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Ministria e Mjedisit, Planifikimit Hapësinor dhe Infrastrukturës
Ministry of Environment, Spatial Planning and Infrastructure
Ministarstvo Životne Sredine, Prostornog Planiranja i Infrastrukture

**EX-POST EVALUATION REPORT OF THE
LAW NO. 04/L-110 ON CONSTRUCTION**

Prishtina, December 2023

Proposing institution	Ministry of Environment, Spatial Planning and Infrastructure
Title of the Ex-Post Evaluation Report	Ex-Post Evaluation Report of the Law No. 04/L-110 on Construction ¹
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Working Group	<p>Members of the Working Group by the Decision No. 82/2023 dt. 13.03.2023</p> <ol style="list-style-type: none"> 1.1. Sabrie Rama - chairperson - LD/MESPI; 1.2. Naime Pakashtica deputy chairperson - DSPCH/MESPI; 1.3. Fatmir Azemi - member - DSPCH-DC/MESPI; 1.4. Arben Ajazi - member - DSPCH-DC/MESPI; 1.5. Arben Rrecaj - member - ISP/MESPI; 1.6. Refik Rexhepaj - member - Inspektorati/MMPHI; 1.7. Ismail Hetemaj - member - DMMU/MESPI; 1.8. Vlora Osaj - member - LD/MESPI; 1.9. Albana Krasniqi - member - OPM; 1.10. Flutura Avdiu - member - Association of Kosovo Municipalities; 1.11. Valbona Puka, member - Ombudsperson; 1.12. Bashkim Shaqiri - member - Kosovo Cadastral Agency/MESPI; 1.13. Esat Xani - member - Kosovo Cadastral Agency/MESPI; 1.14. Liridon Gashi - member - SEEF - Sensibilisation an Education for European Future; 1.15. Ali Sefaj - member - KEPA/MESPI;
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¹ Ex-Post Evaluation Report of the Law No. 04/L-110 on Construction approved by Decision of the Government of the Republic of Kosovo No.17/178 dt.13.12.2023.

EXECUTIVE SUMMARY

The construction sector in any country is of strategic importance to countries, as it provides buildings and infrastructure that are necessary for the economy and society. In Kosovo, the field of construction is regulated by the Law No. 04/L-110 on Construction² which entered into force in 2012 and defines the legal framework which regulates the issuance of construction permits, compliance with the requirements of the construction permit and the issuance of the certificate of occupancy within the territory of the Republic of Kosovo; the Law 04/L-174 on Spatial Planning³ which entered into force in 2013 and defines the basic principles of spatial planning, the conditions and manner of development and spatial regulation, the types, progress and content of plans, the responsibilities of administrative entities at the central and local level for the drafting and implementation of spatial planning documents, administrative supervision for the implementation of this law, as well as the activities undertaken in spatial planning and territorial regulation in the Republic of Kosovo, as well as the Law No. 06/L-024 on Treatment of Constructions without Permit⁴ which entered into force in 2018 and defines the establishment of simplified procedures to enable legalization and to help citizens realize benefits from their constructions.

The safety of buildings and construction works is of great importance. Eurocodes play an important role in this regard. They are a set of European standards that provide a common approach to the structural design of buildings and other construction works and are the preferred reference for technical specifications in public contracts. European standards provide the means for assessment and reporting the performance of buildings in relation to social, economic and environmental sustainability, covering the entire life cycle. They are used throughout the EU and promoted internationally to establish harmonized indicators and methods in the various certification schemes.⁵

This report makes the Ex-post evaluation of the Law No. 04/L-110 for Construction (hereinafter the “Law”), part of the legal framework that regulates the construction sector at the central and local level. The purpose of the report is to present the findings from the analysis of the data collected during the evaluation process, paying special attention to the issuance of building permits and certificates of use.

Starting from the importance of the Law in the regulation of construction issues, the Department for Housing and Construction within the Ministry of Environment, Spatial Planning and Infrastructure (hereinafter MESPI) has assessed the need for Ex-post evaluation of this Law with the purpose of identification of the main challenges in its implementation as well as the compliance of the Law with other legislation in force.

² Law No. 04/L-110 on Construction <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2833>

³ Law No. 04/L-174 on Spatial Planning <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8865>

⁴ Law No. 06/L-024 on Treatment of Buildings without Permit <https://gzk.rks-gov.net/ActDetail.aspx?ActID=17767>

⁵ “The European construction sector”, Brochure 2016, European Commission, Internal Market, Industry, Entrepreneurship and SMEs Directorate General, Energy Directorate General, Joint Research Centre (JRC), qasur me 1 shtator 2018

In this context, the General Secretary of the Ministry of Environment, Spatial Planning and Infrastructure, by the Decision 1315/23 dt. 14.13.2023, appointed the working group for the Ex-post Evaluation of the Law No. 04/L-110 on Construction. This working group included officials from: Legal Department; Department of Spatial Planning, Construction and Housing; Department of Environmental and Water Protection; Institute of Spatial Planning, Inspectorate of Environment, Water, Nature, Spatial Planning and Construction; Legal Office of the Prime Minister; representatives from Civil Society and the Association of Kosovo Municipalities.

In the Ex-Post evaluation of this Law, the working group is defined in the “Evaluation of the implementation of compliance” as one of the three types of Ex-Post evaluation defined by the Manual for the Ex-Post Evaluation of legal acts approved by the Government of the Republic of Kosovo by the Decision No. 07/145 dated 07.06.2023. This is in order to evaluate the process of the implementation of the law, specifically, if its implementation is carried out properly, as well as in order to identify the factors that have helped or hindered its implementation.

During the drafting of this report, the working group has encountered difficulties in providing statistical data from some municipalities, which has affected the report not to be complete due to the lack of concrete data related to the rapplications for issuance of construction permits, applications for certificates of use and the number of permits and certificates issued.

From the meetings held with the representatives of the Association of Municipalities, the working group has come to the conclusion that there are certain obstacles related to the implementation of the law, including but not limited to: the lack of issuance of the building code, the determination of the diameter of fifty (50) meters in areas where there are no detailed regulatory plans, lack of human resources.

Consequently, the report contains general and specific recommendations for taking appropriate steps to improve the implementation of the law. More specifically, the report, inter alia, recommends the fundamental change of the law in order to regulate the substance and structure of the law.

I. INTRODUCTION

1.1. The Evaluation context

During field research and based on the large number of complaints received by municipalities and citizens, it was observed that the institutions responsible for the implementation of the law face serious difficulties in the legal but also the institutional and functional aspect. Also, taking into account that the Law on Spatial Planning is in the process of amendment, it is necessary to analyze the Law on Construction because there are two laws that should be treated jointly due to the correlation they have.

Based on this, MESPI has initiated the inclusion of this Ex-post evaluation in the programme for Ex-post evaluations for the year 2023.

Following this, there was established the working group for drafting the Ex-post Evaluation Report of the law. This, inter alia, given the extraordinary importance of the Law on Construction in determining the rules and procedures for obtainment of a construction permit and a certificate of occupancy.

1.2. Purpose and scope of the evaluation

The purpose of the report is to present the findings arising from the analysis of the data collected during the Ex-post evaluation process of the Law, paying special attention to:

- The results of the implementation of the Law and the identification of challenges and difficulties encountered during its implementation;
- Harmonization of the Law with the relevant horizontal legislation;
- Issuance of secondary legislation.

The ex-post evaluation of the law is considered a very necessary instrument to identify the level of implementation of the law, the challenges encountered in fulfilling the duties and responsibilities set by the law, as well as the potential measures with the purpose of ensuring and implementing it.

Regarding the scope of this evaluation, the working group has been defined in the “Evaluation of Implementation and Compliance” to identify the degree of implementation of the law as well as the level of its harmonization with EU standards and other legislation in force in the Republic of Kosovo.

In this regard, this evaluation report covers the Law entirely, i.e. all its provisions from its entry into force until to date.

II. DESCRIPTION OF THE LAW WHICH WILL BE EVALUATED AND THE APPLIED METHODOLOGY

2.1. Description of the law which will be evaluated

Article 1 of the Law, which is the object of this evaluation, stipulates that *“The purpose of the present law is to set forth the the legal framework governing the issuance of construction permits, the compliance with the construction permit requirements and the issuance of an occupancy certificate within the territory of the Republic of Kosovo”*.

In addition to Article 1, the purpose of the law can also be derived from Article 2, which stipulates that *“This law governs the construction of all construction facilities in Kosovo, design, construction, reconstruction, demolition, unless otherwise provided for by a separate law.”*

Further, the following provisions of the Law define the principles (Chapter II), types of construction, (Chapter III), construction (Chapter IV), construction documentation (Chapter V), construction permit (Chapter VI), construction site (Chapter VII), Certificate of occupancy (Chapter VIII), supervision (Chapter IX) and fines and penalties (Chapter X).

As mentioned above, this Ex-post evaluation report covers all provisions of the law, but focuses mainly on the most problematic issues of these provisions, such as building permits, certificates of occupancy, imposition of fines and others.

The law aims to ensure the regulation of the field of construction of all construction facilities in Kosovo, design, construction, reconstruction, inspective supervision and demolition unless otherwise provided for by a separate law.

Furthermore, there is no concept document approved regarding this law. Consequently, this Ex-Post evaluation report will not be able to analyze the correlation between the analysis of the policies that would be defined in a concept document and their reflection in this Ex-Post evaluation. This is, in fact, the first official and concrete document that highlights the challenges in the implementation of this law, and as such constitutes an important step in the beginning of the process of amending the Law as well as harmonizing other separate laws, as far as the field of construction is concerned.

A similar limitation can be found in relation to the practice of the Assembly regarding the exercise of its oversight function. According to Article 4.4 of the Constitution of the Republic of Kosovo, the government *“is responsible for implementation of laws and state policies and is subject to parliamentary control”*. The Regulation of the Rules and Procedure of the Assembly of Kosovo (2010) and the Manual on the Oversight Functions of the Parliamentary Committees (2012) regulate the oversight role of the Assembly and the authority of the committees in monitoring the implementation of laws. In particular, the Committees of the Assembly have the authority to monitor the effectiveness of the laws in force, their implementation and make recommendations for the measures that should be taken in concrete situations. In the last decade, the Assembly of Kosovo has adopted over 300 laws. In this period of time, he has developed the practice of overlooking the implementation of laws. However, after the information received from the Assembly of Kosovo, the functional Committee during the 6th and 7th legislatures, has begun to oversight the implementation of the Law No. 04/L-110 on Construction. However, the oversight

activity has not ended due to the end of the VI and VII legislatures and it was not possible to issue a report with recommendations.

2.2. Chain of results

Taking into the consideration the nature of this evaluation, the working group has come to the conclusion that the chain of results does not apply to this type of evaluation.

2.3. Methodology

The General Secretary at MESPI has established the working group for the drafting of this Ex-Post evaluation, which, as already mentioned above, was led by the Legal Department of the Ministry in co-chairmanship with the Department for Spatial Planning, Construction and Housing. In carrying out this report, the working group has collected data from two sources:

- **Primary sources:** legislation in force in the field of construction, spatial planning and other legislation in force in the field of environment and spatial planning;
- **Secondary sources:** reports and other documents from institutions dealing with the issuance of permits and certificates in the field of construction.

With regards to the primary sources, the working group has analyzed the relevant provisions of the law on construction in correlation with other legislation in force in the field of environment and space.

Within the framework of secondary sources, the working group has prepared a questionnaire consisting of a total of 5 questions, which has been sent to the municipalities for responses. In addition, the working group also conducted interviews with the following institutions: Ministry of Agriculture, Forestry and Rural Development, Ministry of Culture, Youth and Sports, Association of Municipalities of Kosovo, Association of Architects of Kosovo, UN Habitat, Civil Society “ProPlanning”, and the Builders’ Association. Thus, there has been made considerable effort by the working group to ensure that the meetings and interviews are as comprehensive as possible, through exploratory interviews, phone calls, e-mails, etc.

From the above-mentioned interviews and meetings, there have been identified the main challenges of the institutions in the implementation of the Law on Construction, specifically those related to the lack of issuance of the Construction Code and other sub-legal acts for the implementation of the law, as well as the lack of harmonization of the law on construction with other laws in force, in particular with the law on spatial planning.

Finally, given that the main challenges of the law on construction are related to its implementation and harmonization, the working group has been decided for the type of evaluation known as “Evaluation of Implementation and Compliance.”

Considering the limited time frame for conducting the evaluation, adequate consultation with all potentially competent actors, including supervisory and enforcement authorities, has been challenging.

Initially, there was prepared a list of contact points for consultation purposes, where the Ministry acted as a “facilitator” in the consultation process and at the same time assisted in completion of the list by identifying additional competent actors. Competent actors on the issue were also asked for additional references of other relevant actors, to enrich the existing list.

The said consultations included the categories of competent actors, as in the order presented below:

1. All relevant units of the Ministry of Environment, Spatial Planning and Infrastructure, focusing on topics related to the effects of the Law and sub-legal acts that affect their scope;
2. The Association of Kosovo Municipalities, with the aim of collecting facts and recommendations from the field on possible difficulties in the implementation of the Law and sub-legal acts derived from it. In this respect, there were also carried out separate consultations with some of the characteristic municipalities;
3. Line Ministries for the purpose of investigating possible problems that may be caused by the Law or by its special provisions in their scope;
4. Emergency Management Agency - EMA;
5. Civil society - some of their representatives, although they did not participate actively in the review process.

The following paragraphs provide a brief overview of the research and data collection tools used during this evaluation and their limitations.

2.4. Research from the office

The purpose of the research from the office was to provide background information including relevant legal analysis, to help that the information collected during the interviews be resources for all actors. The resources were identified and collected mainly by the Working Group and supplemented from time to time by other actors. All sources are referenced throughout the report. Whenever it was necessary and possible, the conclusions drawn from the research from the office have been confirmed with information collected through other means.

In addition to the analysis of laws, relevant legislation and their implementing legislation, research from the office has also covered expert reports prepared by previous local and international projects, such as:

2.4.1. Exploratory interviews

Exploratory interviews were conducted with the following institutions/officials:

Institution	Person in charge
Ministry of Agriculture, Forestry and Rural Development	Idriz Gashi - Head of the Agriculture Division
Ministry of Culture, Youth and Sports	Vjollca Aliu - Director of the Department for Cultural Heritage

Civil Society “ProPlanning”	Lumnije Gashi - Director of the Civil Society “ProPlanning”
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Through e-mail, the responsible persons of the Institutions, mentioned in the table above, were sent the questions:

1. How familiar are you with the construction legal framework?
2. What is your opinion about the law in terms of regulating issues in the construction sector?
3. What, in your opinion, are the main challenges in implementing the Law in practice?
4. What are the shortcomings of the law in terms of dealing with definitions, goals and objectives?
5. How do you see the operation of the construction sector at the two levels of governance?

Some of the surveyees have given their responses, which we have deposited in the archive created by the Working Group, the content of which has an impact on the final conclusion of the analysis.

III. EVALUATION RESULTS

1.1. Applicability

General information

From the process of this Ex-Post evaluation, it has resulted that the implementation of the Law has been accompanied by various challenges, starting from the unclear formulation of the provisions of the law, their harmonization with other laws in force, the lack of human and financial resources of competent institutions for law implementation.

1.1.1. Sub-legal acts and lack of the Unique Construction Code of the Republic of Kosovo

The evaluation shows that the provisions of the Law provide that the Ministry, the Government and the municipal authorities are responsible for issuing legal acts in accordance with the Law. According to article 38 paragraph 2 and 4 of the Law it is provided that *“The Ministry, at latest within three (3) months after entry into force of this Law, shall harmonize the Law on Spatial Planning and other relevant Laws with the provisions of this Law as well as The Ministry, in coordination with other ministries and the municipalities is obliged that within six (6) months from the day of entry into force of this Law to issue the necessary Administrative Instructions for the implementation of this Law.”*

In practice, out of (8) eight provisions that require the issuance of sub-legal acts by the Ministry and one (1) by the Government, eight (8) provisions have been implemented through the approval of sub-legal acts.

On the other hand, the obligations set forth in Article 6, paragraph 3 and Article 38, paragraph 3 remain unfulfilled, in which it is stated that The Ministry, in coordination with other ministries, municipalities, business community and other interested parties, shall issue the Unified Construction Code of the Republic of Kosovo in the spirit of EU technical standards and international best practices.

It is worth noting that the legal analysis for the assessment of the legal basis of the sub-legal acts issued by the ministers (approved at the 50th Meeting of the Government of the Republic of Kosovo) determines that;

- Administrative Instruction MESP- No. 02/18 on construction permits, demolition permits and administrative fees and infrastructure regulatory charges, was issued pursuant to articles 22, 23 and 38 of the Law No. 04/L-110 for Construction.

The recommendation is to remain in force until the establishment of a concrete legal basis by amending and supplementing the law.

This sub-legal act cannot be considered to have a clear legal basis since the provisions of this law on construction permits, demolition permits and administrative fees and infrastructure regulatory charges are left to the competence of the competent bodies (municipalities) in consultation with the ministry. Therefore, nowhere is it specified that the ministry will issue a sub-legal act on their determination, but the fees and taxes coordinated with the municipalities have determined that they will make them public on their pages. In this aspect, it is necessary to review the legal basis to precisely define the specific competencies and responsibilities of the central and local level regarding this matter.

Therefore, with this legal basis and the designation that this administrative instruction carries, in particular its purpose and scope, it has no clear legal basis. However, in order not to create a legal vacuum and not to create obstacles in the field of construction and demolition of buildings and tax payments in this field, it is recommended that the legal provisions be clarified as soon as possible, establishing the basis for the drafting of the Law on Construction.

During the EX-Post evaluation process of the Law 04/L-110 on Construction, it was established that issuing a unique construction code for the Republic of Kosovo is not necessary. It is sufficient to apply EU standards - EU codes. These standards and codes are intended to establish minimum requirements for the protection of public health, safety and general welfare through the necessary resistance of the structure of emergency spaces, balance and stability, sanitation, management of construction waste, adequate lighting and ventilation, measures for energy efficiency and saving, safety of life and property from fire and other risks attributable to the construction environment, as well as to create safety for firefighters and other responders in cases of emergencies.

1.1.2. Avoidance and prolongation of the procedures for reviewing applications for construction permit

The construction permits process is one of the most important processes. At the same time, this process is quite complex because it deals with areas that are closely related to spatial planning, citizens' safety and health, includes a number of institutions within the municipality, and outside it (in cases of consents and other permits) and its administration passes through several stages. In some cases, from the implementation in practice of the process of obtainment of a construction permit, the parties are conditioned by procedural actions, a large number of documentation and the frequency of applications to complete the file, affecting the increase of the administrative burden and cost for the parties.

Furthermore, due to the lack of human resources, the examination of applications for construction permits has been delayed. Consequently, the delays in considering the applications for construction permits has affected the delayed collection/postponement of financial revenues that originate from these services due to delays by the competent officials (the small number of officials and the large number of applications), in the provision of this service that is paid by the applicant (builder) for increasing the administrative burden and cost for the parties.

Competent municipal bodies (Directorate of Urbanism) for issuance of construction permits exceed the legal deadlines many times over the established deadline. In the reports of NAO (National Audit Office), the procedure for obtaining a construction permit can last up to 16 or 18 months.

There should be specified more clearly the legal provision that silence is approval, due to the negligence and overextension of deadlines for granting a construction permit.

1.1.3. Lack of interconnection of digital platforms

Analyzing the current procedures for granting construction permits both at the local and central level, it turns out that the management of the current permit system is not built on any digital platform. All aspects that directly or indirectly affect the process of granting permits function as systems disconnected from each other, not being connected to a single platform and communicating coherently. The systems identified during the analysis are as follows:

- *Municipal Intranet* – Application that works in all municipalities of Kosovo and mainly works for the processing of requests that are issued in the municipality such as certificates, and other services that are carried out through the municipal directorates. Most of these services are administered by the central level such as civil status, through AIS, property tax through MF, municipal cadastral offices through KCA, where services can be performed such as: issuance of property certificate, copy of plan and coordinates of cadastral units. All these services are now integrated in the platform ‘e-Kosova.’ With regards to the *Intranet module*, which is developed specifically for *construction permits*, in the municipalities that were visited, it is only used to register the cases where the case number is generated, but not to process them in all the steps. This system is not seen as appropriate because the module as such is designed for the conditions phase and the construction permit in an application and are not separated as “file” for separate processing. This is particularly challenging for all municipalities, considering the fact that even when they have Zoning Maps of the Municipality (“MZM”), they continue to issue construction conditions for each case, when there are applications for a construction permit.
- *Spatial Planning Application in Kosovo (SPAK)* serves as a tool to provide access to the Zoning Maps of the Municipalities and the Zoning Map of Kosovo. The initial idea of creating SPAK was for the application to serve MESPI to better coordinate the process of drafting MZM and to provide opportunities for real monitoring of these planning tools. Since the creation of SPAK, it has never been put into full operation or used by the municipalities.

- *Geoportal* is one of the most complete platforms in terms of data in spatial extension. In summary, 'Geoportal' is a 'web portal' which contains information in an integrated form from different sources. Depending on the sector, the 'Geoportal' contains well-structured information such as orthophotos, topographic maps, water maps, cadastral areas, and information on protected areas, which can be used more for planning issues.
- *Kosovo Cadastre and Land Information System - cadastral map (KCLIS-CM) - The copy of the plan is issued - the cadastral directorate.* This system contains graphic data on the parcel such as: parcel boundary, coordinates of boundary points and parcel number, information on a building and parts of the building (building size, building number, size coordinate, floor area). All changes that occur in KCLIS-CM are reflected within the day - as a rule, after 16:00 on the state geoportal.
- *Kosovo Cadastre and Land Information System (KCLIS) - certificate on rights in immovable property - cadastral directorate.* This system presents textual information about cadastral units: parcel, building, parts of the building and the rights over them. Also, data on the owner, user, lease holder, etc. are presented. In this system, there are recorded all the data on a cadastral unit, such as: mortgages, court notices, security measures, tax burden, rent holding, etc.
- *Unified address system (ARIS)* - is related to the urbanism directorate, the data is stored in the Cadastral Agency.
- *Database of the Kosovo Agency of Statistics (KAS)* provides quality statistical information to the government institutions, communities and academic research institutions, the international community, the business community, civil society and the general public. Consequently, the limitations arising from MZM that are related to socio-economic statistics can be confirmed based on the regular updating of data in KAS.

1.1.4. Lack of provision of a "single counter" service by the municipalities and the MESPI

In public administration, with the purpose of to facilitating the process of receiving public services for citizens, institutions have developed the concept of providing services in a single office (one-stop-shop). This principle also constitutes a legal obligation since the same is expressly defined by article 4. subparagraph 1.5 of the Law No. 04/L-110 on Construction, Article 33 of the Law No. 05/L-031 on General Administrative Procedure, in Article 16 of the Law No. 04/L-202 on the System of Permits and Licenses, as well as in Article 26 of the Administrative Instruction MESP No. 06/2017 on Setting Procedures for Submission and Review Of Applications For Terms Of Constructions, Construction Permits And Demolition Permits for Category I and II of Constructions. However, in practice, most municipalities in Kosovo do not offer this service, that is, through a single office, in the process of applying for a construction permit.

Usually, the use of public services in most cases is conditioned by a number of documents that citizens are obliged to obtain from different institutions, in different locations. In many cases, different documents that a citizen or a business is required to present as a condition for receiving a service from a municipality are issued by the same institution, but through different bodies

(offices) of that municipality. In the case of application for a building permit, the municipality is responsible for issuing documentation such as: property certificate, copy of the plan, information on the development plan, zoning map, etc. However, usually due to the organization and division of work in the municipality, these services are offered in different offices, and often those offices are located in different locations. In some cases, some documentation, such as “consents for connection to the infrastructure” are issued by institutions outside the municipality. The service concept “in a single office” reduces the administrative burden on citizens and businesses, enabling citizens to receive certain services in a single office or through a single point of contact. Consequently, if a citizen applies for a building permit for a house, he would be able to obtain a property certificate in the same place where he applies for a building permit.

Even in those cases where municipalities have established a ‘one single counter’ service, such as the Municipality of Prizren, this service is not fully provided in the case of applications for building permits. In the Municipality of Prizren, citizens must be provided with the consents for connecting to the separate infrastructure at KEDS, the water supply company, the post company and other companies.

Similarly to the category I and II of construction, also to the category III of construction which falls under the competence of MESPI to review and approve applications, the Administrative Instruction No. 01/2019 for Determining Procedures for Preparing and Representing Requirements for Construction Conditions, Construction Permits and Demolition Permit for III Category of Construction has determined the authorization of MESPI to establish “one-stop-shop” service offices.

However, MESPI has not established this office, and applicants receive services from responsible officials at MESPI. Due to the complexity of constructions in this category, the requirements for documentation, consents or permits are more numerous than in category I and II constructions. Therefore, the lack of a “single office/counter” requires the parties to obtain the services for obtaining these documents, consents and permits by themselves and in several institutions.

1.1.4. Lack of harmonization of the Law with the other laws in force

The law is quite *outdated* in terms of the issues covered and it needs harmonization with other laws from the field of environment, planning and construction as well as other general laws such as that of the general administrative procedure, law on minor offences, law on enforcement procedure, etc. The evaluation results show that, although the Law is still relevant for the area it covers, it has not been fully effective or only partially effective in achieving its objectives. One of the main issues affecting the effectiveness of a law is the lack of coherence with the existing legal framework. Defects in harmonization with other laws, which already had an impact on this Law at the time of its entry into force, but which gradually expanded after the development and expansion of the legal framework of Kosovo over the years, has produced duplications in the regulation of this field. This duplication has in some cases resulted in conflicting rules governing the same issue.

Ambiguity and lack of clarity on a number of provisions of the Law is another cause for concern. Another important limitation, besides the lack of harmonization and clarity of the provisions, is the approach to defining the scope of the Law and defining general principles, which are not necessarily in line with the best practices in the field. The definitions also need improvement, and it is necessary to make the functional correlation of the central inspectorate with the relevant inspectorates at the local level.

1.1.5. Lack of human and financial resources of competent institutions for implementation of the law

It is estimated that the number of responsible officials who issue construction permits, inspectors and other officials is very small. Even the current officials who administer the issuance of construction permits do not have this responsibility described in their duties and responsibilities defined by the acts of appointment. At the same time, it is estimated that there is a lack of mandatory training for these officials, since the trainings in the Continuous Training Programme are currently voluntary, as well as a programme of study visits abroad in order to gain experience from the experiences of other countries.

1.1.6. Lack of sufficient capacity in oversight of law implementation

Inspective supervision has not been able to fulfill the legal requirements due to the small number of inspectors at the central and local level.

The establishment of new supervision structures both at the local and central level, the continuation of supervision which is carried out in accordance with the previous procedures is not enough for the full implementation of the Law, therefore, there is a constant need to advance and improve the procedures in addition to requests.

1.2. IMPORTANCE

From this Ex-Post evaluation, it results that the provisions of the Law are important to ensure the legal framework that regulates the field of construction, namely, obtaining construction permits and occupancy certificates, in accordance with the criteria and procedures defined by law. However, the law has not been fully effective in achieving its objectives, therefore it follows that some of its provisions must undergo significant amendments to remove not only duplications and contradictions, but also to eliminate ambiguities and conflicts, in particular in relation with the Law No. 04/L-174 on Spatial Planning, and the Law No. 05/L-087 on Minor Offences. In addition, its provisions should be harmonized with European best practices and at the same time be expanded to include issues that are currently not properly regulated.

1.3. HARMONIZATION

1.3.1. Harmonization with international standards

The law is not subject to regulation with EU Acquis, therefore it is not analyzed from this point of view.

1.3.2. Lack of coherence of the law

Internal coherence

The evaluation findings show that some provisions affect the internal coherence of the Law itself. These include but are not limited to:

- **Article 1 Purpose and Article 2 Scope** - should be reformulated and clearly specified because currently the purpose, in addition to being defined in Article 1, is also regulated in Article 2, which in fact should regulate the scope of the law.
- **Article 3 Definitions** - point 1.25 should be reformulated, the Construction Code should be removed and replaced with EU standards - EU codes. This should also be reflected in Article 6 of the law which regulates the Unique Construction Code.
- **Article 5 Types of Construction and Article 14 Types for which a construction permit is issued** - have no coherence between themselves, namely there is an ambiguity between Article 5 and 14 regarding types of construction and types for which construction permits are issued.
- **Article 7 Participants in construction** - the provision should be reformulated in this form: *“Participants in construction are the investor, the holder of the construction permit, the designer, the contractor, the supervising engineers and the revizor.”*
- **Article 9 Legal remedies and prevention of conflict of interest** - paragraph 1 should be reformulated as follows: *“1. Against the decision of the administrative body of the first instance, the party has the right to file an appeal in accordance with the Law on General Administrative Procedure in the second instance body in the Municipal Commission for permits of the first and the second category, in the commission in the ministry for permits of the third category and open an administrative conflict in accordance with the Law on Administrative Conflict.”*
- **Article 10 Construction documents** - should be reformulated as follows:
 - “1. Construction documentation shall contain written, graphic, pictorial documents, prepared or assembled, with the purpose of description the design, location, and physical characteristics of the project elements, necessary to obtain the construction permit.*
 - 2. The construction documentation, shall, at least, contain:*
 - 2.1 Copy of the plan and certificate of ownership*
 - 2.2 Consent for Environmental Impact Assessment (if required according to the Law on Environmental Protection and the sub-legal acts in force)*
 - 2.3 Fire Protection Consent (if required by the applicable Law)*
 - 2.4 The legal administrative act that establishes the construction conditions, if required*
 - 2.5 Notarized copies of diplomas and licenses of the professionals who designed and supervised the project*

2.6 Main Project

2.7 Also other consents if required."

- **Article 14 Types for which a construction permit is issued** - should be reformulated, adding a paragraph, as follows *"1.6 Temporary facilities are regulated by a sub-legal act by the Ministry."*
- **Article 16 Constructions for which a construction permit is not required** - should be reformulated as follows *"Construction facilities for which a construction permit is not required must be equipped with the consent of the competent body, which is determined by a sub-legal act by the Ministry in cooperation with the Municipalities."*
- **Article 17 General procedure for issuing construction permits** - prolonged delay for issuance of construction permits is a violation of citizens' rights. Legal deadlines are not respected, they can even last up to one (1) year, in many cases even more.
- **Article 18 Establishment of the Terms of Construction** - the requirement regarding the diameter of 50 meters should be changed for areas where there are no detailed regulatory plans. This possibility should exist only for specific cases when, due to the non-existence of a detailed regulatory plan, the realization of any project of national importance is jeopardized or made impossible. In these cases, it should be possible for the investor to obtain the construction permit and implement the project based on the diameter of 50 meters.
- **Article 19 Competences for Issuance of Construction Permits** - paragraph 1 should be reformulated. *Competences for issuance of construction permits 1. The Ministry shall have the competence to issue permits for category III constructions, according to Annex No. 1 of this law. Whereas item 1.9 of Annex I, where the ministry grants permits in protected areas outside rural settlements, should be harmonized with other laws in force.*
- **Article 21 Procedure for Issuing a Construction Permit** - there should be added a new paragraph with the following content *"paragraph 8. Construction may not begin without obtaining a construction permit."*
- **Article 22 - Construction Permit Administrative Fee** - this article which regulates the administrative fee for construction permits which are included in Chapter VI, but does not foresee the creation of the legal basis by which the ministry is obliged to issue an administrative act that covers this issue.
- **Article 26 - Documents in Construction Site** - it should be reformulated as follows:
"1. The contractor at the construction site must at all times be equipped with the following documents:
 - 1.1 The contract between the construction permit holder and the investor*
 - 1.2 Contract of supervising engineers,*
 - 1.3 Contract of construction phase engineers,*

1.4 Construction phase protocols approved by the competent engineers at the construction site.”

1.5 The main project Approved by the competent body

- **Article 27 Occupancy Certificate** - should be reformulated, in order to add paragraph 4, with the following content:
“4. The facility may not be used without being provided with the occupancy certificate.”
- **Article 28 Requirements for Issuing the Occupancy Certificate** - should be reformulated as follows:
“1. An occupancy certificate shall be issued by the competent body.:
2. To an application for an occupancy certificate shall be attached the following:
1. geodetic recording of the object and external arrangement - the realized state; approved protocols for all construction phases;
1.1. material assets and test results
1.2. The final report of the realization of the construction works during the construction supervision, whereby it is taken over that the works have been fully completed according to the project in accordance with the construction permit;
1.3. Photo of the realized facility
Final inspection.”
- **Article 29 - Inspective Supervision:** to be reformulated as follows: “The function of inspective supervision by this law and the sub-legal acts for the third category facilities shall be performed by the construction inspector of the ministry, in accordance with the relevant Law on Inspections and other legislation in force in the field of construction and planning.”
For the facilities of the first and the second category, the inspective supervision shall be carried out by the construction inspector of the municipality.
- **Article 31 Inspection at Completion of Construction Phases** - it should be amended and supplemented, as follows, removing the provision for the construction inspector to draft and sign the protocol on the construction phase because it has not find implementation. “The inspector will carry out regular inspective supervision, in the realization of all obligations by the investor and the engineers of the construction phases.”
- **Article 34 Demolition** - regulates the demolition of construction facilities, but there is missing the mechanism which gives authority to the institution on how to act if the holder of the construction permit does not act according to the order of the inspector during the inspection. Also, paragraph 1 and 5 of Article 34 leave room for misuse during inspections. Also, the article should be supplemented by adding a new paragraph 6 with the following content: “6. Buildings started without building permits and parts of buildings that were built in excess of building permits shall be demolished. All demolition costs are borne by the investor. Demolition procedures should be defined by a sub-legal act which clearly defines the procedures for the demolition of buildings without permission.”

Articles 35 Minor offences from the owner, 36 Minor offences from the competent bodies and 37 Limitations of legal force - there should be reformulated the punitive provisions, in

order to harmonize them with the law on minor offences and the law on general administrative procedure. Likewise, the costs of the demolition of buildings without permission must be harmonized with the Law on Administrative Procedure, Minor Offences and the Law on Enforcement Procedures. In Article 36, there should be added *“According to the Criminal Code of Kosovo - Chapter XXXIII - Official corruption and criminal offenses against official duty (414, 417-419, 421, 422, 424, 428)”*.

- **Article 38 Transitional and final provisions** - there is no drafting of provisions in compliance with the drafting standards of legal acts.
- There should be added a separate article for temporary buildings
- There should be added a separate article on energy efficiency measures in buildings
- There should be added a separate article the access of persons with disabilities ⁶.

External coherence

The evaluation results show that during the drafting of the law, it was not harmonized with the existing legislation in the relevant fields. In addition, even after its adoption, the law has not been harmonized with subsequent laws or with amendments in the laws in force in the field of construction and planning. Specifically with:

- **Law No. 04/L-174 on Spatial Planning** - there is no harmonization of provisions related to construction conditions, constructions within special areas and areas where there are no detailed regulatory plans, (Article 19 paragraph 1 and Annex 1 paragraph 1 point 1.9).
- **Law No. 02/L-26 on Agricultural Land** - Article 11 does not apply - Changing the destination of agricultural land, specifically provisions 11.5, 6, 8 and 9. Construction permits are issued without Urban Planning Consent and the change of destination of the land is done beyond the legal deadline.
- **Law No.06/L-06 on Amending and Supplementing the Law No. 03/L-12 on Roads** - it is violated article 26, paragraph 26.2 by issuing permits within the distances defined by this article. This is also a consequence of the inconsistency of the spatial planning documents and the provisions of this law.
- **Law No. 02/L-88 on Inheritance** - this law is not also compliant with other general laws which have entered into force later.

⁶ REPORT OF THE OMBUDSPERSON Ex officio no. 648/2021 regarding access to sidewalks, public spaces and the free movement of citizens as well as respecting the right to a safe and healthy living environment

- **Law No. 05/L -031 on General Administrative Procedure** - articles 2 and 3 set out the rules of what is considered an administrative procedure, while article 131 of the Law contains a very generalized provision regarding the superior body as the second instance in the procedure for reviewing appeals, which should actually be a body within the municipalities for the first and the second category and a commission within the ministry for the third category facilities.
- **Law No. 05/L-101 on Energy Performance of Buildings** - provisions of this law define the minimum requirements for energy performance, but because this law was issued after the law on construction and Kosovo does not have a construction code, it could not be harmonized according to the requirements.
- **Law No. 05/L-087 on Minor Offences** - Article 7 paragraph 1 provides that minor offences and sanctions for minor offences can be determined by law and by acts (municipal regulations) of the Municipal Assembly, while the Law on Construction in Article 25 provides that the Government by a sub-legal act determines regulation and supervision, punishments and taking measures to any form of violation of this law. Consequently, after analyzing the Law, the working group found that the latter contains a chapter on sanctions, but it did not define the acts that constitute minor offences, nor did it define the sanctions for minor offences.
- **Law No. 04/L-175 on the Inspectorate of Environment, Waters, Nature, Spatial Planning and Construction** - There should be harmonized the provisions related to the tasks of the construction inspectorate, Article 4, the construction inspectorate exercises inspective supervision and control through the construction inspection in the implementation of this law and the laws related to the field of construction.
- **Law No. 03/L-233 on Nature Protection** - articles from 159 to 163 should be harmonized and specified precisely in the spirit of the two laws.

1.4. Efficacy

Considering the scope and type of this ex-post evaluation, the working group has come to the conclusion that this part does not apply to this evaluation.

1.5. Suitability

In general, the law can still be considered a relevant means of regulating the field of construction. However, it must undergo an extensive revising process.

Such a law is necessary to regulate the field of construction, but due to its specific nature and broad scope, analyzing why certain objectives are not being implemented, although the conditions and criteria cannot be said to be so vague as not to have implementation up to this level.

A relevant objective remains to ensure an administrative regulatory framework with the purpose of further advancement of the field of construction, such as the removal of the Construction Code, which has never been able to be drafted, and the adaptation of EU standards - EU codes - as most EU countries have.

In addition, the working group has assessed that this law is quite outdated in terms of the issues covered and needs harmonization with other laws from the field of environment, planning and energy efficiency as well as other general laws such as the law on general administrative procedure, the law on minor offences.

IV. CONCLUSIONS AND RECOMMENDATIONS

4.1. CONCLUSIONS

After analyzing and evaluating the Law, other legislation, based on the findings obtained through meetings, interviews, questionnaires and other information, it appears that this field must be reformed and advanced. These findings show that in addition to legal conflicts, there are also challenges in the exercise of powers according to the provisions of this Law with special emphasis in the field of supervision and inspection.

A. Conclusions on applicability

Although it is considered that the law is still important to regulate the field of construction, it needs a substantial revision. More specifically, from the findings above, we conclude that the law is characterized by these shortcomings:

- Incomplete implementation;
- The need to determine the responsibilities of the central and local power regarding the granting of construction permits for protected areas;
- Lack of issuance of the Unique Construction Code of the Republic of Kosovo;
- Avoiding and delaying the procedures for reviewing applications for construction permits;
- Lack of provision of a “single counter” for handling requests for construction permits and occupancy certificates;
- Lack of interconnection of digital platforms;
- Lack of human and financial resources of competent institutions for implementation of the law.

B. Conclusions on importance

The current state of regulation in the field of construction and elimination of judicial gaps and legal collision needs major improvements as well as the harmonization with other laws from the field of environment, planning and energy efficiency based on the best practices of the EU from the field of construction.

C. Conclusions on harmonization

Although the Law on Construction is not subject to regulation with the EU Acquis, however, it is estimated that there is room for harmonizing the Law with other laws in force because there is a lack of harmonization between the Law and horizontal legislation, which has resulted in a number of duplications and sometimes even contradictions among the laws, which affect its practical implementation.

Therefore, the Law on Construction has inconsistencies with the laws mentioned in the assessment results section, under the harmonization section and in the recommendations section.

4.2. RECOMMENDATIONS

A. Recommendations for applicability

A1. Recommendations for building professional capacities through training:

Since the analysis of the situation shows that there is a sufficient lack of knowledge on how to approach the field of construction, it is recommended to organize continuous and mandatory training for all subjects of law implementation at the central and local level, especially in the review of applications for construction permits and certificates of occupancy. Likewise, it is recommended to find ways to encourage construction inspectors, engineers and architects to perform regular inspective supervision to follow advanced training in all phases of construction.

A2. Recommendations for avoiding and delaying procedures

Avoiding and delaying the procedures for reviewing applications for construction permits discourages citizens from filing complaints or lawsuits for administrative silence, since it creates financial costs for them. In this regard, it is recommended to undertake all necessary measures, including the increase of human resources, in order to speed up the procedures for reviewing citizens' applications.

A3. Recommendations for strengthening with budget and human resources the mechanisms that deal with the field of construction

Considering the approach followed in the evaluation of the law, it is recommended to improve the quality of the law and the legal framework that regulates the field of construction. Also, taking into account the large number of identified challenges, a substantial change of the Law is recommended since its objectives cannot be achieved with a modest change in the Law.

Such changes, which can significantly change the substance and structure of the law, can only be presented by defining a new approach in the field of construction, drafting a new law.

B. Recommendations for importance

Since the law is important for the regulation of this field, it is recommended its fundamental change.

It is recommended that the drafting of the new law on construction be done in parallel with the drafting of the new law on spatial planning.

C. Recommendations for harmonization

Based on the findings reflected above, it is recommended to harmonize the Law with the following laws:

- Law No. 04/L-174 on Spatial Planning;
- Law No. 02/L-26 on Agricultural Land;
- Law No. 02/L-88 on Inheritance;
- Law No. 05/L -031 on General Administrative Procedure;
- Law No. 05/L-101 on Energy Performance of Buildings;
- Law No. 05/L-087 on Minor Offences;
- Law No. 03/L-233 on Nature Protection;
- Law No. 04/L-175 on the Inspectorate of Environment, Waters, Nature, Spatial Planning and Construction.

ANNEXES

Part of this manual are the following annexes:

Annex 1 - Applications for Construction Permits at the local level; and

Annex 2 - Applications for Construction Permits at the central level.

ANNEX 1 - APPLICATIONS FOR CONSTRUCTION PERMITS AT THE LOCAL LEVEL

Below are reflected the data realized over years about the construction at the local level

Applications for construction permit		Approved	Rejected	Certificate of occupancy	Comment
Zone III of the National Park "Sharri" (2017-2022)	90	83	3	10	Applications for a certificate of occupancy for the constructed facilities is small compared to the permits issued.
Applications for Construction Permits for facilities of category III (2014-2022)	47	44	2	12	

Annex 2 - Applications for Construction Permits at the central level

Below are reflected the data realized over years about the construction at the central level

Municipality	Applications for Construction Permits Period 2014-2023	Approved	Rejected	Applications for Certificate of Occupancy Period 2014-2023	Approved	Rejected	Applications for Temporary Permits	Approved	Rejected
Prishtinë									
Obiliq	562	420	141	53	53	0	7	7	0
Drenas	248	277	7	3	3	0	0	0	0
Shtime	154	150	4	17	17	0	0	0	0
Hani i Elezit	99	99	0	6	6	0	0	0	0
Prizren									
Mitrovica e Jugut									
Deçan									
Gjakovë									
Rahovec									
Skënderaj									
Kaçanik									
Dragash									
Klinë									
Gjilan									
Fushë Kosove	396	378	19	136	132	5	0	0	0
Vushtrri	500	400	40	40	35	5	50	30	20
Pejë									

Podujevë									
Junik	27	26	1	1	0	0	0	0	0
Kamenicë	393	319	66	5	5	0	8	0	0
Istog									
Malishevë	247	246	0	4	4	0	0	0	0
Lipjan									
Suharekë	244	209	35	4	4	0	0	0	0
Ferizaj									
Viti									
Mamushë	11	5	6	1	0	0	0	0	0
Zveçan									
Leposavic									
Gracanicë	543	482	43	321	316	5	0	0	0
Ranillug									
Partesh									
Kllokot									
Zubin Potok									
Shtërpcë									
Mitrovicë e Veriut									
Novobërdë									