initiative of the Assembly Member, Committee or of a Parliamentary Group shall be reviewed in a plenary session with or without the opinion of the Government, within two months from the day of its introduction. If the Assembly approves the initiative, the Government shall prepare the Draft-Law within three (3) months, following the day of its approval¹⁸.

2.3 The initiative to propose laws by the Government

According to Constitution of the Republic of Kosovo, the Government has the competencies to propose draft laws, proposes amendments to existing laws and other acts to the Assembly and may give its opinion on draft laws that are not proposed by it.¹⁹ The Government shall present its opinion in writing within one month from the day of receipt of such Draft-Law that is not proposed by it.²⁰ Government of Republic of Kosovo has the right of initiative to propose Laws, by its scope, as determined by the Rules of Procedures of the Government and by the Law on Legislative Initiatives.²¹ Article 38 of Regulation No. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo provides that the Prime Minister and every minister have the right to propose drafts of Primary and Secondary Laws. Ministries exercise this right in conformity with their relevant fields of activity as well with the responsibilities that derive from the approved concept documents. The Prime Minister, the Minister, General Secretary and equivalent positions, Chief Executive Officers of Executive Agencies, Directors of the Office of OPM, Director of the Department, and the Director of the Legal Department, are eligible to initiate legislation, respectively they propose the start of the procedure for drafting a Primary Law or Secondary Law. The legislative initiative can be exercised also by more than one Director, when the draft Primary Law or Secondary

15 See Article 79 [Legislative Initiative] of the Constitution of the Republic of Kosovo, Article 7 (Legislative initiative by the President) Law No.04/L –025 on Legislative Initiatives and Article 53 Introduction of Draft-Laws (Rules of Procedure of the Assembly);

16 See Article 53 Introduction of Draft-Laws (Rules of Procedure of the Assembly);

17 Article 8, Legislative initiative by members of the Parliament (Law on legislative initiative)

18 Article 55 Initiative for drafting a Draft-Law (Rules of procedure of the Assembly)

19 See Article 92 [General Principles] and Article 93 (3) [Competencies of the Government] of the Constitution of the Republic of Kosovo ; Article 53 Introduction of Draft-Laws (Rules of procedure of the assembly)

20 See Article 53 Introduction of Draft-Laws (Rules of procedure of the Assembly)

21 Article 9 ,Legislative initiative by the Government, Law No.04/L –025 on Legislative Initiatives

Law regulates the relations of more than a specific field. In this case the General Secretary of the relevant Ministry coordinates this initiative.

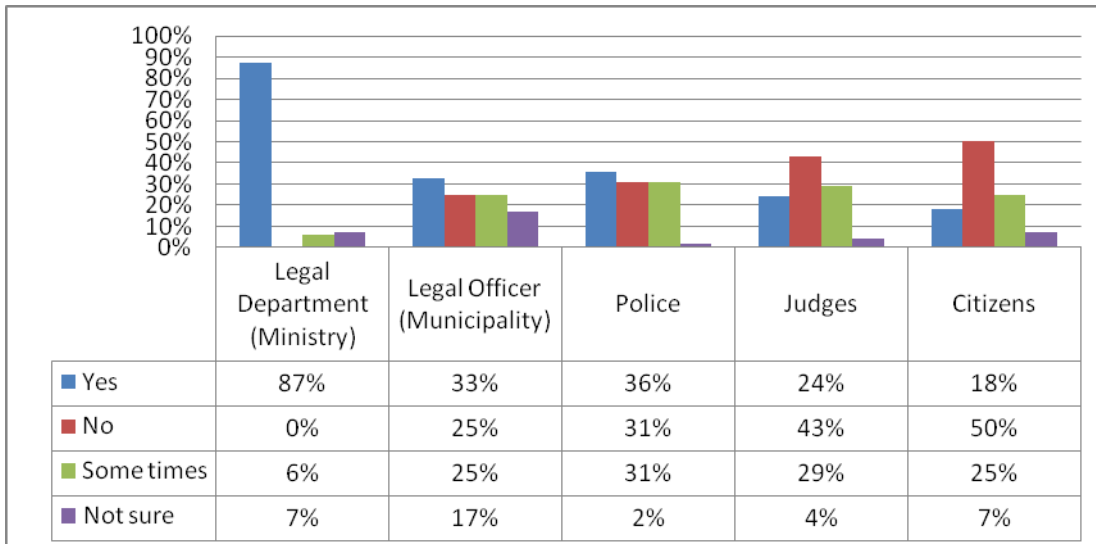
2.3.1 Transparency of the Kosovo Government in the process of drafting the legislation

"There is only one way to keep on foot a democracy: to inform the public of what happens," noted Joseph Pulitzer (one of the pioneers of American journalism). In the past, in Kosovo, communication between Government and citizens was in that position that government tasks were considered as not for citizens. This form of Government communication with citizens started to change after the war (1999), initially starting to inform citizens for the activities carried out by the Government later to change in the form of communication. What can we do and how can we work together? One of the main challenges is inclusion of citizens in the policymaking process. This is an important element in the process of building democracy, a process through which Kosovo is going.

After declaration of independence of the Republic of Kosovo (2008) it is responsibility of Kosovo institutions to work in the directions so that process of inclusion and encouraging of civil society in drafting of legislation and all activities of public authorities to be transparent. Inclusion of citizens on the process of policymaking changes varying from the intensity of participation. There are four gradual levels of participation, from the least level of participation to the most participating: informing, consulting, dialogue and partnership. Institutions have already started to use the four levels, but, in order to encourage better administrative practices to offer Kosovo citizens a closer participation in the process of decision making in public institutions it is necessary to do more, especially in the level of dialogue and partnership.

See what key stakeholders think about the transparency of the government; refer to the results in (figure 2.2).

Figure 2.2. Do you think that Kosovo Government is transparent in the process of drafting the legislations?



Transparency and inclusion of civil society in the decision making is a process which is defined with the legislation in force in Kosovo. In this respect, there are a number of legal and sublegal acts that guarantee this process. The Right on Access to Public Documents is granted by Constitution, where each individual enjoys the right of access to public documents. Also, documents in possession by public institutions and government body, are public with exception for information that are protected by law, due to privacy, business secrets or information classified secret.²² In 2010 was approved Law no. 03/L-215 on access to public documents which grants rights to each legal and civil entity, without discrimination on any basis, to have access, upon request, in documents possessed, drafted or received by public institutions. Furthermore, transparency is one of core principles of civil service in which is determined: Processes in civil service are opened for public.²³

With the Regulation no.09/2011 on the Work of the Government of Republic of Kosovo, is determined: the manner of work and decision making procedures of the Government of Republic of Kosovo; rules and procedures for drafting legislation and policy recommendations by the Government and ministries, as well as organizing meetings of the Government and the work of Ministerial Committees. In accordance with this regulation the government informs the public and media about its work and decisions. Meetings of the Government will be public, unless the government decides to hold a full meeting or part of a closed-door meeting. Public meetings of the Government will be open to journalists and other representatives of public opinion.²⁴ Prime Minister and Deputy Prime Ministers are responsible to ensure that the public is informed on the work and decisions of Government. Government spokesman and Communication Office within the Office of Prime Minister will assist them in exercising these responsibilities. Every minister is responsible to ensure that the public is informed on the work and decisions of the ministry. Communication officers in every ministry will support the Minister in exercising these responsibilities in cooperation with the minister's advisers if this decided by the Minister.²⁵ With this regulation has been made an advancement in terms of public consultation where in article 32 of this regulation is determined the obligation of governmental bodies to seek public opinion on policy or proposed legislation which they want to draft, and will specifically seek comments from non-governmental organizations that significantly affected by the proposal. The consultation process is conducted in accordance with the Guidance for the consultation process which is approved by the Office of the Prime Minister in September of 2011.

Regulation No. 03/2011 on government service of communication with public (05.04.2011), also defines the responsibilities for planning and development of public information campaigns, communication and general government policies and public

²²See Article 41, Constitution of the Republic of Kosovo

²³ Article 5 (1.7) Law nr. 03/L-149 for Civil Service of the Republic of Kosovo

²⁴ Article 71 Regulation No. 09/2011 on the Work of the Government of the Republic of Kosovo

²⁵ See Article 72 Regulation No. 09/2011 on the Work of the Government of the Republic of Kosovo

activities, studies and surveys, media relations and media analysis, processing requests on access to official documents, maintaining of official websites, evaluation and archiving of communication products. Offices and relevant officials ensure effective and clear communication of policies and activities of public institutions for the target groups or interested stakeholders.

Government Transparency in the process of drafting legislation is very important because:

- a) Assists the Government to quickly identify and more accurately the needs of citizens.
- b) Increases the capacity of government to manage different situations.
- c) provides additional resources;
- d) Assists the Government to have the citizen's consensus for controversial issues before important decision is made;
- e) Assists in providing effective services;
- f) Assists the Government to work with transparency;
- g) Saves money and time for the Government.

2.3.2 Role and contribution of civil society during the process of drafting the legislation

Today civil society is usually defined as a third sector, in addition to the public and private sectors, where people can get together around shared values, norms and interests²⁶. No country can be considered democratic or free, without a well organized and coordinated civil society. Civil society plays an important role in helping Kosovo to become a truly democratic country. It is estimated that somewhere around 6300 NGOs are registered in Kosovo, however only 10% of them are considered to be less or more active.

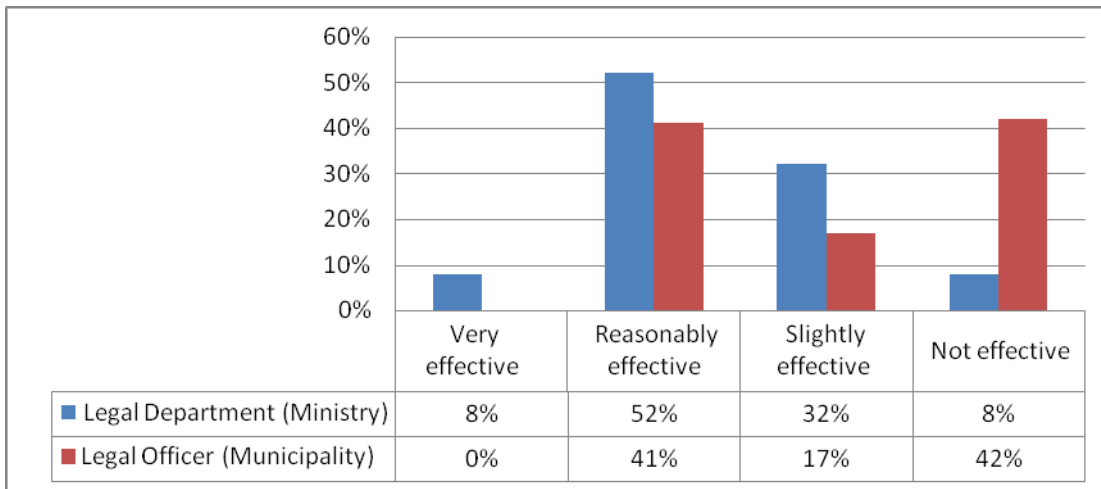
The process of making policies, laws and other official documents in Kosovo is now in the authority of elected bodies at central and local government. Although the making of policies and laws remain reserved powers for the Assembly, Government and Municipalities of Kosovo, democratic process of governance and decision-making guarantees and encourages participation in this process and other parties outside the public authorities. In the last 10 years Kosovo public authorities have developed a significant experience in policy-making, including participation and involvement of citizens in general and civil society organizations in particular in this process, but not at the satisfied level. Kosovo Legislative framework provides a favourable environment that ensures a normal functioning of civil society organizations. Functioning of NGOs sector in Kosovo is defined and regulated by the Law on Freedom of Association Nr.04/L-57 of non-governmental organizations. Civil society in Kosovo is mostly coordinated through networks and coalitions of NGOs working together to address common issues. In the post-war period, strengthening civil society and expanding its

26 Kosovo human development report ,2008- UNDP pp 18

influence in policy making process has been one of the main goals of international engagement in Kosovo.

On the other hand, in recent years Kosovo leadership was very much influenced and preoccupied with the issues of the final statutes, so the development and the functioning of civil societies was not even on their agenda and their preoccupation. Although Kosovo now has a clear structure and more advanced civil society which is largely funded by internationals, still there is an overall perception and appraisal, that civil society is not able to exert serious influence on the development and implementation of public policies. But on the other side the capacity of institutions at both central and local level of government to include the participation of civil society is still not at the satisfactory level, because institutions lack experience in this regard to. Until the announcement of independence, Kosovo was governed from domestic and international. Even Kosovo's legislative agenda was influenced by international, was not transparent and clear, and this was a serious obstacle for inclusion and participation of civil society in determining the impact of this agenda. However, the overall impression is that civil society has not yet reached a favourable position that would allow it to influence in policy formulation and to provide options for solving problems in various sectors of society (see results on figure 2.3).

Figure 2.3. How do you evaluate the contribution of civil society during the process of drafting the legislation?



Approach of the Government was oriented mainly on engaging representatives of civil society organizations in drafting legislation, decision making or debating public policies. The Kosovo Government does not have a strategic approach for cooperation with civil society organizations, and this reflects the essence of the problem²⁷. Until now cooperation between Government and civil society organizations was ad-hoc insufficient, sporadic and fragmented. Civil society representatives expressed their opinion that this cooperation is happening more as a result of personal contacts or knowledge of politicians and representatives of civil society or the result of the need for

²⁷ European commission, Progress Report for Kosovo, 2008

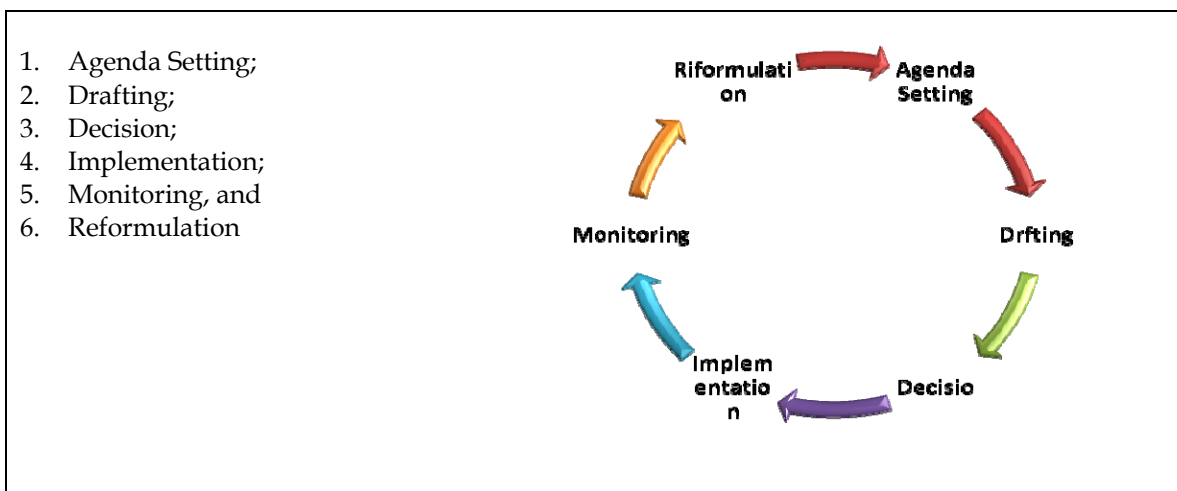
polymakers to improve their public image. Oftentimes, this form of ad-hoc cooperation is itself criticized by civil society organizations, which claim to have been left out from important discussions, forums, debates and only for the fact that they didn't had personal contacts and knowledge with decision-makers.

Involvement of civil society in the lawmaking process is now regulated by the Rules of Procedure of the Republic of Kosovo no. 09/2011. As defined in this regulation, the involvement of civil society is not required only for laws and sub legal acts but also is required for other materials as: concept documents, explanatory memorandums, strategic plans of ministries or sectorial strategies. All the sponsoring bodies, prior to submission for review and approval by the Government of any material, have a responsibility to ensure that besides institutions they are obligated to require comments from non-governmental organizations that significantly are affected by the proposal.²⁸ Presently, there are two forms of participation of civil society organizations at the cycle of policy making process:

- a) The first period includes the period of development of policies or draft law in the ministry, and
- b) the second phase covers the period of involvement of civil societies in public hearing and debate, to be called by parliamentary committees.

But Democratic Decision-making requires and encourages involvement in this process and the other outside public authorities offering and providing wider space for action, participation of civil society must become an integral part of the process of policy making and decision making in the Republic of Kosovo. In theory, there are six different steps of the political process of decision-making:

Figure 2.4. Steps in the political decision-making process²⁹



²⁸ See Article 7 and Article 32 of the Rules of Procedure of the Republic of Kosovo no. 09/2011

²⁹ Code of good practice for civil participation in the decision-making process, Adopted by the Conference of INGOs at its meeting on 1st October 2009 (CONF/PLE(2009)CODE1), pp 9

The cycle below defines the six different steps of the political decision-making process. Each step in the decision making process offers opportunities for NGOs and public authorities to interact with each other.

Agenda setting-the political agenda is agreed by the parliament and government but can be shaped by NGOs, or groups of NGOs, through campaigns and lobbying for issues, needs and concerns. New policy initiatives are often the result of influence of the campaigns of NGOs. During this step NGOs aim to influence decision-makers on behalf of a collective interest and act in a way that is complementary to political debate.³⁰

Drafting-Public authorities usually have well-established processes for policy drafting. Here NGOs are often involved in areas such as identifying problems, proposing solutions and providing evidence for their preferred proposal with, for example, interviews or research. Facilitating opportunities for consultation should be a key element in this step as well as various forms of dialogue to collect input from key stakeholders.³¹

Decision-The forms of political decision-taking vary based on national context and legislation. Common characteristics are the establishment of a government policy directive by a ministry; or legislation, such as passing a law by parliamentary vote; or public referendum, which then requires enabling legislation. Draft laws and motions should be open to input and participation of NGOs. The public authorities should evaluate different views and opinions before the decision is taken. At this step consultation is central to informed decision. However the final power of choice lies with the public authorities, unless the decision is taken by a public vote, referendum or a co-decision mechanism.³²

Implementation-this is the step at which many NGOs are most active, for example in service delivery and project execution. Much of the work done by NGOs in the previous steps includes attempts to influence the implementation of policy. This phase is especially important to ensure that the intended outcome will be fulfilled. Access to clear and transparent information on expectations and opportunities is important at this step, as well as active partnerships.³³

Monitoring- at this point the role of NGOs is to monitor and assess the outcomes of the implemented policy. It is important to have in place an effective and transparent monitoring system that ensures the policy/programme achieves the intended purpose.³⁴ In this step the role of NGOs is to monitor and evaluate the results of implemented policies.

Reformulation- the knowledge gained from assessing the policy implementation, coupled with evolving needs in society, often require a reformulation of policy. This must be based on access to information and opportunities for dialogue to identify needs and initiatives. This reformulation allows for the initiation of a new cycle of decision-making.

30 Code of Good Practice for Civil Participation in the Decision-making process Adopted by the Conference of INGOs at its meeting on 1st October 2009 (CONF/PLE(2009)CODE1) pp 9,

31 Ibid, Page 10

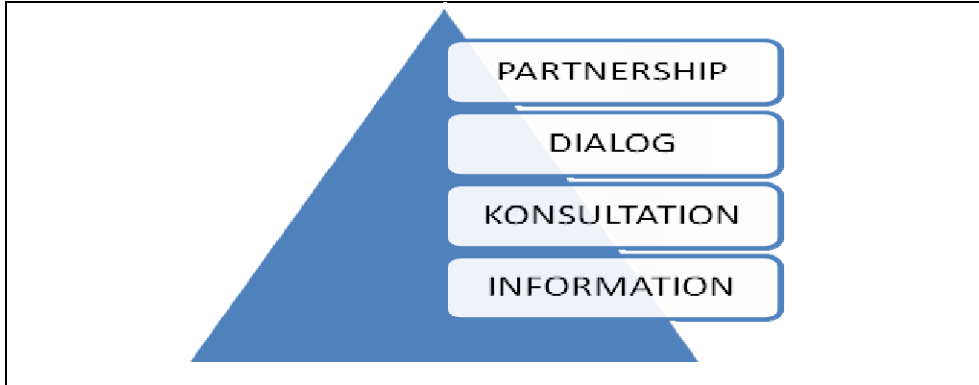
32 Ibid, Page 11

33 Ibid, Page 12

34 Ibid, Page 13

Also there are four different levels of citizen participation in decision-making process, starting from the lowest participation rate to the highest participation:

Figure 2.5. Four levels of citizen participation in decision-making process.



Why to strengthen relations between public authorities and civil society?

Citizen participation in designing public policy, either directly or through civil society organizations increases their credibility on government institutions because through this participation they learn more about the processes and the ways the government takes its decisions, at the same time ensure that their voice is heard in the case of approval of these documents. Also, civil society will enhance its positioning in terms of holding the government transparent, responsible and accountable in relation to citizens³⁵.

Kosovo Government in collaboration with representatives from civil society is in the process of drafting the Strategy for Cooperation with Civil Society. This strategy will establish the basis of the Government's cooperation with civil society and in this case the Government shall be liable for the obligations to develop civil society sector. With this strategy will be establishing a regular communication with civil society sector, shall be promoted partnership and transparency in political processes and always will be provided and maintained the independence of civil society sector. With the development of this Strategy the Government of Kosovo is expressing, once again its readiness and political will to involve citizens in decision-making, drafting legislation and policy. In conclusion, cooperation between the two sectors in Kosovo should happen not only for social and political reasons but also for the economic reasons.

35 Straight a structured cooperation between the Government and civil society in Kosovo-platform CIVIKOS-January, 2011

2.4 The initiative to propose laws by the or at least ten thousand citizens as provided by law

The right of citizens to propose laws is regulated by the Law on legislative Initiative Article 10, the right of legislative initiative by citizens. Every citizen enjoys equal rights in terms of legislative initiative and may initiate a legislative initiative. Every legislative initiative must have a representative. Citizen/s has/have the right of initiative to propose Laws by:

- 1.1. Drafting the Draft Law or,
- 1.2. Proposing the drafting of the Draft Law to the Assembly.

Draft Law or the proposal of drafting a certain Draft Law together with the disclosure document about the objectives to be achieved to realize and signed by at least ten thousand (10.000) citizens shall be submitted to the Assembly by the representative of initiative.³⁶

³⁶See Chapter III Legislative initiative by citizens and Chapter IV procedures and criteria for legislative initiative by the citizens -Law no.04/L –025 on Legislative Initiatives.

Chapter 3

Current procedures for drafting the legislation

The legislative drafting techniques and procedures play an important role for ensuring the successful drafting legislation and the legal reform, and consequently in the implementation of legislation. The basic principles of the legislative process in the Republic of Kosovo are set out in the Constitution of the Republic of Kosovo. Additionally, there are a number of laws and sub-legal acts that regulate the legislative process, such as: Law no.04/L -025 on legislative initiatives, Rules of Procedure of the Assembly of the Republic of Kosovo (29 April 2010), Law no. 03/L-190 on Official Gazette of the Republic of Kosovo, Regulation no. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo· Administrative Instruction no. 14/2008 for the compose of draft laws and sub legislative acts (30 July 2008), Administrative Instruction no. 13/2007on organization and scope of legal services of the executive branch-Government of Kosovo.

Until 2001, UNMIK was the only authority responsible for adopting legal acts, which took the form of Regulations and Administrative Directions for the implementation of UNMIK Regulation. The legislative drafting techniques and particularly the procedures during this period were different. The Special Representative of the Secretary-General (SRSG), for the purposes of developing meaningful self-government in Kosovo pending a final settlement, and establishing provisional institutions of self-government in the legislative, executive and judicial fields, promulgates the Constitutional Framework for Provisional Self-Government³⁷. The Constitutional Framework for Provisional Self-Government open the way for the establishment of the provisional institutions of self-government in the legislative, executive and judicial fields. Furthermore, the Constitutional Framework also defined the areas of responsibilities of these institutions. The powers and responsibilities of the Provisional Institutions of Self-Government were limited and did not include certain reserved powers and responsibilities, which remained exclusively in the hands of the SRSG. However, what was important was that the Constitution Framework established the Assembly of Kosovo as the highest legislative body of the Provisional Institution of Self-Government of Kosovo. Furthermore, the Constitutional Framework established the procedures for the adoption of laws.³⁸

What characterized the entire legislative process in Kosovo during this period was the fact that there were two authorities that were responsible for adopting legal acts, the SRSG and the Assembly of Kosovo, each in the areas specified in the Constitutional Framework. The element that was particularly interesting in the Constitutional Framework was the requirement that after the approval of a law by the Assembly, the President shall sign each law adopted by the Assembly and forward it to the SRSG for

37 According Chapter 1 (1.5) Basic Provisions, of the Constitutional Framework, the Provisional Institutions of Self-Government are: Assembly; President of Kosovo; Government; Courts; and other bodies and institutions set forth in Constitutional Framework.

38 Chapter 9 (9.1.34-9.1.45) Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-government in Kosovo,

promulgation. Laws shall become effective on the day of their promulgation by the SRSG, unless otherwise specified.³⁹ After approval by the Assembly, laws were promulgated through a UNMIK Regulation and were numbered according to the number of the promulgating regulation, and this was considered the law in force. In the promulgating regulation, the SRSG had the right to make amendments to laws approved by the Assembly without asking the Assembly. This happened in many laws.

All these procedures for the approval of legislation made the implementation of laws, respectively UNMIK Regulation more difficult. A significant number of citizens and administrative officials were not familiar with these procedures and often used the laws approved by the Assembly, without being aware that the law could have possibly been amended by the SRSG in the promulgating regulation. The laws approved by the Assembly were published in the UNMIK Official Gazette together with the respective promulgating regulation. UNMIK was responsible for the publication of UNMIK Regulations and Administrative Directions issued under the authority of the Special Representative of the Secretary-General. Even though in this official Gazette UNMIK assumes no responsibility as to the quality of the texts of the Laws adopted by the Assembly of Kosovo and promulgated by the Special Representative of the Secretary-General or as to the accuracy of the respective translations of the Assembly Laws in the languages required by paragraph 9.1.51 of the Constitutional Framework (UNMIK Regulation No. 2001/9 of 15 May 2001. UNMIK shall not be responsible for any consequence resulting from reliance on such texts and translations.

In addition to the various procedures that were applied and the bodies involved in this process, one additional problem was language. Taking into account the fact that the legislative drafting process depends largely on the proficient knowledge of language, this caused a number of problems during the drafting and implementation of legislation. UNMIK Regulations and Administrative Instructions were drafted in the English language and were then translated and published in the English, Albanian, Serbian, Bosnian and Turkish languages. This was done because the audience to which UNMIK Regulations and the laws approved by the assembly which were promulgated by the SRSG were addressed, were the citizens of Kosovo, and it's was important that they can easily read and implement the law. However, due to the sheer number of languages and the speed with which legal acts were adopted, they ultimately ended up containing many linguistic and grammar mistakes and inconsistencies between the various language versions of the Regulations and Laws. After the entry into force of the Constitution of the Republic of Kosovo (15.06.2008) the techniques and procedures for legislative drafting started to be consolidated and become more similar to normal countries, and this process still continues.

³⁹ Chapter 9 (9.1.44 and 9.1.45) Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-government in Kosovo

3.1 General principles of drafting the legislation

Some of the basic principles of legislative drafting, which always remain the same, are as follows:

- **Clarity:** The language used during the drafting of laws should be clear and simple.
- **Accuracy:** is another important principle, which means that the language used should be accurate.
- **Compatibility:** The words used in one law should have the same meaning as the same words used in other related laws and subordinate legislation. In fact, this compatibility is manifested in at least three of the variants listed below, which should always be taken into account during the legislative drafting process:
 - a. *Consistency of legal terminology;*
 - b. *Compliance of provisions within the same legal act; and*
 - c. *Compliance between legal acts.*
- **Necessary language:** which means that, every word used in the law should be necessary and there should be a reason for using it.⁴⁰

Article 5 of Administrative Instruction No.14/2008 for the compose of draft laws and sub legislative acts, define General principles of composing the project acts. According this article, In the process of composing the draft laws and sub-legislative acts, their compliers should abide and respect entirely the principles as follows:

- Legal language should be clear, simple, accurate and not ambiguous;
- Unnecessary acronyms and long sentences should be avoided;
- Incorrect and excessive refereeing of other texts should be avoided;
- Provisions within an act should be in accordance with one-another;
- The same term is used in the whole text to express the same meaning;
- The rights and obligations of those that the act is dedicated should be defined clearly;
- The draft law or sub-legislative act to be presented according to the standard structure, as it is foreseen in the article 8 of this Instruction;
- The preamble should have in the content the institution that issues the legal act, legal base for act issuing (defined in annex three (3) and four (4) of this Instruction) and the aim of act issuing;
- Provisions that do not have legislative character should be avoided;
- Incompatibility with the existing legislation should be avoided, in the same way that is avoided unnecessary repetition of existing legal provisions.
- Each amendment, invalidity of an act or legal provision should be ranked clearly;
- A juridical act that amends a legal act into force should not have in the content main self-supporting provisions, but only provisions that are included directly in the legal act that are amended;
- Juridical act that is amended above forty (40 %) should be write in a new juridical act.

⁴⁰ See Guide for drafting laws and writing legal opinions, B&S Europe

3.1.2 Objectives of legislation

The objective of each law should be to provide its users with as precise and comprehensive regulation as possible of the matter addressed. Its provisions should be limited to regulating objectively determinable societal circumstances by reference to their identifiable characteristics. It should contain a clear and accurate statement of obligations, rights and duties.

The law should seek the most durable and sustainable solution that is:

- (I) constitutionally competent;
- (II) in line with the ratified international agreements and commitments deriving from the participation of Kosovo in international organisations;
- (III) otherwise consistent with fundamental notions of reason and logic;
- (IV) practicable;
- (V) with a minimum of undesirable side effects; and
- (VI) the most cost-efficient relationship between the legislative objective and
- (VII) the means used to achieve it.

In a country at Kosovo's stage in the EU pre-accession process, compliance of national law with the EU's *acquis* is another objective that needs to be addressed.

To the extent that a law fails to meet these objectives, it undermines the legal order and the authority of the state.⁴¹

The objective of each project act should be in a way to provide to those dedicated a complete regulation, clear and understandable of the problem that is reviewed by defining clearly obligations and rights.⁴²

3.1.3 Legislative procedures

Laws result from a complex process of interaction and coordination of the various players involved in the legislative process. The quality of laws therefore greatly depends on the organisation of the legislative process and the co-operation among these players.⁴³

The process of composing the project-acts entirely can be described by the following steps:

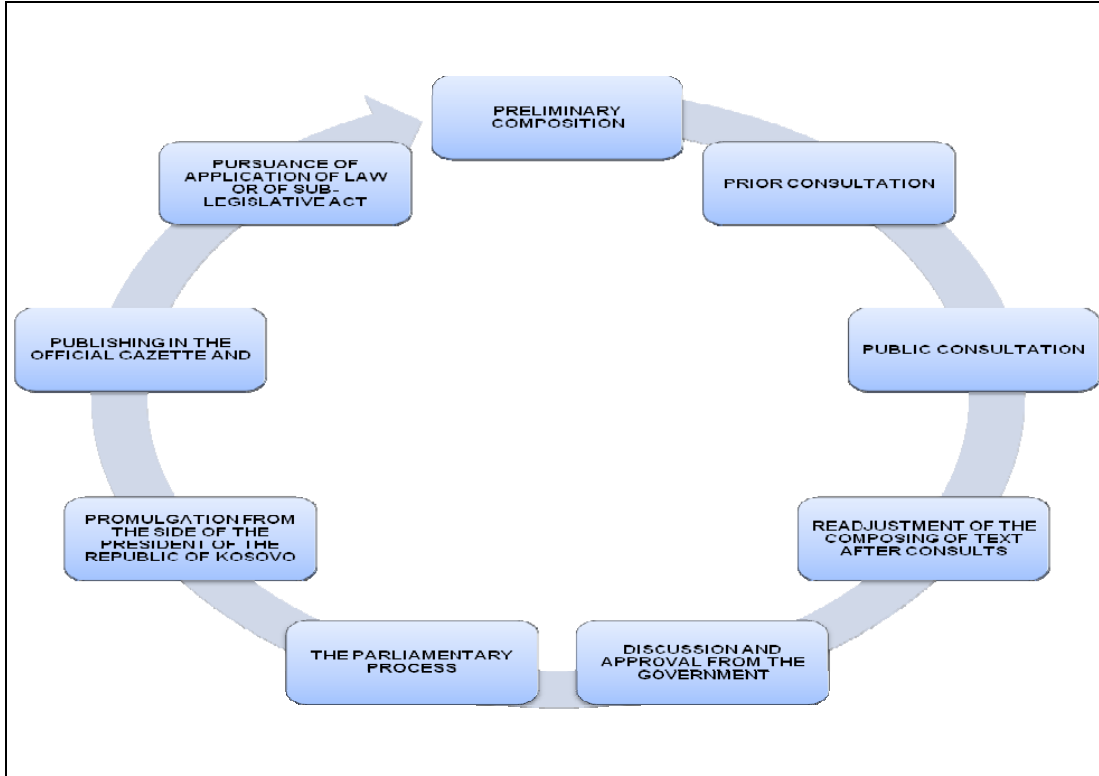
- 1.1. Preliminary composition
- 1.2. Prior Consultation;
- 1.3. Public Consultation;
- 1.4. Readjustment of the composing of text after consults;
- 1.5. Discussion and approval from the Government;
- 1.6. The parliamentary process;
- 1.7. Promulgation from the side of the President of the Republic of Kosovo
- 1.8. Publishing in the Official Gazette and
- 1.9. Pursuance of application of law or of sub-legislative act.

⁴¹See, Compare Law Drafting Manual: A guide to the legislative process in Albania Tirana, 2010 (EURALIUS Mission-European Assistance Mission to the Albanian Justice System). pp 10,

⁴² Article 4, Administrative Instruction no.14/2008 for the compose of draft laws and sub legislative acts

⁴³Law Drafting Manual: A guide to the legislative process in Albania Tirana, 2010 (EURALIUS Mission-European Assistance Mission to the Albanian Justice System).pg 30,

Figure 3.1. The process of composing the project-acts



Drafting legislation requires a significant period of time. In order to draft quality legislation which can be properly implemented, it is very important to keep in mind the steps listed above. This means that sufficient time should be made available for implementing the steps listed above. There are many cases in Kosovo, where these steps are not respected during the drafting of legislation. This happens for several reasons. The first reason is the high demand for advanced legislation that is in accordance with democratic principles and legislation that regulates the work of the various state mechanisms of the Republic of Kosovo. This leads to a high demand for new legislation and for the amendment of existing legislation. The time available for drafting such legislation is often insufficient. Furthermore, a significant number of laws are drafted as a result of requirements from various European (e.g. Progress Report of the European Commission for Kosovo) and international (World Bank Report) mechanisms and the wish to improve and implement the recommendations laid out in these reports quickly. Another factor is the fact that in some cases, laws are still drafted by external experts that are usually engaged in short terms and they do not follow the steps of the legislative process. At the same time, the lack of professionalism and diligence of officers responsible for legislative drafting lead to situations where these steps are not implemented. In this regard, there is still much that needs to be done to improve the consultation process and particularly public consultation. All these factors have a negative impact, since any draft law that is drafted without a specific calendar and without respecting the aforementioned steps, is very likely to encounter problems during implementation.

3.1.4 Planning (Legislative program)

The coherence of the legal system may be greatly facilitated by establishing short, medium and long-term legislative priorities by means of appropriate planning and programmes. Such planning and programmes also facilitate the coordination of the drafting work between various ministries, especially in the preparation of complex laws.⁴⁴

The demand for legislation may come from various sources, such as:

- the Government's legislative programme;
- a request by the Assembly or individual Members of the Assembly;
- demands from non-governmental organisations and interest groups;
- requirements of an international treaty or of an international organisation;
- court decisions;
- opinions expressed in legal doctrine;
- the obligation to approximate legislation as a consequence of the European integration processes.⁴⁵

Given the fact that the Government drafts over 90% of all draft laws, the Government's legislative programme, is the main planning document for legislative drafting. The principal planning tool for the legislative activity of the Government is the annual legislative programme, which provides a structured presentation of the draft laws that the Government intends to prepare and introduce during the given year. With regulation of rules and procedure of the Government of the Republic of Kosovo no. 09/2011 is regulate the rules and procedures on the drafting of legislation by the government and ministries. Annual Work Plan of the Government shall include both legislative and non-legislative tasks. However, the legislative tasks in the work plan shall also be summarized separately in an annex (Legislative Program) to the work plan, to facilitate the management and monitoring of the Government's legislative initiatives.

3.1.5 Internal consultation and external consultation

The Kosovo society for many decades has been in a fight for survival and during this time, in Kosovo a variety of value systems have been applied and there have been various reactions by the population to these values. This has also resulted in different forms of communication between governments and citizens. The Rules of Procedure of the Government obligate the Government to conduct a consultation process before the approval of policies and legislation. This consultation is done in two stages. The first stage involves internal consultation and the second is public consultation.

Prior Consultation are regulated by Article 7 of Regulation no. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo provides that, before the originating body or a government body submits a concept document, explanatory

⁴⁴ Law drafting manual: A guide to the legislative process in Albania Tirana, 2010 (EURALIUS Mission-European Assistance Mission to the Albanian Justice System).pp 31

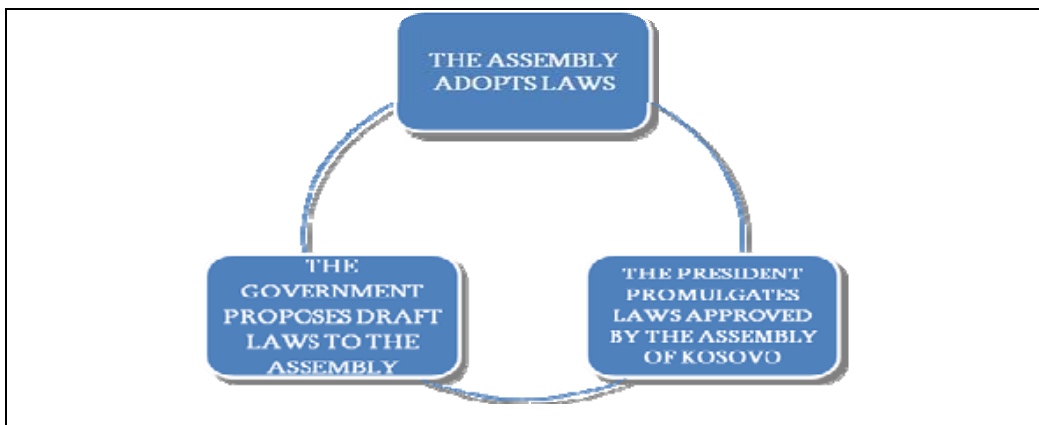
⁴⁵Compare Law Drafting Manual: A guide to the legislative process in Albania Tirana, 2010 (EURALIUS Mission-European Assistance Mission to the Albanian Justice System). pp 12,

memorandum, draft law or sub-legal act, strategic plan of a ministry or sectorial strategy for deliberation by the Government, the body preparing the material (*the 'originating body'*) is responsible for ensuring that all the highest bodies of the state administration, central bodies of the state administration, independent bodies of the state administration and other relevant bodies which the Government is obligated to consult in accordance with the Constitution or whose work might be affected by the concerned proposal (draft law, sub-legal act or policy) have the opportunity to comment upon it. Article 32 of Regulation no. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo provides obligation for government institutions to hold and organize Public Consultation.

In relation to any proposal for which a concept document is required, in addition to consulting other ministries and public administration bodies as required by article 7 of this regulation, the originating ministry shall publish the substance of its proposal for public comment and shall specifically seek the comments of any non-Governmental organization that would be substantially affected by the proposal. In conducting this consultation, the originating body shall provide sufficient information in a publicly understandable form to permit the public to understand the nature and consequences of the proposal. The originating body shall also publicly announce the beginning of the consultation exercise, and shall permit sufficient time for the public and non-Governmental organizations to consider the recommendations and offer a considered response. The results of such consultations shall be reported to the Government meeting or Ministerial Committee as part of the concept document or explanatory memorandum required by articles 29 and 30 of Regulation no. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo.

3.1.6 Review of the draft law by the Government and proceedings to the Assembly

Figure 3.2. The normal cycle of drafting and the finalization of a law



Article 78 of the Constitution provides that the Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution.

3.1.7 Announcement, Decree and publication of the Law in Official Gazettes

Laws adopted by the Assembly are signed by the President of the Assembly of Kosovo and promulgated by the President of the Republic of Kosovo upon her/his signature within eight (8) days from receipt. If the President of the Republic of Kosovo returns a law to the Assembly, he/she should state the reasons of return. The President may exercise this right of return only once per law. The Assembly decides to adopt a law returned by the President by a majority vote of all its deputies and such a law shall be considered promulgated. If the President of the Republic of Kosovo does not make any decision for the promulgation or return of a law within eight (8) days from its receipt, such a law shall be considered promulgated without her/his signature and shall be published in the Official Gazette. A law enters into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo, except when otherwise specified by the law itself.

3.1.8 Approximation of legislation with *acquis communautaire*

In a country at Kosovo's stage in the EU pre-accession process, compliance of national law with the EU's *acquis*⁴⁶ is another objective that needs to be addressed. Approximation of Kosovo Legislation with the *acquis communautaire* is a precondition for EU membership. Countries that are candidates for European Union (EU) accession face the complex and urgent task of building administrative institutions so that they can fulfil the "Copenhagen criteria". Such institutions must be able to implement the *acquis communautaire* within tight budget constraints and ensure favourable conditions for a competitive private sector. They must also provide candidate countries with the institutional capacity to participate effectively in future policy making within the European Union upon accession.⁴⁷ However, this process has not been easy, not only for Kosovo, but also for regional countries that aim to obtain EU membership⁴⁸. In 1993, at the Copenhagen European Council, the Union took a decisive step towards the fifth enlargement, agreeing that "the associated countries in Central and Eastern Europe that so desire shall become members of the European Union." Thus, enlargement was no longer a question of 'if', but 'when'.

⁴⁶http://europa.eu/abc/eurojargon/index_en.htm *Acquis communautaire*: This is a French term meaning, essentially, 'the EU as it is' – in other words, the rights and obligations that EU countries share. The 'acquis' includes all the EU's treaties and laws, declarations and resolutions, international agreements on EU affairs and the judgments given by the Court of Justice. It also includes action that EU governments take together in the area of 'justice and home affairs' and on the Common Foreign and Security Policy. 'Accepting the *acquis*' therefore means taking the EU as you find it. Candidate countries have to accept the 'acquis' before they can join the EU, and make EU law part of their own national legislation.

Acquis Communautaire - The entire body of EU law as expressed in the Treaties, the secondary legislation and policies of the Union as well as in the jurisprudence of the European Court of Justice. For more information on the European Union, see their website at: <http://europa.eu.int>.

⁴⁷ Sustainable Institutions For European Union Membership, SIGMA PAPERS: No. 26 (CCNM/SIGMA/PUMA(98)57; OLIS : 25-Nov-1998) <http://www.oecd.org/dataoecd/20/11/36953545.pdf>

⁴⁸ See, Preparing Public Administrations for the European Administrative Space, SIGMA PAPERS: No. 23, CCNM/SIGMA/PUMA (98)39, OLIS: 13-Maj-1998 <http://www.oecd.org/dataoecd/20/56/36953447.pdf> 69.

Membership criteria require that the candidate country must have achieved;

- stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union;
- the ability to take on the obligations of membership including adherence to the aims of political, economic & monetary union.⁴⁹

The drafting of laws according to the model of the European Union, as well as their implementation, depends of three key elements: Transposition, Implementation and Execution. While it is important for a candidate country to transpose the EU legislation within its own legal framework, it is even more important to implement such legislation effectively through the appropriate administrative and judicial structures. Taking into account the fact that the European legislation is very advances, the approximation of out legislation with the EU Acquis will improve the lives of our citizens and businesses.⁵⁰

At this stage of the European Integration process, Kosovo is not obligated to fully approximate its legislation with the EU, and it has the freedom the chose the level of approximation that is suitable under its economic and administrative circumstances. The way various candidate countries manage the process for the approximation of legislation varies from one country to the other. The procedure for the approximation of Kosovo legislation with EU legislation is set out in Regulation No. 09/2011 on the Rules and Procedures of the Government of the Republic of Kosovo, Administrative Instruction No. 13/2007 on organization and scope of legal services of the executive branch-government of Kosovo and the Rules of procedure of the Assembly of the Republic of Kosovo (29 April 2010).

No draft law can be submitted to the Assembly for approval if it does not contain the declaration on approximation and harmonization with the EU legislation. The Table Office of the Assembly shall verify the formal-legal aspect of the Draft-Law, record it based on the presented order and distribute it to the Members of the Assembly. The procedures for the approximation of Kosovo legislation with EU legislation are set out in the Rules of Procedure of the Government of Kosovo. The approximation procedures begin in the initial stages of the drafting of the law or sub-legal act by the originating Ministry. This is done because the originating Ministry has subject matter experts that know best the content of the draft law and are aware of the capabilities as well as the administrative, human and economic capacities for the implementation of the legislation and they are also in the best position to determine the appropriate level of approximation of the concerned legislation with the EU Acquis. Before the originating body or a government body submits a draft law or sub-legal act, for deliberation by the Government, the body preparing the material (*the 'originating body'*) is obligated to consult, In particular, the Ministry responsible for European Integration to ensure that the proposed policy is in harmony with EU integration priorities and that it complies

49 http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm

50 Rexhep Bllaca: Approximation of national legislation with Acquis-in e EU in Kosovo, pg 3, <http://www.qpa-ks.org>

with EU requirements and the *acquis communautaire*.⁵¹ The originating body is responsible for the procedures of drafting the first draft in conformity with the principles and standards on legislative⁵², Carries out the initial compatibility with the *Acquis Communautaire* and seeks assistance from Ministry responsible for European Integration, as appropriate.⁵³ Before submitting the draft law for approval in the government, the originating body shall prepare the evidence of EU legislation references, which describes relevant acts of EU legislation that the originating body used for drafting the concerned law. Departments of all Kosovo Government Ministries will ensure compatibility of laws and other bylaws proposed/sponsored by the relevant ministry with the European Union's legislation (*Acquis Communautaire*), as well as with applicable laws in Kosovo.⁵⁴ Within the structures of these departments, it is also envisaged that a Senior Legal Officer for EU Legislation.⁵⁵ , which has the duty and responsibility to estimate and ensure compatibility of the proposed legislation by the ministry with the EU legislation, standards and international practices.⁵⁶

After completing the drafting of a law, the legal department of the concerned ministry shall send the draft law to the Legal Department of the MEI, which shall assess, analyze and check the content of the draft law in question and its compliance with the EU Acquis and issue a Statement of Compliance with EU Legislation and its Legal Opinion. If the Legal Department in the MEI determines that the law is in compliance with the EU Acquis, it shall issue the Statement of Compliance with EU Legislation. If the Legal Department of the MEI determines that the draft law is not in compliance with the EU Acquis, then it has two possible course of action: the first possibility is to return the draft law to the concerned Ministry and suggest that the Ministry approximate the draft law with the EU Acquis; the second possibility is for the Legal Department of the MEI to suggest concrete recommendations and to include such recommendations in the draft law in cooperation with the Legal Department of the concerned Ministry and the Legal Office of the Prime Minister. No law can be submitted for approval by the Government if a positive Statement of Compliance has not been issued. After such Statement of Compliance is issued, then the draft law can be submitted for approval in the

51 See Article 7, (1.2) Regulation No. 09/2011 of rules and procedure of the Government of the Republic of Kosovo

52 See Article 43 Regulation No. 09/2011 All persons engaged in the drafting or reviewing draft laws or sub-legal acts, shall, at every stage of drafting act with professional diligence in order to ensure that such document is in compliance with the principles and standards of legislative drafting and The ten basic drafting principles set forth in the Resolution of the Council of the European Communities of 8 June 1993, "On the Quality of Drafting of Community Legislation," shall apply *mutatis mutandis*.

53 See Article 39, Regulation No. 09/2011 of rules and procedure of the Government of the Republic of Kosovo

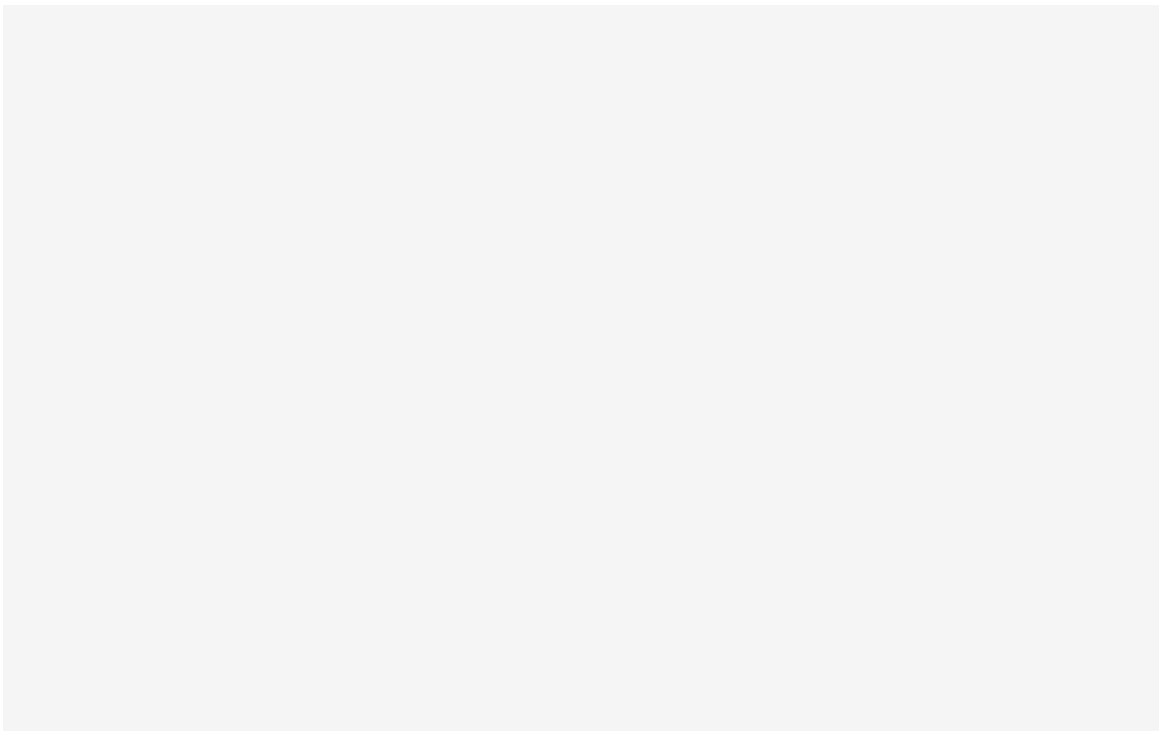
54 See Article 3 (iii) Administrative Instruction No. 13/2007 on organization and scope of legal services of the executive branch-Government of Kosovo

55 See Article 4 (4/iv) Administrative Instruction No. 13/2007

56 See Article 8 Administrative Instruction No. 13/2007 on organization and scope of legal services of the executive branch-government of Kosovo (1)

Government meeting. The Secretariat in the Office of the Prime Minister sends the draft law to the Assembly once it has been approved in the Government meeting.⁵⁷ Following the approval of the Draft-Law in the first reading, the Assembly shall assign for further review the following Functional Committee as lead committee and Committees for European Integrations as Main committees of Assembly.⁵⁸ The Committee for European Integration is a permanent committee of Assembly, within its scope of work and responsibilities reviews and supervises the process of harmonization of laws enacted by the Assembly with the legislation of the European Union.⁵⁹

In order for the Republic of Kosovo to obtain membership in the European Union, the approximation of legislation with the *acquis communautaire* is not sufficient, since this legislation must be implemented. Kosovo has taken a number of important steps for developing the necessary structures that will lead policymaking on EU issues. One of these steps is the establishment of the Departments for European Integration and Policy Coordination in line ministries.⁶⁰ These departments were established in 2011, but are not yet fully developed and suffer from the lack of coordination and the lack of policymaking capacities.



57 Rexhep Bllaca: Approximation of national legislation with Acquis-in e EU in Kosovo ,pg 3, <http://www.qpa-ks.org>

58 Article 57 Rules of procedure of the Assembly of the Republic of Kosovo (29 April 20100). The Committee for European Integration is a permanent committee.

59 See Annex nr. 2. Scope of activities and responsibilities of the parliamentary committees 4. Committee for European Integration - Rules of procedure of the Assembly of the Republic of Kosovo (29 April 20100).

60 Regulation No.01/2011 on Departments for European Integration and Policy Coordination in the Ministries (18.03.2011) http://www.kryeministri-ks.net/repository/docs/Rregullore_nr.01-2011-MIE_.pdf;

Chapter 4

Current Monitoring system for the Assessment of the implementation of legislation in Kosovo

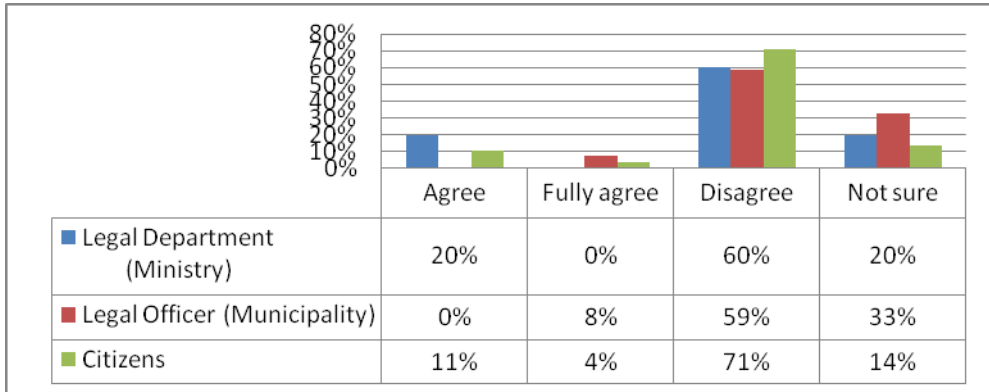
Despite significant progress has been achieved in drafting and harmonizing Kosovo legislation with EU standards, it is still challenging establishing mechanisms for monitoring and reporting in relation to implementation of laws. Practical implementation of laws and proper functioning of mechanisms for monitoring and reporting related to implementation of laws requires greater support, instruction, expertise as well as adequate human and financial resource. Drafting and approving of laws by the Government is not the final step in the process of drafting policy. Evaluation of achieved progress depends on law implementation, a process which needs to be monitored closely and to generate real reports related to the performance of state institutions for implementation of laws.

Despite government priorities in drafting legislation and completion of legal infrastructure that would enable normal functioning of different society sector, monitoring and evaluation were not part of agenda in the central body of Government. Same situation is also in the Kosovo Assembly, parliamentary commissions have given greater priority reviewing of draft laws which, the government processed for approval in the assembly, and there is very little space for monitoring of implementation of laws by the side of government. Lack of focusing in monitoring, evaluation and reporting means less attention on expected and achieved results. Lately there has been some effort to strengthen these systems of monitoring and reporting through applying of new frameworks for reporting (for example monitoring and reporting for European Partnership Action Plan (IPAP), monitoring of implementation of government decisions and annual government report). Monitoring and reporting in relation to implementation of Government Legislative Strategy (GLS). Monitoring and reporting related to implementation of Legislative Strategy is carried out on regular basis by the Office of legal support services (OLSS). This process is focused in the progress of legislative drafting in the line ministries and it helps OLSS towards managing its progress on final reviewing of draft laws, which then are processed to the Government for approval.

4.1 Parliamentary commissions

Within the Assembly of Kosovo exists and are functional Parliamentary Committees which have responsibility to monitor implementation of legislation by the executive branch, but how these committees are working properly it is highly contentious issue. Recently, public authorities of Kosovo (mostly assembly) have begun to monitor the implementation of certain laws, even though still in a very small number and not at a satisfactory level (please see figure 4.1).

Figure 4.1. Do you agree that commissions of the Assembly of Kosovo, monitoring well the Implementation of legislation by the executive branch?



Article 77 of the Constitutions of the Republic of Kosovo determines that; The Assembly of Kosovo appoints permanent committees, operational committees and ad hoc committees reflecting the political composition of the Assembly. On the request of one third (1/3) of all of the deputies, the Assembly appoints committees for specific matters, including investigative matters. Function, scope procedures and mandates of the Committees of the Assembly is regulated by the Rules of procedure of the assembly of the Republic of Kosovo. The Assembly of Kosovo appoints main, functional and *ad hoc* committees. The committees shall reflect the political composition of the Assembly. The Assembly shall, upon the request of one-third (1/3) of all members of the Assembly, establish committees on specific matters, including enquiry matters.

Main committees are as follows:

1. Committee on Budget and Finance;
2. Committee on Rights and Interests of Communities and Return;
3. Committee on Legislation and Judiciary;
4. Committee on European Integrations.

Functional committees are as follows:

1. Committee on Foreign Affairs;
2. Committee on Education, Science, Technology, Culture, Youth and Sports;
3. Committee on Economy, Trade, Industry, Energy, Transport and Telecommunication;
4. Committee on Agriculture, Forestry, Rural Development, Environment and Spatial Planning;
5. Committee on Health, Labour and Social Welfare;
6. Committee on Public Administration, Local Government and Media;
7. Committee on Internal Affairs and Security;
8. Committee on Human Rights, Gender Equality, Missing Persons and Public Petitions;
9. Committee on Oversight of Public Finance;
10. Committee on Oversight of Kosovo Intelligence Agency;
11. Committee on Oversight of Kosovo Security Force;
12. Committee on Mandates, Immunities and Rules of Procedure of the Assembly⁶¹.

61 Article 69, Rules of procedure of the Assembly of the Republic of Kosovo

Authority of the committees in monitoring the implementation of laws. Each Committee shall, within the scope of its authority, be authorized to monitor the implementation of a law by the government of Kosovo or ministry, respectively. The relevant ministry shall report to the functional committee about the implementation of the law without request, at least once in every year. In order to fulfil the authority given above, the committees shall: a) Perform controls and studies of the effectiveness of the laws in force on issues within the scope of their authority, their implementation, and propose measures to be taken in concrete situations; b) Produce a list containing: the date of the promulgation of the law, the date of its publication in the Official Gazette, the list of the provisions of the law that need to be implemented by the Government, the list of the government's decisions implementing those provisions. c) Exercise control over the overall activity of relevant ministries; and d) report in writing and orally once a year to the plenary sessions of the Assembly. If the Ministry fails to report or if its reporting is deemed incomplete, upon the request of the committee, the issue shall be put to the agenda of the next plenary session⁶².

4.2 Mechanisms in the central level of the government for monitoring the implementation of legislation

It is a central task of the Government through the responsible minister to monitor the effect of the legislation adopted in the field of its competence and to propose any necessary amendments. The minister must, among other things, ensure that laws fulfil their purpose, that the basis and practical need for them continues to exist, and that their objectives continue to be relevant in contemporary society⁶³. In the central level of the Government of Kosovo, Legal Departments except the drafting legislation they are obligated to monitor the implementation of the legislation. The Administrative Instruction Nr. 13/2007 on the organization and operation of legal services in the executive branch regulates in a unique way organization, responsibilities and operation of legal departments in all ministries of the Government, with the exception of the *Office of Legal Support Services (OLSS)* which operates under the Office of the Prime Minister. Based on the Administrative Instruction Nr. 13/2007, the internal organization of the legal department shall consist of two divisions:

- a) Division for the development and harmonization of legislation and
- b) Division for monitoring the implementation of legislation, legal support, and interagency cooperation in the field of legislation. Although the Administrative Instruction Nr.13/2007 attempts to regulate in a unique way organization, responsibilities and functioning of the Legal Departments in all government ministries, (19) there is not a unique organization of departments ,so some ministries have not followed this administrative instruction. The total number of officials in the legal departments within ministries ranging from 3 to 9. Appropriate structures of the organization of legal departments as required by Administrative Instruction Nr. 13/2007, have only some ministries.

62 Article 73, Rules of procedure of the Assembly of the Republic of Kosovo

63 See Law drafting manual a guide to the legislative process in Albania, pg.48

Disturbing is the fact that most (15 of 18) of the ministries have not established Division to oversee the implementation of laws, legal support, and interagency cooperation in the field of legislation.

Also in 2008, the Kosovo government had made a decision and set up the Commission for monitoring implementation of laws which was led by the one of the Deputy Prime minister⁶⁴. This commission did not fulfil its mandate and did not achieve the purpose for what the goal was created. The Commission didn't have clear working procedures, there were no work plan, except two or three meetings conducted by this committee, and we cannot present any results or assessment report on monitoring the implementation of laws by this commission.

Another mechanism, the Council of Directors of Legal Departments is hereby established under Rule of Procedure of Government and shall be headed by the Director of the Office of legal support services (OLSS). The Council is composed of the directors of legal departments in all ministries and serves as a mechanism for coordinating the process for drafting and implementing legislation. The Council shall usually meet every month, more often if necessary, to review important issues that relate to legislative drafting, the progress of implementation of the Legislative Program and provide advice and legal opinion.

4.3 Mechanisms in the local level of the government for monitoring the implementation of legislation

In Chapter X of the Constitution of the Republic of Kosovo are determined and defined the general principles on the organization and functioning of local self-government. Municipalities are bound to respect the Constitution and laws and to apply court decisions. The legal basis for the functioning of local self-government throughout the territory of the Republic of Kosovo is established and regulated by the Law on local self-government.

Local Self-government shall mean the right and ability of local authorities as established by this law and within the limits thereof, to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population⁶⁵.

The Municipality is the basic unit of local self-government in Republic of Kosovo, made up of Community of citizens of a specific territory defined by law and shall exercise all powers which are not explicitly reserved for the central institutions. Within their competencies guaranteed by the Law on local self-government, municipalities have the authority to issue different normative acts such as: The Municipal Statute, Regulation for

64 http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_se_6-shte_te_Qeverise.pdf

65 Article 3, Law nr. 03/I-040 on Local self Government

the work of Parliament, regulation in other areas for implementing of responsibilities local, regulation for the implementation of basic laws for local self-government and other sectorial laws and orders and other decisions. All laws that municipality adopts must be in harmony and full compliance with the Constitution and legislation in force.

Municipalities within the authority which it provides to the legislation in force, they perform: **Own competencies** - shall mean competencies vested upon the municipalities by the Constitution or laws for which they are fully responsible in insofar as they concern the local interest and in accordance with the law.

Delegated Competencies- shall mean competencies of the central government and other central institutions the execution of which is temporarily assigned by law to municipalities;

Enhanced competencies- shall mean competencies vested upon a municipality or a number of municipalities by law.

Ministry of Local Government Administration (MLGA), namely the Legal Department evaluates the legality of normative acts that are issued by Municipalities, also the Municipalities are required to send each legal acts for assessment of the legality to legal department of MLGA, before they are approved by the municipalities.

Ministry for Local Governance Administration (MLGA) is responsible only for administrative review which includes: Review of legality for (own and enhanced Competencies-), while examining the legality and appropriateness of the delegated Competencies, will be made by the organ which is delegated his competencies to local authorities in conformity with Article 18 of (LLSG).

Based on the Law on local self-government (LLSG), the MLGA is leading authority that has the right to be informed by the municipality for all areas for which it has supervisory authority. Each year the MLGA compiles annually report on the performance of the municipalities during the exercise of own, delegated , and enhanced competencies .In order to exercise this control in a better and inclusive manner, the Government of Kosovo in accordance with the document "Supervision of Municipalities in the implementation of local self-government legislation drafted by MLGA, in order to improve the oversee of law enforcement in the municipality has taken a decision (Nr.2/119,dt.07.04.2010), for the establishment of 18 committees in central government to oversee the legality of acts of municipalities for their own competencies, 4 commission for supervising the legality of acts of municipalities for enhanced powers and 9 committees to oversee the legality of acts of municipalities for the delegated competencies. Also, in order to set the quality of drafting normative acts of Municipalities, MLGA has compiled a detailed guide that is dedicated to municipalities, and officials (legal offices) who are involved in drafting of municipality legislation. Support provided by the central level to municipalities during the drafting process is mostly conducted upon municipality request; there is no standardized system of communication between them. However, cooperation with municipalities with the central level of government is not always assessed as satisfactory and sufficient. The main concern which often arises is the lack of clear instructions about the implementation of new legislation of the central level at the municipal level.

Within the municipalities there are various committees such as; Committee for political and Finance, the Communities Committee, Committee for Health and Social Affairs,

Committee on Education, Committee for Economic Development, Committee for Culture, Youth and Sports, Committee on urban planning and protection environment, which has the authority and mandate to instruct, advise and monitor the implementation of laws and other legal acts depends from areas that covering. Also within municipalities have been established the Human Rights Units, as new mechanisms for protection and promotion of human rights, which have responsibility to monitor and evaluate compliance of policies of municipalities with the standards of human rights and legislation in force, and to assist and monitor the implementation of laws and other legal acts within their municipality.

4.4 The role of media and civil society in monitoring the implementation of legislation

*“Getting something wrong is not a crime. Failing to learn from past mistakes because you are not monitoring and evaluating is”.*⁶⁶

Media means all television and radio stations that broadcast in the territory of Kosovo and who are licensed by the Independent Media Commission, including print media. The media should be understood as a group of private entities that are involved in the production and publication of information, entertainment and educational material and that seek, through their own channels, to play an active role in the society. Taking advantage of their special relationship, they work with civil society to reinforce, promote, and improve democracy in Kosovo.

Same as with NGOs, there was an explosion of new media after the war in Kosovo. In Kosovo, the media have been very influential in the agenda-setting stage of the policy process. This is because the politicians care a lot about their public image, and media in Kosovo have a strong influence on the public⁶⁷. Rapid growth in the number of media in post-war Kosovo was not associated with capacity building for journalists already working in print and electronic media.

The media and civil society in Kosovo are facing with different problems such; weak financial stability, influence and pressure from various political circles, influence from outside in the editorial policies and programs, lack of meaningful investigative and professional journalism, concern is the lack of written contracts for the majority of media journalists, prolonged working hours and they treatment made by employers. The most important segment of media which will contribute through different stories in monitoring the implementation of laws i have the attention to investigative journalism in Kosovo is still under embryos development.

Media and civil society is a very important segment that can contribute for the monitoring the implementation of, but how much they have sufficient human capacity to carry out these issues is highly contentious. Working through the media: Civil society

66 Monitoring and Evaluation: Are We Making a Difference- by Justine Hunter pp.5

67 Civil society and development 61, Kosovo human development report, 2008

organizations often organize events and present publications to the media, who can raise public awareness and influence public opinion on different topics. It is a general perception of the media and civil society in Kosovo that they are fulfilling a watchdog function, trying to hold the government accountable for actions or omissions in relation to its citizens.

What characterizes the media today in Kosovo is the fact that some of the media support the government, some others support the interests of particular groups, and some of them are very critical, doesn't exist a realistic and balanced approach in relations government and media. In some cases, media owners seek from their reporters to give-up from research and publication of sensitive topics. They often impose censorship in the newspaper that is publishing, in order to not criticize the government's performance, and to maintain good relations and connections with them. However, both these sector of society have not yet sufficient expertise and human capacity to monitor and assess the outcomes of the implemented policy. Civil society through the print and electronic media can contribute to raising awareness of the wider public opinion regarding the rights and obligations and guarantees that the legislation defines, through presentation of information campaigns, organizing debates, and television stories, realization of surveys in various spheres.

Government's approach in relation to the media and civil society must be very careful and balanced, all media and organizations that represent the interests of citizens should have equal opportunity and access in determining and monitoring the implementation of government policies. The importance of effective communication with the media helps considerably to a government institutions, for the presentation of ideas, new approaches and projects that are aimed at developing new policies of interest to citizens. Cooperation and better coordination between the media and civil society may be reflected in their successes in monitoring and enforcing the legislation.

4.5 Assessment of the implementation of legislation in Kosovo

Good and effective legislation is the foundation of every functioning state based on the rule of law. Laws can only be followed and assessed if they are clear and concise, and they should be adopted according to proper democratic procedures. Kosovo Government has failed to establish effective coordination mechanism of analyzing and assessing the impact of legislation. The same situation prevails in the Assembly, the focus of parliamentary committees has been more oriented to the review of draft legislation that the Government has preceded to the Assembly for approval, the less energy and effort is invested in monitoring, evaluation and reporting on the implementation of laws.

Regarding the evaluation process of law enforcement, the Government did not offered a specific guidance, still is not developed any guide which would help to clarify the process of evaluation and enforcement of legislation. Very few assessment reports are performed by the ministries and municipalities on the implementation of legislation. Even those few reports that have been conducted to evaluate the implementation of the legislation are not very clear and contain no real information and clear

recommendations on the implementation of laws. Evaluation of law enforcement is not an easy process, to fulfil and to manage successfully this process should be available human and material resources. The capacity of ministries and municipalities to assess the implementation of laws are not in the satisfactory level, also are not provided the necessary training for capacity building of responsible officials concerning the evaluation of law enforcement. Usually the assessment reports on the implementation of laws are made with the support of various international institutions operating in Kosovo, or by contracting a private company or non governmental organization which have been specialized in the research and drafting of reports on the evaluation of law enforcement.

However, civil societies, and various international institutions operating in Kosovo, have been more organized, more active and better prepared in terms of implementation of various researches regarding the evaluation of law enforcement. From these surveys have run out valuable assessments and recommendations which, if are taken into consideration by the relevant institutions, in considerable measure would improve the situation regarding the implementation of laws. Process monitoring and evaluating the implementation of laws, and Assembly Government should give priority as the drafting and adoption of laws. The process of monitoring and evaluation of law enforcement, Government and the Assembly should give priority such as their development and adoption. These two processes should be looked as two inseparable processes and which complement each other. Managing the implementation of legislation requires deep knowledge of legislation, even the drafter should pay more attention on the content of legal provisions, in the sense that they are very clear and not cause confusion to those who have the responsibility to Implement and evaluate the implementation of legislation. The citizen's awareness of legal rights is one of the key components for an efficient system of access to justice and provides a basis to fight injustice.

Chapter 5

Results from the Questionnaire conducted with Legal Departments in the Ministries and Legal Offices in the Municipalities about the implementation of the legislation

This chapter presents results from the survey conducted with legal officers from the Legal Department in the Ministries and legal officers from Legal Offices in the Municipalities .The survey took almost three months to complete (July - September 2011).

The Questioner was focused on:

- A. General Questions
- B. Questions about the implementation of legislation
- C. Specific Question
- D. Questions about the capacity and training
- E. Question about (ore related to) the Publication and Media

Within this chapter are presented major problems which have been identified by legal officials during the implementation of legislation within their institutions. Obstacles that are obvious and worthwhile to mention are;

5.1 Obstacles / main problems in implementing the legislation

- 5.1.2 Legislation in force
- 5.1.3 Collision of laws
- 5.1.4 Insufficient staff, inadequate professional expertise, inadequate budget
- 5.1.5 Lack of legal commentaries;
- 5.1.6 Insufficient training

5.1.2. Legislation in force

Figure 5.1. Do you agree that the legislation in force in Kosovo causing confusion in the implementation of laws?

Figure 5.1

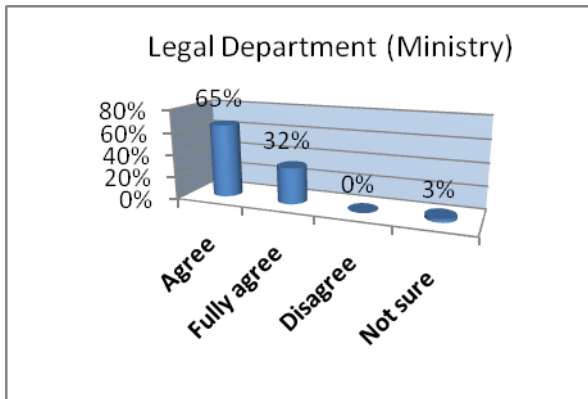
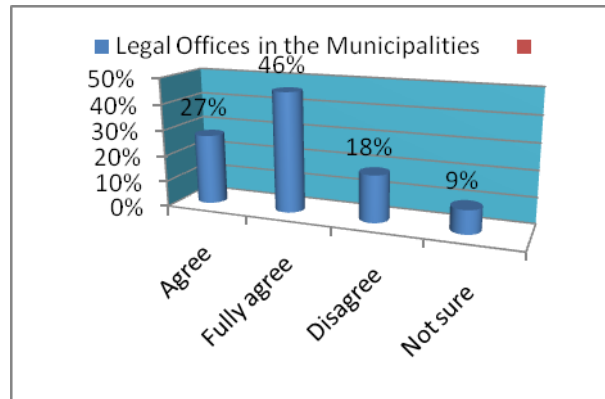


Figure 5.2

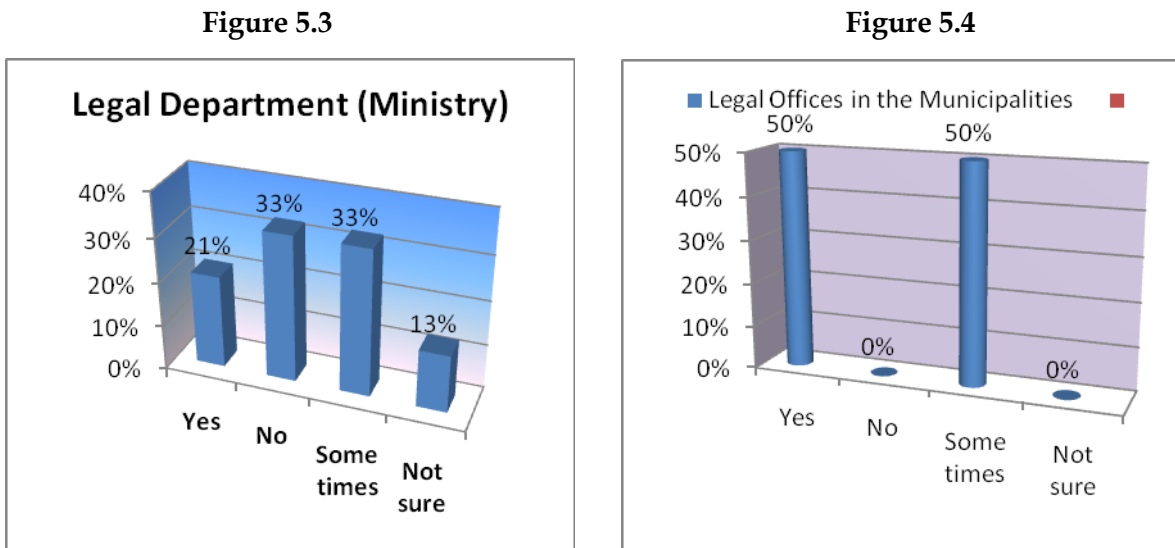


Results shows that 65% of legal officers from ministries are agree, and 46 % of Legal officers from municipalities are fully agree, that the legislation in force in Kosovo causing confusion in the implementation of laws.

5.1.3 Collision of laws

One of the main problems that Kosovo legal system faces today is the collision of Laws. The collision of laws is interpreted as conflict of two or more laws with each other or the issuance of a new law, regulating a specific field of laws which is already regulated by a previous law⁶⁸. This finding also supports the results derived from the questionnaire which was addressed to legal officials within the ministries and municipalities. According the question (see figure 5.3 and 5.4) the responses are as follows.

Figure 5.3. Is there a collision of the laws related to the scope of your ministry-municipality?



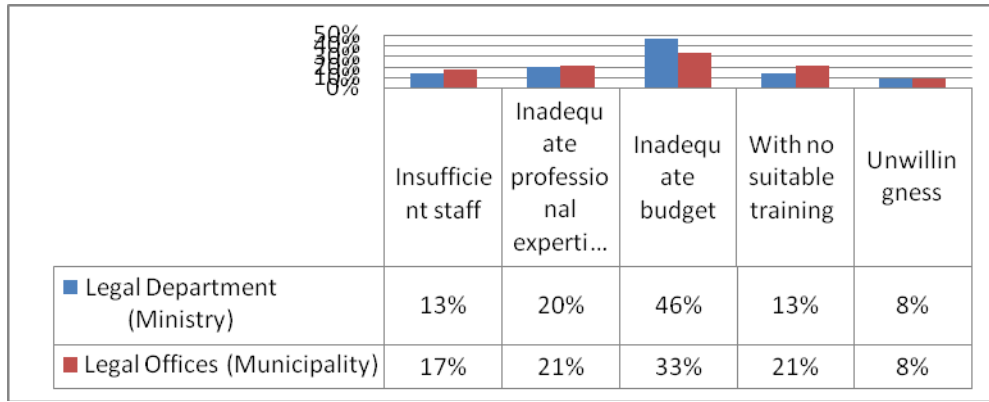
21% of legal officers in the ministries have confirmed that within their ministries exists collision of the laws, while 50% of legal officers in the municipalities have confirmed that within their municipalities exists collision of the laws.

5.1.4 Insufficient staff, inadequate professional expertise, inadequate budget

Legal Departments within Ministries and Legal Offices within Municipalities during the process of implementation of legislation are facing many problems and obstacles, such as insufficient staff, inadequate professional expertise, inadequate budget, no suitable training, unwillingness, (please refer to figure 5.5).

⁶⁸ Karin Wisenius, Conflict of Norms and Jurisdictions between WTO and MEAS, University of Gothenburg, page 19.

Figure 5.5. What do you see as key obstacle, problem in implementing of laws?



5.1.5 Lack of legal commentaries;

In other parts of Europe and the world, academic staff writes commentaries to help interpretation of the most important laws. Commentaries do not exist in legal system of Kosovo, except those that refer to the former Yugoslav laws, many of which have been replaced by other laws. Preparation of such commentaries would be a major step towards the creation of legal certainty and clarity that has to do with the law in Kosovo, and will help law enforcement.

Lack of legal commentaries causing problems related to implementation of legislation in Kosovo, this assessment is confirmed also by legal officers within ministries and municipalities (see figure 5.6 and 5.7).

Figure 5.6. Do you think that the lack of legal commentaries can be an obstacle for the implementation of law”?

Figure 5.6

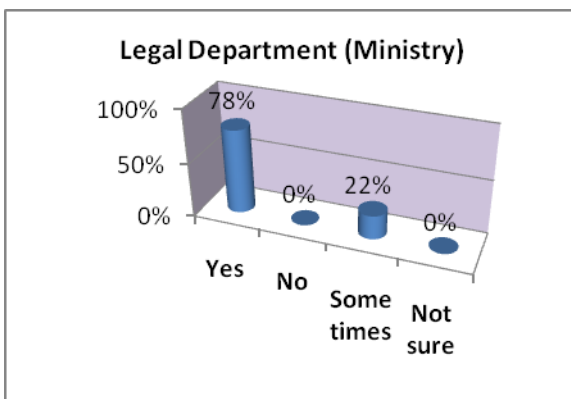
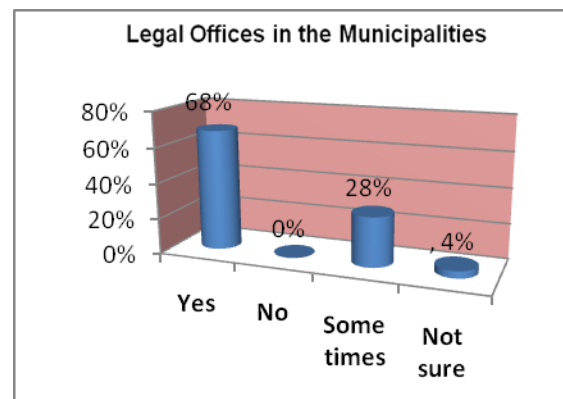


Figure 5.7



Hugh percentage of respondent including 78% of legal officers from legal department in the ministries and 68% of legal officers from legal offices in the municipalities have

declared that the lack of legal commentaries can be an obstacle for the implementation of laws.

5.1.6 Not enough training

Referring to results from (see fig.5.8, 5.9, 5.10 and 5.11), a great percentage of legal officers have declared that did not followed enough training on the drafting of legislation, and major of them are agreeing that have needs for ongoing trainings regarding the drafting of legislation?

Figure 5.8. Do you think that the legal officers have followed enough training on the drafting of legislation?

Figure 5.8

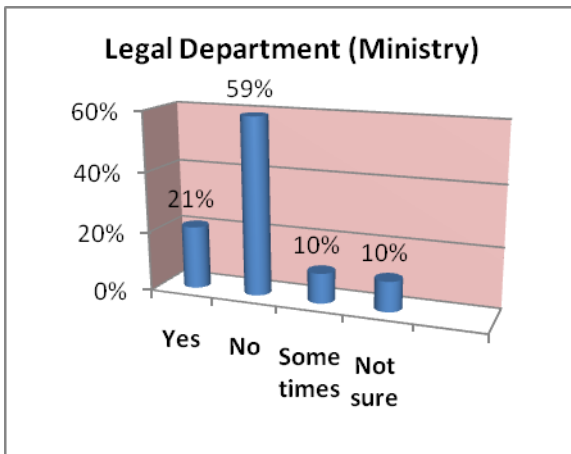


Figure 5.9

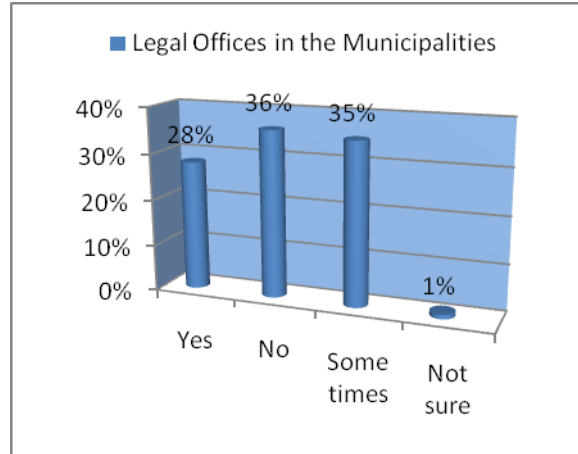


Figure 5.10. Are you agreeing that legal officers have needs for ongoing trainings regarding the drafting of legislation?

Figure 5.10

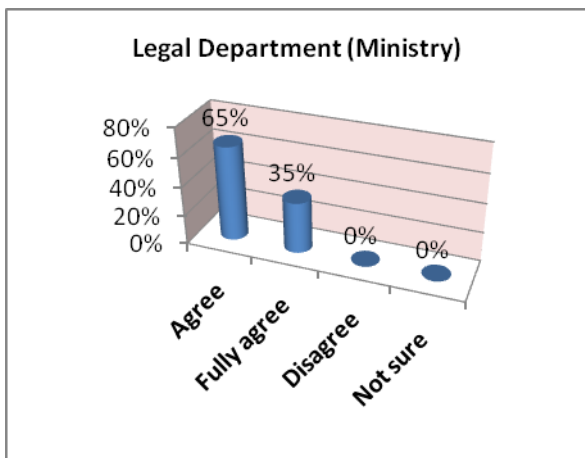
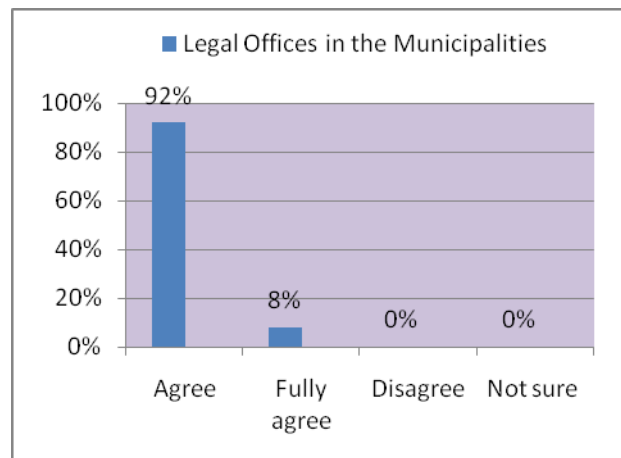


Figure 5.11



Chapter 6

The role of the judicial system in implementing the legislation

This chapter discusses the role of the judicial system in implementing legislation. Also, the chapter presents results from the questionnaires conducted with judges. The judicial system is considered one of the most important pillars for implementing laws. But Kosovo's judicial system is facing difficulty and different problems such as, small numbers of judges, lack of technical and administrative support, lack of professionalism, corruption, these are fundamental issues that are characterizing the justice system in Kosovo. Poor coordination between prosecutors and judges in the scheduling of court hearings, problems with court summons, and the late opening of hearings all constitute technical violations, which, nonetheless, have a significant impact on the work of courts by delaying cases and adding to the backlog. Audio and video recordings of sessions, the use of phones and problems with interpretation and translation were also identified as technical failings during the monitoring process, and these problems also seriously affect hearings⁶⁹. In Kosovo courts there are also problems with interpretation, problems with providing interpretation continue to impact the work of courts and comprise a violation of the human right for a fair trial in one's native languages. This problem with interpretation happens because of lack of competent and professional interpreters, due to the low salaries that the KJC is able to provide for their services.

In order to ensure independence and impartiality of judicial and prosecutorial system, the Constitution of the Republic of Kosovo has given full authority and powers to Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC) to govern the system of justice in Kosovo. The composition, scope and powers of these two highest mechanisms in the management of courts and prosecutors are determined more clearly and in detail in the law on Kosovo Judicial Council (KJC) and the law on Kosovo Prosecutorial Council (KPC). Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) have authority and powers to make recruitment, proposal for appointment of judges and prosecutors to the President of Kosovo, also determining the number of prosecutors and judges .

Regular court system in Kosovo consists of 26 municipality courts, 5 district courts, the Court of Commerce and the Supreme Court, the court system for minor offences involving 26 municipal courts for offences and the High Court for minor offences.

In order to create necessary conditions for normal functioning of the judiciary system, as well as reforming the judicial and prosecutorial system in Kosovo, the Kosovo Assembly in the year 2010 had approved four such laws: Law on Courts, Law on Kosovo Judicial Council (KJC) law on Kosovo Prosecutorial Council (KPC) Law on State Attorney. With

69 Court monitoring annual report (April 2010 - February 2011), pg 43 -September 2011, BIRN Pristina,

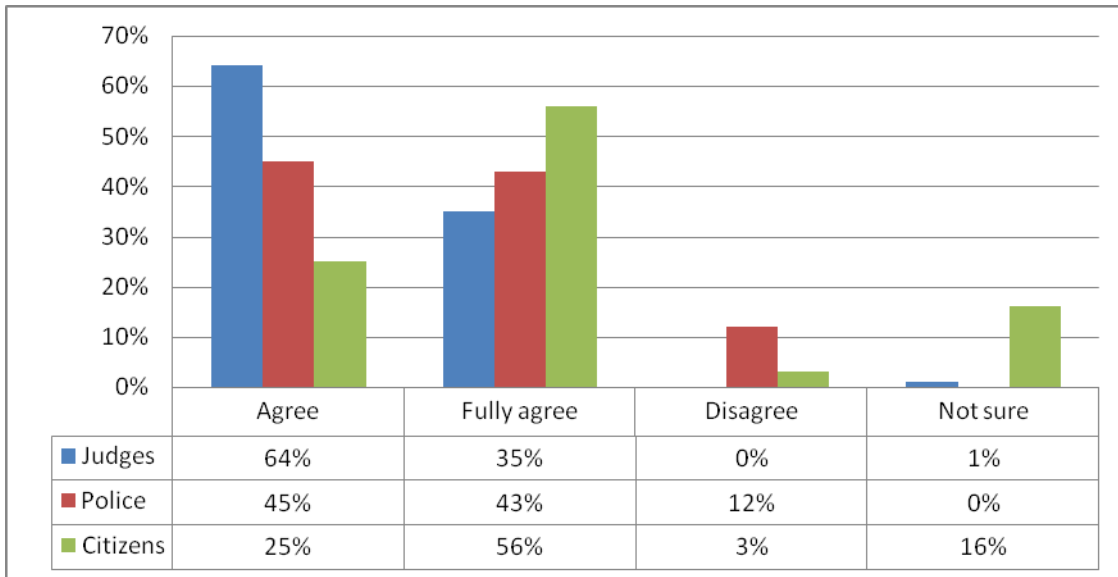
these laws, is foreseen that by the year 2013 to begin with a new system of organizing the system of courts and prosecutors in the country.

Under the umbrella of the Ministry of Justice, already are established and are in operational process new institutions on which is calculated that would greatly facilitate the work of the judiciary in the enforcement of laws and will influence overall reform of judiciary by providing a better opportunity for access to justice for all citizens of Kosovo. In the process of operationalization are notary system and system of mediation.

Kosovo Judicial Council (KJC) is responsible for planning and proper implementation of the budget in order to ensure efficient functioning of the courts. Law on Kosovo Judicial Council (KJC) requires that court personnel to be trained by the Kosovo Judicial Council in collaborate on with the Kosovo Judicial Institute (KJI), associations and other training. Judges have continuously attends training on their capacity to implement the laws, but how these trainings have been sufficient, and also a need to further training and continuing legal education show us the results of the questionnaire (see figure 6.15).

The involvement and consultations of judicial power in drafting laws which are related to the judiciary have been minimal, and this is reflected with problems in the practical application of laws by the judiciary. Log in and consulting with lawyers (judges) working in the judicial and prosecutorial system could contribute much more to the improvement and completion of necessary legal framework for the normal functioning of the judiciary system and the enforcement of legality. In order of better enforcement of laws by the courts, should be intensified cooperation with civil society and Kosovo Police, also the results from the questionnaire conducted with: judges, police officers and citizens, confirm and support this conclusion (see figure 6.1) .

Figure 6.1. Are you agreeing that the cooperation of the Judiciary System with the Kosovo Police and citizens is very important for implementation of legislation?



6.1 Institutional Obstacles & Responses from Judges Questionnaires

This part of the chapter includes a results from the questionnaire conducted with 73 judges which are working in the municipality courts, district court, minor offense court, high minor offense court, and supreme court .Judges were from different communities and had represented this municipalities: Pristina, Gjakova, Peja, Gjilan Deqan ,Mitrovic, Ferizaj ,Viti, Kamenic, Istog, Prizeren, Suharekë, Dragashë ,Gjilanë ,Vushtrri and Ferizaj. It was used a questionnaire via e-mail and face to face questionnaire. A huge help in carrying out research and distribution of questionnaires to judges has provided the Supreme Court, District Court of Pristina and the Kosovo Judicial Institute (KJI). Training which provides (KJI) for judges, has been a good opportunity to distribute the questionnaires during the day where training is hold, because the individually has been very difficult to contact judges.

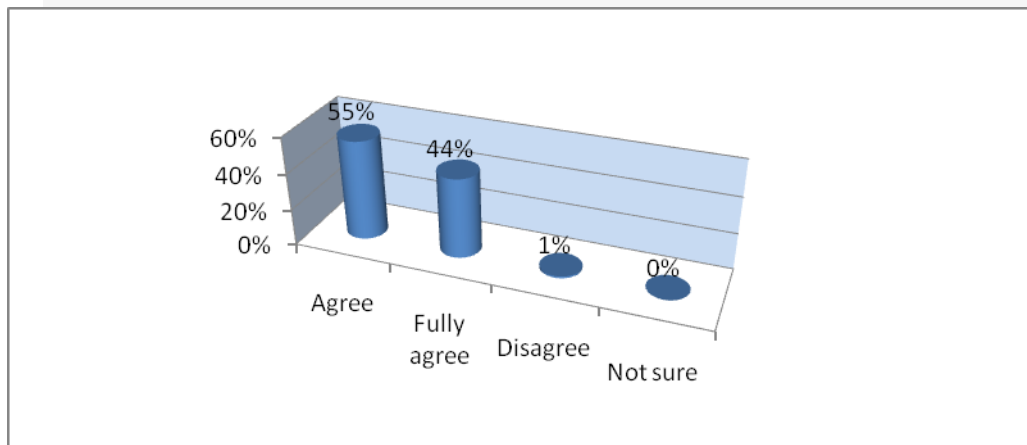
The survey took almost two months to complete (July - September 2011).

The Questioner was focused on:

- A. General Questions,
- B. Questions about the implementation of legislation
- C. Specific Question
- D. Questions about the capacity and training
- E. Question about (ore related to) the Publication and Media

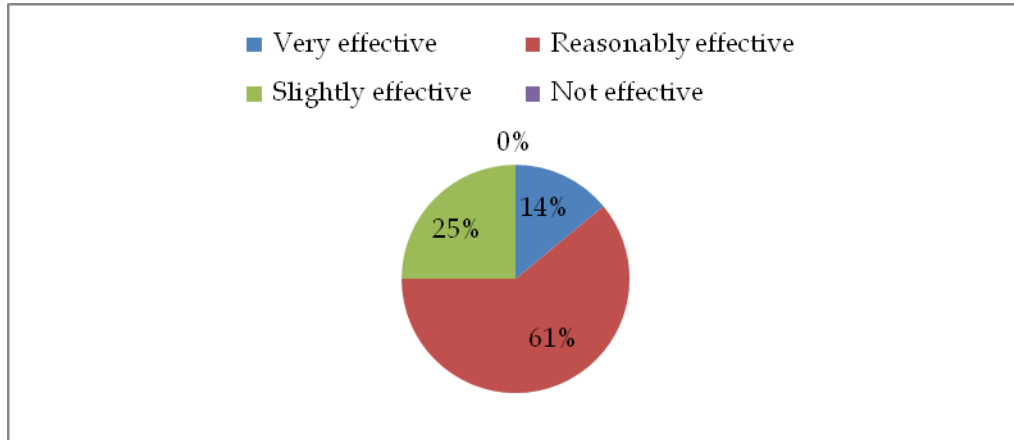
A.General Questions

Figure 6.2. Are you agreeing that the Judiciary System is a highly significant mechanism in the implementation of legislation?



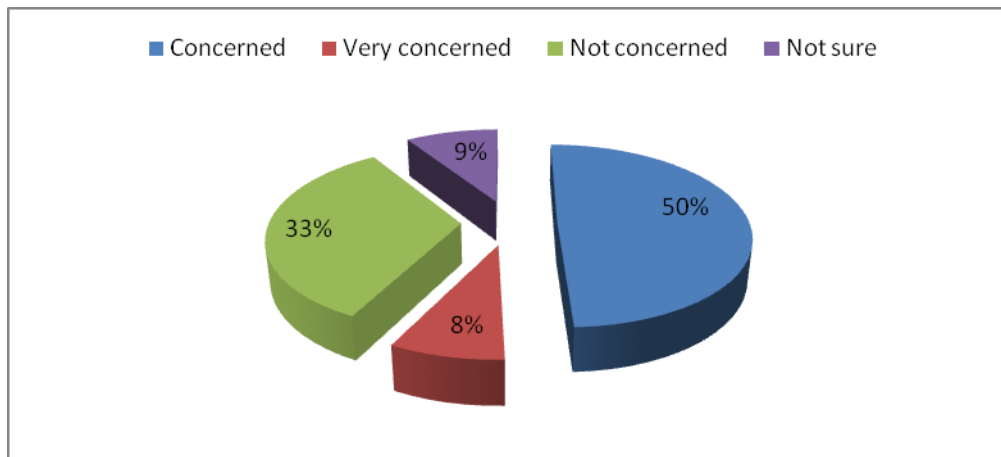
Results shows that 55% of judges are agree, and 44 % of Judges are fully agree ,while just 1% of judges is disagree that Judiciary System is a highly significant mechanism in the implementation of legislation.

Figure 6.3. How do you assess the effectiveness of the implementation of legislation?



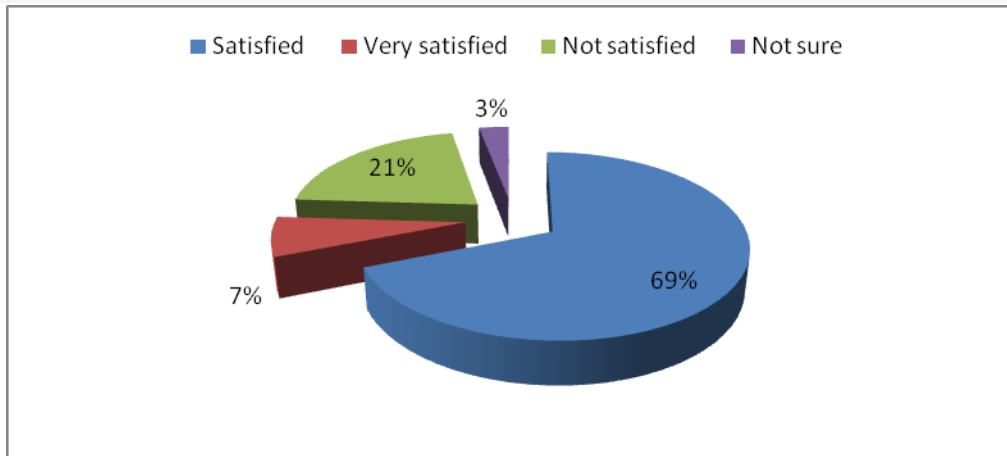
More than 61% of judges said that the effectiveness of legislation in slightly effective, 25% think that is reasonably effective, and 14% said that is very effective.

Figure 6.4. Are you concerned about the implementation of the legislation?



Regarding the question (see figure 6.4), judges have give the following answers: Hugh percentage including 50% is concerned, while 33% are not concerned, 8% are very concerned and 9% are not sure.

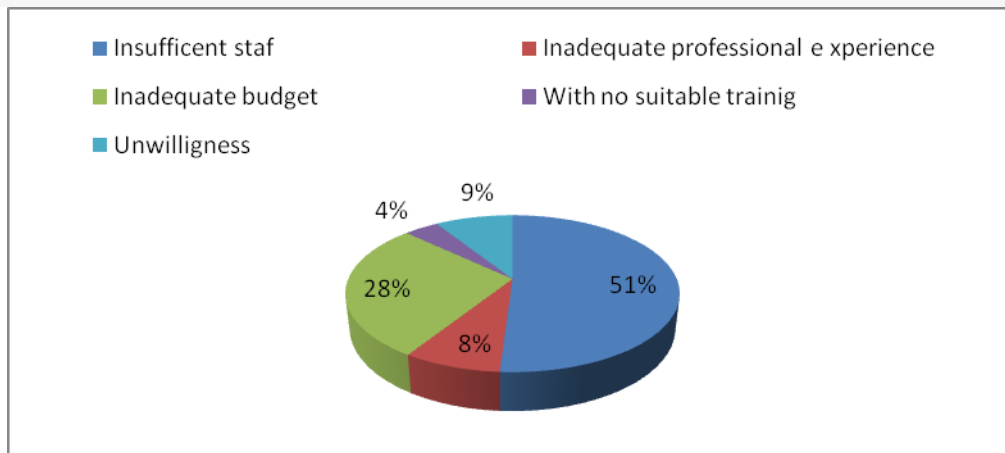
Figure 6.5. Are you satisfied with the progress on implementation of legislation?



More than 69% of judges said that they are satisfied, 21% are not satisfied, 7% of respondents are very satisfied, and 3% are not sure about the progress achieved on the implementation of the legislation.

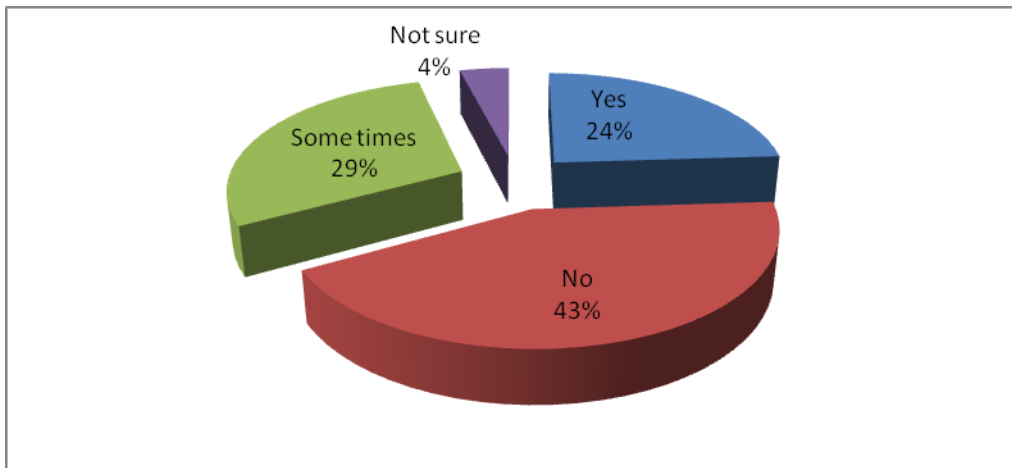
A. Questions about the implementation of legislation

Figure 6.6. When do you see key obstacles, problems in implementing of legislation at your institution?



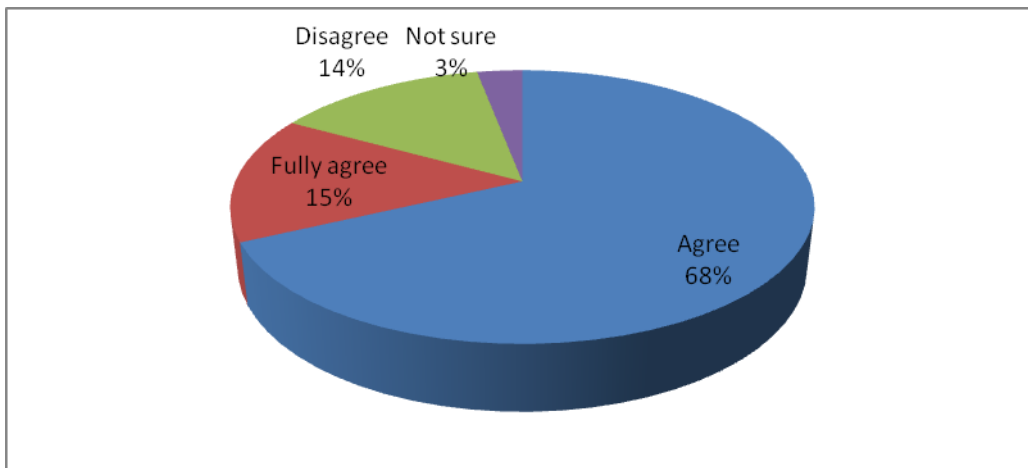
A significant percentage of judges including 51%, consider that the key obstacles which are facing the judiciary system for implementation of legislation is insufficient staff, 28% declared the inadequate budget, 9% said unwillingness, 8% has declared inadequate professional experience, while 4% said with no suitable training.

Figure 6.7. Do you think that Kosovo government is transparent in the process of drafting the legislations?



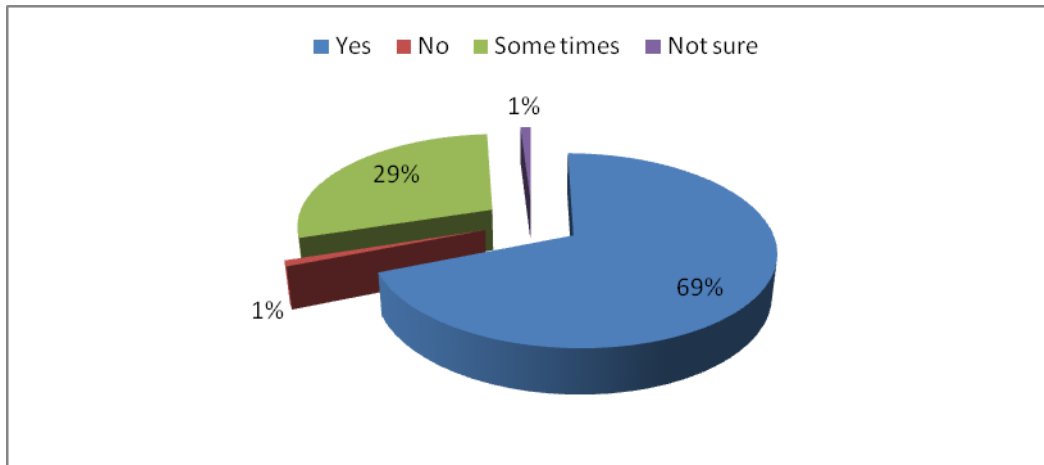
Regarding the question (see figure 6.7), respondents have given the following answers: 43% of judges think that Kosovo Government is not transparent, 29% said some times, 24% declared yes, and for 4% are not sure.

Figure 6.8. Do you agree that the legislation in force in Kosovo causing confusion in the implementation of laws”?



Results of data analyzed shows (see above figure 6.8) that high percentage including 68% of judges are agree that legislation in force in Kosovo causing confusion in the implementation of laws, 15% are fully agree, 14% are disagree and only 3% are not sure With this problem is facing also the Judiciary system .

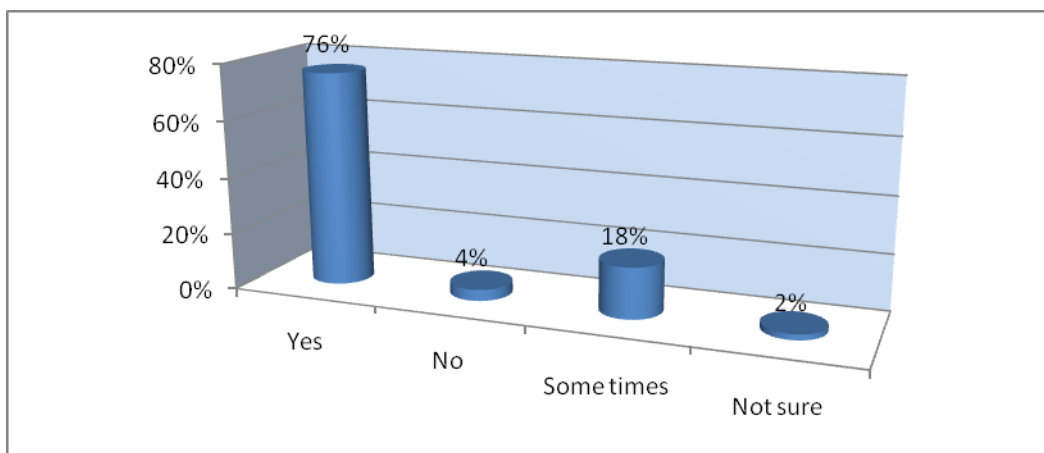
Figure 6.9. Do you think that a collision of the laws can inhibit implementation of the legislation?



Regarding the question (see figure. 6.9) judges have given following answers. More than 69% think that the collision of laws can inhibit implementation of the legislation, 29% said some times, 1% think no and 1% are not sure.

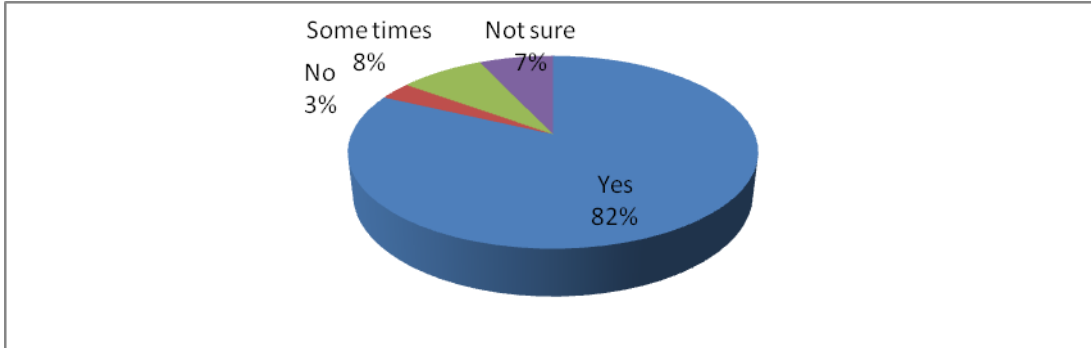
B. Specific Question

Figure 6.10. Do you regularly follow legislation adopted by the Government and Assembly?



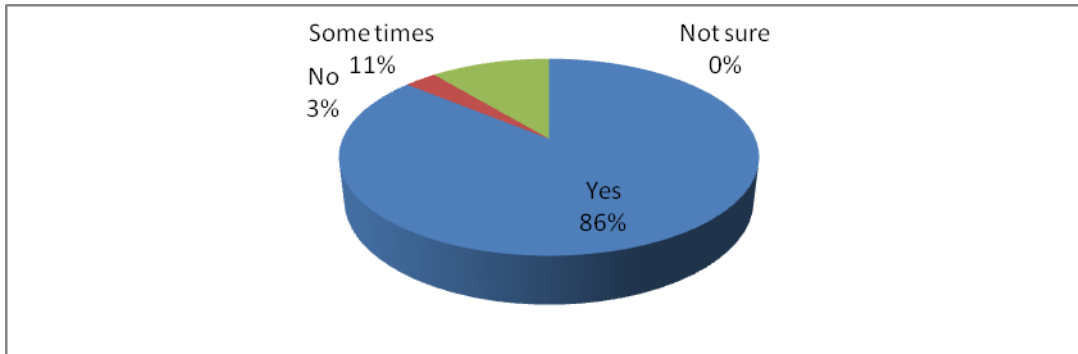
More than 76% of judges said that they regularly follow legislation adopted by the Government and Assembly 18% has declared some times, 4% said no, and 2% are not sure.

Figure 6.11. Is the, Judiciary System independent regarding the implementation of legislation?



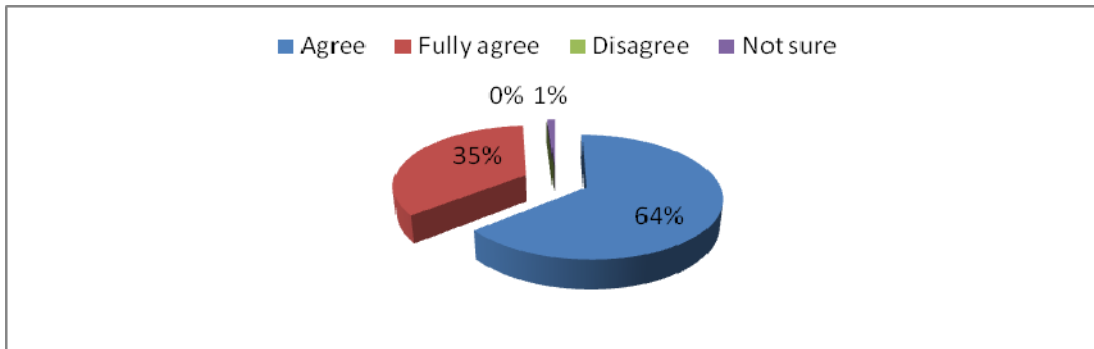
Regarding the question (see figure 6.11), judges have given the following answers: 82% of respondents has declared that the Judiciary System is independent regarding the implementation of legislation, 8% of them said some times, while 7% are not sure ,and only 3% said no .

Figure 6.12. Do you think that the lack of legal commentaries can be an obstacle for the implementation of legislation?



More than 86% of judges think that the lack of legal commentaries can be an obstacle for the implementation of legislation, 11% has declared some times, and 3% said no.

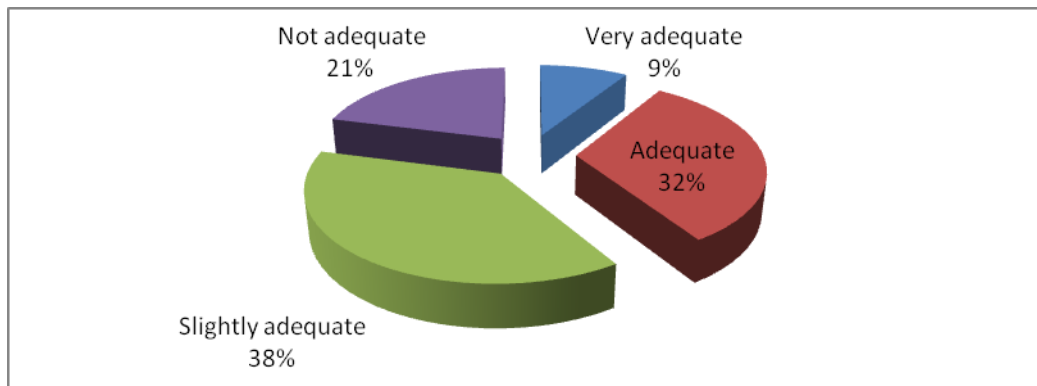
Figure 6.13. Are you agreeing that the cooperation of the Judiciary System with the Kosovo Police and citizens is very important for implementation of legislation?



Regarding the question (see figure.6.13), judges have given the following answers: 64% of judges are agreeing that the cooperation of the Judiciary System with the Kosovo Police and citizens is very important for implementation of legislation, while 35% are fully agree, and only 1% is not sure.

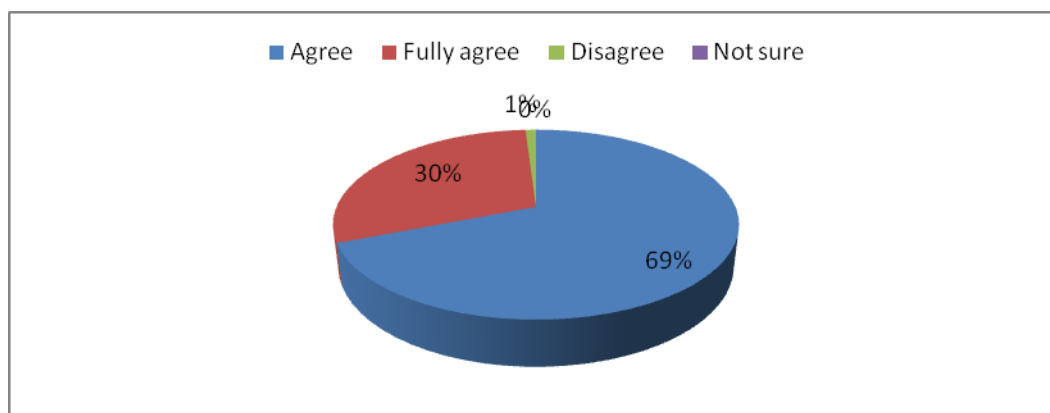
C. Questions about the capacity and training

Figure 6.14. To what extent do your courts have adequate human capacity to implement legislation?



More than 38% of judges said that have slightly adequate human capacity, 32% declared that have adequate human capacity, 9% have very adequate human capacity, and 21% said that don't have adequate human capacity to implement legislation.

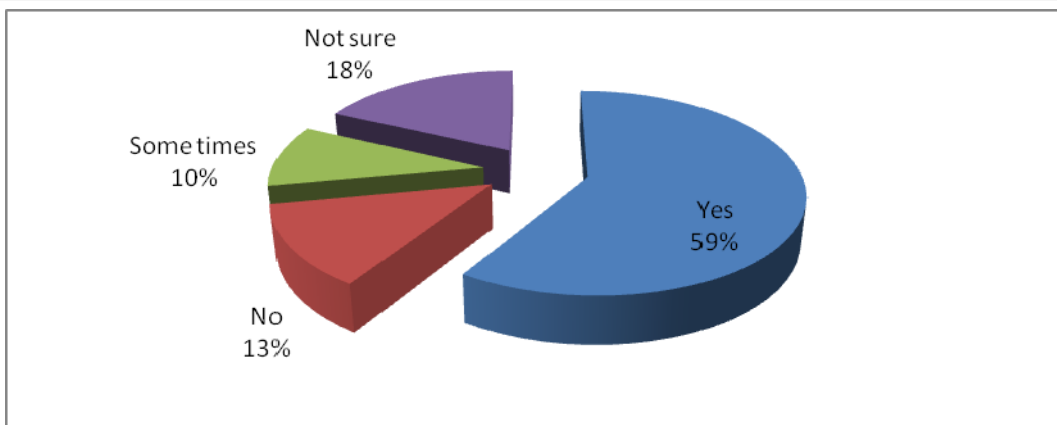
Figure 6.15. Are you agreeing that judges have needs for ongoing trainings regarding the implementation of legislation?



More than 69% of judges are agree that judges have additional needs for ongoing trainings regarding the implementation of legislation, 30% of them are fully agree, and just only 1% are not sure.

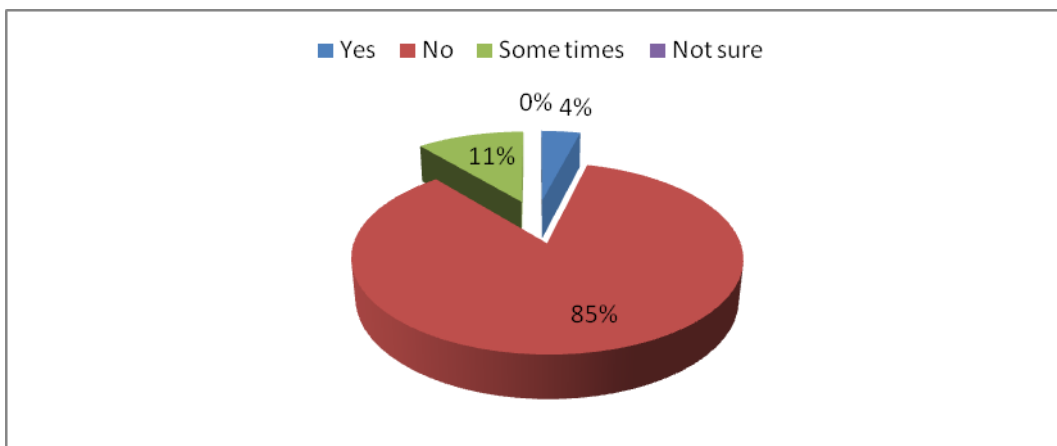
Question about the Publication and Media

Figure 6.16. Do you know that there is an Official Gazette of Republic of Kosova, which regularly publish legislation?



Regarding the question (see figure 6.16), judges have given the following answers: 59% of judges know that there is an Official Gazette of Republic of Kosovo, which regularly publish legislation, 18% said that are not sure, 13% declared no, and 10% said some times.

Figure 6.17. Have you done any assessment or published any report referring the Implementation of laws in your institution?



More than 85% of judges stated that they have not done any assessment and published report referring the implementation of laws in their institution, while 11% said some times and only 4% said yes.

Chapter 7

The role of Kosovo Police in implementing the legislation

This chapter discusses the role of the Kosovo Police in implementing legislation and also presents the results from the questionnaire conducted with Police Officers.

United Nations Interim Administration Mission in Kosovo (UNMIK) included a large international police component, named the UNMIK Police. According to the UN Security Council Resolution 1244, they were given tasks to establish a new local police force in Kosovo. The name for the new police force was "Kosovo Police Service". Before the proclamation of the independency of Kosovo, the Kosovo Police Service was subordinated by the UNMIK Police, and the police commissioner retained command authority over both the international police and the Kosovo Police. On the 6th of September 1999, OSCE mission in Kosovo in accordance with resolution 1244 United Nations have opened Police School and started to train candidates for Kosovo Police Members. The first generation of candidates to become members of this Service started training in this center on 6th of September 1999. This generation has trained 176 members who had successfully completed training and afterwards continued to serve within entire Kosovo territory as a first group of this Service⁷⁰.

Kosovo police has been established through the Law NR. 03/L-035 on Police, the purpose of this Law is to establish the Kosovo Republic Police, describe its powers and duties and the powers and duties of its Police Officers, define its organizational structure, and clarify other matters regarding the activities and operations of the Kosovo Police. The Police of the Republic of Kosovo shall be responsible for the preservation of public order and safety throughout the territory of the Republic of Kosovo. The Kosovo Republic Police is hereby established as a public service within the framework of the Ministry of Internal Affairs, the Police are a legal person, the Police shall operate through a unified chain of command throughout Republic of Kosovo, the Police have its own uniform, flag and symbol, which shall be established by the Minister, subject to the approval of the Government⁷¹. The Police shall function under the authority of the Minister of Internal Affairs and under the control and supervision of the General

⁷⁰ <http://www.kosovopolice.com/?page=2,2>

⁷¹ Law NR. 03/L-035 on Police, article 4

Director of the Police. The Minister's authority does not include operational management of the Police. The General Director shall report to, and shall be directly accountable to the Minister for administration and management of the Police⁷².

Kosovo Police through the law enforcement has crucial role in protecting citizen's rights. By had the authority to enforce the law of the country, including use of force if is necessary, police have great responsibility to carefully exercise this authority in order that the rights of all citizens are equally protected. Law on Police has foreseen the Relationship between the Police and Public Prosecutors and Judges. The Police shall execute orders and instructions lawfully issued by a competent public prosecutor, also shall report to the competent public prosecutor's office information related to alleged criminal activity of which the Police become aware, in accordance to the applicable law⁷³. Kosovo Police, will cooperate with Local Communities, this means that Police shall communicate and cooperate with local governmental authorities, civic organizations, and local communities for the purpose of preventing and combating crime and enhancing the safety and security of all communities in Republic of Kosovo⁷⁴.

The main duties and powers of the Kosovo Police, based on article 10 of the Law on Police are; a) to protect the life, safety and property of all individuals) to protect the human rights and fundamental freedoms of all citizens) to prevent dangers to the public and maintain the public order and safety) to detect and prevent criminal acts) to investigate criminal acts') to provide surveillance and control for traffic safety; g) to provide surveillance and control of the border) to provide assistance during natural disasters and other emergencies; and i) to perform other duties as assigned by applicable law. Based on the duties and obligations which determine for them the Law on Police, with full responsibility we can conclude that the Kosovo Police plays an important role in implementing the legislation in Kosovo, this assessment is supported by the results which emerged from the questionnaire (see figure 7.1).

7.1 Results from the Questionnaire Conducted with Police Officers

This part of the chapter includes a results from the questionnaire conducted with 41 (forty one) Police Officer which have been selected by the Directorate for Planning and Operational Assesment which operate within the Kosovo Police.

The survey took almost two months to complete (July - September 2011).

The Questioner was focused on:

- A. General Questions
- B. Questions about the implementation of legislation
- C. Specific Question
- D. Questions about the capacity and training
- E. Question about (ore related to) the Publication and Media

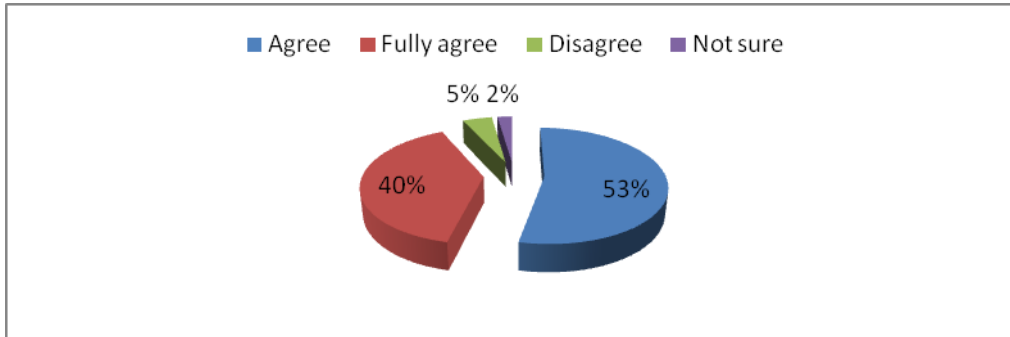
A. General Questions

⁷² Ibid, Article 5

⁷³ Ibid ,Article 6

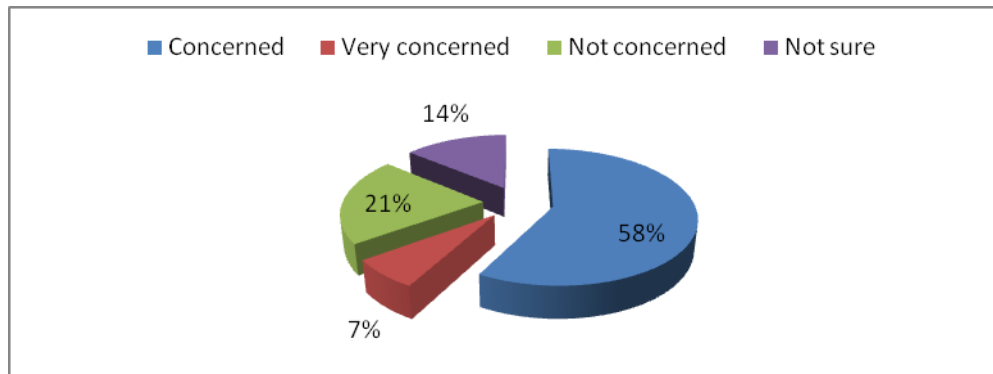
⁷⁴ Ibid ,Article 7

Figure 7.1. Are you agreeing that the Kosovo Police is a highly significant mechanism in the implementation of legislation?



Results shows that 53% of police officers are agree, and 40 % are fully agree that the Kosovo Police is a highly significant mechanism in the implementation of legislation, while 5% are disagree ,and only 2% are note sure that Kosovo Policeis a highly significant mechanism in the implementation of legislation.

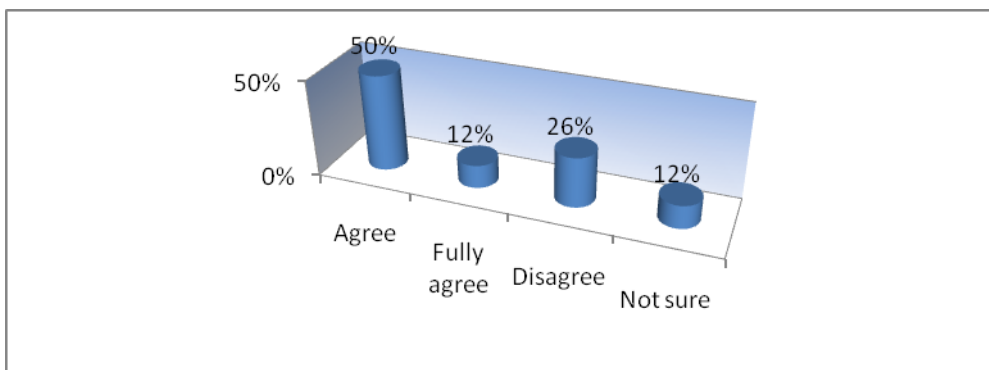
Figure 7.2. Are you concerned about the implementation of the legislation?



Regarding the question (see figure. 7.2), police officers have given the following answers: Hugh percentage including 58% is concerned, while 21% are not concerned, 7% are very concerned and 14% are not sure.

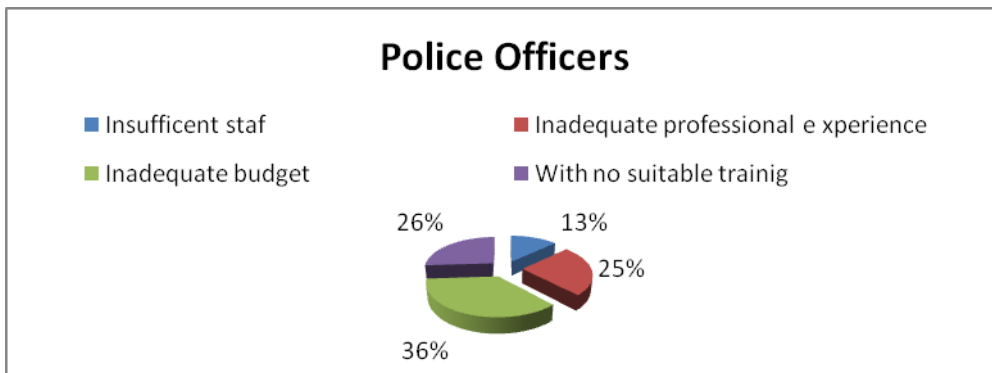
B. Questions about the implementation

Figure 7.3. Do you agree that the legislation in force in Kosovo causing confusion in the implementation of laws?



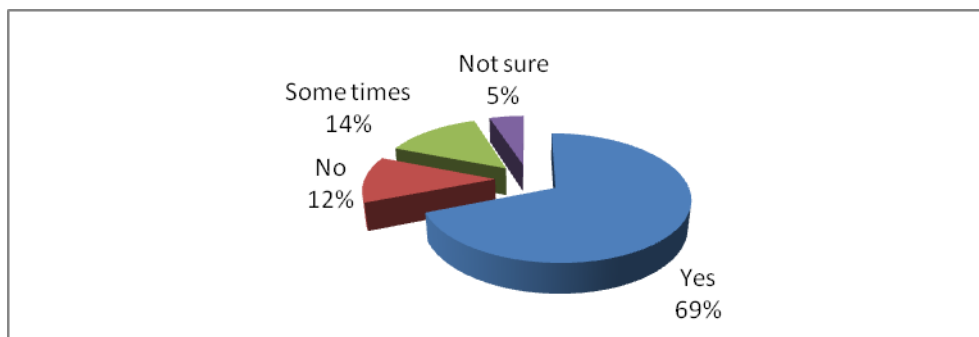
Regarding the question (see figure 7.3), police officers have given following answers: 50% are agree and 12% are fully agree that the legislation in force in Kosovo, causing confusion in the implementation of laws ,while 12% are disagree ,and 12% are not sure.

Figure 7.4. When do you see key obstacles, problems in implementing of laws at your Institution?



According to their responses, police officers consider that the key obstacles which are facing the Kosovo Police for implementation of legislation are: 36% declared the inadequate budget, 26% said no suitable training, 25% has declared inadequate professional experience, and 13% said insufficient staff.

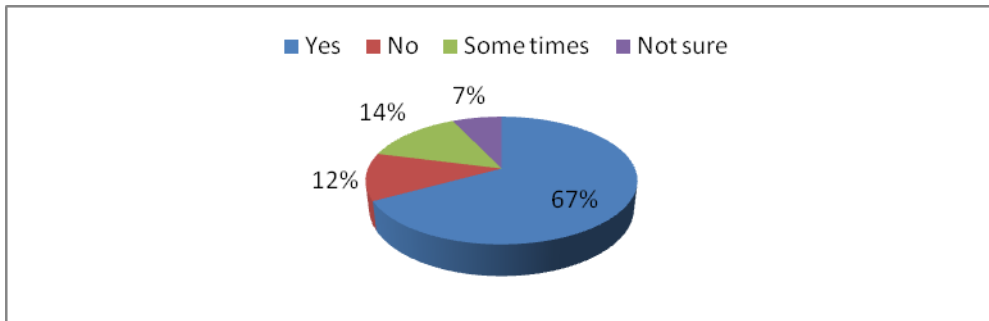
Figure 7.5. Do you think that the lack of legal commentaries can be an obstacle for the implementation of legislation?



More than 69% of police officers think that the lack of legal commentaries can be an obstacle for the implementation of legislation, 14% has declared some times, 12% said no, and 5% are not sure.

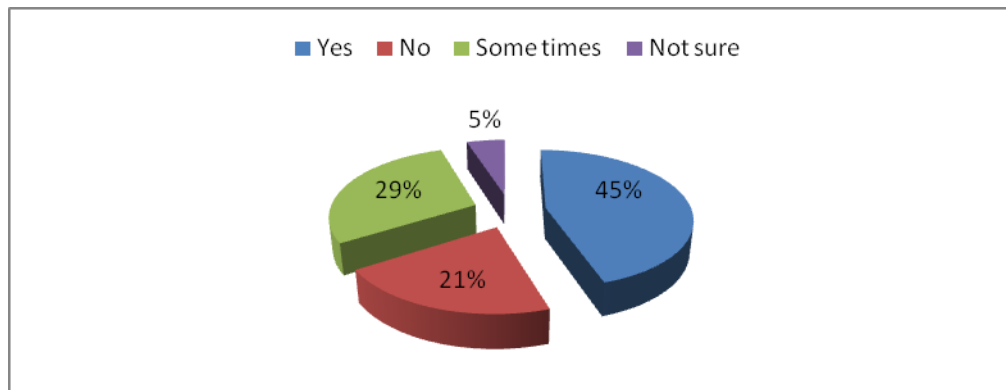
C. Specific Question

Figure 7.6. Do you think that a collision of the laws can inhibit implementation of the legislation?



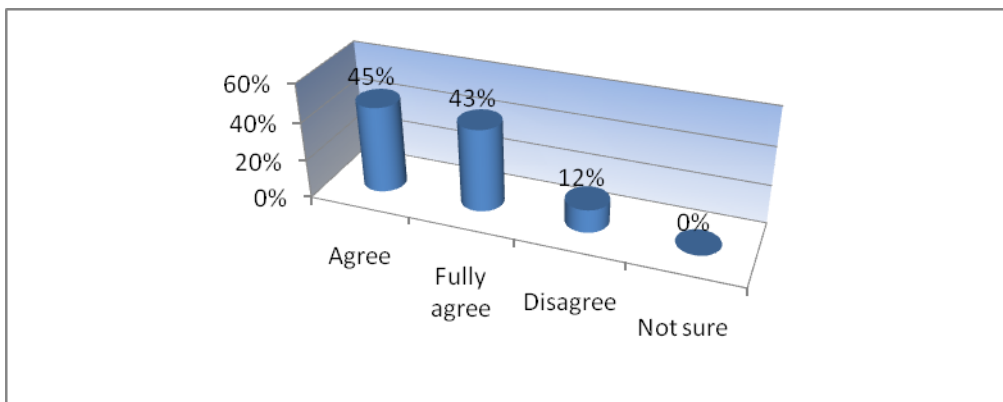
More than 67% of police officers think that the collision of the laws can inhibit implementation of the legislation, 14% have declared some times, 12% said no, and 7% are not sure.

Figure 7.7. Is Kosovo Police independent institution on implementation of legislation?



Regarding the question (see figure 7.7), was given the following answers: 45% of police officers have declared that the Kosovo Police is independent institution regarding the implementation of legislation, 29% of them said some times, while 21% said no.

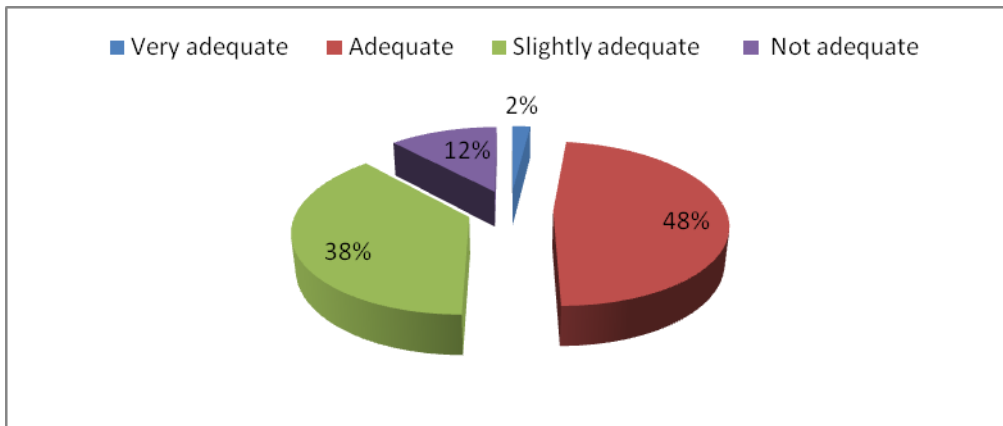
Figure 7.8. Do you agree that the cooperation of the Kosovo Police, with the judicial system and the Citizens is very important in law enforcement?



Regarding the question (see figure 7.8), police officers have given the following answers: 45% are agreeing that the cooperation of the Kosovo Police with the Judiciary System and citizens is very important in law enforcement, while 43% are fully agree, and 12% of police officers are not sure.

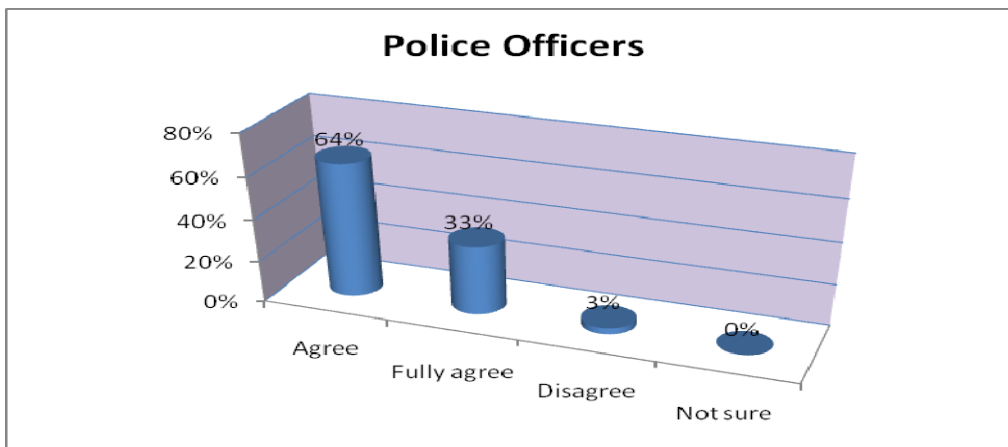
D. Questions about the Capacity and training

Figure 7.9. To what extend your institution have adequate human capacities to implement legislation?



More than 48% of police officers said that they have adequate human capacity, 38% declared that have slightly adequate human capacity, 12% declared that don't have adequate human capacity to implement legislation, and only 2% said that have very adequate human capacity to implement legislation.

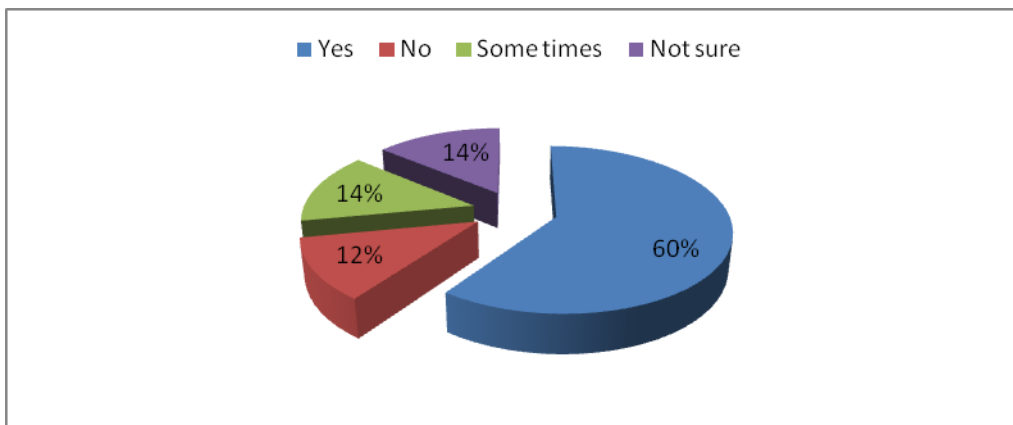
Figure 7.10. Are you agreeing that the members of the Kosovo Police have needs for ongoing trainings regarding the implementation of legislation?



Regarding the question (see figure 7.10), police officers have given following answers: 64% are agree and 33% are fully agree that the members of the Kosovo Police have needs for ongoing trainings regarding the implementation of legislation, 0% are not sure and 3% are disagreeing.

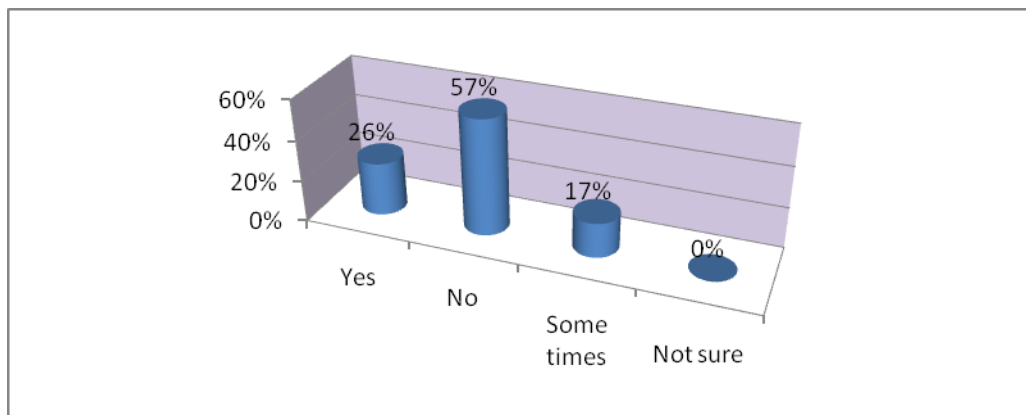
E. Question about the Publication and Media

Figure 7.11. Do you know that there is an Official Gazette of Republic of Kosovo, which regularly publishes legislation?



Regarding the question (see figure 7.11), police officers have given the following answers: 59% of them know that there is an Official Gazette of Republic of Kosovo, which regularly publish legislation ,18% said that are not sure,13% declared no, and 10% said some times.

Figure 7.12. Have you done any assessment ore published any report referring the implementation of Legislation in your institution?



More than 57% of police officers stated that they have not done any assessment and published report referring the implementation of laws in their institution, while 26% said yes ,and 17% said some times.

Chapter 8

The role of media and civil society in implementing the legislation

This chapter discusses the role of the media and civil society in implementing the legislation. Also, the chapter presents results from the questionnaire conducted with Kosovo Citizens.

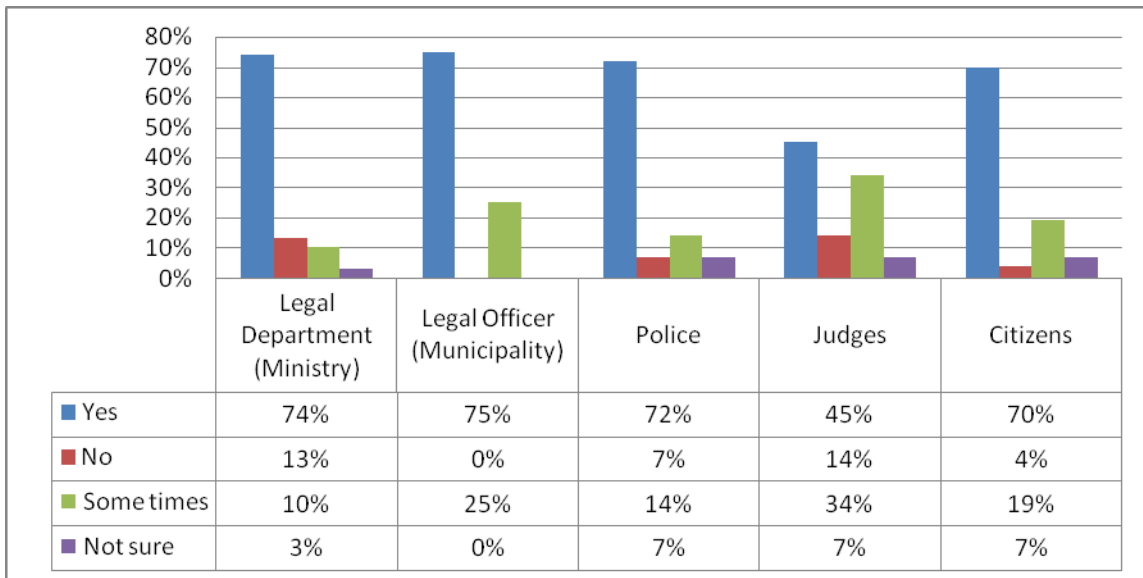
The Media and Civil society plays an important role in helping Kosovo to become a truly democratic country and part of the European Union. In many cases, individual NGOs cannot address a particular issue alone, which raises the need for coordination among NGOs. NGO networks and coalitions have been multiplied, particularly in the last decade. With they engagement and initiatives they have achieved many concrete results, including monitoring elections, lobbying for changes to laws, and advocating for the rights of minorities, displays persons, women, youth, and people with disabilities. Coordination among civil society organizations is not a goal but rather a tool for achieving goals. It serves to strengthen the voice of civil society and increase its ability to improve people’s lives and to fight injustice, corruption and other forms of inequity and discrimination.

Today there are about 6,300 local NGOs registered in Kosovo, even though the exact number of operational NGOs is unknown. The huge number of NGOs has brought the need for better coordination. As a result, there are in Kosovo dozens of NGO networks, coalitions and other groupings, all with one goal—to become a strong voice for civil society and to promote and strengthen democracy in Kosovo. NGO in Kosovo in general coordinates activities through networks and coalitions. They are supported financially by the various international donors engaged in Kosovo. Most of NGOs are dependent on international donors. Even though there are some positive movements but not at the satisfied level, the Kosovo government still does not have a clear, concrete and appropriate policy for working with NGOs. Historically, civil society organizations offering legal aid services have played a very important and direct role in enabling access to justice for certain vulnerable populations.

Today, several NGOs are active in providing legal aid services, mainly to the most vulnerable categories of the population, such as women, children, minority communities, people with disabilities etc. In particular it is worth mentioning the role of the civil society in addressing and offering support to the victims of trafficking and domestic violence. Civil society in Kosovo plays a key role in addressing gender based violence. Through the promotion of different laws, organizing champagnes for razing

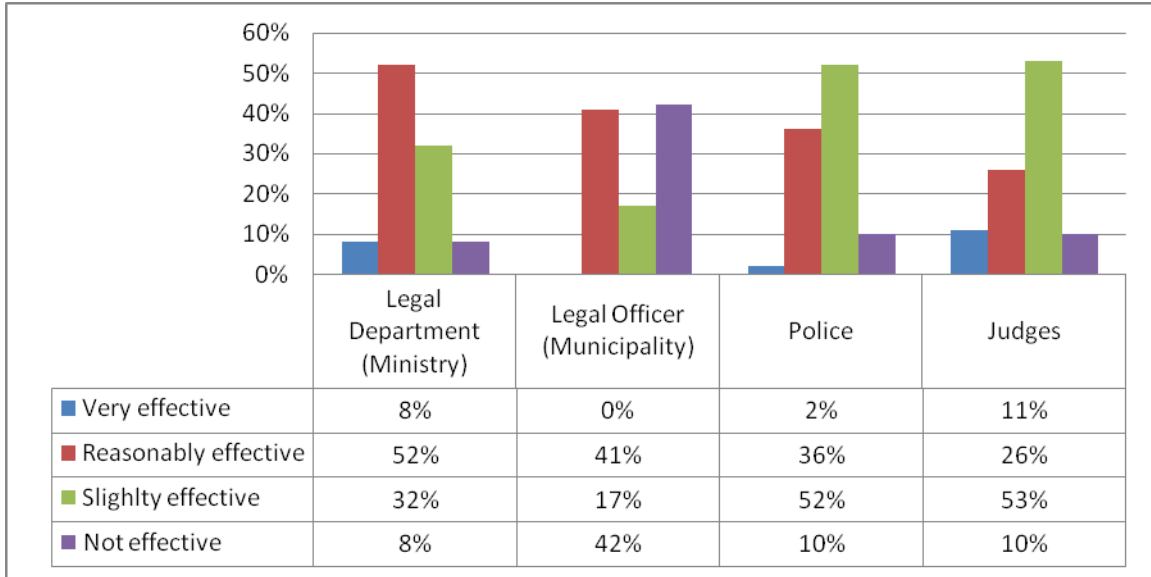
awareness to citizens for their rights guaranteed by certain laws, Media and civil society can play a crucial role for implementation of legislation. The media sector in Kosovo should invest more efforts on investigative journalism including sensitive areas of governance (corruption, transparency, justice, rule of law, etc).

Figure 8.1. Do you think the media can help in the process of implementing the legislation?



Huge percentages from five groups of respondents think that the media can help in the process of implementation of legislation (see figure 8.1), approximately the same results also has came out to the question (see figure 8.2)

Figure 8.2. How do you evaluate the contribution of citizens regarding the implementation of the legislation?

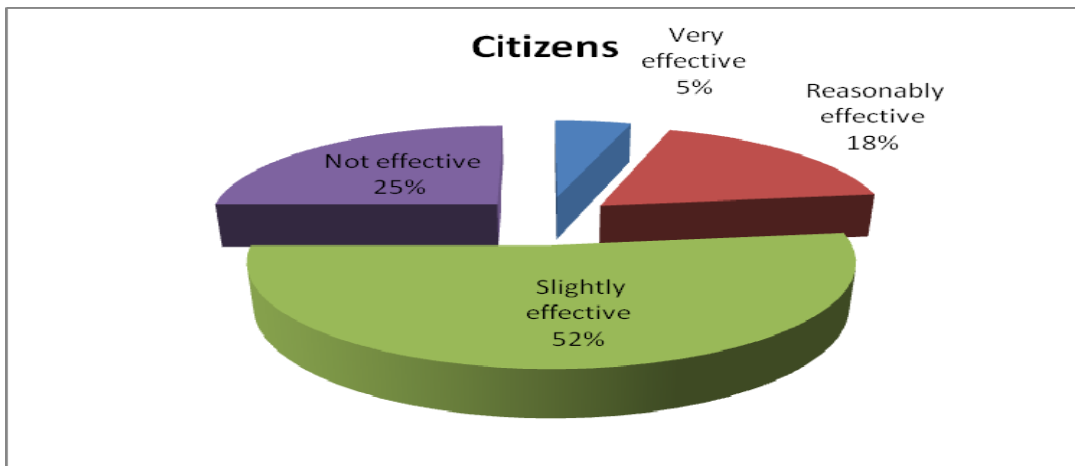


8.1 Results from the Questionnaire Conducted with Kosovo Citizens

This part of the chapter includes results-outcomes from the questionnaire conducted with 55 (fifty five) citizens from different communities, ages, educational background, and from different professions including; lawyers, doctors, waitress, journalist, commercial, students, professor, housewife, etc.

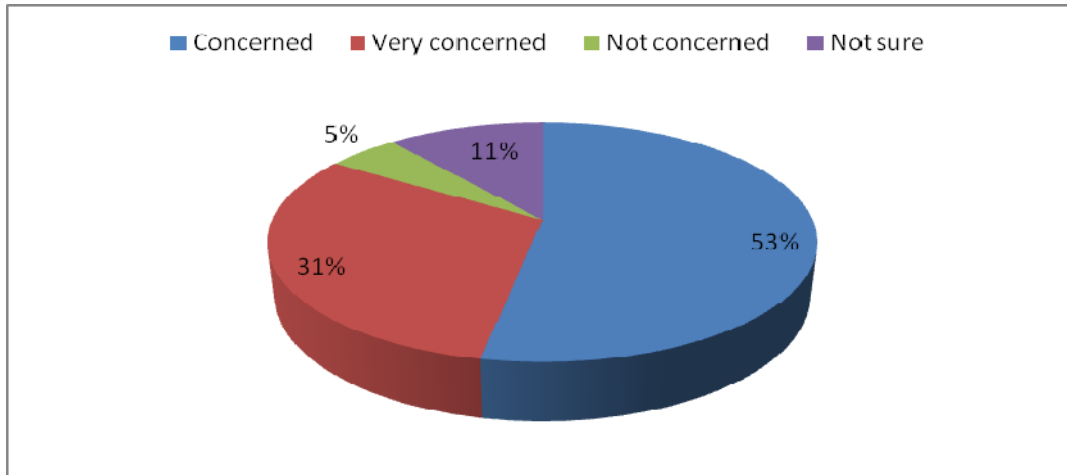
The aim was to get opinions from citizens from the various professions and with different educational qualifications, what they think about the rule of law in Kosovo, namely are they concerned ore satisfied with the progress and effectiveness of institutions on law enforcement and lot of other questions, whose answers may be found in the following;

Figure 8.3. How do you assess the effectiveness of the implementation of legislation?



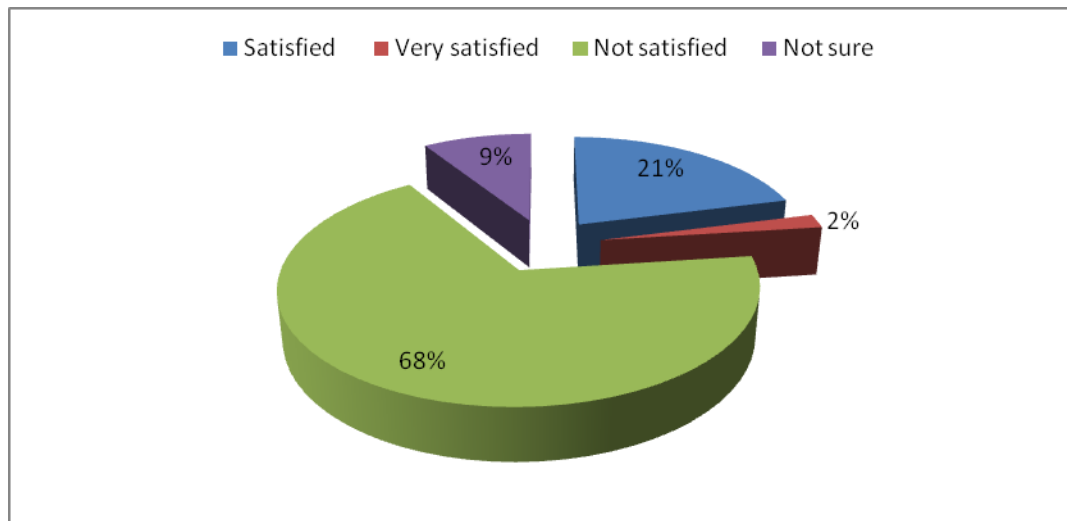
52% of respondents said that the effectiveness of legislation is slightly effective, 25 have stated not effective, 18% think that is reasonably effective, and 5% of respondents said that is very effective.

Figure 8.4. Are you concerned about the implementation of the legislation?



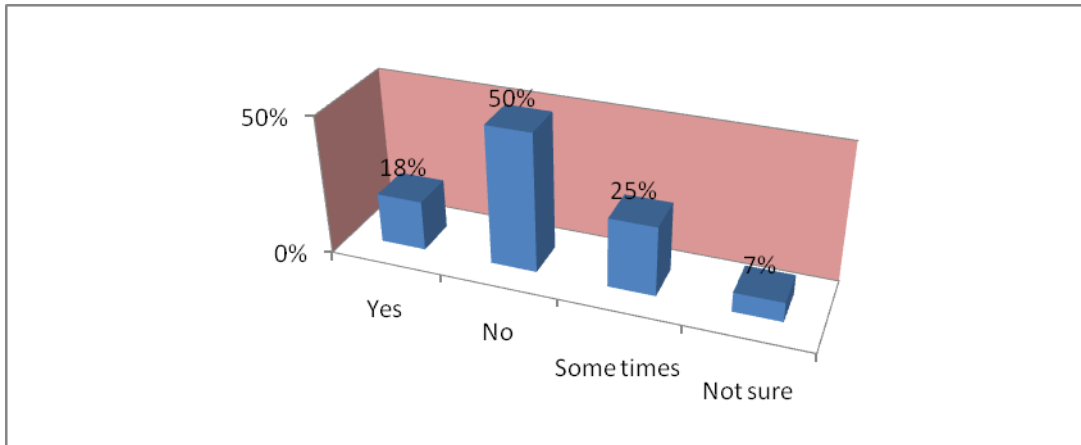
More than 53% of respondents are concerned about the implementation of the legislation, 31% have stated that they are very concerned, while 11% are not sure and 5% of respondents are not concerned.

Figure 8.5. Are you satisfied with the progress on implementation of legislation?



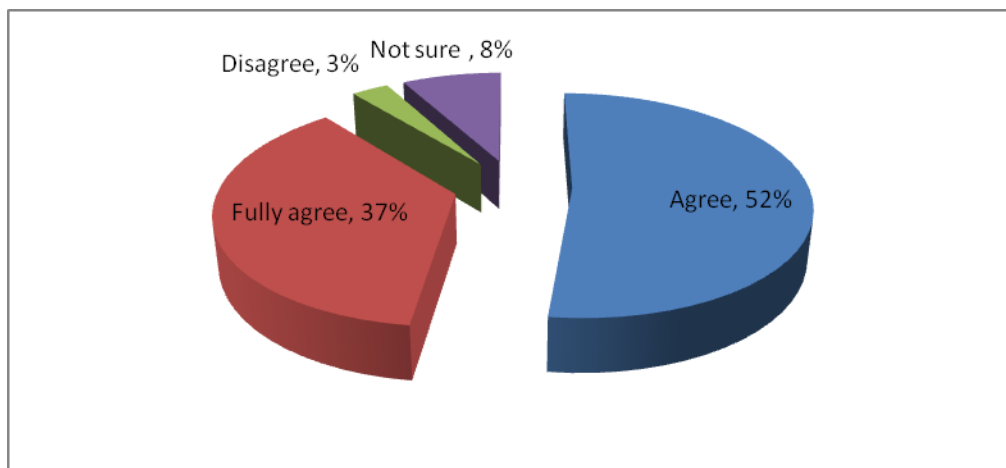
Huge percentages of respondents including (68%) are not satisfied with the progress on implementation of legislation, satisfied have declared 21% of respondents, only 2% are very satisfied, and 9% are not sure.

Figure 8.6. Do you think that Kosovo Government is transparent in the process of drafting the legislations?



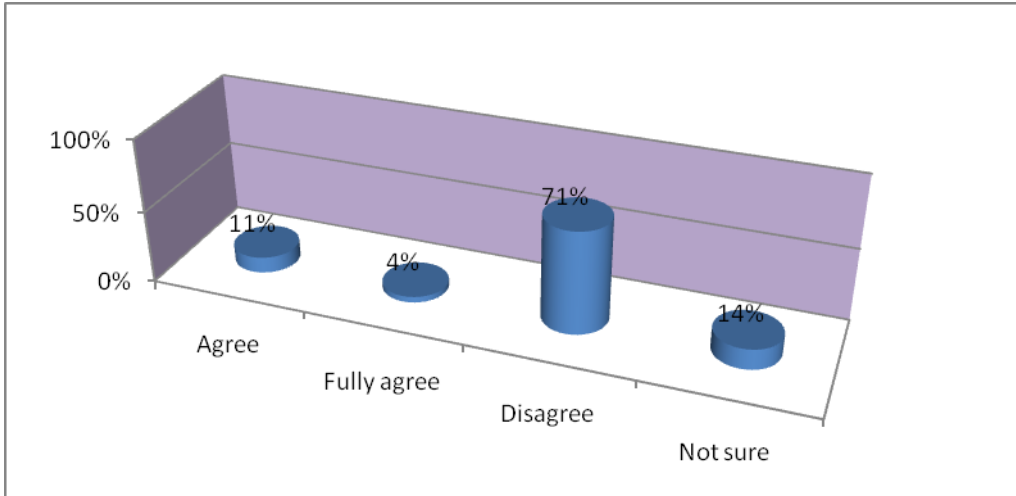
Regarding the question (see figure 8.6), respondents have given the following answers: 18% think that Kosovo Government is transparent in the process of drafting the legislations, 50% declared that that Kosovo Government isn't transparent, 25% said some times and 7% aren't sure.

Figure 8.7. Do you agree that the legislation in force in Kosovo causing confusion in the implementation of laws?



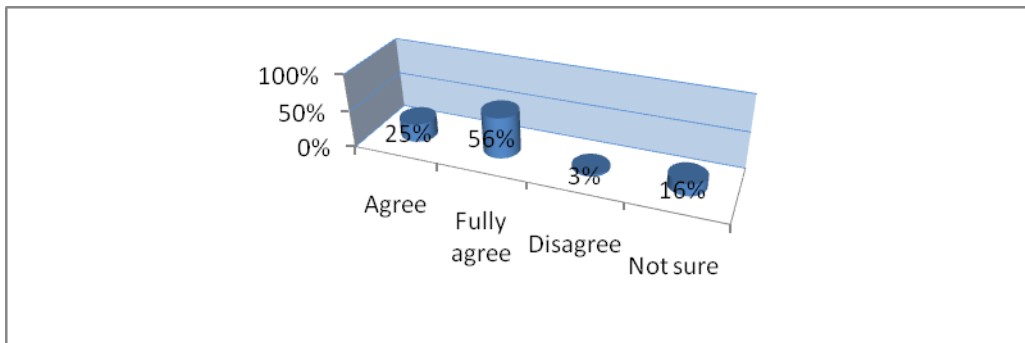
Regarding the question (see figure 8.7), respondents have given following answers: 52% are agree and 37% are fully agree that the legislation in force in Kosovo, causing confusion in the implementation of laws ,while 8% are not sure and 3% are disagreeing.

Figure 8.8. Do you agree that commissions of the Assembly of Kosovo, monitoring well the implementation of legislation by the executive branch?



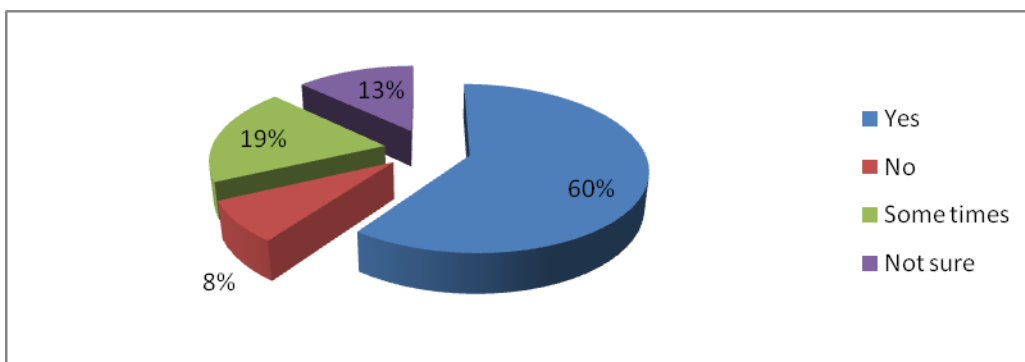
Regarding the question (see figure 8.8), respondents give the following answers: 71% of respondents are disagree that commissions of the Assembly of Kosovo, monitoring well the implementation of legislation by the executive branch, 11% are agree, 4% are fully agree, and 14% aren't shore.

Figure 8.9. Do you agree that the cooperation of the Judiciary System, with the Kosovo Police and the Citizens is very important in law enforcement?



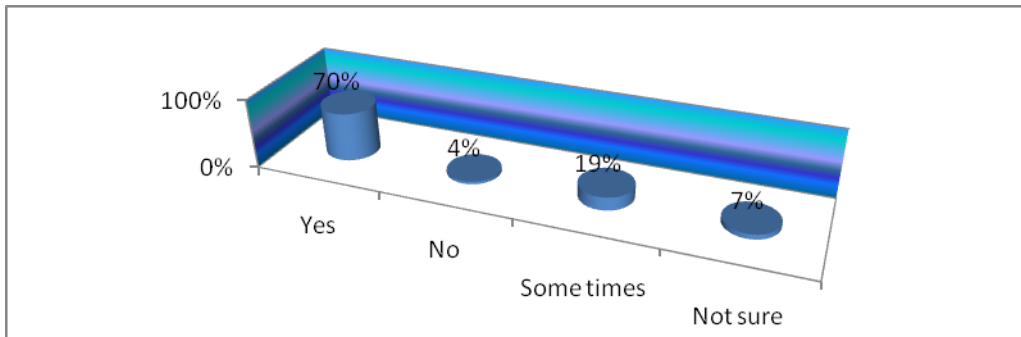
Regarding the question (see figure 8.9), respondents have given the following answers: 56% are fully agree and 25% are agree that the cooperation of the judiciary system, with the Kosovo Police and the Citizens is very important in law enforcement, while 16% are not sure, and 3% are disagree.

Figure 8.10. Do you think that the lack of legal commentaries can be an obstacle for the implementation of legislation?



More than 60% of respondents think that the lack of legal commentaries can be an obstacle for the implementation of legislation, 19% has declared some times, 8% said no, and 13% are not sure.

Figure 8.11. Do you think the media can help in the process of implementing the legislation?



Regarding the questionnaire (see figure 8.11), respondents has given the following answers: 70% think the media can help in the process of implementing the legislation, 19% said some times and 4% said no, and, 7% aren't sure.

Chapter 9

Discussions and Recommendations

9.1 Final Discussions

During the last decade, Kosovo institutions and International institutions which are acting in Kosovo, have dedicated much more importance to drafting and development of the laws, while very little attention was dedicated to their implementation. The aim of this study has been to assess the role and capacities of Kosovo institutions for effective implementation of legislation. Although the study has limitations such as time, resources, space, experience, etc, it still makes several noteworthy contributions. The study addresses key issues concerning the role of rule of law in a new country such as Kosovo and provides solid grounds and arguments that call for immediate action. Nevertheless, further research with a more diverse population would add considerably to the understanding of the situation on implementation of legislation in the Republic of Kosovo. More research with a larger sample, of higher diversity balance might be more beneficial for generating new solutions and standards.

This capstone project provides information about the main challenges which Kosovo institutions are facing with regarding implementation of legislation. The questionnaires conducted with the main stakeholders, who are obligated to implement the legislation, identify the main reasons, obstacles and problems which include: Current legislation in force, lack of budget, lack of legal commentaries, collision of laws, insufficient staff, inadequate professional expertise on drafting and implementation of legislation,

insufficient number of judges, no continuous and professional training. Several major recommendations are also made.

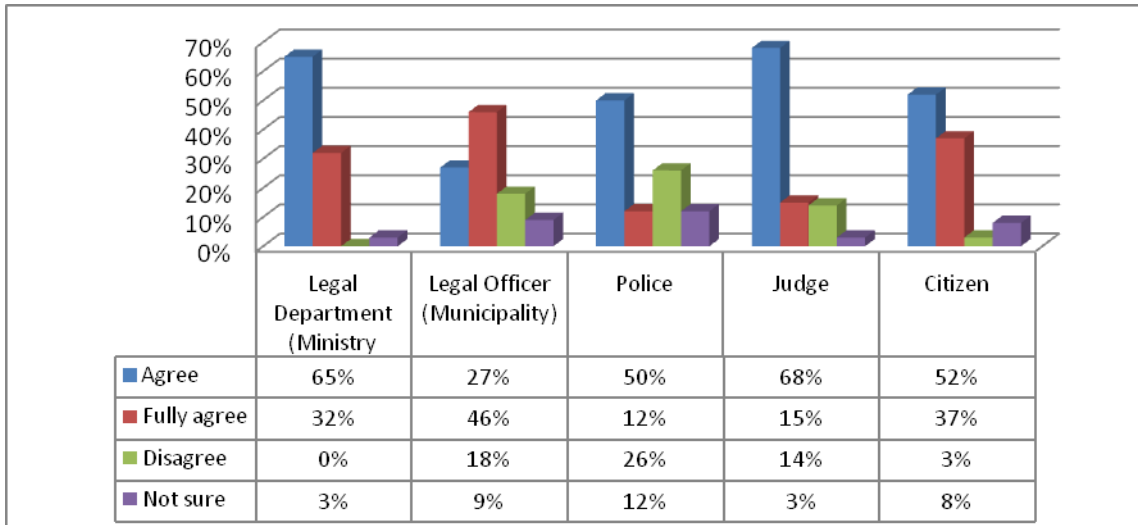
Kosovo has adopted a solid legal framework, but their implementation is selective and is not at a satisfactory level. The functioning of parallel institutions (structures) in north of Mitrovica has a negative impact and impedes the implementation of laws in the whole territory of Kosovo. The legal infrastructure in Kosovo is in full compliance with international standards. However, it still faces obstacles in the implementation due to the lack of financial, and human resources, administrative obstacles and sometimes lack of adequate political will. The implementation of the legislation requires more financial support, human capacity with sufficient expertise and more efforts on coordinating cooperation and information sharing among main stakeholders who are in charge of drafting and implementation of legislation.

Until the Declaration of Independence, leading and final authority on legislative, executive including the administration of justice was under the authority of UNMIK. Kosovo institutions were provisional and temporary bodies and their powers were limited and restricted. In Kosovo there is a significant international presence that automatically makes its independence and sovereignty incomplete and limited. Declaration of Independence and adoption of the Constitution brought a new reality in Kosovo regarding separation of powers and their independence. However, still these powers are supervised and influenced by international actors acting in Kosovo, which often diminish the independency of these powers.

Kosovo has not yet taken all the responsibility to govern it self , still has not extended its legislative, executive and judicial powers, on its entire territory, still doesn't enjoys full political , legal, constitutional and international subjectivity. Kosovo institutions are not the sole governing structures of the state. The International Civilian Office (ICO) is mandated with overseeing the implementation of the Ahtisaari Plan, while EULEX is in charge of assisting, monitoring and advising Kosovo institutions in charge of implementing the rule of law.

The legal system in Kosovo is a combination of legislation adopted by the Kosovo authorities, Regulations and Administrative Directions issued by UNMIK, and Ex-Yugoslav laws (if they are not discriminatory) in place before March 22, 1989. This mixed legislation in force is causing problems in practice during the implementation of laws (please refer to results obtained from the questionnaire conducted with main stakeholders (see figure 9.1).

Figure 9.1. Do you agree that the legislation in force in Kosovo causes confusion in the law implementation?



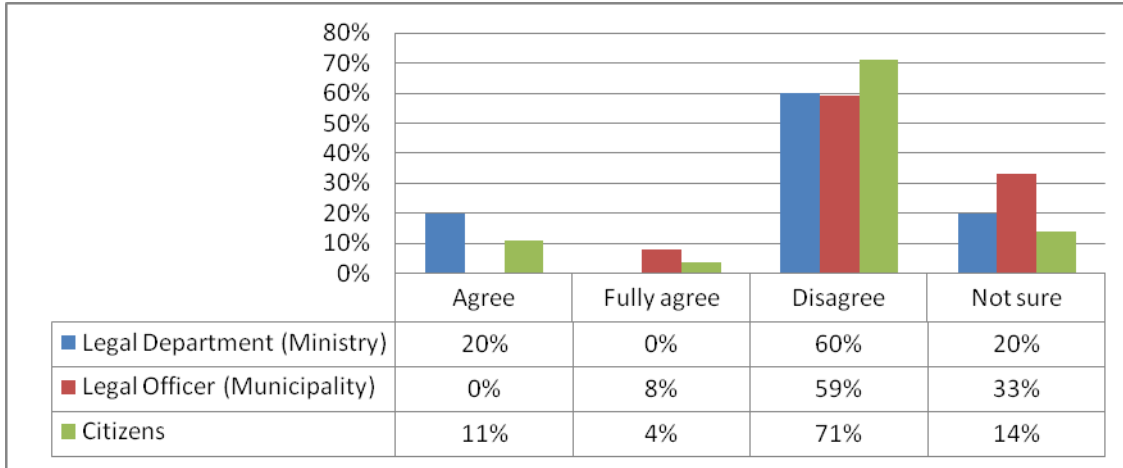
(See figure 1.4)

A significant percentage of respondents, consider and are agree that the legislation in force in Kosovo, causes confusion in the law implementation.

The need to draft new legislation is constantly stressed by representatives of the international administration and Kosovo institutions, with the aim of crossing the gap between the inherited Yugoslav legal system and the new social, economic and political reality. Implementation of the legislation didn't have the full attention of the international administration acting in Kosovo and the Provisional Institution of Self Government (PISG) due to other existing priorities they do not paid proper attention to the law enforcement process. Kosovo still faces challenges, aside from those posed by its struggle for international Recognition the country suffers from weak institutions. Three main pillars of the state, including legislative power, executive power and judiciary power are facing difficulties in carrying out they mission.

Parliament has significantly failed to meet legislative strategy and did not use proper instruments of parliamentary oversight. Assembly lacks the professional unit, which would provide a draft legislation that would avoid collisions of various laws. Professional staff, for the support of the Assembly is currently limited in number and in quality, operating with considerable budgetary and physical constraints. As the main actors of democratization, the capacity of members of the Assembly to meet their representative roles, legislative and monitoring is not yet in the desired level. Assembly lacks the capacity to monitor the implementation of laws, organizing debates, public consultations, the amendment of draft laws, research, etc. As well results stemming from the questionnaires confirm such an assessment (see figure 4.1). Performance of the Assembly shall be improved with the funksionalisation of the Parliamentary Research Unit, so that deputies will have in advance enough data and information, which will be of help in reviewing the drafts laws and other strategic documents which the government proceeds to the Assembly for approval.

Figure 9.2. Do you agree that commissions of the Assembly of Kosovo, monitoring well the implementation of legislation by the executive branch?



(See figure 4.1)

Hugh percentage of respondent are disagree that the commissions of the Assembly of Kosovo, monitoring well the implementation of legislation by the executive branch.

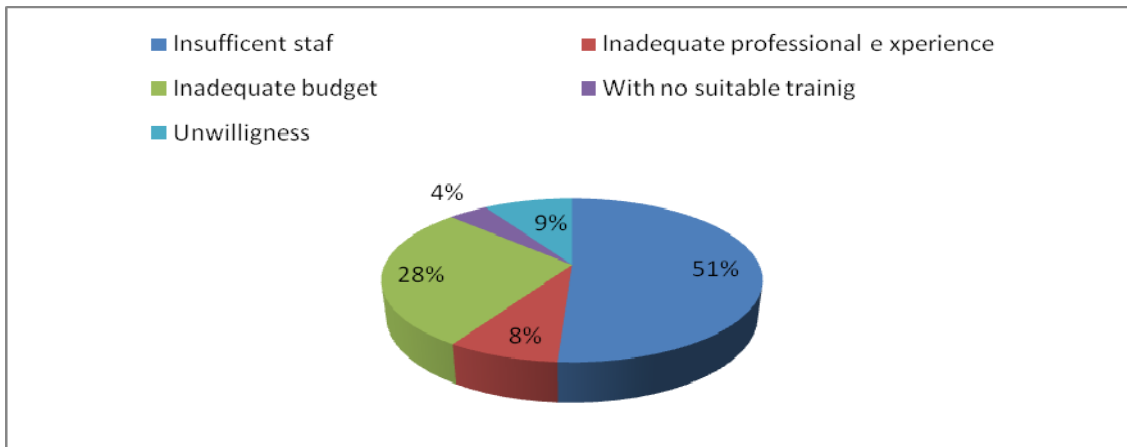
The Kosovo government is operating with limited human, technical and financial resources. While the quantitative resources mostly are there, the quality remains problematic in some sectors, especially in public administration. Also government facing many challenges during the implementation of legislation including; Insufficient staff, Inadequate professional expertise, Inadequate budget, Collision of laws ,Legislation in force, Lack of legal commentaries, not enough training (see chapter 5, results from the questionnaire conducted with Legal Departments within ministries and Legal Offices in the municipalities). Drafting various laws in a very short time without adequate coordination between the ministries involved in this process, has resulted in many conflicting provisions in different laws. However, in line of ministries and municipalities professional capacity for policy making and implementation is still insufficient. The capacity to review policies, before they are submitted to government and the capacity to prepare policies and draft legislation and other legal acts is constrained by limited human resources (in term of inadequate professional expertise) across all ministries and municipalities. Currently there is an unusual thing for legal offices with only 3-5 ore 9 staff members to be confronted with tasks that require more capacity. For this reason we can not avoid the fact that some sub laws in some cases even issued a year after the statutory deadline.

Kosovo Government has failed to establish effective coordination mechanism of analyzing and assessing the impact of legislation. The same situation prevails in the Assembly, the focus of parliamentary committees has been more oriented to the review of draft legislation that the Government has preceded to the Assembly for approval, the less energy and effort is invested in monitoring, evaluation and reporting on the implementation of laws. The capacities of ministries and municipalities for monitoring

and assessing the implementation of laws are not in the satisfactory level. Managing the implementation of legislation requires deep knowledge of legislation, even the drafter should pay more attention on the content of legal provisions, in the sense that they are very clear, concise and not cause confusion to those who have the responsibility to implement and evaluate the implementation of legislation. Kosovo Institute for public Administration (KIPA) which is in charge to provide professional training for civil servants will offer necessary training for capacity building of responsible officials concerning the evaluation of law enforcement.

The situation is not good even in the Judiciary system as one of the main pillars of the rule of law and enforcement of law in Kosovo. The judiciary system remains weak, vulnerable to political interference and inefficient. The key obstacles which are facing the judiciary system for implementation of legislation are insufficient staff, inadequate budget, inadequate professional experience, unwillingness (see c figure 6.6).

Figure 9.3 When do you see key obstacles, problems in implementing of legislation at your institution?



(See c figure 6.6).

A significant percentage of judges including 51%, consider that the key obstacles which are facing the judiciary system for implementation of legislation is insufficient staff, 28% declared the inadequate budget, 9% said unwillingness, 8% has declared inadequate professional experience, while 4% said with no suitable training.

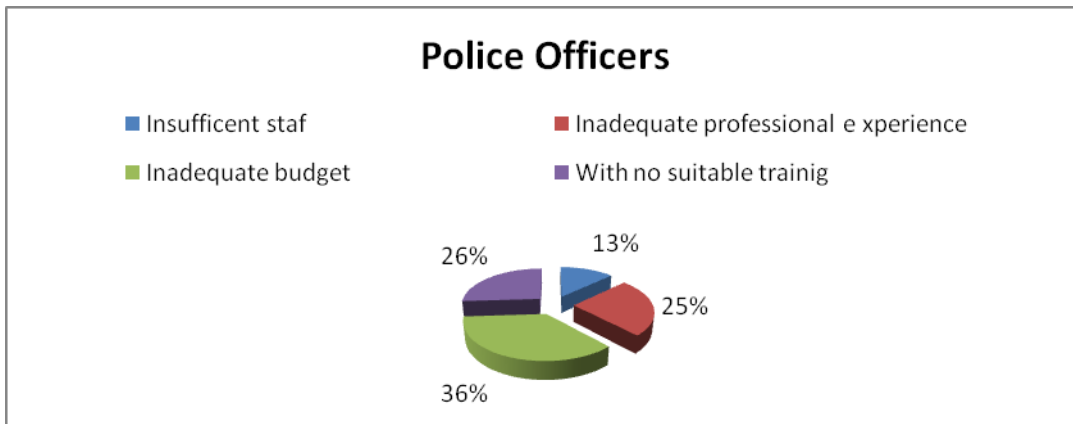
Challenges remain in further reducing the backlog of cases, especially in municipal courts. Concerning issue remains ensuring the sufficient budget for proper functioning of the courts. Besides progress has been made in reforming the judiciary of Kosovo, he still suffers from a number of structural weaknesses. Although legislation in force provides integrity and independence for justice system, in practice, the judiciary is not able to maintain its independence from political pressure and influence. A large number of cases are pending before the courts, which impede the timely administration of justice. Currently the Judiciary system has been considered one of the weakest links of the rule of law in Kosovo. Despite the appointment and reappointment of some judges and prosecutors, the number of pending cases continues to be high in the Kosovo courts.

There are about 224.000 (two hundred and twenty-four thousand) unsolved cases of different nature, a real problem that is inherited from year to year.

Judiciary System continues to be the most critical sector in Kosovo, not only for non-resolution of cases, but also for the presence of corruption. Also concern issues, remain the political influence in the judiciary and judicial processes. This fact doesn't justify judges or prosecutors, who are affected by these political pressures, or even without such effects, to give up them by sharing justice. Despite recent advances, the quality of legal education in Kosovo continues to have poor quality and lack of the practical training specifically for new judges. Judges have additional needs for ongoing trainings regarding the implementation of legislation (see chapter 6, figure 6.15).

Furthermore, the role of the Kosovo police for implementation of the legislation is very important. Kosovo Police through the law enforcement has crucial role in protecting citizen's rights. By had the authority to enforce the law of the country, including use of force if is necessary, police have great responsibility to carefully exercise this authority in order that the rights of all citizens are equally protected. Based on results which stemming out from the questionnaire conducted with police officers, the key obstacles which are facing the Kosovo Police for implementation of legislation is: inadequate budget, no suitable training, insufficient staff, and inadequate professional experience (see figure 7.4).

Figure 9.4. When do you see key obstacles, problems in implementing of laws at your Institution?



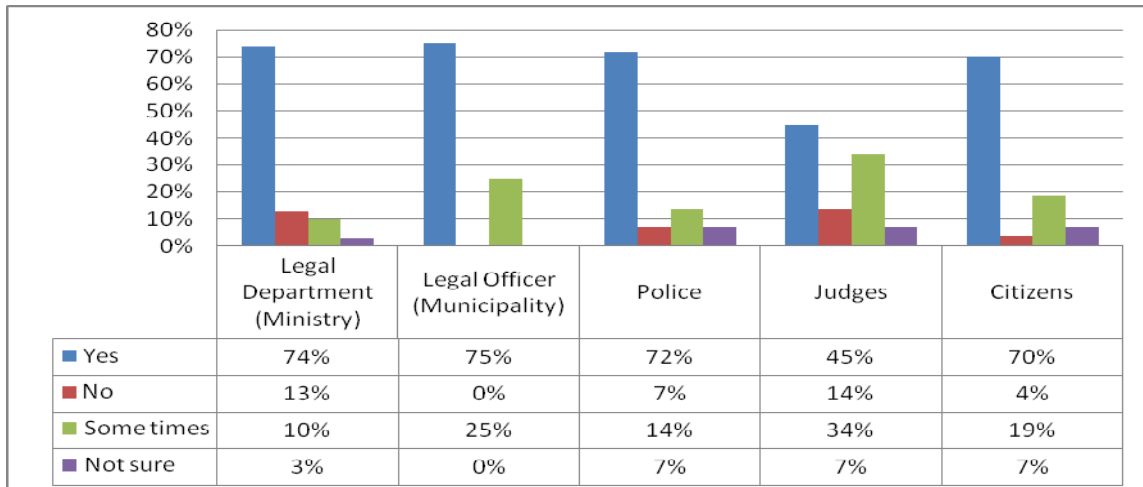
(See figure 7.4).

According to their response police officers consider that the key obstacles which are facing the Kosovo Police for implementation of legislation is: 36% declared the inadequate budget, 26% said no suitable training, 25% has declared inadequate professional experience, and 13% said insufficient staff.

Based on the duties and obligations which determine for them the Law on Police, with full responsibility we can conclude that the Kosovo Police plays an important role in implementing the legislation in Kosovo, this assessment is supported by the results which emerged from the questionnaire (see chapter 7, figure 7.1).

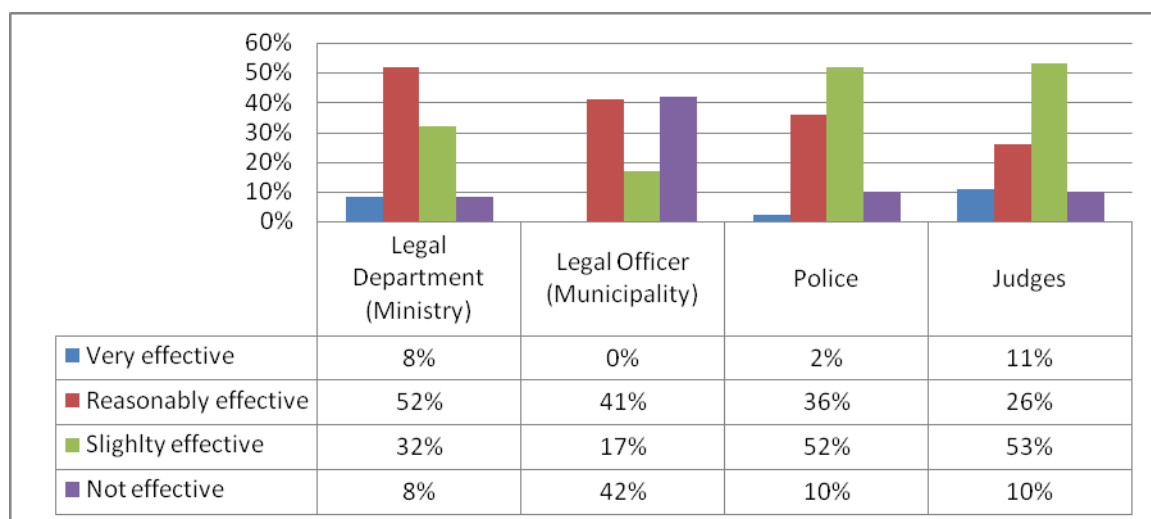
Definitely the role of media and civil society for monitoring and implementation of legislation is very crucial. This is confirmed by the results emerged from the survey (see chapter 8, figure 8.1, and figure 8.2).

Figure 9.5. Do you think the media can help in the process of implementing the legislation?



Huge percentages from five groups of respondents think that the media can help in the process of implementation of legislation (see figure 8.1), approximately the same results also has came out to the question (see figure 8.2)

Figure 9.6. How do you evaluate the contribution of citizens regarding the implementation of the legislation?



It is a general perception of the media and civil society in Kosovo that they are fulfilling a watchdog function, trying to hold the government accountable for actions or omissions in relation to its citizens. What characterizes the media today in Kosovo is the fact that some of the media support the government, some others support the interests of particular groups, and some of them are very critical, doesn't exist a realistic and balanced approach in relations government and media. However, both these sector of society still do not have sufficient expertise and human capacity to monitor and assess the outcomes of the implemented policy. Civil society through the print and electronic media can contribute to raising awareness of the wider public opinion regarding the rights and obligations and guarantees that the legislation defines, through presentation of information campaigns, organizing debates, and television stories, realization of surveys in various spheres.

Finally this capstone project also offers concrete recommendations for all stakeholders who have responsibility for drafting and monitoring the implementation of laws. Implementation of the recommendations addressed to institutions will have a positive impact on strengthening the role and capacities of Kosovo institutions for effective implementation of legislation.

9.2 Recommendations

Major Recommendations for main Stakeholders

a) Recommendations for Executive Power (Government)

The Role of Executive Power on drafting, monitoring and implementation of legislation is very important. Results stemming out from the survey conducted with Legal Department within Ministries and Legal Offices in the municipalities, show us that the Government of Kosovo including central and local level of government facing many difficulties in exercising its mandate related with drafting, monitoring and implementation of legislation. Recommendations presented in the sequel will significantly affect on the strengthening of the role and capacities of Executive power at both level of government for effective implementation of legislation.

- a) Having a balanced approach in the legal offices of the various ministries, where enforcement of the laws should have a similar priority as the drafting of new legislation.
- b) Consistent structuring of legal departments in ministries to be in accordance with Administrative Instruction Nr. 13/2007 on the organization and operation of legal services in the Executive Branch. Each Legal Department must have two

divisions; the division for the development and harmonization of legislation and division for monitoring the implementation of legislation, legal support, and interagency cooperation for legislation.

- c) Strengthening the capacity of the legal offices within the executive branch in two ways. These will include increased numbers of staff members in legal offices as well as providing additional professional training in their respective fields.
- d) Reinforcing the capacities of line ministries for policy analysis, law-drafting and public consultation. The overall quality of the legislation will not improve if laws are drafted without previous and accurate policy analysis.
- e) Enforcement of the Government decisions from 2008 for the Commission for monitoring the implementation of laws and Commission for identifying and eliminating the collision of laws.
- f) Receiving continued support from the international community for the Government of Kosovo in preparation of draft laws and in the implementation phase.
- g) Before issuing legal act or a sub legal act that affects the interests of local authorities the municipalities must be consulted.
- h) Legal Office of the implementing institution shall issue an annual report to Office of the Prime Minister (OPM) over the progress in implementing the primary and secondary legislation within their respective fields of activities.
- i) Office of the Prime Minister (OPM) should issue an annual report to Parliament on the implementation process of primary legislation as part of this oversight.
- j) Application of best methods to verify the compatibility of draft laws that are being developed with existing laws in force and regulations must enable lawmakers to avoid possible inconsistencies/collisions between the laws.
- k) Given that a large part of the activity of civil society in Kosovo focuses on evaluating the implementation of certain policies and laws, recommendations and information produced by the Civil Society Organizations through research and various reports, can serve as a useful source for public authorities to assess whether a policy or law needs to be reworded.
- l) Kosovo Government should develop a National Plan for Approximation of Kosovo Legislation with the *acquis communautaire*.
- m) Kosovo Government in close cooperation with civil societies should prepare the strategy to strengthen the role and participation of civil society's organization in the policy making.
- n) Government should obligate its officials to include relevant non-governmental organizations in the early stages of drafting policies and laws and to offer trainings to these officers for this process.

b) Recommendations for Legislative Power (Assembly)

The Role of Legislative Power on drafting, monitoring and implementation of legislation is very crucial. Results stemming out from the survey conducted with main stakeholders show us that the Assembly facing many difficulties in exercising its mandate. Recommendations presented in the sequel will significantly affect on the strengthening of the role and capacities of legislative power for effective monitoring and implementation of legislation.

- a) Assembly of the Republic of Kosovo through the assembly committees must exercise a regular parliamentary control on the activities of the executive branch to ensure accountability and added responsibilities of government in the implementation of laws passed by the Assembly.
- b) Assembly should ameliorate the quality of legal drafts and to increase the participation of the civil society in the drafting process.
- c) There should be increased administrative and technical capacity of parliamentary committees in order that parliamentary oversight of the executive will become more effective.
- d) Parliament must functionalize Parliamentary Research Unit, so that deputies will have in advance enough data and information, which will be of help in reviewing the drafts laws and other strategic documents which the government proceeds to the Assembly for approval.
- e) Parliamentary committees should be more responsible in implementing the Annual Work Program of the Assembly, and to comply with the rules of procedure deadlines for processing draft laws from the first reading to second reading.
- f) The work program of the Assembly should be harmonized with the Legislative Strategy Program of the Government, so that no delay in processing and approving laws.

c) Recommendation for Judicial Power

The Role of Judicial Power for enforcement of legislation is more than important. Results stemming out from the survey conducted with Judges show us that the Judiciary system facing many difficulties in exercising its mandate related to implementation of legislation. Recommendations presented below will significantly affect on the strengthening of the role and capacities of judicial system for enforcement of legislation.

- a) The judicial system needs reforms in order to ensure the independence, credibility, accountability and professionalism of judges.
- b) Political and institutional leaders need to stay far away from trial so that judges and prosecutors can feel free and independent in exercising their profession.
- c) To increase total budget for the Judiciary and the rule of law agencies (at least to double the existing one), so that they are equipped with necessary infrastructure, such as: modern library, courthouse (courtroom) to new, and more highly professional and administrative support staff;
- d) To increase the number of judges, prosecutors and investigative police officers, in order to deal with the high number and complexity of pending cases;
- e) Judicial Council of Kosovo and the Kosovo Government should provide security for judges and prosecutors, in order that they are free to do their jobs, in accordance with the principles of integrity, independence and impartiality.

- f) To ensure that the process of reappointment of judges and prosecutors, is based on meritocracy and without interference and political pressure and influence.
- g) Local prosecutors and judges are obliged to put into law enforcement service equally, without distinction including all high political profiles.
- h) In order to release the courts and prosecution of cases overloaded, due to lack of working conditions and insufficient number of judges and prosecutors, the Ministry of Justice (MoJ) must establish and functionalized non-judicial mechanisms such as notary system and system of mediation.

d) Recommendation for media and civil society organizations

Based on results derived from the survey conducted with main stakeholders who are in charge for drafting and implementing legislation, show us that the media and civil society organizations are facing many difficulties in exercising its mandate and its role related to monitoring and implementation of legislation.

Recommendations presented below will significantly affect on the strengthening of the role and capacities of media and civil society organizations for monitoring and enforcement of legislation.

- a) The media sector in Kosovo should invest more efforts on investigative journalism including sensitive areas of governance (corruption, transparency, justice, rule of law, etc).
- b) Public and private media should safeguard its independence and impartiality in relations with the government, and not to fall under the influence or pressure from various political circles.
- c) Through the promotion of different laws, organizing champagnes for raising awareness to citizens for their rights guaranteed by certain laws, media and civil society can play a crucial role for implementation of legislation.
- d) Civil society must enhance the level of cooperation and regularly contacts with media, and through them to do more pressure on Government for implantation of policies and legislation.
- e) Capacities of civil society for participating in policy and decision making process needs to be improved and strengthen.
- f) Civil society should focus more on continuous research referred to judicial independence in relation to government and parliament.
- g) Civil society organizations should provide training for his staff in media relations.
- h) Civil society organizations should work to build their capacity and professionalism.
- i) Civil society organizations should work more to inform and to raise awareness of the opinion public about their role, and to improve and strengthen cooperation within civil society organizations.
- j) At the same time, civil society must establish internal mechanisms for selecting their representatives in the forums, relevant government bodies, which can contribute most to improving the quality of certain policies and laws.

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