

THE BIG IMPACT OF A SMALL PROGRAM IN THE DEVELOPMENT OF THE RULE OF LAW IN KOSOVO

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My first encounter with University of Pittsburgh School of Law (Pitt Law) professors was in September 2002. I was still a first year law student, but I had taken a couple of courses with international professors and that is why I was invited, along with another student, to join a dinner held for Prishtina and Pitt Law representatives. The discussion was about the possibility of establishing a partnership between the two Universities. One of the elements of this partnership would be the funding by Pitt of a team from Prishtina Faculty of Law to participate in the Willem C. Vis International Commercial Law Moot Court Competition. The University chose me as one of the students to go to that competition. At that time, I did not know what I was getting myself into. I must admit that during the six months of preparations for that competition, many times I regretted accepting a role on the team because of all the hard work it required. But it cannot compare with the number of times I have thanked God and Pitt Law for giving me an opportunity that has opened so many doors for me. This was just the beginning of not only a professional but also a personal partnership with the University of Pittsburgh. Over the years, my constant work with Pitt professionals, professors and students created strong bonds and friendships that I knew would last long after my involvement in the actual partnership between the two Universities was over.

For three years during my studies in Prishtina, I also acted as a coordinator of many projects with Pittsburgh. The University of Prishtina had partnerships with many universities around the world. However, the particularity of this partnership with Pittsburgh was that its projects were mainly focused on addressing the problems, needs and difficulties that students (rather than professors) were facing. It was one of the few programs that included the organization and funding of summer schools, courses, competitions, visits, conferences, seminars and other activities for Prishtina

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students. But, the most important aspect of this whole partnership was by far its LL.M. program.

Just like many other Kosovar students, I had dreamt many times of studying in the U.S. I always thought, and still think, that one of the best investments a country can make in its youth is in their education. And, in that sense, legal education is by far the most important. I finished my studies with top grades in all exams and immediately after I graduated (and even before that) I had a couple of offers from foreign Universities to pursue my Master's degree in those respective countries. One of them was the University of Pittsburgh. I was offered a full scholarship, including tuition fee, travel and living expenses. I did not have to think long before I made my choice. Pitt had proven to me and the University of Prishtina that the educational opportunities they offer are exceptional, their legal professionals are among the best in the U.S. and worldwide, and their methods of teaching are something that can be taken as a role model for every other country. In addition, the area of law that I was planning to specialize in, international commercial law, was taught at Pitt Law by some of the most prominent experts in the field, Professors Ronald Brand and Harry Flechtner. However, once I got to Pitt and the whole LL.M. adventure started, I understood that it offers much more than that.

While pursuing my LL.M. studies, for the first time I learned that teaching students how to think like a lawyer is much more efficient than making them learn theories and definitions by heart, an approach that unfortunately is still applied in Kosovo in many cases. I learned that working closely with each and every student, which is what Pitt Law professors did with us since we were a small group, can help you learn from your students almost as much as they learn from you. Besides promoting and encouraging the students' group and individual work, the experience also helps students to understand the truth of living. This is especially true when you work with people from different legal backgrounds and cultures. It can help you overcome any misconception or stereotype you might have had about any group or people. The program is fully designed to prepare you to go back to your home country and to put in practice all the things learned during that time.

When I came back to Kosovo, I was fully committed to joining the people who work for positive developments in Kosovo. I immediately got a job with the Council of Europe Office in Kosovo (CoE), which is an organization making an outstanding contribution to the rule of law process in Kosovo, and my work was mostly focused on legal and human rights matters. The legislative drafting process is currently very intensive in Kosovo, and I represented the CoE in many legislative drafting working groups. Considering

that these working groups included people from different legal systems and countries, clashes were sometimes inevitable. The groups were mainly headed by U.S. experts but on the other hand, there was a handful of European and Kosovo experts that for many years worked in the civil law system, one completely different from the common law principles that dominate in the U.S. I was lucky enough to have studied and worked in both systems and therefore, I had the opportunity to understand and grasp the ideas and proposals of all stakeholders. This also gave me the chance to help the group clarify many things and overcome many obstacles, thus making the whole process move quickly and smoothly.

One critical area of legislation for Kosovo, my work with which was heavily influenced by my experiences with the University of Pittsburgh, is the law concerning the sale of goods. Kosovo is, because of its status of administrative subordination under the United Nations, party to the U.N. Convention on Contracts for the International Sale of Goods (CISG) with regard to international sales. Moreover, this law has been introduced, perhaps unwisely, for domestic sales as well, and interpretation of this law by Kosovar courts has been unsatisfactory.

After the war ended, legal gaps were evident in all areas of Kosovo law, thus, one of the standards Kosovo had to reach before talks for its final status could begin included having a sound legal framework for a sustainable, competitive market economy, compliant with European standards.¹ When setting these standards, the UN Security Council also reiterated the primacy of the Regulations promulgated by UNMIK and subsidiary instruments thereunder as the law applicable in Kosovo.²

As far as Contract Law is concerned, until 1999, the Law on Obligation Relations covered all issues concerning contractual relationships, including provisions on sales. In the attempt to fulfill one of the standards, which was creating a market-based economy, one of the very first Regulations UNMIK adopted was Regulation 2000/68 on the contracts for the sale of goods. By means of this Regulation, the sales provisions in the Law on Obligations were repealed and were no longer applicable. The interesting fact, however, is that the Regulation takes as a model, or better to say it is mostly a copy-paste of the text of the UN Convention on Contracts for the International Sale of Goods (CISG) rather than adjusting it to the needs of Kosovo.

1. Standards for Kosovo, presented in Pristina on December 2003, *available at* www.unmikonline.org.

2. *Id.*

With regards to Kosovo courts, many judges confirm that the CISG was applied by them in cases involving a foreign party. The problem is however finding those cases. Since there was never a system for publishing the cases, they were never accessible for the public. Moreover, in 1989, all Kosovo Albanian judges were dismissed from their jobs and they got their jobs back only in 1999 when the war was over. When they went back to courts, however, the whole inventory and files were either burned down or taken away by the Serb police when they left Kosovo.

Now, with the CISG being applied in domestic cases, judges and practitioners are facing many other problems while trying to ensure the proper application of this Regulation. One of these problems is the inaccurate translation of Regulation 2000/68 into local languages. Many judges have indicated that in most cases it is unclear what the Regulation is saying, thus instead of applying it, they turn to the old Law on Obligations, which was applicable before 1999. In addition, since the majority of judges cannot speak English, it is impossible for them to follow international precedents. Even for the ones who speak the language, international case law is hard to find because they do not have access to internet, which would enable them to use the relevant CISG websites. Moreover, they are not accustomed to the concept of international precedents and sometimes consider this a breach on the sovereignty of lawmaking in their jurisdiction. These are issues that I developed a deep understanding for in Pittsburgh, and have tried to address since my return to Kosovo. It is only with the kind of education that I received that I may explore the issues with an eye to improving the system in my home country.

Apart from my work with the CoE, upon my return to Kosovo, I immediately got involved in the work with the University of Prishtina, Faculty of Law. I taught part-time courses in International Humanitarian Law and International Commercial Law and also trained the students for moot courts for both these areas of law. The Socratic method and other approaches of teaching that I learned at Pitt Law have been an enormous help for me while working with the students. It is so obvious that these methods can be successful and at the same time can earn you the respect of your students, because they feel that this respect is mutual and that you care about their professional advancement.

Today, I am involved in the most important process in our history—the process of building the state of Kosovo. I left the CoE after accepting an offer to work as Legal Adviser to the President of Kosovo, and while the experience I gain is immense and unparalleled, it is also a job full of daily challenges. Nevertheless, my Pitt Law experiences have taught me how to face this type

of challenge bravely. I have learned so much not only about the law, but also about culture and life, and at the same time I boosted by self-confidence, took advantage of my future and above all, I made friends for life. Certainly, when I applied to Pitt, I knew just a small part of its importance and how it would feel. This program showed me what I can do as a professional and as a human being. Apart from the outstanding educational experience, it is also about growing up, opening your eyes, and preparing you to come back to your home country fully equipped to work hard towards strengthening the rule of law in the best ways possible.

I would like to conclude with an experience from a business event that recently took place in Kosovo. I was sitting at the same table with representatives of some of the biggest companies in Kosovo. They started a discussion about their import-export activities and the business relationship with the U.S. They were mentioning the wide range of goods exported from the U.S. At the end, without hesitation, I told them that they had missed one: the export of legal education. This is the most important investment the U.S. has made in Kosovo, this newly emerging state that hopes and believes that this support and investment will yield positive results in the future.