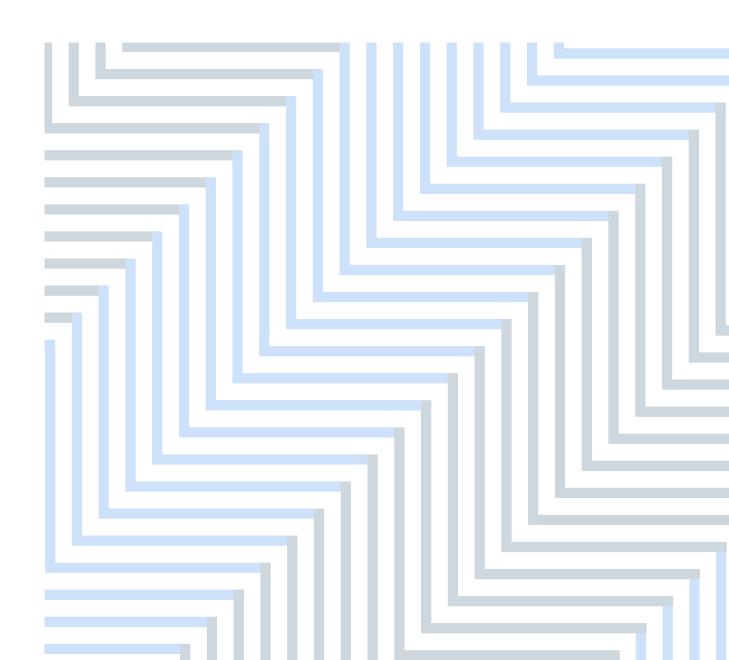


Oversight of the Implementation of Law No. 04/L-156 on Tobacco Control and Law No. 08/L-040 on Amending and Supplementing Law No. 04/L-156 on Tobacco Control





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Introduction

Pursuant to Article 99 of the Rules of Procedure of the Assembly of the Republic of Kosovo, the Health and Social Welfare Committee of the Assembly of Kosovo has the authority to oversee the implementation of laws. In order to exercise this authority, the Committee conducts checks and research and examines the effectiveness of the laws in force, presents proposals for concrete measures to be taken, exercises control over the work of the ministry and relevant bodies regarding the implementation of laws and reports to the Assembly on the extent of Law implementation.

Tobacco enforcement is a challenge that almost all countries face. In addition to harming people's health, smoking has adverse effects on the environment and society as a whole. Smoking affects all age groups, and especially young age groups.

The lack of official statistics and in-depth research in this field is perceived as an obstacle to identifying the causes of the problem, which requires structured measures and actions. Since the enactment of the Law on Tobacco Control, the applicable restrictive measures are yet to be fully enforced. Therefore, the purpose of this report is to provide a real overview of implementation of the law, in order to propose the appropriate legal and administrative measures to achieve the standards on smoking enforcement.

Legal Basis for Oversight of Legislation Implementation

The Health and Social Welfare Committee conducted the oversight of the implementation of Law No. 04/L-156 on Tobacco Control and Law No. 08/L-040 on Amending and Supplementing Law No. 04/L-156 on Tobacco Control, pursuant to Article 99 of the Rules of Procedure of the Assembly of the Republic of Kosovo.

Aiming to fulfill its obligations provided by Article 99 of the Rules of Procedure, the Committee met on February 22, 2023, and approved the initiative for the oversight of the implementation of Law No. 04/L-156 on Tobacco Control and Law No. 08/L-040 on Amending and Supplementing Law No. 04/L-156 on Tobacco Control.

For this purpose, the Committee established a Working Group, tasked to directly deal with the oversight of the implementation of this Law.

After several months of oversight related work, the Committee prepared a report, providing its assessment of the implementation of Law No. 04/L-156 on Tobacco Control and Law No. 08/L-040 on Amending and Supplementing Law No. 04/L-156 on Tobacco Control, including recommendations related to measures to be taken to improve the Law and its implementation.

This report is submitted to the Presidency of the Assembly, with a request for debate, and its approval in the Assembly. Upon approval by the Assembly, the report shall be addressed to the Government of the Republic of Kosovo, namely the Ministry of Health, and published on the website of the Assembly of the Republic of Kosovo.

II. Purpose of Oversight of the Implementation of the Law on Tobacco Control

The legal framework for tobacco enforcement has been under construction since 2008, with the initial enactment of Law No. 02/L-36 on Tobacco, amended and supplemented in 2010 by Law No. 03/L-157. Law No. 04/L-156 on Tobacco Control was passed in 2013. The currently applicable Law No. 04/L-156 on Tobacco Control, amended and supplemented by Law No. 08/L-040 was adopted in 2022.

For the implementation of the tobacco enforcement law, the Ministry of Health has issued two administrative instructions, as follows:

- Administrative Instruction No. 09/2015 Smoke-free premises and placing of signs on the prohibition of smoking in closed areas; and
- Administrative Instruction No. 02/2022 Conditions in the smoking designated areas.

The purpose of oversight of the implementation of Law No. 04/L-156 on Tobacco Control and Law No. 08/L-040 on Amending and Supplementing Law No. 04/L-156 on Tobacco Control, is to examine this Law, as well as to establish the level of its enforcement in practice. This assessment is intended to be achieved through meetings and field visits, interviews with representatives of the central institutions of the Republic of Kosovo and stakeholders in the tobacco industry from responsible institutions and the private sector, in order to obtain information related to the operation and implementation of this Law, as well as to assess whether the Government, namely the Ministry of Health and other competent institutions, are fulfilling the obligations arising from this Law. Certainly, reducing the number of smokers but also tobacco enforcement is not an easy task, because people and institutions face it constantly and in different forms. In the era of technology and digitalization, controlling how tobacco products are promoted or advertised is quite limited. Nevertheless, the ultimate goal of these activities and future legal amendments is to have a healthy society where smokers do not feel comfortable smoking versus now where smokers enjoy all the conveniences and comfort of smoking anywhere.

Key goals of the Implimentation oversight of the Law on Tobacco Control are:

- Review and evaluate Law No. 04/L-156 on Tobacco Control and Law No. 08/L-040 on Amending and Supplementing Law No. 04/L-156 on Tobacco Control;
- General assessment of the implementation of Law No. 04/L-156 on Tobacco Control and Law No. 08/L-040 on Amending and Supplementing Law No. 04/L-156 on Tobacco Control;
- Evaluation of the extent to which the Ministry of Health and other institutions are complying with their obligations in the implementation of this Law.

- Evaluation of the issuance and implementation of by-laws by the Ministry, for purposes of implementing the Law.
- Assessment of the effects and consequences of the inefficient implementation of this Law.

Based on the identified issues, the Committee will decide on initiating or recommending legislative amendments.

III. Methodology

Aiming to achieve the aforementioned goals, the Committee has undertaken the following steps:

- Establishment of the Working Group comprised of Committee memhers
- Identification of relevant institutions, authorities, and entities for the implementation of this Law.
- Visits to relevant government institutions and other institutions responsible for the implementation of this Law.
- Collection, study, and analysis of relevant documents.

The Committee acquired the required information in several stages:

- Collection of information from the Ministry of Health.
- Collection of information from the Sanitary Inspectorate.
- Collection of information from the Kosovo Gastronomy Association.

The Health and Social Welfare Committee, at the meeting of February 22, 2023, established its Working Group, tasked to directly engage in the implementation oversight of this Law. The Working Group is comprised of:

- Haxhi Avdyli Chairperson
- Fatmire Kollçaku Member
- Mirsad Shkreta Member
- Armend Zemaj Member
- Shemsedin Dreshaj Member
- Floretë Zejnullahu Member

Pursuant to the mandate granted by the Committee, the Working Group on oversight of the Law's implementation, was vested with the authority to engage in the necessary activities to collect information and data on the extent of Law implementation and finally prepare a summary report to be presented to the Committee for consideration. Working Group members received expert assistance from Democracy Plus (D+) during the research phase.

Between March and June 2023, the Working Group conducted several meetings and field visits. Additionally, the Group convened regularly for purposes of activity coordination and planning. Working Group field trips and meetings focused on the relevant institutions that implement the Law, such as the Ministry of Health, the Sanitary Inspectorate, and the Gastronomy Association.

IV. Meetings and Visits

- The Working Group met several times to coordinate and plan its activities, to ensure successful oversight of the implementation of this Law.
- The Working Group conducted multiple meetings and visits in the course of its oversight activity.
- On February 27, 2023, the Working Group adopted the Work Plan on Oversight of the Implementation of Law No. 04/L-156 on Tobacco Control and Law No. 08/L-040 on Amending and Supplementing Law No. 04/L-156 on Tobacco Control.
- Initially, on March 6, 2023, the Working Group met with the Deputy Minister of the Ministry of Health, Mr. Arsim Berisha, the Secretary of the

Ministry of Health, Mr. Naim Bardiqi, the Head of the Public Relations Division in the Ministry of Health, Mr. Faik Hoti, the Inspector of the Health Inspectorate, Ms. Advie Mala, and the Acting Director of the Legal Affairs Office, Ms. Afërdita Hoxha.

Working Group members were interested to learn about the implementation of Law No. 04/L-156 on Tobacco Control and Law No. 08/L-040 on Amending and Supplementing Law No. 04/L-156 on Tobacco Control, starting with questions by the Chairperson of the Working Group, Member of Parliament (MP) Haxhi Avdyli, about the obstacles in the implementation of this Law, stating that in recent years there was vast non-compliance with this Law, especially by gastronomy establishments, but also by state institutions where the prohibition of smoking indoors is not respected. The Chairperson of the Committee, Fatmire Kollçaku, asked about the issuance of by-laws provided under this Law, about the functioning of the Inter-Ministerial Tobacco Enforcement Council, and about awareness campaigns about the consequences of smoking. MP Shemsedin Dreshaj and MP Floretë Zejnullahu also had comments and questions about the challenges in implementing the Law.

According to the Secretary of the Ministry of Health, Mr. Naim Bardiqi, monitoring of this Law's implementation has been lacking in recent years for a variety of reasons, including the lack of staffing of the Health Inspectorate, which has only 12 inspectors, and the COVID-19 outbreak. We have observed that there is a need for better monitoring and implementation of the Law, but it is also necessary to amend the Law or draft a new law in line with the applicable EU Directive. We just need to agree on which ministry should draft the Concept Note and then the new Law. It is anticipated that a Concept Document will be prepared very soon, so this oversight effort and the resulting report by the Committee will be relevant to the drafting and implementation of future legislation.

It was also said that two administrative instructions provided by the Law have been issued while one is still pending. We are confident that very soon we will proactively ensure that the Inter-Ministerial Tobacco Enforcement Council becomes operational, even though it has not been to date.

The Head of the Public Relations Division, Mr. Faik Hoti, informed the members

of the Committee that the implementation of this Law has not been observed to a great extent even by the media outlets, and that, recently, e-cigarettes are featured extensively in the media. As for the tests provided by the Law, those are conducted regularly.

The Inspector of the Health Inspectorate, Ms. Advie Mala, informed that the Health Inspectorate inspects the implementation of this Law in health care facilities and said that to a large extent this Law is enforced in such facilities, but there have been cases of violations, noting the imposition of 5 fines. The media and schools have not run smoking awareness campaigns in recent times.

The Deputy Minister, Mr. Arsim Berisha, committed to the members of the Committee that he would collaborate with the Minister and the competent bodies for the implementation of this Law as well as the operationalization of the Inter-Ministerial Tobacco Enforcement Council.

In the end, participants agreed that the oversight effort and the resulting report will have a positive impact on the implementation of this Law.

On May 5, 2023, the Working Group visited the Food and Veterinary Agency where it met with Mr. Flamur Kadriu, Acting Executive Director of the Agency, with Mr. Arsim Arifi, Deputy Director of the Department of Inspections, and Mr. Ibrahim Tërshnjaku, Head of the Sanitary Inspections.

The MPs were interested to learn how the Sanitary Inspectorate monitors the implementation of the Law and what are the challenges and achievements in the implementation of Law No. 04/L-156 on Tobacco Control and Law No. 08/L-040 on Amending and Supplementing Law No. 04/L-156 on Tobacco Control.

Mr. Flamur Kadriu informed the members of the Working Group that the Sanitary Inspectorate under the Food and Veterinary Agency has taken several steps towards implementing the Law, and that the results are good, but not sufficient to ensure full implementation. According to him, there have been some challenges faced by the Sanitary Inspectorate both with the implementation of this Law and with other legislation that this Inspectorate monitors. There have been some difficulties for the Inspectorate, especially during the pandemic when engagement was high, and inspectors were few. Now the situation is better as a number of municipal sanitary inspectors have moved to the central level of the Sanitary Inspectorate and currently the Sanitary Inspec-

torate has 49 sanitary inspectors. Regarding the work and the details of the implementation of the Law, the members of the Working Group were informed by Mr. Ibrahim Tërshnjaku.

Mr. Ibrahim Tërshnjaku informed the members of the Committee that despite the activities that the Sanitary Inspectorate has taken in the implementation of this Law, the extent of implementation still falls short of satisfactory. In addition to the small number of sanitary inspectors, there were also challenges in several other aspects. The Law was particularly advanced and could not get traction with the prevailing mentality in our country. There have not been enough awareness campaigns for both the population and the business establishments. Additionally, some provisions of the law are ambiguous and misaligned. We have difficulties especially in the implementation of Article 12, and with the definition of closed areas.

We have a small number of inspectors and 20 of them are over 60 years of age, which presents additional challenges in our work. The Sanitary Inspectorate has monitoring duties under several laws resulting in a huge workload. As for the implementation of the Tobacco Law, this year we imposed some 375 fines.

It is our request that other inspectorates support and assist us in the implementation of this law.

On May 16, 2023, the Working Group met with representatives of the Kosovo Gastronomy Association, namely its Chairperson, Mr. Petrit Kllokoçi, and Secretary, Mr. Arian Vranica.

Working Group members were interested to know what difficulties gastronomy establishments face in implementing the Tobacco Control Law.

According to Mr. Kllokoçi, the Law was too advanced and therefore encountered obstacles in implementation. Further, he stated that there had been no awareness campaigns and that inspections should start from labeling and retail sales to people younger than 18 years of age and end with gastronomy establishments. The fundamental problem we have is the definition of open spaces on the patios, where the legal provision defining such areas is quite unclear.

Mr. Vranica said that even the Administrative Instruction is not in compliance with the Law and the definition of open spaces is introducing difficulties and

inequality among businesses. Additionally, he stated that they also request strengthening the Sanitary Inspectorate and more inspectors to ensure inspections are spread equally across all establishments, rather than some being inspected constantly while others are not at all.

V. Reporting at the Health and Social Welfare Committee Meetings

During the oversight period, the designated Group Rapporteur, MP Haxhi Avdyli, reported to the Committee on the activities conducted by the Working Group on implementation oversight of Law No. 04/L-156 on Tobacco Control and Law No. 08/L-040 on Amending and Supplementing Law No. 04/L-156 on Tobacco Control, presenting what was achieved in the respective legislation implementation oversight.

In all stages of the legislative oversight process, the Working Group received support from the staff of the Committee.

In the course of implementation oversight of this Law, the Working Group managed to collect sufficient data on the enforcement of this Law. Following its meetings and findings thereof, the Working Group was able to assess the extent to which this Law has been implemented, identify issues, and propose concrete measures for amending the situation, in the form of recommendations.

VI. Enforcement of the Law

The Law on Tobacco Control provides a series of measures that must be taken to protect public health and to prevent harmful health, social, economic, and environmental impacts caused by tobacco use. The responsibility for the implementation of this Law is multi-sectoral, including both public and private sectors and individuals. Being a distributed responsibility, it requires proper coordination and collaboration to reduce tobacco use and control the quality of tobacco products on the market. For this purpose, depending on the specific issues, the Law also separates the duties of relevant institutions. The Law, *inter alia*, provides for aspects of enforcement related to packaging and labeling of tobacco products, ingredients, testing, advertising, promotion, sponsorship, sale, areas where such products may be used, prevention, awareness, and education.

Achievements since the Adoption of the Law on Tobacco Control

Initially, with the adoption of the Law, there was satisfactory implementation and there were results to that effect. A lack of inspectors and the pandemic outbreak later resulted in poor implementation and enforcement of the Law.

Now with the commitment of the Minister of the Ministry of Agriculture, Forestry, and Rural Development, Mr. Faton Peci, and the commitment of the Sanitary Inspectorate, we see a new phase of implementation of the Law, which has had a significant impact on how it is implemented both within institutions and within gastronomy establishments. There is ongoing oversight and efforts to ensure that the Law is implemented.

Findings regarding challenges in Implimenting the Law

There have been certain obstacles and challenges in the implementation of this Law.

Key findings regarding such challenges are as follows:

- The small number of Sanitary Inspectors and lack of efforts to strengthen this entity.
- Failure to operationalize the Inter-Ministerial Tobacco Enforcement Council provided by the Law.
- Failure to issue one of the administrative instructions provided by the Law.
- Failure to align the Law with EU Directives.
- Failure to provide a precise legal definition of electronic tobacco products consumption, sale, and advertising.
- Failure to provide proper oversight of cigarette advertising in the media, especially online, even though the Law prohibits such advertising.
- Ambiguity in the definition of closed spaces.
- Ambiguity in the language of Article 12 has led to implementation challenges.

A. Packaging and Labeling

One of the most important factors that affect tobacco users' motivation is the packaging and labeling of tobacco products. The 2016 EU Directive on Tobacco Products establishes the requirement for tobacco packaging to carry combined health warnings including a picture.

In Kosovo, the Law on Tobacco Control, in Article 6, provides for the remarks and labeling on the packages of tobacco products. Article 6 paragraph 13 stipulates, inter alia, that "Each unit of packaging of tobacco products should have photos that discourage the use of tobacco products as defined by secondary legislation issued by the Ministry." Currently, this provision is not being implemented in the packaging of tobacco products, because almost all products offered on the market contain only the textual part of the warning about the harms of smoking provided in the Law, without any images depicting the harms of smoking.

B. Advertisement, Promotion, and Sponsorship of Tobacco Products

Advertisement, promotion, and sponsorship are the three main marketing strategies. In Kosovo, the Law on Tobacco Control in Article 8 has established the prohibition of advertisement, promotion, and sponsorship of tobacco products. In terms of enforcement measures, legal provisions have prohibited domestic and cross-border advertisement, promotion, and sponsorship of tobacco-related events and activities.

Additionally, the Law provides that no person, either directly or indirectly, is allowed to: 1) stimulate any form of advertisement, promotion and sponsorship; 2) manufacture, publish, or provide access to any advertisement, promotion or sponsorship; 3) be involved or take part in any advertisement, promotion or sponsorship as media or organizer of events, famous person or other participant, as receiver of any sponsorship contribution, or as mediator facilitating any such contribution including also the commercial communication, action or practice that promotes or may promote any tobacco manufacturer, wholesaler or direct or indirect importer. Apart from these, all advertisements, promotions, and sponsorships of tobacco sponsored and initiated by any foreign citizen or other country, in the territory of the Republic of Kosovo, are prohibited.

C. Sale of Tobacco Products

The sale of tobacco products is another aspect that occupies a special place in the Law on Tobacco Control. Sale locations, sale methods, and buyer eligibility are regulated by applicable law. In Article 9, the Law provides that sales are prohibited in health and educational facilities, namely their courtyards or areas. The prohibition of the sale of tobacco products in all types of sports, recreational, and cultural facilities, including the yard under the administration of the establishment, is also provided. In addition to the places where the sale of tobacco products is prohibited, the law has also regulated the way these products are sold, underlining that tobacco products should not be openly displayed, namely it has prohibited their placement in visible areas in the places where they are sold, with except at the time of purchase. The Law on Tobacco Control prohibits, inter alia, the deployment of self-service options for customers, while allowing the sale of tobacco products through vending machines only in the closed spaces of hospitality establishments, which meet

the requirements according to this Law.

Similarly, there is a special provision under Article 9 of the Law stipulating that "tobacco products may be sold only in sealed packages." This issue, too, represents a problem in itself, because there are many retail outlets that sell loose cigarettes, allowing easier access to such products, primarily to minors.

D. Treatment of e-Cigarettes

The problematic issue of the use, sale, advertisement, and promotion of electronic tobacco products persists as a result of legal ambiguities, namely the lack of specific regulation of such products.

These products are currently subject to perfunctory regulation by Law No. 04/L-156 on Tobacco Control in Article 11, paragraph 4 which states "Smoking prohibitions set forth in this article shall also apply to the use of any equipment that produces emissions of nicotine or any other substance derived from tobacco, unless the equipment is allowed for use by the ministry as nicotine replacement therapy or for other medical purposes," which according to the oversight Working Group is insufficient.

In addition, Article 8, paragraph 3, provides that "It is prohibited to advertise products which by this law are not tobacco products but their appearance, name, and purpose of use, encourage the use of tobacco products." In terms of this provision, e-cigarettes have the same purpose, the consumption of smoke (vaping) or nicotine as their main ingredient, therefore the above provision banning the advertising of such products should apply equally. The oversight Working Group finds that the absence of legislative treatment of e-cigarettes is an issue, because vaping products contain components such as nicotine, which causes addiction and adverse health outcomes.

E. Awareness against Smoking

Smoking enforcement is a challenging issue across the globe. However, the measures undertaken to date in Kosovo in terms of awareness and monitoring

have not been successful in achieving the goal of reducing the number of tobacco users, as well as observing the restrictions on smoking in indoor public spaces.

Competent institutions should organize more awareness campaigns, especially in schools, about the harmful health effects caused by smoking.

F. Inspections and Institutional Coordination

Monitoring or inspections under the Law on Tobacco Control Act represents an inter-agency responsibility. Depending on the specifics of the regulation and the aspects covered by this Law, inspections fall under the scope of various relevant organizations. The institutional responsibility for the implementation of this Law is with the Ministry of Health, the Ministry of Agriculture, Forestry, and Rural Development, namely FVA, Ministry of Education, Police, municipalities, etc. However, the entire responsible inter-agency set up lacks an umbrella body, which would ensure the coordination and proper running of activities for legislation implementation and monitoring. In many cases, the extent of responsibility by institution is not clear and may be perceived as duplication of responsibility. At the same time, the number of inspectors is considered to be insufficient to cover legal requirements. Therefore, since it is provided in the current Law anyway, the Inter-Ministerial Tobacco Enforcement Council must become operational.

VII. Conclusions

Based on the work conducted in the oversight process related to the implementation of Law No. 04/L-156 on Tobacco Control and Law No. 08/L-040 on Amending and Supplementing Law No. 04/L-156 on Tobacco Control, the Health and Social Welfare Committee has reached certain conclusions about the status of implementation of the Law.

The Committee concludes that: notwithstanding the initial progress in the implementation of the Law, after a while the progress stalled due to the lack of willful implementation by the law enforcement bodies and the small number of inspec-

tors; the Inter-Ministerial Tobacco Enforcement Council was not operational and there were not enough capacities to monitor the implementation of the Law; there were challenges arising from the ambiguity of the legal provisions defining closed spaces; there were not enough anti-smoking awareness campaigns.

Furthermore, the current legal framework does not address e-cigarettes or other vaping devices, so they can easily be consumed even inside closed spaces. As a result, electronic tobacco products have become increasingly popular in Kosovo recently.

Although the Committee has observed difficulties in the implementation of the Law, it concludes that in the last three months the monitoring of its implementation by competent bodies has improved in a satisfactory manner and there have been concrete steps taken to strengthen the Sanitary Inspectorate and the Interministerial Tobacco Enforcement Council has convened.

VIII. Recommendations

- The Ministry of Health should amend the Law on Tobacco Control, to include the precise definition of open and closed spaces, the use of e-cigarettes and other vaping products, and to ensure alignment with the EU Directives.
- 2. Pending by-laws should be approved and adopted, as provided by the Law.
- The Inter-Ministerial Tobacco Enforcement Council should be operationalized.
- 4. To ensure that the Law is implemented effectively, the number of sanitary and health inspectors and inspections should be increased, and coordination with other inspectorates should be established.
- 5. Amending the Law should involve cooperation with the stakeholders affected by the Law and with NGOs that work in this area.
- 6. Amending the currently applicable tobacco legislation should include detailed provisions on e-cigarettes and other vaping products, their form of consumption, packaging, advertising, and their legal treatment.
- 7. More awareness campaigns that encourage individuals not to smoke or to quit smoking should be organized.
- 8. Competent bodies should monitor and sanction tobacco product advertis-

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- ing in print and online media.
- 9. Enforcement measures over tobacco product sales and purchases should be tightened, especially in terms of the eligibility of persons.
- 10. Enforcement of smoking prohibition in various facilities, including those administered by educational institutions, near entrances/exits of public spaces, workspaces, and health care facilities, playgrounds for children, stadiums, arenas, or performing arts facilities, should be tightened.

Additional Recommendation:

The Ministry of Health must report to the Health and Social Welfare Committee on the extent of legislation implementation. This responsibility of the Ministry derives from Article 99, paragraph 7 and 9 of the Rules of Procedure of the Assembly of the Republic of Kosovo.

Prishtinë, dated: July 7, 2023 Committee Chairperson

Fatmire Kollçaku



