

**ANALYSIS ON THE LAW ON
DUTIES, RESPONSIBILITIES AND
COMPETENCES OF THE STATE
DELEGATION OF THE REPUBLIC
OF KOSOVO**

**IN THE PROCESS
OF DIALOGUE WITH
THE REPUBLIC
OF SERBIA**

MARCH 2019

Prepared by: **Jeta Krasniqi, Florent Spahija, Violeta Haxholli, Eugen Cakolli**

COPYRIGHT © 2018. Kosova Democratic Institute (KDI).

All rights are reserved for the Kosovo Democratic Institute, therefore the reproduction or broadcasting of any part of this publication in any form, mechanic or electronic, including photocopying or utilization of any other system of material saving or extraction is prohibited without the written consent of the publisher. The publication may be reproduced or broadcasted only if used for non-commercial purposes. Whenever quotations or different materials from this paper are used, the user shall be obliged to clarify the source of such quotations or materials.

Any potential appraisal, remark, critique or suggestion should be addressed to:

Address: Str. Bajram Kelmendi,
No. 45, 10 000, Prishtina, Kosovo.
Tel: +381 (0)38 248 038
E-mail: info@kdi-kosova.org
Web: www.kdi-kosova.org

Remark: This report is a result of a research delivered under the project "European Perspective – Building a National Consensus on the Normalization of Relations with Serbia" funded by the Swiss Federal Department of Foreign Affairs.

The content of this report is sole responsibility of the Kosovo Democratic Institute, and, in no circumstances shall be considered as reflecting the views of the Swiss Federal Department of Foreign Affairs.

Kosova Democratic Institute (KDI) conducted an analysis of the law on the duties, responsibilities and competences of the State Delegation of the Republic of Kosovo in the process of dialogue with the Republic of Serbia where it identified a number of issues and raised some questions regarding the content of this law.

THE ASSEMBLY OF THE REPUBLIC OF KOSOVO

The Assembly of the Republic of Kosovo,

In support of Article 65 (1) of the Constitution of the
Republic of Kosovo,

Approves:

LAW ON THE DUTIES, RESPONSIBILITIES AND COMPETENCES OF THE STATE DELEGATION OF THE REPUBLIC OF KOSOVO IN THE DIALOGUE PROCESS WITH THE REPUBLIC OF SERBIA

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope of the law

1. This law determines the institutional hierarchy and the decision-making procedure in the Dialogue Process with the Republic of Serbia (hereinafter: the Dialogue). Furthermore, this law regulates the functioning of the State Delegation of the Republic of Kosovo in the Dialogue with Serbia (hereinafter: State Delegation) by determining the organizational structure, activities, competences and responsibilities of the State Delegation. The law clearly defines, inter alia, the relation that the State Delegation shall maintain with other constitutional institution of the Republic of Kosovo.

COMMENTS FROM THE KOSOVO DEMOCRATIC INSTITUTE (KDI):

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope of the Law

Through Article 1 paragraph 1 this law aims to regulate the institutional hierarchy of the Republic of Kosovo in the dialogue with Serbia and the decision-making procedure for this process.

The institutional and decision-making hierarchy is defined by the Constitution of the Republic of Kosovo. According to the general rules, the prerogatives provided by the Constitution cannot be changed with laws.

With Article 4 of the Kosovo Constitution, Kosovo is a democratic Republic based on the principle of the separation of powers and the checks and balances among them, as provided in this Constitution.

THE ASSEMBLY OF THE REPUBLIC OF KOSOVO

2. This law shall have the statute of Lex Specialis. The Articles of this law shall prevail should there be any collision with other legal provisions.

Article 2

Objective and Purpose

In accordance with this law, the State Delegation of the Republic of Kosovo for the Dialogue with Serbia is hereby authorized by the Assembly of the Republic of Kosovo to negotiate and enter an agreement under the Dialogue process, in consultation with Constitutional Institutions of the Republic of Kosovo.

COMMENTS FROM THE KOSOVO DEMOCRATIC INSTITUTE (KDI):

According to Article 1 paragraph 2 this law has a Lex Specialis status. Consequently, the Assembly waives the rights and obligations of constitutional institutions that are foreseen by the law on international agreements. Namely the authorizations and procedures that state institutions should follow in issues related to international agreements according to [Article 6 and Article 7](#).

Despite the fact that this is a Lex Specialis law, this law cannot change constitutional competences and decision making powers of the Kosovo Assembly for ratification of international agreements.

Article 2

Objective and Purpose

From reading Article 2, it is not clear how the consultation with the constitutional institutions of the Republic of Kosovo will take place with respect to the process of dialogue with the Republic of Serbia.

The law should determine the consultation procedures between the state delegation and the constitutional institutions of the Republic of Kosovo. Also the law should determine which constitutional institutions needs to be consulted.

THE ASSEMBLY OF THE REPUBLIC OF KOSOVO

Article 3

Definitions

1. Expressions used in this law shall have the following meaning:

1.1. **Dialogue** – The closing phase of the Dialogue with Serbia, which commences with the mandate of the State Delegation to reach a comprehensive agreement between the Republic of Kosovo and that of Serbia. This comprehensive agreement shall mean the formal and reciprocal recognition between the Republic of Kosovo and the Republic of Serbia.

1.2. **Day** – Calendar Days.

1.3. **State Delegation** – shall mean the State Delegation of the Republic of Kosovo, mandated by the Assembly.

1.4. **Civil Society** – shall mean a member of the civil society, part of the State Delegation with the right to vote

1.5. **Working committees** – shall mean the professional representative groups established by the State Delegation in compliance with the topics addressed during the negotiation process.

1.6. **Ad Hoc Parliamentary Commission on Dialogue Oversight** – shall mean the body established by a decision of the Assembly in accordance with the Rules and Procedure of the Assembly of the Republic of Kosovo.

COMMENTS FROM THE KOSOVO DEMOCRATIC INSTITUTE (KDI):

Article 3

Definitions

Article 3, paragraph 1.1. Dialogue- closing phase commences with mandating the state delegation.

It remains unclear what happens to the process that has already begun regarding the closing phase of the Kosovo-Serbia Dialogue led by the President of the country, Hashim Thaci. How will this process be addressed? what will happen to the discussion topics that have already begun to be negotiated in Brussels within this phase of the dialogue?

Further, there is no definition of what exactly the process of dialogue means?

Article 3 paragraph 1.4. Civil society – it should be defined what this law means by civil society, not the number of members represented in the state delegation.

Does civil society have the same meaning as foreseen in the Law on Freedom of Association?

CHAPTER II

**BASIC PROVISIONS
ESTABLISHMENT OF THE
STATE DELEGATION, ITS
COMPOSITION, WORKING
COMMISSIONS, AND
PARLIAMENTARY OVERSIGHT
COMMISSION**

Article 4

**Procedure for establishing the State
Delegation**

The State Delegation for the dialogue with the Republic of Serbia will be mandated by the Assembly of the Republic of Kosovo.

The State Delegation shall be the sole body authorized to lead the Dialogue. In this regard, the Delegation shall consult with the Constitutional Institutions of the Republic of Kosovo.

CHAPTER II

**BASIC PROVISIONS
ESTABLISHMENT OF THE
STATE DELEGATION, ITS
COMPOSITION, WORKING
COMMISSIONS, AND
PARLIAMENTARY OVERSIGHT
COMMISSION**

Article 4

**Procedure for establishing the State
Delegation**

Article 4 of this law as Lex Specialis takes the powers envisioned by other laws for the President and the Government. Unlike the Law on International Agreements that provides for authorization from the President for matters pertaining to peace, territory. This law authorizes the Assembly to mandate the state delegation.

By this law, the Assembly authorizes the state delegation as the only body to run the dialogue with Serbia. But this article and this law cannot take the Constitutional Competences of Institutions (President, Government, Assembly) in foreign policy.

Article 5

Article 5

Composition of the State Delegation

Composition of the State Delegation

1. The State Delegation shall consist of eleven members (12). The delegation shall consist of representatives of the government coalition and the Opposition, in a close proportional representation number. The total difference in the number of members from the Government and the Opposition within the Delegation shall not be more than two (2) members of the State Delegation.

2. Members for State Delegation shall be nominated by the representatives of parliamentary parties in the Assembly of the Republic of Kosovo. Should a parliamentary party fail to respond to the request in due time, the nominations made by other parliamentary parties are proposed to the Assembly. In such case, the un-nominated positions are filled by representatives of these parties while maintaining the provided proportion of Government-Opposition representation.

3. The State Delegation is co-chaired equally by (two) representatives: one from the ranks of the Parliamentary Opposition and the other by the Governing Coalition. Both co-chairs are voted by the Assembly of the Republic of Kosovo, together with other members of the State Delegation.

4. A representative from the Civil Society shall be part of the State Delegation, in the capacity of a regular member of the State Delegation. The civil society representative shall be appointed by the State Delegation.

Article 5 paragraph 2. The deadline should be clearly defined to which this article refers when addressing the proposals for nominations by parliamentary parties for members of the State Delegation.

Article 5 paragraph 3. Both co-chairs are voted by the assembly of Republic of Kosovo, together with other members of the state delegation.

Does this mean that the other three members who are not voted by the Assembly, their names should be sent to the assembly to be voted? Or the Assembly should vote again the entire composition in order to obtain the mandate provided with this law? The law does not clarify the mandate of the ones voted with resolution 06-R-015 adopted by Assembly. Same matters apply for paragraph 5 of this Law.

Article 5 paragraph 4. Representatives of civil society shall be appointed by the delegation who will be a regular member.

Based on what procedures and criteria the member from civil society in this delegation is selected? Will he/she be voted in the Assembly same as other members of civil society in bodies of panels (for ex. Kosovo Prosecutorial Council).

THE ASSEMBLY OF THE REPUBLIC OF KOSOVO

5. The State Delegation and its composition are voted by the MPs of the Assembly of the Republic of Kosovo, and the latter shall be considered as mandated after receiving a simple majority of votes from the MP.

6. The Assembly of the Republic of Kosovo reserves the right to dismiss the Delegation, or any of its assigned members, with 50% + 1 of all MPs of the Assembly of the Republic of Kosovo

7. The State Delegation can be dismissed when:

7.1. Fails to fulfil the duties and responsibilities set forth in this Law;

7.2. Fails to respond to the invitations by the Dialogue Oversight Commission in at least 3 occasions;

7.3. There is evidence of violations in procedures established by this law;

7.4. There is evidence of deviations from the State Platform in the Dialogue process.

7.5. The motion for the dismissal of the State Delegation or its special members can be submitted by the Co-Chairs of the Delegation, as well as 1/3 of the MPs of the Assembly of the Republic of Kosovo.

COMMENTS FROM THE KOSOVO DEMOCRATIC INSTITUTE (KDI):

Article 5 paragraph 7 argues on the reasons based on which the delegation may be discharged, such as: lack of work, failure to respond to ad-hoc committee, when the platform is not respected and this can be done by co-chairs and 1/3 of MPs.

What happens if a group of members of the Assembly as provided in item 7.5 notes violation of procedures, failure to accomplish tasks and failure to respond to the ad-hoc Committee, notes deflection from the platform, but there is no will of the majority 50%+1 to vote the discharge of the State Delegation?

Does this mean that the State Delegation continues its work even in contradiction to the Law itself in the absence of numbers to vote? Should such violations automatically discharge the state delegation?

THE ASSEMBLY OF THE REPUBLIC OF KOSOVO

Article 6

Civil Society in the State Delegation

1. The Civil Society's representative in the State Delegation shall be nominated and appointed by means of a consensus between the Co-Chairs of the Delegation.

2. In the event of the failure to reach a consensual agreement between the co-chairs with regard to the appointment of the Civil Society representative, he/she will be nominated and appointed by 2/3 of the votes of the State Delegation. His/her discharge is done with the same procedure as those applied for his/her appointment.

Article 7

Establishment of the Working Commissions

1. Working Commissions are established by the State Delegation.

2. The Commissions are responsible for negotiations on specific topics, based on the State Platform and Strategy approved by the State Delegation.

3. The Working Commissions are composed of political representatives delegated by the parliamentary political parties, as well as by experts of the relevant fields of the committees.

COMMENTS FROM THE KOSOVO DEMOCRATIC INSTITUTE (KDI):

Article 6

Civil Society in the State Delegation

On what occasion the person from civil society may be discharged? Based on what violations? On what criteria? To whom do the co-chairs or other members of the delegation report for violations of the member of civil society?

Why for appointment and dismissal of the member of civil society is not applied the same procedure as for other members? Why the member of civil society is handled separately? Why different standards are applied for the member of the civil society and other members of the delegation when he/she has a voting right too? Why the member of civil society does not answer to Kosovo Assembly but to the co-chairs of the state delegation?

Article 7

Establishment of the Working Commissions

According to this article the working committees are established by the state delegation and are responsible for conducting negotiations based on the platform and the strategy.

Article 7 paragraph 3, what criteria are used for the selection of experts?

Can the parliamentary ad-hoc committee or the Assembly invite other committees or working committees for reporting?

THE ASSEMBLY OF THE REPUBLIC OF KOSOVO

4. The State Delegation decides on the number of Working Commissions based on the State Platform, the Dialogue Agenda and Delegation's Negotiation Strategy.

5. The State Delegation reserves the exclusive right of dismissing any relevant commission, when it is considered that the same has become redundant.

6. The establishment or termination of a commission is done with the proposal of the Co-Chairs of the State Delegation and the votes of the members of the Delegation.

7. Regardless of the number of working committees, the governing positions will be allocated equally between the Government Coalition and the Opposition in a 50/50 proportion.

Article 8

Ad Hoc Parliamentary Committee on Dialogue Oversight

1. The Ad-hoc Parliamentary Committee on Dialogue Oversight shall be established by the Assembly of the Republic of Kosovo in accordance with the Rules and Procedures of the Assembly of the Republic of Kosovo. It will be composed by representatives of all parliamentary entities and shall be filled with observer members selected from civil society.

COMMENTS FROM THE KOSOVO DEMOCRATIC INSTITUTE (KDI):

Article 7 paragraph 7. It is not clear whether working committees by Members of the state delegation or members of parliamentary parties.

Article 8

Ad Hoc Parliamentary Committee on Dialogue Oversight

Under the Regulation, the Ad Hoc Commission has the right to invite any Kosovo official whom it sees appropriate to testify before the committee. Can the Ad Hoc Committee invite the Working Committees for reporting?

The Assembly's Rules of Procedure do not foresee observer members as members of the Parliamentary Committees.

Article 65, paragraph 1 of the Rules of Procedure of the Assembly stipulates that committee meetings are open except in cases when the committee deems otherwise (the reasons are set out in the Regulation)

Are the meetings of this Ad Hoc Parliamentary Committee open or closed? Why is it envisaged to have observer representatives of the Committee? Who selects them? Based on what criteria?

THE ASSEMBLY OF THE REPUBLIC OF KOSOVO

2. The Ad-hoc Parliamentary Committee on Dialogue Oversight shall be led by a representative of the opposition parties participating in the Dialogue process.

3. The Ad-hoc Parliamentary Committee on Dialogue Oversight consists of eleven members (11).

4. After the establishment of the Commission, the Presidency of the Assembly reviews and approves the budget proposed by the Commission.

COMMENTS FROM THE KOSOVO DEMOCRATIC INSTITUTE (KDI):

Article 8 paragraph 2 entitles only opposition parties that are part of the delegation to lead the Ad Hoc Committee.

This article should provide the possibility to lead the committee to the largest opposition party in the Assembly, without determining if it is part of the state delegation or not.

Article 8 paragraph 3. What happens if members of the other opposition parties do not participate?

CHAPTER III

FUNCTIONING, COMPETENCES, DECISION-MAKING

Article 9

Functioning of State Delegation

1. State Delegation mandated by the Assembly of the Republic of Kosovo shall function under the following underlining documents:

- 1.1. State Platform, and
- 1.2. Negotiating Strategy of the State Delegation.

CHAPTER III

FUNCTIONING, COMPETENCES, DECISION-MAKING

Article 9

Functioning of State Delegation

Article 9 paragraph 1: Should the Constitution of the Republic of Kosovo not be included as part of the basic documents on which the State Delegation functions?

THE ASSEMBLY OF THE REPUBLIC OF KOSOVO

Article 10

Competencies of State Delegation

1. The Co-chairs shall be representatives of the State Delegation.

2. State Delegation cannot be lead or represented by only one Co-chair.

3.State Delegation shall be the only body entitled for publication and proceeding of the agreements reached in the dialogue process.

4.State Delegation shall:

4.1.chair the process of dialogue with Serbia;

4.2. represent the Republic of Kosovo in dialogue;

4.3.approve the general negotiating strategy and specific strategies on topics of the dialogue; 4.4.co-ordinate the dialogue agenda with State Platform, in accordance with the facilitators/mediators of the dialogue; 4.5.coordinate meetings with other institutional leaders (President, Prime Minister, President of the Assembly, Ministers, etc.) whenever deems necessary for holding them;

4.6. report to the Committee on Oversight of the Assembly after each meeting with the delegation of the Republic of Serbia and/or facilitators/mediators of the dialogue;

4.7. approves initial negotiating positions of the Republic of Kosovo on each topic of the dialogue;

5. coordinate actions with other Constitutional Institutions related to the dialogue process.

COMMENTS FROM THE KOSOVO DEMOCRATIC INSTITUTE (KDI):

Article 10

Competencies of State Delegation

Article 10 paragraph 2: What happens when one of the co-chairs is absent on justification?

Article 10 paragraph 3. Is this competence of the state delegation in accordance with the constitutional powers of the Kosovo institutions?

Article 10 paragraph 4. This article shall also regulate the reporting of the state delegation to the plenary sessions of the Assembly of Kosovo and other committees- based on their scope, in addition to the ad-hoc committee.

The competences of the Assembly of the Republic of Kosovo foreseen by Article 65 of the Constitution of the Republic of Kosovo cannot be limited.

Also in this article should be added that the reporting of the State Delegation should be done upon any invitation of the Assembly, Ad Hoc Parliamentary Committee and other Parliamentary Committees.

Article 10 paragraph 5 - What are the actions for which coordination is needed? What happens when there is no agreement between the constitutional institutions and the state delegation on a particular issue?

Article 11

**Relation of State Delegation with
Constitutional Institutions**

1. Constitutional Institutions of the Republic of Kosovo shall be engaged in Dialogue according to their constitutional mandate and always in coordination and agreement between relevant institutions of the Republic of Kosovo and State Delegation.

2. In case when one of the Constitutional Institutions of the Republic of Kosovo (President, Prime Minister, President of the Assembly, etc.) receives a formal invitation from the mediator in the dialogue process, the decision on him shall always be taken in coordination and agreement between the State Delegation and Constitutional Institution invited. Every such meeting, in addition to the invited present institutions, shall be attended even by co-chairs of the State Delegation.

3. Any action of the institutions of the Republic of Kosovo in relation to the Republic of Serbia shall be coordinated and mutually approved between the institutions of the Republic of Kosovo and State Delegation.

4. All Constitutional Institutions of the Republic of Kosovo shall be obliged to make available all documentation produced during the hitherto process of the Technical Dialogue, as well as enable all necessary resources as required by the State Delegation.

Article 11

**Relation of State Delegation with
Constitutional Institutions**

Article 11 paragraph 2

This article shall be in compliance with article 4 of the Constitution of the republic of Kosovo, since any deflection from article 4 of the Constitution may be considered a severe violation of the constitutional order.

By article 4 of the Constitution of Kosovo, Kosovo is a Democratic Republic based on the separation of powers and the checks and balances among them, as provided in [...] Constitution.

Is the President of the Assembly a constitutional category? Does the coordination with the president of the assembly mean the coordination with the institution of the Assembly of the Republic of Kosovo?

Article 11 paragraph 3- This article of this law is in contravention with constitutional competences of institutions, such as the Kosovo Assembly, Presidency, Government.

Article 12

**Administrative
competencies of the cochairs
and State Delegation**

1. Co-chairs of the dialogue shall establish the Office of Dialogue Administrative Coordinator. Upon the proposal of co-chairs, the Coordinator shall be elected with 2/3 of votes of all members of the State Delegation.
2. Functioning of the Office of Administrative Coordinator shall be governed with a special bylaw to be approved by the State Delegation.

Article 13

**Decision-making in
State Delegation**

1. Meetings of the State Delegation shall take place if 50%+1 of its members are present.
2. Decisions of the State Delegation shall be taken unanimously, with the consent of all its members.
3. If after two attempts for decision-making it is proved that the unanimity is impossible, a decision shall be considered approved when it receives two thirds (2/3) of votes of all members present.
4. If before, and during a meeting of the State Delegation is ascertained the lack of quorum, the Co-chairs shall terminate the meeting for a certain time. If the quorum is not reached within this period, the Co-chairs shall end the meeting and call for another meeting within a period not longer than two (2) days.

Article 12

**Administrative
competencies of the cochairs
and State Delegation**

Article 13

**Decision-making in
State Delegation**

Article 13 paragraph 3 - The decision by the State Delegation, in each case, must be obtained by a qualified majority (2/3) of all members of the state delegation.

Article 14

Meetings of the State Delegation

1. The first constitutive meeting of the State Delegation shall be summoned by the Co-chairs not later than seven (7) days from the date when the decision on establishing the State Delegation is taken by the Assembly of the Republic of Kosovo.
2. Upon the request of the majority (50%+1) of the members of the State Delegation needed, one of the Co-chairs shall be obliged to summon a meeting of the State Delegation on the date requested by the proposing members.

Article 15

Public discretion and maintaining the confidentiality of data

1. Meetings of the State Delegation shall be closed, except when the Delegation decides for an open session.
2. State Delegation may decide for open meeting with the simple majority of the votes of its members.
3. The request for open meeting may be made by one (1) member of the Delegation present.
4. The decision for open meeting shall be notified by one or both of the Co-chairs of the Delegation.
5. Meetings of the State Delegation shall be recorded only via official electronic means of the Assembly and shall be kept as an official secret, unless the Delegation decides otherwise

Article 14

Meetings of the State Delegation

What should be considered actions taken by the State Delegation before the entry into force of this law? According to this article the entire State Delegation should be voted on by the Assembly after the entry into force of this law in order to have the power to act.

Article 15

Public discretion and maintaining the confidentiality of data

Article 15 paragraph 1. The hearing session shall be replaced by the word meeting.

6. Members of the State Delegation and supporting staff shall be obliged to maintain the confidentiality of the information and progress of the Delegation work.

7. The violation of this Article shall be sanctioned with the relevant Law.

CHAPTER IV

OTHER PROVISIONS

Article 16

1. Administration of the State Delegation shall provide administrative and technical support for the needs of the Delegation, Working Commissions and individual members of the State Delegation.

2. Administrative Coordinator of the State Delegation shall lead the administration of the Delegation as subordinate of Co-chairs and State Delegation.

3. Organization of the work of administration of State Delegation, as well as other rights and obligations, shall be governed with a special bylaw approved by the Delegation upon the proposal of the Administrative Coordinator.

Article 17

Budget of the State Delegation

1. For its activity, the State Delegation shall have a special fund approved by the Government of the Republic of Kosovo, upon the proposal of the Delegation.

2. State Delegation shall autonomously manage the budget allocated by the Government and present a report according to the needs of the Government and Assembly.

Article 18

Final provisions

Whenever necessary, the State Delegation may issue internal rules, which cannot be in contradiction with this Law.

Article 19

Entry into force

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

KDI is a non-governmental organization (NGO) committed to support the development of democracy through the involvement of citizens in making public policies and empowering the civil society sector with a view to influencing the increase of transparency and accountability by public institutions.

For more information about KDI please visit www.kdi-kosova.org

With the financial support of:



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA