

THE HARMONIZATION OF LEGISLATION OF REPUBLIC OF SRPSKA AND THE EUROPEAN UNION LEGISLATION

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Abstract: *One of the important tasks of the National Assembly of the Republic of Srpska is harmonization of legislation of the Republic of Srpska and EU legislation. The task of the Assembly is to develop additional parliamentary instruments in order to provide strategic supervision of the process of harmonization of legislation and more effective and regular performance of parliamentary tasks related to harmonization of legislation. In this process the cooperation of the Government and the National Assembly of the Republic of Srpska is necessary. The Government takes the main initiative and the leading role, and the Assembly makes laws necessary for the introduction of EU regulations and practices. The National Assembly should ensure strong political work over the activities of legislative harmonization carried out by governmental entities.*

Keywords: *harmonization, legislation, the National Assembly, the Government, the European Union.*

INTRODUCTION

Legal norms, adopted by the European Union authorities, are valid over the whole EU territory, but they exist parallel to the norms adopted by member states for their own territories and population.

So, there are two parallel legal systems.

Since the EU is not a state, it is considered that agreed behaviour of certain sovereign rights on community authorities is the basis. The holders of sovereign authorities are member states, but they willingly, or by contract, transferred certain authorizations to the Union authorities, or the Union itself. The truth is that the EU does not have the monopoly of coercive enforcement in order to achieve the realization of legal norms, but the guarantee of realization of legal norms is under the unlimited jurisdiction of European Court of Justice that interprets the EU law, ensuring its realization by performing a judicial function.

The overall EU law is divided into primary and secondary, and the primary one has the primacy over the secondary one, which means that the secondary one has to comply with the primary one, and in this regard it is a subject of the European Court assessment. Primary law means the law that the member states created by themselves, immediately concluding appropriate international contracts (usually founding contracts and their amendments).

Secondary law is created by the Union authorities, as a result of standardization of the Union authorities, and those are: regulations, directives, decisions, recommendations, and opinion (a multitude of other types of legal acts).

In case of collision, national law is applied, which excludes the liability of the state for failure to fulfil its obligations that derive from the membership.¹

The process of harmonization of domestic law regulations and the EU regulations is complicated, and it must be constantly performed and it should be performed by the Parliamentary Committees of Bosnia and Herzegovina. It is the responsibility of the Government of Republic of Srpska and the National Assembly. The first committee is the Ministry of Economic Relations and Regional Cooperation, and then the Government of Republic of Srpska. The second committee is the Committee for European Integration and Regional Cooperation of National Assembly.

THE ORIGIN AND THE SIGNIFICANCE OF THE EUROPEAN UNION

The European Union was formed in order to end wars and make peace in Europe. It was created by the European Coal and Steel Community, formed in 1951 by six countries, Belgium, France, Netherlands, Italy, Luxembourg and Germany, and today it has 28 member countries (included in six enlargement processes (in 2004 and 2007, it is considered as one process), and those are: Denmark, Ireland, United Kingdom – in 1973, Greece in 1981, Spain and Portugal in 1986, Austria, Finland and Sweden in 1995, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia in 2004, Bulgaria and Romania in 2007, and Croatia in 2013.²

There are also disagreements among members about the enlargement of the EU, the stumbling block is Great Britain, because it is a proponent of international cooperation, and its population is both for staying in the EU and leaving the EU.³

The EU Council acknowledged BiH as a potential candidate for membership in 2000, and in 2003, the study on the endurance capacity of BiH for the implementation of Stabilization Agreement was published, whereas in 2005 the negotiations began, and in 2008, Visa Facilitations Agreement entered into force, and on June 16th 2008, Stabilization and Association Agreement was signed. In January 2015, BiH Presidency signed a written commitment of BiH, and national Parliament gave support, on June 1st 2015, the Stabilization and Association Agreement entered into force.

1 Stevanović, Z., (2008), *Pravo evropske unije* (The European Union Law), Službeni list, Belgrade, p. 167-168

2 Golijan, D., Lavrić, R., (2016), *Uloga Parlamentarne skupštine BiH u procesu pristupanja EU* (The role of the Parliamentary Assembly of BiH in the process of accession to the EU), Zbornik radova, ANTIM, Belgrade, p.396

3 Bodiroža, M., (2006), *Evropska unija od 1957. do 2006.* (European Union from 1957 to 2006), Glas Srpski, Banja Luka. p. 315

The BiH Presidency submitted an application – the application for the EU membership on February 15th, 2016, which is followed by the initial estimates, and then the European Commission will carry out a thorough inspection of the legal system in BiH, as well as it should be harmonized and modified with the rights and obligations.⁴

THE HARMONIZATION OF LEGISLATION IN REPUBLIC OF SRPSKA

There are several legal norms that regulate the process of harmonization of legislation in Republic of Srpska.

Legal acts relevant to the harmonization of legal system in Republic of Srpska and the EU legislation are:

- Decision on the process of harmonization of legislation in Republic of Srpska and the EU acquis and the legal acts of the European Council (*Sluzbeni glasnik RS*, no. 46/11), that also contains the methodology of harmonization.
- Decision on achieving coordination of republican administration committees in the field of European integration (*Sluzbeni glasnik RS*, no.46/13)
- Document that has the force of an act entitled “Rules for drafting laws and other regulations prescribed in Republic of Srpska”, and they are related to the rules for drafting legislation, adopted by National Assembly of Republic of Srpska. It provides the same rules for all legislative proposals. Additionally, the rules contain specific provisions related to the harmonization of legal system in Republic of Srpska and the EU acquis.

The source of the obligation to harmonize the legal system in Republic of Srpska and the EU legislation can be also found in the Acts 73 and 193 of the Rules of Procedure of National Assembly of Republic of Srpska.

In the Act 77 of the Rules of Procedure of National Assembly of Republic of Srpska, it is said that Committee for European Integration and Regional Cooperation considers, *inter alia*, the following questions related to:

- Monitoring and harmonization of the legal system in Republic of Srpska and EU legal system
- Consideration of legislative proposals through which the harmonization of legal system of Republic of Srpska and legal system of European Union is performed in accordance with the obligations of Bosnia and Herzegovina and Republic of Srpska related to the process of joining the European Union.
- Consideration of comparative review of harmonization of legislative proposals and the EU acquis, the statement of harmonization of legislative proposals and the EU acquis, and opinion of the Government of Republic of Srpska on the degree of harmonization of legislative proposals and the EU acquis.

In the Act 193 of the Rules and Procedures of National Assembly of Republic of Srpska, it is said that the legislative proposal, apart from the text of the law, also contains the Decla-

⁴ Golijan, D., Lavrić, R., (2016), *Uloga Parlamentarne skupštine BiH u procesu pristupanja EU* (The role of the Parliamentary Assembly of BiH in the process of accession to the EU), Zbornik radova, ANTIM, Belgrade, p. 396

ration of Conformity with the EU regulations. However, the existing system of harmonization of laws of legislation and the EU regulations does not include the required verification of harmonization of parliamentary amendments and the EU regulations.

The Government of Republic of Srpska does not have any database of the EU legal acts where the harmonization of legislation has already been done, nor the the database of the EU legal acts translated into official languages in Bosnia and Herzegovina. The Department for Harmonization of Legislation in Republic of Srpska and the EU legal acts within the Ministry of Economic Relations and Regional Cooperation has some sort of database. However, this database is in Excel format and it can not be put on the Internet.

PLANNING AND PRIORITIES OF PROCESS OF HARMONIZATION OF LEGISLATION

The Government of Republic of Srpska prepares an annual plan for harmonization of legislation in Republic of Srpska and EU legislation (in fact, the plan is the part of the general legislative plan of the Government of Republic of Srpska), but it is not delivered to National Assembly of Republic of Srpska. This plan of harmonization of legislation is not based on any strategic document, but it is partly prepared on an ad hoc basis. If the legal act, that was planned by a certain ministry, included the questions governed by the EU regulations, then it would be included in the harmonization plan. Separately planning a certain legal act for the purpose of implementing the concrete EU legal acts is a very rare situation.⁵

The lack of a well-prepared plan of harmonization of legislation sometimes leads to the situation where the legal acts of Republic of Srpska are fully compliant with the EU legislation but they can not be implemented due to lack of capacity at the entity level.

The Act 287 of the Rules and Procedures of National Assembly of Republic of Srpska obliges the Government of Republic of Srpska to submit a report about its activities. Such reports contain information related to the process of harmonization of legislation. However, these reports are presented to National Assembly of Republic of Srpska only if it asks for them or at the initiative of the Government itself. There is no legal obligation for regular preparation of such reports that may weaken the effectiveness of the control of the National Assembly of Republic of Srpska and the Government of Republic of Srpska in this field.

PARTICIPANTS IN THE PROCESS OF HARMONIZATION OF LEGISLATION INSIDE AND OUTSIDE OF THE NATIONAL ASSEMBLY OF REPUBLIC OF SRPSKA

There are two entities included in the proces of harmonization of legislation, together with the departments and sections for the EU, established within the relevant ministries and they deal with the matters related to the EU. One entity is located within the Government Administration and the other is in the parliamentary structure.

The first entity is the Ministry of Economic Relations and Regional Cooperation, especially the the Department for Harmonization of Legislation in Republic of Srpska and the EU

⁵ Avramović, N.,(2009), *Pravo Evropske unije* (The European Union Law), Privredna akademija, Novi Sad., p. 126

regulations. It is composed of three permanent experts and two temporary experts. The Department cooperates with the contact points on the EU matters in other ministries.⁶

The second entity is the Committee for European Integration and Regional Cooperation of National Assembly. The Committee is composed of nine members: the President, the Vice President, and seven members. The President, the Vice President and five members are selected among Members of Parliament in National Assembly of Republic of Srpska. In accordance with the Rules of Procedure, there are also external members who are not the Members of Parliament (Act 76, The Rules of Procedure of National Assembly of Republic of Srpska). National Assembly of Republic of Srpska recently established the Department for the EU, appointed the director of the Department and performed the internal relocation of two employees into this Department. Neither the Ministry of Economic Relations and Regional Cooperation nor the Committee for European Integration and Regional Cooperation have enough staff and they need more legal officers specialized for EU law.

THE PROCEDURE AND PRACTICE OF HARMONIZATION OF LEGISLATION

The vast majority of legislative proposals is drafted by the Government of Republic of Srpska. Legislative proposals are drafted by ministries that cooperate with the Department for Harmonization of Legislation of Republic of Srpska and the EU regulations which are located in the Ministry of Economic Relations and Regional Cooperation. This department plays an important role in the Government of Republic of Srpska as one of the EU centres. The ministries are in charge of making comparative surveys of harmonization of legislation and EU legislation. They act in accordance with the instruction how to fill out the comparative surveys on harmonization of draft/proposed legislation and the EU acquis and the legal acts of the European Council and the Ministry of Economic Relations and Regional Cooperation.

In accordance with the Rules and Procedures of National Assembly of Republic of Srpska, any legislative proposal, whether the Government proposed it or not, should contain the statement of harmonization. The Committee for European Integration and Regional Cooperation gets the comparative survey of harmonization of legislation and the opinion of the Ministry of Economic Relations and Regional Cooperation on the degree of harmonization from the Government. Mentioned documents are considered in the Committee session.

In the National Assembly of Republic of Srpska, the Committee for European Integration and Regional Cooperation is the only industrious entity which has the responsibility for monitoring of harmonization of legislation in Republic of Srpska. All the acts of Republic of Srpska, which transpose the EU legal norms to the legal norms of Republic of Srpska, and which the National Assembly of Republic of Srpska is considering, require prior approval of the vast majority of the Committee.

At the moment, the amendments proposed during the parliamentary procedure do not consider their compatibility with the EU legislation. However, the Government of Republic of Srpska has the right to give its opinion of any amendment. These opinions can include harmonization of legislation too.

⁶ In Republic of Srpska, the coordination of processes of European integration is regulated by Stevanović, Z., (2008), *Pravo evropske unije* (The European Union Law), Službeni list, Belgrade, p. 168-178

lated by the decision on accomplishment of coordination of the authorities in implementing activities in the field of European integration and international cooperation (*Sluzbeni glasnik RS, no. 47/13*). This decision was made by the Government of Republic of Srpska.

The officials of the Committee for European integrations and Regional Cooperation, the Department for EU of the National Assembly of Republic of Srpska, and the Ministry of Economic Relations and Regional Cooperation, maintain regular communication in the context of the preparation of materials for the meeting of the Committee.

The entire process of harmonization of legislation should be regulated in order to be effective, from the planning phase to the adopting of legislative acts. The process of harmonization of legislation should include all relevant participants, their rights and obligations, including vertical and horizontal coordination. It is also important to mention that the entire process of approximation of legislation can be regulated by one or several legislative acts.

The centralized database of translated legal acts of EU should be established, which should be available to all government institutions of Republic of Srpska and National Assembly of Republic of Srpska and the general public, too. The database should contain translations in all languages officially used in Bosnia and Herzegovina. The appropriate system of harmonization of legislation should ensure the access to all necessary documents, and also the use of systematic method for harmonization of legislation. In order to achieve the goal, all legal acts of EU should be translated into local languages and put in one database. Otherwise, there is a risk of wasting time, effort and money on duplicating the same tasks, and risking that the important part of the *acquis* remains unfair. Members of Parliament, employed in National Assembly of Republic of Srpska, the citizens, and the other participants should be able to read the texts of EU legal acts which are built into law of Republic of Srpska in languages officially used in Bosnia and Herzegovina, so they could judge whether a particular proposal is in compliance with an EU legal act or not. This electronic database should be available in whole country, have the same format, and follow the same methodology like the databases at the country and entity level, which would enable a creation of a unified database for the whole country and avoid duplication of translations. Under ideal conditions, one coordinate entity should govern this electronic database in whole country, in order to reduce to a minimum the duplicating of tasks and ensure consistency.

In this context, the database of legal acts of Republic of Srpska, equivalent to corresponding EU legal acts, should be established, and vice versa. A list of already harmonized legal acts of EU could be a good source for future legislative activities and it could provide useful information for all citizens, business entities and other participants. The database should contain two parts: EU legal acts with which the legal system of Republic of Srpska was harmonized, and the legal acts of Republic of Srpska with which the legal system of Republic of Srpska was harmonized with EU legislation. The database should be a part of Unified State Database.

PLANNING AND PRIORITIES OF HARMONIZATION OF LEGISLATION

A prerequisite for an efficient procedure of harmonization of legislation is a well-prepared plan for harmonization of legislation. Therefore, the Government of Republic of Srpska should prepare a multi-year plan for harmonization of legislation for the whole entity and it should update the plan regularly. Planning of harmonization of legislation should

be linked to Republic of Srpska's budget planning. Although there is the annual plan of legislative activities in National Assembly of Republic of Srpska, it does not contain concrete references for harmonization with EU legislation, so it would be advisable to adopt a special, elaborate plan for this specific purpose. It should consider all the laws of EU, in all areas of their operation and all their responsibilities. Every part of EU legislation should have prescribed deadlines for partial or full harmonization. The plan should also determine competent entities for harmonization of specific laws, but it should also consider the possibilities and the needs of the entity. Harmonization of legislation very often requires certain financial costs to ensure the implementation of harmonized legal regulations, including the requirements in terms of construction and development of human potential. Therefore, the planning of harmonization of legislation should be also linked to the budget planning. The Government of Republic of Srpska should be in charge of drafting the plan of harmonization of legislation, but National Assembly of Republic of Srpska should supervise the drafting and implementing of the plan. Such supervisory activities of National Assembly of Republic of Srpska would not only inform the Members of Parliament and employees about the plan of harmonization of legislation of Republic of Srpska, but it should also include the discussion about the activities from last year. Nevertheless, the plan of harmonization of legislation of Republic of Srpska and its implementation should be also coordinated with the similar plans, adopted in Bosnia and Herzegovina. Brcko District and in the whole country. The multi-year plan could provide a clear map of the division of responsibilities and competences, based on constitutional order of Bosnia and Herzegovina. The goal of this kind of planning is to increase efficiency and transparency of efforts to harmonize legislation. In order to achieve this goal, it is very important that the planning process is under the supervision of National Assembly of Republic of Srpska and to be synchronised with similar plans at other levels of government.

CONCLUSION

National Assembly of Republic of Srpska should give all necessary documents (to all Members of Parliament) when they consider draft laws which are used for harmonization of legislation of Republic of Srpska and EU legislation, not only the comparative review of harmonization and statement of harmonization but also the translated versions of corresponding acts of EU. All documents, also including the relevant translations, should be delivered to the Members of Parliament of National Assembly of Republic of Srpska which would increase their capacity for performing the supervisory tasks over the Government of Republic of Srpska and help them in making informed decisions in the harmonization of legislation process.

Moreover, amendments to legislative proposals should be necessarily checked in terms of their harmonization with the EU legal regulations. The Government of Republic of Srpska in cooperation with the Department for EU in National Assembly of Republic of Srpska should carry out these checks. Although the Government of Republic of Srpska makes a great effort to check the harmonization of legislative proposals and EU regulations, this system does not take into account one important phase of legislative procedure – submitting amendments. Generally, it is known that parliamentary amendments can significantly change the legislative proposal which can influence the degree of harmonization of pro-

posals and EU regulations. So, it is necessary to have a mandatory check of parliamentary amendments. At the moment, neither National Assembly of Republic of Srpska nor the Government of Republic of Srpska have enough human resources that could deal with it. Since the Government of Republic of Srpska regularly prepares opinion of harmonization of regulations, it is recommended that the Government of Republic of Srpska performs these checks too. Closer cooperation with National Assembly of Republic of Srpska's Services and increasing number of professional staff in the Department for Harmonization of Legislation in Republic of Srpska and EU acquis (within the Ministry of Economic Relations and Regional Cooperation) will be necessary in order to perform tasks of checking the harmonization of amendments.

Nevertheless, more time to work on the legislative proposals, which are harmonized, should be given to the Committee for European Integration and Regional Cooperation during legislative procedure. This would help National Assembly of Republic of Srpska with the performance of its supervisory function and improvement of quality of regulations which are adjusted.

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