

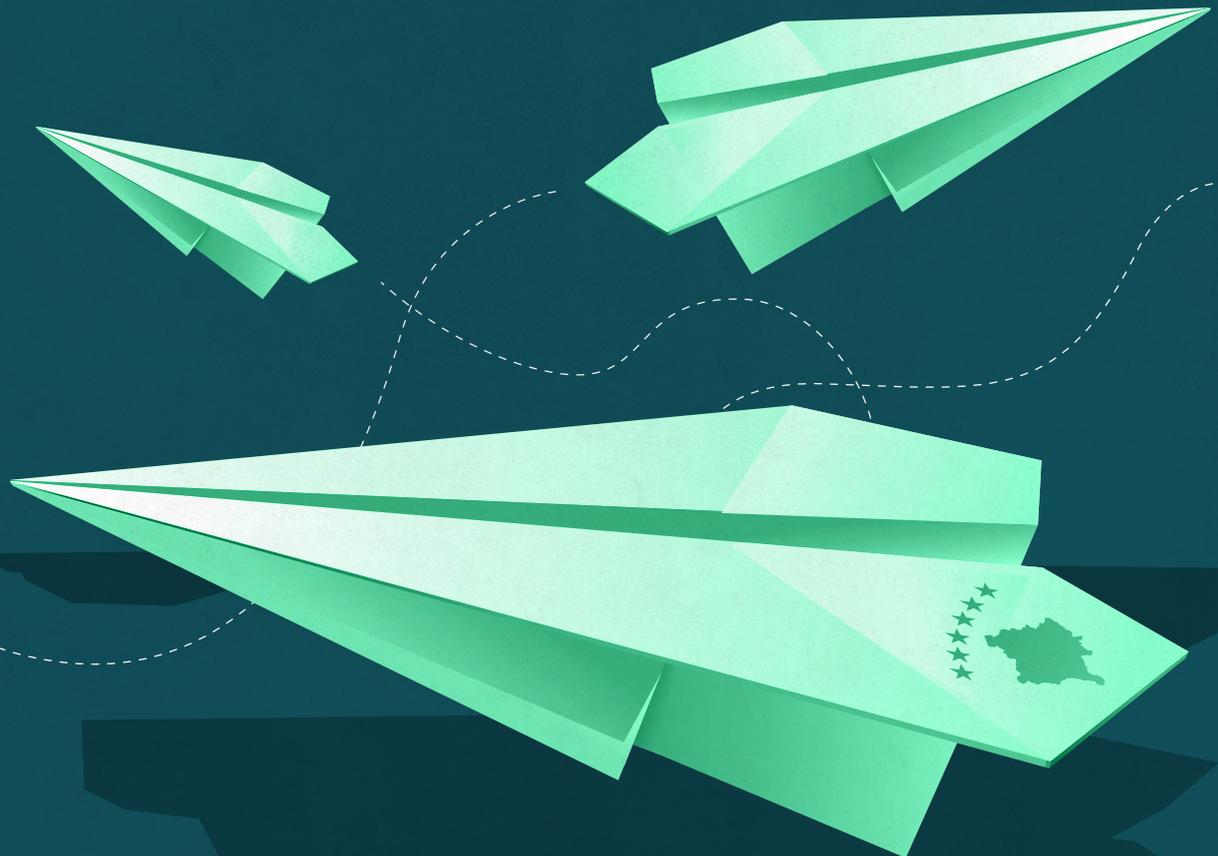


DEMOCRACYPLUS

MONITORING REPORT

ON IMPLEMENTATION OF LEGISLATION IN FORCE ON REPUBLIC OF KOSOVO FOREIGN SERVICE

NOVEMBER, 2020



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The views expressed herein do not necessarily reflect the views of the donor.

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I. Introduction

A country's foreign policy is guided by the strategies and interests that the state sets and which it is committed to protecting as national interests, as well as to achieving within the framework of international relations. The approach to international relations is done strategically in order to cultivate relations with other states. In recent decades, due to globalization and international activities, states have to interact with non-public institutions as well. These interactions are aimed at bilateral and multilateral international cooperation.

Diplomatic relations between states are regulated by Vienna Convention on Diplomatic Relations (1961), as well as Vienna Convention on Consular Relations (1963). Republic of Kosovo founded its Ministry of Foreign Affairs in March 2008, based on Chapter IV, Article 65 Paragraph 1 and Article 96 Paragraph 1, of the Constitution of the Republic of Kosovo, in order to regulate, deepen and establish relations with other states and organizations, subject to international law.

Law No. 03/L-044 on the Ministry of Foreign Affairs and the Diplomatic Service of the Republic of Kosovo was approved by the Assembly of the Republic of Kosovo on 13 March 2008, thus marking the establishment of the diplomatic service of the Republic of Kosovo. This Law was amended and supplemented by **Law No. 03/L-207**, promulgated by the President of the Republic of Kosovo on 8 July 2010. This Law is currently in force, and it regulates the Foreign Service of the Republic of Kosovo, albeit there have been several attempts by previous governments of the Republic of Kosovo to make a new Law, which would regulate in more details the Foreign Service of Kosovo.



IN ACCORDANCE WITH LAW ON FSK¹, ARTICLE 3 “THE MINISTRY FOR FOREIGN AFFAIRS AND DIPLOMATIC SERVICE OF THE REPUBLIC OF KOSOVO, COMPRISING THE MINISTRY AND ITS PERSONNEL IN EMBASSIES ABROAD, ARE PART OF THE GOVERNMENT OF KOSOVO”. ALSO, SUB-PARAGRAPH 3.2 OF THE SAME ARTICLE PROVIDES THAT “THE MINISTRY OF FOREIGN AFFAIRS SHALL FORMULATE AND IMPLEMENT THE FOREIGN POLICY OF KOSOVO”.

1 Since 2020, Ministry of Foreign Affairs was added a component of diaspora, hence its new abbreviation is MFAD. In this report, the abbreviation used to refer to this Ministry is MFA, given that the legislation currently in force refers to this department without the Diaspora component.

In this framework, the Minister of Foreign Affairs manages the Ministry, Embassies, always in coordination with the Prime Minister and the Government, but also in consultation with the President of the Republic, as well as it reports to the Assembly of the Republic. Article 84 (10) of the Constitution of the Republic of Kosovo provides that: “[*President of the Republic of Kosovo*]: ... leads the foreign policy of the country;”. The Constitution of the Republic of Kosovo provides that the Minister of Foreign Affairs reports to the Assembly of the Republic of Kosovo, as Article 65 (10) of the Constitution provides: [*Assembly of the Republic of Kosovo*]: ... (12) oversees foreign and security policies;”.

Article 93 (1) of the Constitution provides that [*Government*]: proposes and implements the internal and foreign policies of the country;, while Article 94 (4) obliges the: [*Prime Minister*]: ... to consult with the President on the implementation of the foreign policy of the country”.

From this it can be understood that the foreign policy of a country requires a complex coordination between the highest institutions in the state hierarchy, and the same should be done without prejudice to the political position of one party or the other. The Minister of Foreign Affairs should balance and coordinate between all these institutions, before developing state positions on certain issues, through which the state will be represented in the foreign affairs framework.

On the other hand, the diplomatic and consular missions of the Republic of Kosovo must always maintain their political impartiality, and in no way should they allow themselves to be subject to the positions which are not in line with the official position of the institutional leaders. For this reason, when employed in the foreign service, diplomats of the Republic of Kosovo are expected to cease any political activity in which they have been engaged earlier, based on Sub-paragraph 1.2 of Article 32 of the Law on Foreign Service, providing that “[Foreign Service officer duties are] to suspend his/her activity to any political party, political organization or association for the time serving in the foreign service”. In no circumstances should diplomats take sides in cases of lack of inter-institutional coordination in the country, and for any official position in the host country they should coordinate with the MFA, as well as in any circumstances they should protect the interests and integrity of the country in the place they were accredited in.

The Ministry of Foreign Affairs is the coordinating authority for all international cooperation of all institutions. Article 4 of the Law No. L/03-044 provides that:

“4.1 The Minister for Foreign Affairs, and the President and Prime Minister of the Republic of Kosovo, have the authority to sign Treaties and other binding international conventions on behalf of the Republic of Kosovo, and sign instruments of accession to international Conventions which are already in force.

4.2 This authority may be delegated in writing by the Minister, in respect of specified Treaties and conventions, to:

- A heads of Embassies of the Republic of Kosovo or diplomatic Missions abroad;
- B other Ministers within whose competences the subject matter of the Treaty or international agreement may lie”.

However, the same Law stipulates that even after the signing of these agreements, if they are binding international treaties and conventions, they do not enter into force in Kosovo until they are ratified by the Assembly of the Republic of Kosovo. Sub-paragraph 4.3, of Article 4 of the same Law obliges as follows: “...Such ratifications shall be promulgated by the President and be published, together with the text of the Treaties or international agreements concerned, in the Official Gazette”.

Missions of the Republic of Kosovo are divided into Diplomatic Missions, including embassies and permanent missions in international organizations, and Consular Missions, including general consulates, consulates, sub-consulates and consular offices.

Article 9 of the Law No. 03/L-122 provides that:

1. Diplomatic missions shall open, reorganize and close by a Presidential decree, after consultations with the Prime Minister;
2. The diplomatic missions are under the authority and instructions of the Ministry of Foreign Affairs;
3. The functioning, structure and number of personnel of the diplomatic missions shall be determined by the Minister of Foreign Affairs”.

Diplomatic and Consular Missions of the Republic of Kosovo are opened in other countries after the signing of diplomatic relations with other countries, as well as after obtaining the consent of those countries for the opening of these missions in the host countries. The opening of these missions, including privileges and immunities, is regulated based on Vienna Convention on Diplomatic Relations (1961) and Vienna Convention on Consular Relations (1963). Embassy personnel consists of Ambassador / Head of Mission, diplomatic staff, technical and administrative staff as well as service staff. An embassy may be accredited in more than one country, in which case the Ambassador / Head of Mission serves as a non-resident representative of the Republic of Kosovo in third countries. The diplomatic staff that serves in embassies includes career diplomats who are part of the Foreign Service of the Republic of Kosovo. Part of this staff may include personnel delegated by other ministries, for certain services in embassies, as in the case of Military Attachés, delegated by the Ministry of Defense, Police Attachés, delegated by the Ministry of Internal Affairs, etc. Usually, staff who are not part of the Foreign Service of the Republic of Kosovo are paid by the ministries which have delegated them to those missions, in agreement with the Ministry of Foreign Affairs.

Exceptions to the rule of being career diplomats can be made by the Ambassador / Head of Mission, who can also be political appointee, in 50% to 50%, proportion, based on **Law no. 03/L-207**², as well as the local staff in the country where the mission operates, who do not have to be part of the Foreign Service of the Republic of Kosovo.

² Law No. 03/L-207 amending and supplementing Law No. 03/L-044 On Ministry of Foreign Affairs and Diplomatic Service of Republic of Kosovo.

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- 2 The diplomatic missions are under the authority and instructions of the Ministry of Foreign Affairs;
- 3 The functioning, structure and number of personnel of the diplomatic missions shall be determined by the Minister of Foreign Affairs”.

II. Methodology

The purpose of this research is to evaluate the implementation of Law No. 03/L-044 on Ministry of Foreign Affairs and Diplomatic Service of Republic of Kosovo, amended by Law No. 03/L-207; Law No. 03/L-122 on Foreign Service of the Republic of Kosovo as well as Law No. 03/L-125 on Consular Service of Diplomatic and Consular Missions. This research also analyzes the Draft Law no. 06/L-154 on Foreign Service of Republic of Kosovo to see whether it addresses issues that have been identified as problematic in the implementation of legislation currently in force.

Efforts were made to collect responses to these questions through: (I) analysis of the current Law, bylaws, analysis of the draft law no. 06/L-154 submitted to the Assembly in the previous legislature on 11 March 2019, as well as the Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on Consular Relations (1964); (II) analysis of reports published by the media, other institutions and organizations dealing with foreign policy monitoring; (III) through interviews with persons who served and / or still serve in the foreign service, by not disclosing their identity.

In the framework of this research, the following issues were addressed:

1. Has the legislation that is currently in force been implemented?
2. Identification of possible shortcomings in the legislation currently in force?
3. Are the competencies of the MFA and the institutions that lead the country's foreign policy clearly defined in the laws that are currently in force?
4. Is it necessary to adopt a new Law on MFA and Foreign Service?
5. Does the Draft Law on Foreign Service, which was submitted to the Assembly in the previous legislature, address these issues?

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- II analysis of reports published by the media, other institutions and organizations dealing with foreign policy monitoring;
- III through interviews with persons who served and / or still serve in the foreign service, by not disclosing their identity.

III. Legislation regulating the operation of the Foreign Service

Law No. 03/L-044 on the Ministry of Foreign Affairs and the Diplomatic Service of the Republic of Kosovo was approved by the Assembly of the Republic of Kosovo on 13 March 2008, and it was amended and supplemented by **Law No. 03/L-207**, adopted on 8 July 2010, promulgated by the Decree no. DL-037-2010, of 28 July 2010.

This Law has 12 provisions which regulate the essential aspects of the functioning of the Foreign Service, thus regulating the basic infrastructure, however it did not regulate the functioning of the service in a consolidated and detailed manner. This Law, therefore, regulates the functioning of the Ministry of Foreign Affairs, diplomatic and consular missions, Foreign Service personnel, issues of appointment of heads of missions and their personnel, as well as issues related to financial management and procurement.

Law No. 03/L-122 on Foreign Service of Republic of Kosovo was adopted on 16 December 2008, and it was promulgated by Decree no. DL-071-2008 of 30 December 2008. Whereas, on the same dates, Assembly of the Republic adopted and President of the Republic promulgated **Law no. 03/L-125 on Consular Service of Diplomatic and Consular Missions of the Republic of Kosovo**.

The Law on Foreign Service provides a broader framework, which complements the Law on the Ministry of Foreign Affairs and Diplomatic Service of the Republic of Kosovo, but without repealing it. This Law deals exclusively with issues related to diplomatic missions and issues related to the diplomatic service in general, excluding the part on consular ranks, which are left exclusively to Law no. 03/L-125 on Consular Service of Diplomatic and Consular Missions.

Law No. 03/L-125 on Consular Service of Diplomatic and Consular Missions was promulgated by Decree No. DL-073-2008 of 30 December 2008. This Law has a total of 18 provisions, and it deals exclusively with regulatory matters relating to consular missions and consular matters in general, ranging from the appointment of consuls to consular fees.

In addition to the above cited laws, the operation of the Foreign Service of the Republic of Kosovo is done through regulations, namely the *Regulation on Foreign Service*, issued in 2009 by the Government of the Republic of Kosovo, as well as the *Regulation on Consular Service*, issued by the Ministry of Foreign Affairs, also in 2009.

IV. Institutions competent for operation of the Foreign Service

The competent institutions for the implementation of the country's foreign policy include: Ministry of Foreign Affairs and its subordinate institutions, namely Embassies and Consulates of the Republic of Kosovo. The Ministry of Foreign Affairs, therefore, implements the foreign policy of the state, as well as represents the state abroad, by implementing the priorities of the Government, however in coordination with the President of the Republic, who leads the foreign policy according to Constitution, Article 84 (10), as well as by reporting to the Assembly.

Embassies and Consulates represent the country, and protect the interests of the state, in those countries where they are accredited (embassies), as well as in districts (consulates).



“

MINISTRY OF FOREIGN AFFAIRS AND ITS SUBORDINATE INSTITUTIONS, NAMELY EMBASSIES AND CONSULATES OF THE REPUBLIC OF KOSOVO. THE MINISTRY OF FOREIGN AFFAIRS, THEREFORE, IMPLEMENTS THE FOREIGN POLICY OF THE STATE, AS WELL AS REPRESENTS THE STATE ABROAD, BY IMPLEMENTING THE PRIORITIES OF THE GOVERNMENT, HOWEVER IN COORDINATION WITH THE PRESIDENT OF THE REPUBLIC, WHO LEADS THE FOREIGN POLICY ACCORDING TO CONSTITUTION, ARTICLE 84 (10), AS WELL AS BY REPORTING TO THE ASSEMBLY.

V. Research Findings

Shortcoming of current legislation

The legislation currently in force, and which regulates the field of Foreign Service of the Republic of Kosovo leaves many areas specifically uncovered, thus leaving it at the discretion of the Minister of Foreign Affairs to decide the progress of affairs in the Ministry and in the diplomatic and consular missions of the Republic of Kosovo.

A Political appointments

This leaves much room for abuse, especially in matters of rotation and appointments across diplomatic and consular missions. Lack of a clear definition has allowed politics to interfere starting from the process of recruiting new diplomats, to their promotion, appointment to diplomatic missions, and their rotation - extending the mandate of those who have political support, even in cases where the law specifies otherwise. Article 6 of the Law No. 03/L-207, sub-paragraph 7.7 provides that *“At least fifty per cent (50%) of new appointments of Ambassadors and Heads of Missions should be made from the serving members of the Foreign Service of the Republic of Kosovo”*, while such a thing has generally not been respected, and in many cases the 50% quota in political appointments has been exceeded. Another point which has not been implemented is sub-paragraph 7.8 of the same Article of the same Law, which provides that: *“Appointees to the position of the Ambassador and Head of Mission, which are not part of the Foreign Service of the Republic of Kosovo shall serve only for one mandate, and after the completion of this mandate, shall not be considered part of the Foreign Service”*. There are many cases when political appointees in the position of Ambassadors and Heads of Mission have had their mandates renewed, or were transferred to another country. Therefore, this point should be clarified and such violations should not be tolerated.

B Lack of inter-institutional and intra-institutional coordination

What makes the implementation of the Law on Foreign Service more difficult is the lack of internal coordination between key institutions dealing with the implementation of foreign policy - i.e. between the Presidency, the Office of the Prime Minister and the Ministry of Foreign Affairs, hampering a unique foreign policy. In addition to the lack of coordination of the political scene, another problem in the implementation of this Law is the lack of coordination, and often rivalry, between the political and civilian staff within the Ministry of Foreign Affairs. On this issue, frequently the divisions within also reflect outside the institution. One such case, we recall, is the case when the Directorate General of the MFA had sent a circular letter to the Diplomatic and Consular Missions of the Republic of Kosovo, instructing them not to place in their missions the staff appointed by the Minister of Foreign Affairs at that time, Behgjet Pacolli.

Such rivalries, in addition to hindering the functioning of the Foreign Service, also jeopardize that the state comes out as unserious towards the host state. Therefore, the current legislation does not precisely specify the roles of all parties, and therefore it is very necessary that such issues be addressed in the new law on Foreign Service.

C Role of Foreign Affairs Committee

What can be noticed from the current Law is that the role of the Parliamentary Committee on Foreign Affairs is not specified, a role needed not only in monitoring foreign policy, but also in strengthening parliamentary diplomacy. Moreover, Law No. 03/L-207, Article 6, sub-paragraph 7.5, provides that *“The Committee report is consultative and not obligatory for the President of the Republic of Kosovo”*

when it comes to appointment of political ambassadors. This undermines the role of the Assembly, to which issues related to foreign policy should be reported. What has been observed in the past is that, usually, the Ministers of Foreign Affairs avoid reporting to the Committee on a regular basis, and this does not send a good message related to the coordination of foreign policy. The Foreign Service is not complete without parliamentary diplomacy, so it is recommended that the new law on Foreign Service specifies the role that MPs will have in representing the country abroad, through parliamentary diplomacy.

D Role of Diplomatic Academy

Some of the employees in the Foreign Service have a significant lack of knowledge of procedures, legislation, rules and customs which are necessary for the external representation of the Republic of Kosovo. Here, the role of the Diplomatic Academy (DA) must be vital in creating new personnel. The Diplomatic Academy, in the way it currently operates, is an institution that trains recruited diplomats, so it is imperative that these trainings are intensified, expanded and made mandatory for members of the Foreign Service. Last year, a greater dynamics in the work of DA was observed, which has started organizing regular training not only for newly recruited diplomats, but for all staff of the Service, as well as for officials of other Ministries - that has previously been deficient, although provided for in the mandate of the Academy, specifically in points 2 and 3 of Article 4 [Activity of the Academy] of Regulation no. 01-2012 on functioning of the Diplomatic Academy of Republic of Kosovo:

2. Organize and conduct training sessions for diplomatic and consular staff
3. Organize and conduct staff training courses of the relevant ministries staff, which get prepared to serve at the mission of the Republic of Kosovo abroad".

On the other hand, in addition to training, the Diplomatic Academy should be an elite institution of education and training of the new generations of diplomats, for which the scope of the Academy should be expanded beyond what it currently is, turning DA into an autonomous institution within the MFA, which in addition to providing training, recruits and educates the new generations of Kosovar diplomats.

So, since DA currently provides training and serves as a kind of "course" for officials already admitted to the Foreign Service, our recommendation is to turn this institution into a vocational school which offers postgraduate education for all those who are interested in the field of diplomacy, and at the same time recruit in the Service the best personnel who come out at the end of this education. Hence, to take into account the practice of the Diplomatic Academy of Vienna, and to aim at the transformation of DA into an elite institution.

The new law should also address and eliminate ambiguities about the names and terms used, such as: "*Institutional authorities*" and "*Foreign Service officials*"; "*Mission staff members*" and "*Foreign Service members*"; "*Administrative and technical personnel*", "*diplomatic personnel*" and "*service personnel*"; "*Foreign Service*" and "*Diplomatic Service*" etc. So, the Foreign Service and the Diplomatic Service are the same thing, and therefore should be avoided while drafting the new law, as such ambiguities in terms and designations create confusion not only for those who read the law, but also for the officials of Foreign Service themselves.

E Basic salaries and allowances

In terms of the way the Service currently operates, all officials on mission who have diplomatic and consular grades are subject to equal financial treatment, in relation to the grade they hold. This makes it impossible for missions to function properly, because the standard of living varies from country to country, and it is unfair when the same salary is received by diplomats serving in Tirana, for example, with those in Tokyo, for instance. While Tirana has a standard of living similar to Prishtina, the salaries that our diplomats receive during the period of service in the diplomatic and consular missions of the Republic of Kosovo in the Republic of Albania, give them an opportunity for a dignified and above-average living. On the other hand, in all the rankings of the most expensive cities to live, Tokyo ranks as one of the most expensive cities in the world, while the diplomats of the Republic of Kosovo in Tokyo receive the same salaries as the diplomats of the Republic of Kosovo with service in Tirana.

Such a situation, in addition to putting our diplomats in a difficult position, also puts the relations between the states in a difficult position. Since the example of the Embassy of the Republic of Kosovo in Tokyo was taken above, then it should be recalled that our Embassy in Tokyo was left without an Ambassador for a period of almost two years, more precisely from 13 December 2014 when the mandate of Ambassador Ahmet Shala ended, until 7 September 2016 when Leon Malazogu was appointed to this position. So, for a period of almost two years, the Republic of Kosovo has reduced its level of representation in Japan to the level of Charge d'Affaires, and this, among other things, due to the reluctance to serve in Japan and the disproportion between the level of income and cost of living.

This issue should be addressed in the new law on Foreign Service, as situations as the one above, affect not only the image of a state, but also the relationship with the host country.

Another thing to be taken into account when dealing with salaries and allowances for diplomats of the Republic of Kosovo, is the fact that the standard of living in a country does not necessarily determine the cost of living in that country. To illustrate this with examples, the Republic of Kosovo currently has resident Embassies in Dakar, Senegal and in Dhaka, Bangladesh.

Truly, the standard of living in both countries is low, and at first glance this means that our diplomats serving in these countries can lead a dignified life, however if we take into account that in such countries freedom of movement for foreign diplomats is limited (whether for security reasons or other reasons), then it should be borne in mind that the life of these diplomats is limited to a certain circle, in certain areas within the cities in which they serve - places that are usually visited by diplomatic corps staff and officials of the respective governments. Consequently, these areas also have higher costs, and services in them - due to exclusivity - are many times higher than they would normally be in any European city.

So while a Kosovo diplomat serving in Berlin, for example, can travel freely, get food supplies in any part of the city, go to any restaurant and engage in recreational activities anywhere, a diplomat serving in one of the missions mentioned above should do so in a specific area, without having the option of choosing cheaper prices.

Another problem faced by our diplomats who are serving in remote areas, is the fact that the Ministry covers the cost of travel when starting the mission and when completing it. So, it would be good for the Ministry to also cover the cost of travel once a year for vacation, and our proposal would be to cover the full cost of the ticket for the Head of Mission, while for the rest of the family, the Ministry should cover 80% of the ticket cost - to encourage, therefore, finding cheaper round-trip options.

F Education of children

Regarding the education of the children of Kosovar diplomats, it should be borne in mind that the Ministry of Foreign Affairs and Diaspora currently covers costs up to 250 € / month for the primary and secondary education of the children of our diplomats, according to Article 20, Sub-paragraph 4 of the Regulation on Foreign Service. For those countries where diplomats can educate their children in public schools, this amount may be sufficient to cover these costs. However, for those countries where it is impossible for children to be educated in public schools, as in the case of Bangladesh, Senegal, United Arab Emirates, Qatar, Saudi Arabia, Thailand, etc., such an amount is very low, and forces diplomats to choose between taking families on missions, or going on missions alone. In the latter case, it should be borne in mind that they will not be able to fully perform their intended duties, as they will have to take more frequent vacations to spend time with their families.

Law No. 03/L-122 on Foreign Service of Republic of Kosovo in Chapter V, Article 34, and Paragraph 3 provides:

“The Ministry of Foreign Affairs shall guarantee the primary and secondary education of the staff children, appointed to a diplomatic mission and where necessary, shall ensure funding of this education. The manner, criteria and conditions of funding shall be defined by Regulation on Foreign Service”.

While point 2 of Article 20 of Regulation on Foreign Service provides that:

“When in the receiving state the education system is held in different language other than foreign languages taught in education system of the Republic of Kosovo, expenditures for education of the children of the members of diplomatic mission in international private schools are covered partly, when it is affordable for budget of the Ministry”.

So, it is clear that the Ministry of Foreign Affairs is obliged to provide funding for education for children of Foreign Service staff, especially where there are no available schools in one of the languages taught in the education system of Kosovo, however such a thing cannot be achieved with the amount which is currently applied, i.e. 250 € / month, or 3,000 € / year.

What can be concluded from the analysis of the legislation currently in force, is that as such, it serves as a kind of codification of the Foreign Service, which regulates the functioning of the Ministry and the Service in general terms, without going into too much detail. Another shortcoming of the current legislation is the fact that it does not cover and does not regulate many important areas, such as issues of rotation, allowances, treatment of families of diplomats, etc., which are currently covered by bylaws and rules of procedure. As large part of the work of the Foreign Service is regulated by bylaws, this leaves opportunities for incumbents to make decisions which are often not in line with the practices and customs of diplomacy, such as the opening of two separate missions within one city, as in the case of the Embassy and Consulate General in Tirana. Diplomatic practice does not envisage having two separate missions of the same state in a single city. So, the Embassy is located in the capital, and it provides the necessary consular services for all citizens in need, while Consulates are opened in other cities, depending on their size, or the importance that a city may have for the sending state (number of citizens living in that city, historical ties, economic ties, etc.).

Thus, the new law should be more complete and detailed, as well as it should regulate the aspects mentioned above so as not to leave at the discretion of the incumbents the decision-making which could potentially be contrary to international practices, and consequently may damage the reputation of the Republic of Kosovo in the international arena, as well as the functioning of the Foreign Service.

VI. Draft Law No. 06/L-154 on Foreign Service of the Republic of Kosovos

Draft Law No. 06/L-154 on Foreign Service of the Republic of Kosovo, which was submitted in the previous legislature of Republic of Kosovo Assembly on 11 March 2019, is more comprehensive than the legislation currently in force that regulates the area of foreign policy. In general, this draft law has a clear and understandable language, serves as a kind of codification for all relevant legislation covering the field of foreign policy, as well as remedies some of the shortcomings that have been observed during the operational work of the Foreign Service, which has already entered into its second decade of operation.

However, even this draft law does not clearly address some of the issues faced by the Foreign Service. Article 4, Paragraph 4 in this draft law provides that:

“The Minister reports on foreign policy to the Prime Minister, the Assembly, and informs the President on the implementation of foreign policy”,

while Paragraph 2.1 of Article 7 provides that:

“[The Ministry] coordinates official positions with the Government and the President.”.

So there is a discrepancy between these points regarding the role of the President in foreign policy. In order to avoid misunderstandings that have commonly occurred throughout Kosovo’s statehood regarding the role of the President in foreign policy. Taking into account that Article 84 (10) of the Constitution of the Republic of Kosovo provides that: “[President of the Republic of Kosovo]: ... leads the foreign policy of the country; ...”, it would be good to clearly define what is the role of the President in this field, in the new Law on Foreign Policy, in accordance with Judgment no. K043/19 of the Constitutional Court in the case of the State Delegation of the Republic of Kosovo in the Process of Dialogue with Serbia, as well as to clearly define what kind of coordination there should exist between the Ministry of Foreign Affairs and Diaspora, the Office of the Prime Minister and the Office of the President, in order to avoid the problems that Kosovar diplomacy has faced during the 12-year period of its existence.

Also, Article 8 of the draft law, provides an ambiguous organizational structure of the Ministry, as the order in this draft law is as follows:

- 1 Minister
- 2 Secretary General
- 3 Political Director
- 4 General Directorates
- 5 Diplomatic Academy
- 6 Diplomatic Protocol
- 7 Departments
- 8 Divisions

Whereas, our suggestion would be that the organizational structure of the Ministry looks as follows:

- 1 Minister
- 2 Secretary General
- 3 Director General
- 4 Political Director
- 5 Diplomatic Academy
- 6 Diplomatic Protocol
- 7 Directorates/Departments
- 8 Divisions

Comment: The draft law provides for a 'Political Director' as well as (several) 'Directorates General'. In the organizational structure of the Ministry, there is currently a position of *Director General* which is not provided in the new draft law. Therefore, it would be good to clarify and re-formulate this point, as it is illogical to have some 'Directorates General' instead of 'Directorates'. Therefore, it would be good to return the position of Director General, who would follow in the hierarchy after the Secretary General, but before the Political Director.

Sub-paragraph 3 of Article 11 (Political Director), should be reformulated, as it currently states that: *"The mandate of the Political Director shall be four (4) years with the right to be re-elected on no more than two (2) consecutive terms"*.

Comment: This point is suggested to be reworded as follows: *"The mandate of the Political Director shall be four (4) years with the right to be re-elected only for a second term"*. This is because the current wording in the draft law means that after two consecutive terms, and after a break of several years, the Political Director has the right to be re-elected to the same position.

A Citizenship of Head of Mission

Article 23 (Conditions for appointment of the Head of the Diplomatic Mission), sub-paragraph 1.2 provides that "[the Head of the Diplomatic Mission] shall not have the citizenship of the host State", while the Vienna Convention on Diplomatic Relations (1961) does not rule this out. Article 8, Paragraph 2 provides: *"Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time"*.

B Treatment of families of diplomats

One thing which is not addressed either by the laws currently in force or in this Draft Law, is the treatment of families of the staff of the diplomatic and consular mission. In this framework, the comments of the Consulate General of the Republic of Kosovo in Geneva in the Explanatory Memorandum on the Draft Law in question on the Foreign Service of the Republic of Kosovo, are closer to international practices, so it is our recommendation to include them in the draft law as a separate Article.

The comments of the Consulate General in Geneva on the Explanatory Memorandum to the Draft Law on Foreign Service require that the families of diplomats enjoy the right to social and health insurance in the countries where they serve; spouses should be calculated the time spent abroad for the effect of work experience; spouses should receive 50% of the basic salary of diplomats with the rank of Attaché / Third Secretary (if they are not allowed to work in the state they are in); pension contributions should be paid on their behalf by the Ministry of Foreign Affairs; if the spouse worked in a public institution before going on a mission, they should have the right to be reappointed to the same position, or to a position equivalent to it, upon return; to cover the cost of educating children in cases where children cannot attend public schools, or when public education is not available in English, French, German, Spanish or Italian languages.

Regulation on Foreign Service, Article 7, Paragraph 6 provides: *“Close family members are encouraged to accompany diplomatic representatives in their overseas functions, as well as to participate in the life of Diplomatic and Consular Missions”*. Therefore, since the presence of family members is encouraged by this Regulation, it would be good for the MFA to provide conditions for a dignified life for the families of diplomats, so that they can easily fulfill the duties and obligations of representing the country, provided by these acts.

The draft law as such also does not address another issue, which is mentioned above in the analysis of the current legislation in force - allowances for diplomatic servants depending on the country to which they are accredited. Therefore, the new draft law should also address the issue of payment of allowances, depending on where the officials of diplomatic and consular missions of the Republic of Kosovo serve.

C Premature withdrawal of Head of Mission

Neither the legislation in force nor this draft law address the issue of early withdrawal of the Head of Mission. Taking into account that the Head of Mission should withdraw only in cases of serious nature, and these cases should also be provided by law. Frequent changes of Heads of Mission in a country, without managing to complete their full four-year term, presents a bad image for the state. Therefore, it is necessary to define precisely the cases when an early withdrawal of the Head of Mission should be made, but also of the lower ranking diplomats.

D Ranking

The draft law should also specify the role of the Minister in awarding ranks by the Ranks and Discipline Commission. The Minister should be given the right, according to the criteria set out in the law, to increase a rank higher than that recommended by the Commission, but it should not be

left at his / her discretion to reduce the rank assigned by the Commission, to avoid unfair punishment, as well as other possible injustices with personal motives.

The new draft law does not specify who is the authority that decides on suspension and takes the decision to return attachés delegated by the Ministries and other authorities (Defense, Police, Culture Attaché, etc.) - therefore it should be defined whether in such cases the decision is taken by the official Ministry of which the Attaché is a member of, or the MFA. However, it is implied that in such cases there should be coordination between the two institutions, it would be good to specify this and provide for cases where there may be disagreements regarding the decisions of one or the other party

E Honorary Consuls

This draft law, in contrast to the legislation currently in force, provides for a special Article on Honorary Consuls. Over the years the Republic of Kosovo has appointed many Honorary Consuls, the number of whom is unknown, as no records have been kept of these appointments. What has happened with the appointments of Honorary Consuls is that people close to politics, but coming from the business world, have benefited from such appointments, and thus from various tax exemptions, as well as by using the benefits that cars with diplomatic license plates bring with this post.

In addition to the benefits that these positions bring, there are also responsibilities, as Honorary Consuls must protect the interests of the Republic of Kosovo and its citizens in those countries they live in. However, the Honorary Consulates of the Republic of Kosovo in the world are almost inexistent and non-functional, despite the numerous appointments that have taken place.

Therefore, it would be good to address the issue of Honorary Consuls with a separate chapter in the new law, and the Ministry of Foreign Affairs should be obliged to create a

database with the list of Honorary Consuls and Consulates around the world, to control their activity, as well as to make public on the official website of the MFA, the locations and contacts of these Honorary Consulates, so that in case of need, the citizens of the Republic of Kosovo know where to turn to. Currently, the MFA does not have a database of Honorary Consuls who have been appointed over the years.

F Gender Representation

This draft law also does not provide a quota for the representation of women in diplomatic and consular missions of the Republic of Kosovo. Therefore, a quota should be set for gender representation within each mission separately, but also within the appointees as Heads of Mission, to maintain the balance of gender representation, as well as to reflect the balance which is foreseen with the Law on Gender Equality. The quota of 30% representation of women is respected in the Assembly, although the law provides for equal representation, however this quota is not respected in other state institutions, so the Foreign Service can be turned into a leading institution from the executive, moreover considering the fact that the Foreign Service reflects the image of the state in the world.

Related to this issue, **Gender Equality Law** provides for “*Equal gender representation in all legislative, executive and judiciary bodies and other public institutions is achieved when ensured a minimum representation of fifty percent (50%) for each gender, including their governing and decision-making bodies*”, and it should be taken into account while drafting the new Law on Foreign Service.

Article 6 of this Law [Special Measures] expressly requires that:

1. Public institutions shall take temporary special measures in order to accelerate the realization of actual equality between women and men in areas where inequities exist.

2. Special measures could include:

2.1. quotas to achieve equal representation of women and men”.

So, initially a quota should be decided, that may be modified in due time, until a fifty percent minimum representation is achieved, as provided by the above listed law.

According to the official website of the MFA, Kosovo currently has a total of 46 missions; of which 32 embassies, 13 consulates and 1 special economic office in Athens. Only 5 out of 32 embassies of the Republic of Kosovo (about 15%) are led by women, while only 3 out of 13 consulates (about 23%) are run by women.



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VII. Recommendations

1. To determine exactly the rotation procedure and the cases when such a thing is left at the discretion of the Minister of Foreign Affairs;
2. To define the quota for political appointees heading missions, and if deemed necessary (due to lack of staff in the Foreign Service), restore the old quota of 50%, but by strictly respecting it;
3. Duration of service of appointees to the position of Heads of Mission, who do not come from the ranks of the Foreign Service, i.e. who are political appointees, to be determined. It should also be determined whether they are allowed to extend their mandate, or be sent to another country, given the fact that their political weight has enabled them to do so in the past. Legislation currently in force provides that political appointees should serve only one term, however there is a gap here, as it does not specify whether this applies only to the state in which they were appointed, or the same can be appointed for another term in another state;
4. To address the issue of early withdrawal of Heads of Mission and other diplomats, as well as identify the cases when such a thing can be done, and the reasons for the early withdrawal. Frequent change of Heads of Mission, whenever the Government changes, damages the image of the Republic of Kosovo in the host country, and shows institutional instability;
5. To define the role of high state institutions (Presidency, Assembly and Government) in foreign policy, as disagreements between them regarding the Foreign Service are also reflected in the host countries, and this often puts our diplomatic and consular missions in a difficult position;
6. To define the role of political and civilian staff within the structure of the Ministry, as well as their responsibilities in the drafting and implementation of foreign policy, in order to avoid conflicts that have occurred in the past;
7. To define the role of the Parliamentary Committee on Foreign Affairs in monitoring the implementation of foreign policy. To promote parliamentary diplomacy, which would be an added value in representing the country abroad, as well as in strengthening the position of the Republic of Kosovo in the international arena;

8. The new law should oblige on the establishment of a quota for gender representation in the Foreign Service, and the Ministry should be obliged to respect the gender quota both within the staff of the Missions separately, and at the level of Heads of Mission;
9. To address the issue of basic salary and allowances, depending on the country they serve in;
10. To clearly define the mandate of Honorary Consuls, as well as the criteria for the appointment of Honorary Consuls. The Ministry should create a database with the list of Honorary Consuls, as well as the contacts and locations of Honorary Consulates of the Republic of Kosovo around the world, so that citizens in need know where to go in case of need;
11. To strengthen the role of the Diplomatic Academy, and turn the Academy into an elite institution for the recruitment, education and training of young diplomats, taking into account the practices of other countries, especially the example of the Diplomatic Academy of Vienna;
12. To address ambiguities in the naming of terms in the Law, in order to avoid confusion either among those who read the law, or among the officials of the Foreign Service of the Republic of Kosovo;
13. To include a specific Article, which regulates the treatment of the families of diplomats, as well as the responsibilities of the Ministry towards them, both in terms of education, employment, health and social insurance, payment of pension contributions while staying abroad, keeping of jobs (if they have worked in public institutions before going abroad), payment of pension contributions, covering of travel costs etc .;
14. To restructure the organizational chart of the Ministry foreseen in the Draft Law no. 06 / L-154, which provides for the removal of the position of Director General. It is good to have a Director General, as it currently is, who is under the Secretary General in the MFA hierarchy, and who oversees the work of other directorates, and assists the Minister in drafting foreign policy. If deemed necessary to create the position of 'Political Director', it should be under the Director General.

Annex I: The proposal of the Consulate General in Geneva regarding the inclusion of a special Article which deals with the issue of families of diplomats

- 1.** The spouse of the diplomat, children up to the age of 18 (eighteen) under the care of the diplomat, as well as persons in his / her legal custody, shall enjoy the right to hold a diplomatic passport.
- 2.** The Ministry of Foreign Affairs shall cover the social and health insurance for the diplomat's spouse and only health insurance for children up to the age of 18 under the care of the diplomat, as well as for persons in his / her legal custody.
- 3.** The spouse of the diplomat, who accompanies him / her on duty in the diplomatic mission or consular post, shall be recognized the time of stay abroad, as work experience, for the purpose of seniority at work. For this period, the diplomat's spouse shall benefit from the payment of social security and pension contributions according to the law, calculated on the basis of the basic salary for the Attaché grade. In cases when the spouse was not employed, the minimum wage set by law is taken as a reference.
- 4.** The spouse of the diplomat, who accompanies him / her on duty in the diplomatic mission or consular post, shall receive a monthly remuneration in the amount of 50% of the basic salary of the rank of Attaché / Third Secretary, which is determined by Government decision.
- 5.** The spouse accompanying the diplomat assigned to the diplomatic mission or consular post shall have the right to be employed in the host country in cases, when this is provided by a bilateral agreement that the Republic of Kosovo concluded with the host country, or when allowed by the host country.. The head of the diplomatic mission or consular post shall notify the Ministry of Foreign Affairs of this employment. In case of employment, the spouse shall not be entitled to the monthly remuneration according to paragraph 4 of this Article.
- 6.** The spouse, who at the time of the appointment of the diplomat abroad, worked in a public institution, shall have the right to be reappointed to the same job position or to a position equivalent to it, after returning to Kosovo. The state institution, where the spouse used to be employed, shall have the obligation to appoint him / her within six months from the submission of the request for reappointment to this institution.
- 7.** The Ministry of Foreign Affairs shall cover financially the primary and secondary education of the children of the staff appointed to the diplomatic mission or consular post. The Ministry of Foreign Affairs provides funding for this education in cases where:
 - 7.1.** The public school in the country where the representation office is accredited is paid;
 - 7.2.** The language of instruction in public schools is not English, French, Italian, German or Spanish.
- 8.** The manner, criteria and conditions of financing provided by this Article shall be determined by sub-legal act.

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