

The Role of Competent Bodies for the Settlement of Business Conflicts in the Republic of Kosovo

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— *Review of* —
**Integrative
Business &
Economics**
— *Research* —

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ABSTRACT

Conflict is a complex situation resulting from differences of opinion and a wide variety of different phenomena, such as previous living conditions, emotions, perceptions and behaviors. Conflict can appear at any second of our lives from various causes. There may be a variety of causes, like social, psychological, economic, family, the educational level or cultural background of the people around us and depending on the situation we are in, as well as the goals of the people employed in the business organization. The person who is always in the context of the conflict is always associated with the effects of the conflicts. From the perspective of a business organization, events stemming from the problems of working together can be defined, and it prevents employees from doing the things they need to do to accomplish predefined tasks and plans. Conflict can also arise because employees' benefits do not match their ambitions in the business organization. Thus, conflict is a complex situation stemming from differences of opinion. During the analysis of enterprises in Kosovo (2016), 10% of them were established in the last three years. This shows that the trend of new startups remains more or less the same. Kosovo businesses are mainly concentrated in Prishtina, Ferizaj, Prizren, Gjilan and Peja.

Keywords: private sector, business conflicts, conflict resolution in business, Kosovo.

1. INTRODUCTION

The development of a country is closely linked to the economic development of the private sector. In Kosovo it is still very challenging to do business. Kosovo is slowly moving to the World Bank list for ease of doing business. There are still many major corruption issues and political implications that need to be overcome, but Kosovo is nevertheless achieving its goal and one major thing is that it is focused on the country's economic needs. Kosovo continues to have higher economic growth than the average in the Western Balkans region. According to the World Bank, Kosovo is expected to have stable economic growth over the next three years, with 3.9% for 2017, 4.2% for 2018 and projected to be 4.4% in 2019 [12, P.8].

2. THE NATURE OF CONFLICT IN BUSINESS ORGANIZATIONS

Conflict is a complex situation arising from differences of opinion, a wide variety of different phenomena, such as: previous living conditions, emotions, perceptions and behaviors of employees in businesses. Conflict may arise in every second of our lives for various reasons. There may be social, psychological, economic, family, educational level, or cultural

backgrounds of the people around us that make us think of different specialties and characteristics, depending on the situation in which we are in, such as the intentions of the people employed in business organization. *So, the conflict means the difference between opinions and views.*

The person who is always in the context of the conflict is always associated with the effects of the conflicts [4, P.12]. Consequently, conflict in its broadest sense represents shortcomings and disputes based on the logical statement and resources, or positions and changes, value judgments resist in each case, reciprocal movements, and negative conflicts.

From the perspective of a business organization it can be defined events arising from the problems of working together and prevent employees to do things that have to accomplish for the implementation of the tasks and plans set out in advance.

Conflict may arise not only from members of thinking differently, but also because their benefits do not match the ambitions of individuals in the organization. This situation affects the studies done by employees of the organization and its productivity.

Conflicts are events arising from the individual's physiological and socio-psychological state. Conflict is a complex situation arising from differences of opinion.

3. THE ROLE OF MODERN TECHNOLOGY AND TODAY MANAGER

The rapid development of modern technology determines the value of a physical resource and what actually its reserves are. The value of resources and the possibility of providing them are fully controlled by technology, and that technology thus determines the value and price of each product and service. Technology can turn a waste into an invaluable resource. Therefore, today's manager, in the modern world, where things are changing fast, where change is conceived as a way of life and as a necessity, when using advanced technology, human resources are the most valuable asset (i.e. manager) of the organization (starting from the client who is the king of business, to whom the employees serve, supported by team leaders and top managers).

Management is mostly about people's activities and coordinating their actions within existing financial conditions and materials (technical and technological) that change over time.

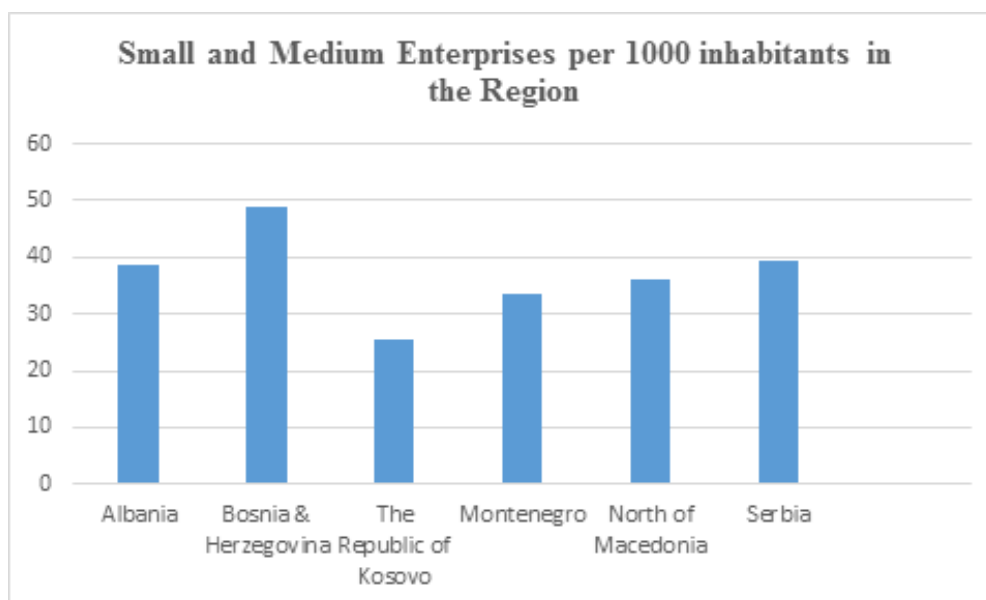
An Albanian speaking manager needs to have proficiency of English language and some of the region's languages. Knowledge about different cultures is of particular importance to international businesses [21, P.2].

4. PRIVATE SECTOR IN THE REPUBLIC OF KOSOVO

The vast majority of SMEs (Small and Medium Enterprises) are micro and small enterprises. The entry into force of the Stabilization and Association Agreement (SAA) in 2016 is assumed to increase the productivity of Kosovar enterprises and will positively affect the economic growth of the Republic of Kosovo, but the results remain to be seen. During the analysis of enterprises (year 2016), 10% of them were established in the last three years. This shows that the trend of new startups remains more or less the same. If we compare the number of SME-s (Small and Medium Enterprises) in the Republic of Kosovo and in the region we see

that the number of SME-s (Small and Medium Enterprises) per 1000 inhabitants in Kosovo is lower than in other countries of the region (Tab.1).

Table. 1. Small and Medium Enterprises per 1000 inhabitants in the Region (Source: https://www.riinvestinstitute.org/uploads/files/2017/May/19/Klima_e_Biznesit1495199071.pdf, p. 11.)



5. BUSINESS CLIMATE IN THE REPUBLIC OF KOSOVO

Kosovo and Albania continue to have the lowest average salary among countries in the region. In Kosovo, the average salary is considered to be higher in the public sector and this has caused the private sector to be undesirable employer among Kosovars. Moreover, often unfavorable working conditions, breach of employment contracts and overtime work contribute that the private sector to be qualified as an unsafe workplace. The majority (81%) of enterprises in the Republic of Kosovo are led by the owner. In about 8% of them, directors or managers have the role of enterprise leader, while 11% of enterprises are jointly led by the owner and director or manager.

6. MANAGERIAL CONFLICT RESOLUTION IN THE REPUBLIC OF KOSOVO

Businesses in Kosovo, due to their size structure, mostly do not have boards. According to Riinvest Institute (2016) data, over 90% of enterprises stated that they operate without a board, while only 8% have boards. These last ones are mostly medium and large enterprises operating as joint stock companies.

Most of the enterprises in Kosovo are locally owned [22, P.5] where 89% of businesses are completely local, 6% foreign owned while the remaining mixed capital. Being part of any business association or association of entrepreneurs does not play a role for owners and managers of Kosovo enterprises. Over 80% of enterprises are not members of any association or organization.

Membership in various organizations or associations has systematically declined over the past 10 years, largely as a result of the dominance of micro and small enterprises that do not see any benefit from membership in these organizations, mainly due to the low trust they have in them. Kosovar production companies lack significant trust in organizations or associations that advocate for improving the performance of Kosovo businesses.

In 2016, 84% of registered enterprises are individual businesses [23, P.147-148]. However, compared to previous years there is a change in the structure of businesses regarding their legal status. On the one hand there is a decrease in the share of individual businesses 90% that were in 2013, while on the other hand the share of Partnerships and Limited Liability Companies (LLC) [24, P.1] has increased.

The number of joint stock companies still remains small in Kosovo; only 0.5% of the total numbers of businesses in Kosovo in 2016 are such.

7. POLITICAL IMPACT IN KOSOVO OF DOING BUSINESS

Despite the many challenges that the private sector in Kosovo is constantly faced with, recent years we have noted an improvement in the business climate in the country. According to Doing Business Report of the World Bank in 2018, Kosovo is ranked 40th [25, P.1] out of a total of 190 economies. However, despite this progress, according to this report, all neighboring countries are ranked higher; thus, they have a more favorable business environment. For instance, Albania is ranked two positions higher than Kosovo, while Serbia, Montenegro and North Macedonia are ranked 47, 51 and 10 respectively. This small progress is mainly attributed to the facilitation of various administrative procedures related to businesses such as procedures for business registration, access to the electricity grid, property registration, etc.

The not-so-favorable environment can be a burden for businesses since a small number of active businesses (about one-third) in Kosovo have had a decline in sales in 2016 compared to the previous year [13, P.22].

8. THE JUDICIAL SYSTEM IN KOSOVO FOR PREVENTING CONFLICT OF INTEREST IN EXERCISING PUBLIC FUNCTIONS

Pursuant to Chapter 9.1.26 item (a) of the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation no. 2001/9 dated 15 May 2001,) and for the Purpose of Regulating Public and Conflicts of Interest of Public Officials, Adopts this: Law on Prevention of Conflict of Interest in Exercising Public Function.

Article 1

Aim

The purpose of this law is to prevent the conflict between the public interest and the official's private interest in exercising public function.

Article 2

Object

The object of this law is to determine the rules, subjects, responsibilities and powers for identifying, treating and resolving cases of conflict of public interest and the private interest of the official while exercising public function.

Article 3

Scope of the law

The provisions of this law establish mandatory rules to be applied by any official when she/he directly or indirectly participates in a decision-making process while exercising public office. UNITED NATIONS United Nations Interim Administration Mission in Kosovo UNMIK NATIONS UNIES Mission d'Administration Intérimaire des Nations Unies au Kosovo 2.

Article 7

Conflict of interest

Conflict of interest is the state of disagreement between an official's public duty and the private interest of an official when, in the exercise of her/his function, the official or related person has a private, non-material, direct or indirect private interest, affecting, or may affect, the proper performance of public function, when found in situations of potential breach of the principles, restrictions and prohibitions or obligations under the provisions of this Law-Nr.02/L-133.

8.1. Optimal and creative conflict resolution in Kosovo businesses - mediation

Mediation is a process in which the third party (the mediator) assists the parties in an effort to reach an acceptable bilateral conflict resolution [26, P.2]. The mediator uses a variety of skills and techniques to assist the parties in reaching an agreement.

The mediator has no power to make a decision because the parties make the decisions themselves. Because the agreement is negotiable, it can often be more creative than a court-imposed judgment, having a higher probability of a settlement where both parties win. More and more people are intended to avoid the courts, as one costly way to resolve various conflicts. The role of the mediator is becoming more actual.

Recent trends show that modern societies are expanding the range of dispute resolution, in order to avoid trial process due to higher economic costs and time, not to mention the other effects. For this, mediation is seen as a good alternative to conflict resolution whether it be commercial or even civil.

With extensive experience in the field of economics and public administration, mediators need to be flexible, adaptable, and creative. So mediation is the right choice and solution. It is also in line with European Union principles, which they consider a good alternative to conflict resolution.

What requirements must be met to be a mediator, what role does s/he have?

Not everyone can be a mediator. Licensed mediators are registered as natural or legal persons in the competent and tax authorities in accordance with the laws in force [27, P.1-9]. Subsequently, they are registered in the register of mediators.

The mediator exercises his/her profession impartially, honestly and professionally, respects the rules of professional ethics and uses all lawful means for the fair resolution of disputes. The mediator preserves the confidentiality of the data, i.e., therefore it preserves professional secrecy, etc. It does not provide legal advice. We can say that the mediator simplifies the process and in no way affects the will of the parties to the conflict.

The mediator uses a variety of skills, even technical ones, to assist the parties in reaching an agreement.

Why mediation is advisable? What are the advantages compared to a trial process?

Before going to court for conflict resolution, no one loses anything if they try to resolve the issue through mediation as an alternative. Avoiding the trial process means avoidance of the economic costs and loss of time several years.

What makes a mediator successful?

A mediator becomes useful and successful for society thanks to: communication skills; when s/he shows no interest about the outcome and is not a decision maker; when s/he has in-depth knowledge and is trained; when it is formally accepted by the parties; when is viewed as impartial; when it follows a formal mediation process and has a relatively limited role and when its authority and value come from professionalism.

The future of mediation is a certain way, because both in terms of the macro as well as micro, we have: rapid resolution of conflicts/disputes between two parties. This is an indispensable process for businesses in the transitional period, in this market economy where there is no lack of unfair competition and where contract disputes are resolved in national and international field. The main advantages are: much lower cost; more time it is gained and change of interaction structure.

As a conclusion, it can be said that mediation allows an agreement to be reached between the two parties who remain satisfied, having won both. This does not happen in the case of a trial process, where with the decision, only one party is winning.

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9. CONCLUSIONS

The conflict resolution authority is the manager. The main task of the manager is to enable workers to work in harmony around shared values. By examining parties in the conflict, subject of the conflict, sources and reasons for the conflict, the manager determines the most appropriate method for resolving the conflict, and puts it into practice. Sometimes more than

one method can be put into practice, or one manner. Finding the fastest, most effective and correct solution is managerial ability of the manager.

In approaching the decision of a third party (arbitrator), if the parties cannot reach an agreement with each other, the decision of the third party that has the assurance of both parties must be involved and make a decision. It must be guaranteed that this third party will be objective about the decision it will make and the parties will be in compliance with this decision that he/she makes. In this case the manager must support all parties in long-term.

The best way to resolve the conflict seems to be to call for mediation, the parties in the presence of a mediator, a third, impartial and neutral specialist, in an effort to clarify the underlying causes of the conflict in order to reach a solution. This is a method where no one loses, everyone gains benefit, because besides that the conflict is resolved by the partners themselves, its causes are found, so in the future can be avoided and communication is restored between the parties.

The mediator neither delivers nor decides who is right or wrong, she/he only restores through the way used in mediation, a security and communication for the parties to reach through dialogue, because only the parties can determine what is best for them and especially how they want to "exploit" the conflict in their own interest by using the energy generated around a conflict to rediscover communication with each other.

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