

New legislation of republic of Kosovo in the field of transport

Nexhat Jashari

Mr. SC. Nexhat JASHARI

Abstract

*In this output are treated issues related to the new legislation in Kosovo in the field of transport. In particular, there is elaborated the law in force, regulations, administrative directions and other sub-legal acts issued by the Ministry of Transport Post and Telecommunication. Special importance was paid on the harmonization respectively on the approximation of the new legislation in Kosovo in the field of transport with *acquis communautaire*, as well as other aspects of direct implementation of the EU legislation from this field in Kosovo. It also reviewed the application of Law on Obligations provisions as *lex generalis* in the field of transport and recommendations are given for better and overall regulation of the field of transport, by supplementing and amending laws and by proposing the issuance of other special laws from this field.*

In this output is treated the report of new national legislation in Kosovo in the field of transport with international report, such as: European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR), Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID), Convention Concerning International Carriage by Rail (COTIF) , Convention Relating to the Contract of Carriage of Goods by Road CMR, The Convention on International Civil Aviation, - Chicago Convention. The method used in this research is the comparative method.

*The result of this research is the ascertainment of the situation of new legislation in Kosovo, in relation to *acquis communautaire*, the effort and commitment of competent institutions for approximation with *acquis communautaire* .*

At the end as a conclusion there have been proposed the measures that should be taken in order to complete the legal framework in the field of transport.

Introduction

Transport is one of the most important sectors for the development of a country, in general, and for the development of process of integration of Kosovo into EU.

The end of liberal war in our country brought in discussion a lot of matters that required response from the legislative body. Previous Laws, including even the Laws covering the field of transport, nowadays took the place of Laws into force, upon some conditions defined by UNMIK regulations¹, while on the other hand there started the promulgation of Laws on fields that were less regulated

Legal regulation of the field of transport is of a particular importance for every country, because from the level of Laws regulating this field, it depends on the level of the security and rights protection that these Laws offer, which derive from the contracts for the transport of goods and passengers for participation in circulation of goods and providing of services.

Hence, even the trust of contracting parties depend on the level of legal regulation of this field, whether the parties are offerers of services or users of transport services that use Kosovo railways or roads for transport of goods or passengers.¹ The great and important changes within the legislation of this field for a relatively short period are a result of efforts of new institutions of Kosovo in order to complete the legal framework in the field of transport

New circumstances created in Kosovo after the war should be treated at the same time with the events and processes that are being developed within EU. Establishment of market of services as a liberalized and unique market within EU, means even the full reform of current model of functioning and organization of circulation and transport in all EU member states. EU directives approved during 90's, had the purpose the full opening of national markets of transport services and removal of monopolist position that transporting enterprises that were within the property of state had such position till then.

The way to the purpose, as to all such legal acts of EU, to EU led between a degree level change of national legislation of members states, and in this survey even the implementation of provisions and directives, as well as implementation in practice of the mentioned reforms that were very important in this sector of transport.

The current developments have to do with the harmonization, particularly unification of contracting law in EU.

The law and legislation of EU in the field of transport is wide and voluminous in the fact that legal regulation on this field, that presents the skid of this legislation, *acquis communautaire*, contains 10 % of the general EU legislation, especially of *acquis and consists hundreds of secondary legislation, such as directions, directives, decisions.*²

Although Kosovo still does not have contractual relationships with EU, in the strategy of development and challenges 2008-2009, European Commission has proposed, while the

¹ Nowadays in Kosovo there is no Law that regulates in a certain way the transport contracts in railway communication, except the applicable Law as *lex specialis*, there can be used also LMD as *lex generalis* ..

² Consolidated Version of the Treaty Establishing the European Community and of the Treaty on European Union, OJ 2002 C 325/1 - 184

Council has approved realization of studying the feasibility in order to advance Kosovo towards EU integration, in the context of stabilization-association process.

Approximation and harmonization of national legislation of the field of transport with the law of *acquis communautaire* is an obligation deriving from Action Plan for Implementation of European Partnership for Kosovo³ and other documents that are of importance in this way.

Legislation of Kosovo in the field of transport is regulated, according to branches of transport upon UNMIK regulations that had and have the power of Law, directions and directives for the implementation of regulations, Laws and other sub-legal acts.

So the branches of transport in the beginning were regulated with UNMIK regulations and other acts and after the conveyance of competencies of Kosovo institutions, this regulation shall be done by Laws and other sub-legal acts.

Road transport in Kosovo nowadays shall be regulated by these Laws: Law on road transport, Law on safety in road communication, Law on roads.

In the field of railway transport there is promulgated the Law on railways in Republic of Kosovo.

In the field of air transport there is promulgated the Law on Civil Aviation.

In the field of transport of dangerous goods there is promulgated the Law on transport of dangerous goods and administrative directions for implementation of this Law.

Law on obligations⁴ even nowadays shall be implemented in the field of transport as *lex generalis* to fulfil approximately the legal vacuum in this field that we will deal in the following part of this paper.

1. Road Transport

Road transport is one of the most important branches for economic development, in general, and the development of Kosovo, in particular, based on the fact that after the war the road transport has the main place in transportation of goods and passengers.

Law on road transport has been adopted in Kosovo Assembly in 2004 and in this case the issue of approximation of this Law with *acquis communautaire* has been of a particular importance.

With this law there are regulated the conditions and the way of exercising the activity of transport of passengers and goods in internal road transport, providing the transport services, transport for own needs, etc.

The most important provisions of the Law on road transport are: scope of implementation, definitions, transport of goods for personal needs, road transport of goods, transport of rental goods and goods with payment, transit licence for the territory of Kosovo, terminals of goods, supervision and control in road transport, etc.

If we analyze the provisions of the Law on road transport, we will see that with this Law there is not regulated the issue of contracts on road transportation.

Regulation No.1999/24 on Law into force in Kosovo and Regulation No.2000/59 on amending the Regulation No.1999/24 on Law into force in Kosovo, in this field of transport lets into force the previous Law on road transport.⁵

³ Government of Republic of Kosovo, Action Plan for Implementation of European Partnership for Kosovo, Pristina, July 2009.

⁴ Law on Relationships of Obligations of 1978 of former YSFR

⁵ Law on contracts in road transport "Official gazette of YSFR" 2-74

Such non-regulation of the field of road transport creates uncertainty and at the same time creates difficulties for operators of transport that require more insurance for their activity.

Taking into consideration the above described situation, amendment and supplementation of this Law is a necessity and through these amendments and supplementations there shall be regulated also the matter of transport of goods in compliance with Convention for contracts on international road transportation of goods CMR⁶.

With the provisions of our Law there is maintained the system of protection of market with the system of quotes, according to which the system of international transport of goods shall be done upon basis of licences on international transport of goods, so there is prohibited the entry into Kosovo for all operators of goods transport that are not equipped with the special licence for entry into Kosovo, except transporting operators that possess the licence of CEMT and bilateral licence.⁷

System of European licence has not been regulated in our Law, not even the opportunity of postponement of implementation of such provisions till the day of membership into EU, as it is foreseen by some Laws of candidate states for membership.⁸

System of quotes in 1993 in EU has been replaced with *System of European Licence - community authorization*, approved with the Direction 881-92, where this licence is valid in the whole territory of EU and it shall be issued by every country to its transporting operators who meet the requirements for exercising the activity of road transporters.⁹

Safety in communication is a segment of special importance in the field of transport that in Kosovo has been regulated by a special Law¹⁰. Law on safety in road communication has an importance for the operators of transport because with it there are defined the main mutual basis of relationships and behaviours of participants, as well as other entities in road communication, the basic requirements that the roads must meet regarding the development of road communication, system of communication signs and signs given by authorized persons, duties in case of accident in road communication, preparations of candidates for drivers, passing the exam for driving, as well as requirements to get the right for driving a mean, dimensions, general measures and shaft load of the mean, and the requirements that must be met by the mean in communication

In this Law there is foreseen that the Government shall establish the Council for safety in road communication, upon the proposal of the Ministry of Transport and Post-Telecommunication, while the composition, functioning, way of organization and financing of the Council on safety in road communication shall be regulated with a special legal act, which shall be proposed by the Ministry and it shall be approved by the Government.

⁶ Convent on Contracts on Inernational Road Transport of Goods CMR

⁷ Law on Road Transport No.2004/1 Article 60.1

⁸ Law of Croatia of 2004 (*Zakon o Prevozu Cestama*) Article 108.1,

⁹ Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States, neni 6, *Official Journal L 095*, 09/04/1992 P. 0001 - 0007

¹⁰ Law on safety in road communication, Law No. 02/L-70

2. Railway Transport

Railway has its advantages in economic, energy, ecologic and security aspect. Besides, railways enable an easy, cheap, fast and mass transport of people and goods. System of railway transport of Republic of Kosovo, in order to be functional and to be linked to European basic networks, it should, within this period, be orientated in realizing these purposes:¹¹

- Establishment of necessary legislation and regulative frames on railways,
- Investments in improvement and revitalization of railway infrastructure and building the new infrastructure,
- Investments in development of railway transport services,
- Increase of safety in railway communication.

With the Law on railways in Republic of Kosovo¹², that has been approved on 15 June 2008, there is established an independent regulatory authority on railway sector, that aims to provide a reliable and safe transport, enabling the local and foreign operators to use railways of Kosovo to transport goods and passengers and taking into consideration the railway transport advantages on environment with the purpose of improving the railway sector according to international and European standards.

Government of Republic of Kosovo, in February 2010, has approved the decision for division of Kosovo Railways, j.a. into two new companies according to principles of European standards, one for infrastructure, while the other for operation with transporting trains.¹³

Independent Regulatory Railway Authority, as an independent regulatory body will have the competences to conclude contracts and to take, possess or purchase as well as will regulate the sector of railways in Kosovo, taking into consideration European directions on railways, which are comfortable for Kosovo.¹⁴

For the development of Railways there are important even two other documents approved by the Government of Kosovo regarding the strategy of multimodal transport.¹⁵

3. Air Transport

In the field of air transport Kosovo has approved the Law on Civil Aviation¹⁶, with which there are defined issues of importance in this branch of transport. Hence, based on this Law Kosovo has full, exclusive and intangible sovereignty in the air space on its territory and has an exclusive authority for organizing and regulating activities of Civil Aviation in its territory and air space.

According to Law on Civil Aviation, use of Kosovo air space is free for all civil planes registered in Kosovo, provided that this use to be done in compliance with all conditions and applicable limitations defined in a Law or in accordance with a Law of Kosovo.

¹¹ Program of the Government of Republic of Kosovo 2008 – 2011 ,Prishtina, April 2008

¹² Law No. 03/1-076 on Railways in Republic of Kosovo

¹³ Government of Republic of Kosovo , Action plan 2010 on implementation of European partnership for Kosovo

¹⁴ Law No. 03/1-076 on railways in Republic of Kosovo, Article 3 ,4

¹⁵ Government of Republic of Kosovo , Action plan 2010 on implementation of European partnership for Kosovo p.. 38-41

¹⁶ Law No. 03/L-051 on Civil Aviation

Hence, based on current legal framework, activities of Civil Aviation in Kosovo air space shall be developed in compliance with the provisions of this Law, Convention on International Civil Aviation of the date 7 December 1944, known even as Chicago Convention¹⁷ and Agreement on Establishment of European Common Aviation Area.¹⁸ It is characteristic of air transport that International direction has a final role and that for this reason from the beginning it has attempts in unification of air transport law.

The primacy of International legislation towards national one is promoted even by new legislation in Kosovo in the field of air transport, where it foresees that all elements of *acquis communautaire* of EU, mentioned or included in Annex I and II of the Agreement on Establishment of European Common Aviation Area, are directly applicable in Kosovo and replace every Law of Kosovo which is not in compliance with them.

Any provision, directly applicable, of the Agreement on Establishment of European Common Aviation Area overrules every provision or aspect of Laws in Kosovo that are not in compliance with it.

Constitution of Republic of Kosovo, article 130, has foreseen a body denominated as Civil Aviation Authority of Republic of Kosovo, which will regulate activity of Civil Aviation and will cooperate with relevant local and international authorities defined by Law.

Now Kosovo is a member of European Common Aviation Area (ECAA), with full rights since 2006, when EU member states signed the Agreement of ECAA with countries of Western Balkans and this agreement obliges Kosovo to present all European legislation on Civil Aviation into national legislation.¹⁹

¹⁷ The Convention on International Civil Aviation, - Chicago Convention - *Convention on International Civil Aviation* (also known as *Chicago Convention*), was signed on 7 December 1944 by 52 States. Pending ratification of the Convention by 26 States, the Provisional International Civil Aviation Organization (PICAO) was established. It functioned from 6 June 1945 until 4 April 1947. By 5 March 1947 the 26th ratification was received. ICAO came into being on 4 April 1947. In October of the same year, ICAO became a specialized agency of the United Nations linked to Economic and Social Council (ECOSOC).

¹⁸ European Common Aviation Area (ECAA) published in Official Journal of the European Union L 285/1, 16.10.2006 (2006/682/EC). The European Common Aviation Area - an ambitious agreement with partners from South-Eastern and Northern Europe: Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, Kosovo under UNSCR 1244, Norway and Iceland. In December 2004, the Council of Ministers authorized the European Commission to start negotiations with eight South-East European partners (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Romania, Serbia and Montenegro and the U.N. Mission in Kosovo) on a "*European Common Aviation Area*" (ECAA) agreement. The objective was to integrate the EU's neighbours in South-East Europe in the EU's internal aviation market which, at the time, consisted of 25 EU Member States as well as Norway and Iceland. The negotiations were opened on 31 March 2005 with a multilateral high-level meeting, at which all negotiating parties expressed support for reaching the ECAA Agreement as quickly as possible. After only nine months of negotiations, the text of the ECAA Agreement was agreed between all parties in December 2005. (On 1 January 2007, Bulgaria and Romania joined the European Union.) The eight South-East European partners agreed to the full application of the European Community's aviation law (Community *acquis*). Once ECAA partners fully implement the EC's aviation *acquis*, ECAA airlines will have open access to the enlarged European single market in aviation. The ECAA agreement will therefore create new market opportunities due to an integrated aviation market of 36 countries and more than 500 million people. At the same time, the agreement will lead to equally high standards in term of safety and security across Europe, through the uniform application of rules.

¹⁹ Government of Republic of Kosovo, presents this aim even in the document titled "Action Plan 2010 on implementation of European partnership for Kosovo" f 38-41

4. Transport of dangerous goods

It is very important for the legal system of Kosovo and transport law in Kosovo that the transport of dangerous goods to be regulated in compliance with International acts on the sphere of transport of dangerous goods, based on the fact that recently transportation of dangerous goods shall be done by transport operators with the residence in Kosovo and in the roads of Kosovo.

Through this Law and other sub-legal acts there is aimed to reach the purpose of institutions of the state of Kosovo, to prevent danger and to increase supervision and insurance of communication during the transport of dangerous goods, which with their self-firing, poisonous, exploding, steamy, infectious and radioactive features present danger for safety of people and environment, regulates conditions for the transport of dangerous goods in individual sector of transport, obligations of persons included in the transport of dangerous goods, competences and responsibilities of respective authorities about the supervision regarding the implementation of this Law.

Transport of dangerous goods in Kosovo shall be regulated with the Law on transport of dangerous goods²⁰ and other sub-legal acts approved by the Ministry.

dangerous goods, according to the Law, are substances and objects which endanger public safety or public order, particularly the public, life and health of people and animals, plants and objects, based on their nature, characteristics and their conditions during transportation, transport of which is prohibited by ADR or are allowed to be transported in special conditions.

Subject to this Law is the transport of dangerous goods in land roads in conformity with rules of European Agreement for Transport of dangerous goods in land roads (ADR), and European Agreement for Transport of dangerous goods in railroads (RID).

According to the Law, Ministry of Transport shall be authorized that with special legal acts to issue rules on transport of dangerous goods and regulation of important issues for the transport of dangerous goods.

Hence, the Ministry, having limited competences in appointing sub-legal acts, did not have the right to issue regulation, while this rights was reserved for Secretary General Special Representative (SGSR), so it has issued some administrative instructions regarding the transport of dangerous goods, such as:

Administrative instruction on certification of vehicles and manner of transport of dangerous goods in road communication²¹, shall regulate the way of transport of dangerous goods in road communication, which includes the certification of vehicles, preparation, documents, special safety measures, actions in case of fatality, as well as measures of supervision of the transport of dangerous goods.

Administrative instruction on training and passing the driving exam and manipulator of dangerous goods.²²

²⁰ Law No. 2004 / 6 on transport of dangerous goods,

²¹ Administrative instruction No. 2006/5 on certification of vehicles and manner of transport of dangerous goods in road communication

²² Administrative instruction No. 2005/3 on training and passing the driving exam and manipulator of dangerous goods, MTPT

With this administrative instruction there is defined the program for holding beginner and special courses for training the drivers of vehicles of dangerous goods and manipulators of dangerous goods, that have to do with packing, loading and unloading of dangerous goods, procedure of passing the exam as well as organizations of additional courses.

Administrative instruction on criteria and procedures on issuing, suspense and revocation of licence for road transport of dangerous goods²³ defines criteria and procedure on issuing, suspense and revocation of licenses for operators that exercise activity of road transport of dangerous goods.

5. Law on obligations

LRO is a general Law – *lex generalis* in relation to other Laws that regulate field of transport and particularly in relation to the Laws regulating the contracts of transport, as special Laws – *lex specialis*, and the provisions of this Law shall be applicable in absence of provisions of special Law.

This solution, even that it is reasonable and right in the formal-legal aspect, it should not be understood as a final and satisfactory solution in order to cover legal vacuum, that it is mostly presented nowadays in Kosovo based on the fact that legal framework is still not completed and in particular the issue of contracts of transport is not regulated by new Laws.

Kosovo still does not have the new Law on obligations, based on the fact that LRO of Kosovo, even that it has been approved in the Assembly, it did not enter into force because it was not signed by the Secretary General Special Representative of UNO (SGSR) and as an applicable Law in Kosovo it is still LRO of 1978, which does not meet the requirements, as a result of the newest developments.

Law on obligations contains the basic principles with which there are regulated the relationships of obligations, which have an importance even for the field of transport and regulate the certain issues in the field of contracts of transport.

Conclusions

Taking into consideration the situation of new legislation in Kosovo on the field of transport presented briefly in this paper, we will present the conclusion regarding the necessity of advance of the situation in this field as following.

- The fact that nowadays in Kosovo in the field of transport there are still applicable even some Laws that with the UNMIK Regulation are considered as applicable Laws, presented before the legislative institutions as a matter with priority of promulgation of Laws with which there are regulated the issues to which the Laws into force are applicable.
- Taking into consideration the situation described above, amendment and supplementation of the Laws regulating the field of transport is a necessity and through these amendments and supplementations there will be regulated also the above

²³ Administrative instruction No. 2005/7 on criteria and procedures on issuing, suspense and revocation of licence for road transport of dangerous goods, MTPT

mentioned issues that are still not regulated in accordance with the EU legislation and international conventions on this field.

- With the amendments and supplementations of the Law on road transport, there should be regulated even the issue of contracts for road transport.
- It will be the same way even in the field of railway transport, while the Law on railways does not regulate the issue of contracts of transport.
- Law on relationships of obligations which should be promulgated as soon as possible, it also should be harmonized with the contemporary regulative of European Union and with international conventions, hence the operators of transport including even.