# THE LEGAL GOVERNANCE OF ONLINE LEARNING AND THE HIGHER EDUCATION INSTITUTIONS APPROACH IN THE DEVELOPING COUNTRY

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## Abstract

The purpose of the study is to examine the legal framework governing online learning in higher education in Kosovo and harmonization with accreditation standards, professional licensing bodies, and copyrights laws (Frydenberg, 2002; Davis, Dowd, Poulin, & Silverman, 2020) and evaluate the transformation process from in-campus classes to online classes from the technical perspective within five higher education institutions (HEI) in Kosovo such as faculty support, redesign of learning outcomes, and assessment strategies (Martin, Polly, Jokiaho, & May, 2017; Coates & Lennon, 2014; Johnson, Veletsianos, & Seaman, 2020). The present study uses qualitative research methodology. The qualitative research method analyzes laws, standards, and other by-laws in Kosovo to examine the legal clauses governing the delivery of online teaching in Kosovo. The study analyzes the Kosovo Law on Higher Education, Accreditation Directive, accreditation manual and standards, and strategic documents of the Ministry of Education, Science and Technology of Kosovo. Further, the present study uses discussions and interviews with the homogenous purposive sample of stakeholders within five HEIs in Kosovo. The present study finds that the actual legal framework in Kosovo lacks clarity and standardization and offers liberty for self-governance and independence to universities to decide on online education. Also, results show that Kosovo universities are at the outset of transformative processes towards online education such as faculty support, the adaption of didactics, course redesign, and the adaptation of assessment policy. So, the present study paves the way for better regulation of online learning within the Law on Higher Education and various administrative directives governing the accreditation of HEI and their study programs and modes of delivery. The present paper represents the first qualitative study of legal and institutional governance of online learning in Kosovo.

**Keywords:** Online Education, Higher Education, Legal Framework, Standardization, Kosovo

# 1. INTRODUCTION

Ensuring the right to education is a public responsibility (Burić, 2020). This right was tested several times during the confrontation with the COVID-19 pandemic from the beginning of 2020 in the state of Kosovo and around the world.

Online education has encountered huge growth in the past few decades (Seaman, Allen, & Seaman, 2018). Around 20% of higher education institutions (HEI) in the United States offer online education (Garrett, Legon, & Frederickson, 2019). As HEI around the world expand their online course offerings, also quality scrutiny and regulatory governance take place (Shelton, 2011). The transition to online education requires changes and regulation within the institutions demanding support for stakeholders (e.g., faculty, students) and processes (e.g., course development) to ensure its successful implementation (Pedro & Kumar, 2020).

Although some of the world's elite universities practiced online and distance learning for various programs, it was the first time that teaching and learning would have to rely entirely on the internet and technology using contemporary, obscure ways. HEI around the world encountered extraordinary challenges to shift to digital learning and made substantial attempts to minimize the learning losses (Babbar & Gupta, 2021). In addition to the effectiveness of distance learning, the insufficient training of professors, remodeling learning assessments and evaluation methods, and protection of intellectual property remain the key challenges during the pandemic period.

In Kosovo, different online platforms were employed by various HEI depending on the number of students and the familiarization of teaching staff with these platforms (Baftiu & Pireva Nuçi, 2021).

For instance, online learning in Romania was regulated with the Ministerial Order, which stipulated that during the state of emergency the direct didactic activity can be suspended and replaced with online learning, whereby the mode of online learning is left to the autonomy of universities (Dobrilă, 2020). Nevertheless, the use of online learning raises issues of intellectual property rights (De Cagne & McGill, 2010).

Before the pandemic, several countries stipulated by law blended learning as a combination between face-to-face learning and online learning, which nevertheless was not a proper common learning method (Kaing, 2020). Different types of regulatory frameworks can be adopted for online education starting from government regulation, independent accreditation, funding mechanisms, and international guidelines (Harley & Lawrence, 2006).

Numerous HEI in the world have adopted and at least partially deployed the basic tools that are required for a comprehensive and sustained shift to online learning (Brooks, Grajek, & Lang, 2020). In various countries, the regulatory framework ranges from government legislation and policy to rules, regulations, and practices of online learning adopted at the university level (Tynan & James, 2013).

In this regard, the lack of clarity in Kosovo's legal framework that would ensure a strategic shift from physical to digital education remains an issue to be addressed. The purpose of the study is to examine the legal framework governing online learning in higher education in Kosovo and evaluate the transformation process from in-campus classes to online classes from the technical perspective within five HEI in Kosovo.

The structure of the paper is as follows: Section 2 reviews the relevant literature related to legal governance of online education and transformative processes needed to shift to digital education. Section 3 describes the methodology, research instrument, and research sample, and research instrument. Further, Section 4 presents the results of qualitative research in the form of analysis of the relevant laws, directives, standards, and strategic documents of the Ministry of Education, Science and Technology of Kosovo and results of the predominant opinion of stakeholders of workshop discussions. Section 5 discusses the findings of the present study by comparing them with relevant findings by other authors and presenting the implications for research and practice and finally Section 6 recapitulates the findings of the study by noting the limitations of the study and future research directions.

# 2. LITERATURE REVIEW

Electronic learning in the modern sense of the term is a relatively new concept. The beginning of a revolution of the machines and tools used in education, took shape back in 1960 at the University of Illinois in the USA, giving the earliest instances of online learning. Although the Internet was not invented at the time, students began to learn from the computer that was interconnected to form a network (Prestridge, Jacobsen, Mulla, Paredes, & Charania, 2021). So, the potential of this, unknown to the public at the time, educational process lies in learning accessible and within the reach of what people could have ever imagined (Sarkar, 2020).

According to Frydenberg (2002), the quality of online education must be preceded by well-defined teaching law, standards of online learning in national and regional accreditation, and stipulation in the copyright laws. For online education to take place in the institutional policies that support distance education must be identified and reviewed. Further, these policies must be harmonized with accreditation standards and finally upheld by a strategic review of distance education policies and implementation procedures (Dunn, 2021). Effective transformation of education to online learning requires a regulatory framework that is harmonized with accreditation standards and professional licensure since many professional associations and bodies in their governing framework recognize only traditional education (Davis, Dowd, Poulin, & Silverman, 2020).

Online education must consider numerous factors when applied under extraordinary circumstances like COVID-19 (Kiraz & Üstün, 2020). The aspects that must be taken into account are the lack of staff teaching experience to online teaching and their adaptive capability to the new form of learning (Coman, Gabriel Țîru, Meseșan-Schmitz, Stanciu, & Bularca, 2020).

The research in the last few decades shows that lack of technical skills by faculty, pedagogical skills,

incentives for online teaching, and other administrative processes that support online teaching are some of the issues that must be taken into account during the transformation process into online teaching (Kebritchi, Lipschuetz, & Santiague, 2017). According to Martin, Polly, Jokiaho, and May (2017), faculty support is one of the key precursors for qualitative transformation towards online learning implementation (Martin et al., 2017).

For the purpose of transformation to a resilient online learning system, the support for students, professors, and other administrative supporting members needs to take place (Dayagbil, Palompon, Garcia, & Olvido, 2021). In this regard, for a smooth transition to a digital environment, training, and support to online transfer of knowledge, and professional development of academic staff to improve their practice, training on how to use the materials and above all establishing standards for the evaluation of the engaged staff need to take place beforehand (World Bank, 2020).

Additionally, for the strong transformation to quality online education to take place, the adequate assessment methods suited to online education and suitable course structure that requires a redesign of learning outcomes must accompany the online implementation of education (Coates & Lennon, 2014). Online education requires the transformation of assessment strategies in some instances even eliminating assignments (Johnson, Veletsianos, & Seaman, 2020). To this end, the ways how student achievement is measured must be altered (Johnson et al., 2020).

In the same fashion, the transformation of education to online learning requires course and instruction redesign, since lengthy instructions delivered by technological means are seldom instructional necessary and are not aligned with the psychological principles of how humans learn (Silva & White, 2015).

Furthermore, the qualitative transformation from in-class to online learning requires assessment policies that take into account the online learning materials used by students and communication (Benigno & Trentin, 2000). To this end, innovative assessment policies must be adopted to the new online teaching environment so the learning outcomes will be achieved by students (Osborn, 2015).

In the same fashion, the transformation to online teaching requires observance of intellectual property rights in online learning, which refer to the legally recognized exclusive rights to the creations of the mind such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and patterns. So, if the e-learning content is protected by intellectual property law and who owns the copyright ("Is e-learning content intellectual property?", 2014). Traditionally, universities developed intellectual property policies that generally dealt with inventions. The legal challenges of sharing copyright in remote learning materials and managing trademarks and trademarks effectively have only just begun to be evaluated (Kennedy, 2002).

Rapid transformation and shift to digital learning environment require strong didactic and pedagogical processes to be blended in the online teaching process (Danko, Stare, & Decman, 2014).

As a consequence of the literature review, the present study formulates the following research questions:

*RQ1: Which is the legal framework in place governing online education in Kosovo, including the standardization?*

*RQ2: What are the main transformative processes that Kosovo universities are undergoing towards online education?*

## 3. RESEARCH METHODOLOGY

The present study uses a qualitative research methodology. The qualitative method provides the intricate details of phenomena, which cannot be derived through quantitative methods (Strauss & Corbin, 1990). The qualitative research method analyzes laws, standards, and other by-laws in Kosovo to examine the legal clauses governing the delivery of online teaching in Kosovo.

Further, the present study uses discussions and interviews with the purposive sample of stakeholders organized in the form of two workshops organized on the 22nd of December, 2020 and the 16th of February, 2021, with main key stakeholders, respectively the Deputy Minister of the Ministry of Education Science and Technology in Kosovo, representative of the Kosovo Accreditation Agency, rectors, and the chief technology officers (CTO). These workshops are supported by a project funded by the Ministry of Education Science and Technology in Kosovo and it took the initiative to invite CTO from University for Business and Technology, University of Pristina, University of Prizren, University of Gjilan "Kadri Zeka", IBCM Mitrovica. The purposive sample is homogenous since the stakeholders are rectors and CTO of the biggest universities in Kosovo. According to Saunders, Lewis, and Thornhill (2012), homogenous purposive sampling is used when the researcher selects sample members that share a common characteristic such as a particular occupation.

On the other hand, according to Ørngreen and Levinsen (2017), workshop discussion is a promising tool for data collection. Apart from the intense engagement of stakeholders, the workshops provide the researcher with an opportunity to elicit rich information from participants (Creswell & Poth, 2017).

Whereas the first workshop evaluates the transformative processes towards online teaching, the second workshop analyzed the legal framework in Kosovo and the need for standardization to ensure the quality of the learning and teaching processes in online education.

## 4. RESEARCH RESULTS

The first section of research results elaborates on the findings derived from analysis of the legal framework and need for standardization of online learning derived from the discussions of the second workshop and analysis of laws, by-laws, and other documentary evidence.

From the analysis of the legal framework and discussions in the second workshop, it is the predominant opinion of interviewees that the Kosovo Law No. 04/l-037 on Higher Education in the Republic of Kosovo lacks clarity when it comes

to the provision of online education. In this regard, paragraph 5 of Article 5 of the Law on Higher Education in the Republic of Kosovo stipulates the possibility that higher education may be undertaken full-time, part-time, by distance learning and the combination of any of these ways of study, as it is foreseen in the Statute of the higher education provider, which provides qualification of higher education. So, this is the only legal provision that stipulates this form of study. However, it is the predominant opinion of stakeholders in the second workshop that the present legal uncertainty exists because online education has not been the focus of the educational system and has not been considered as an added value to the HEI[1]. By analyzing the additional policy documents such as the Action Plan of Kosovo Education Strategic Plan 2017–2021 (MEST, 2016), it can be concluded that online education has not been the strategic focus of Kosovo's higher education. It is the predominant opinion of stakeholders of the second workshop that Kosovo's strategic documents in education do not emphasize the development of online education.

In terms of national accreditation standards that regulate online education, the authors of this study and the stakeholders of the second workshop agree that the Administrative Instruction 15/2018 of Kosovo Ministry of Education Science and Technology on the accreditation of higher education institutions and Accreditations Manual of Kosovo Accreditation Agency as of 2021 do not provide for any requirements on the distance learning for the HEI. Therefore, the legal framework lacks clarity gives liberty to HEI to self-regulate the aspect of online education. It is the predominant opinion of stakeholders of the second workshop that accreditation standards lack any formal requirements related to the delivery of online distance learning. Since, online learning in the context of the pandemic and possible future situations is considered a necessity and creates conditions, for the fulfillment of Bologna process objectives. So, the development of the Bologna process in the higher education system, especially in the context of the pandemic has had positive dynamics (Bitieva, Bulavina, Bitieva, 2021). Even though Kosovo is not a formal member of the Bologna Process since 2001 it attends to its developments and standards. At this level, we consider that the lack of legal government of online education will be supported by the Bologna process principles and quality assurance system, to assist HEI to develop appropriate policies, including about online learning.

Additionally, as far as copyrights laws are concerned, the Kosovo Law 04/l-065 on Copyright and Related Rights, more specifically Articles 43, 129, and 152 stipulate the "fair use exception" that permits the reproduction of copyright works only for educational purposes. Nevertheless, copyright law is not specific as far as distance and online learning are concerned.

In response to the first research question, it is the predominant opinion of stakeholders of the second workshop that Kosovo Law lacks clarity with regards to online education, and Administrative directives and accreditation standards do not provide for any requirements for online learning, giving freedom to HEI to self-regulate in this regard. Finally, the stakeholders opine that although Kosovo Copyright Law permits the reproduction of the material for educational purposes, it does not specifically foresee the reproduction of audio-visual material for online teaching purposes. The Kosovo regulatory framework lacks standardization whatsoever.

The next section elaborates the research results related to the transformative processes that Kosovo universities are undergoing towards online education derived from the first workshop with rectors and CTO of five universities and HEI in Kosovo related to institutional and faculty capacity, faculty support, course structure, and assessment policies that enable a smooth shift towards digital education.

Based on the data presented during the first workshop, before COVID-19 period, most universities that were part of purposive sample used platforms like Moodle and Student Management Information System (case of University for Business and Technology), Students Management Electronic System (case of the University of Pristina "Hasan Prishtina", University of Prizren "Ukshin Hoti" and the University of Gjilan "Kadri Zeka"), mainly for uploading learning materials, submission of assignments or additional administrative services for students and professors. Nevertheless, it is the predominant opinion of the stakeholders of the first workshop that Kosovo universities lack planning capacities and institutional readiness to shift towards online education despite the limited infrastructure used before pandemics.

As far as faculty support and training is concerned, it is the predominant opinion of the stakeholders of the workshop discussion that Kosovo universities lacked support for professors to adapt their didactics and pedagogy to new remote learning technologies.

In the same fashion, as far as course structure that should be adapted to online education is concerned, it is the predominant opinion of stakeholders of the workshop discussions that Kosovo universities lack a uniform format of course syllabus adapted to online education. The course syllabi must be adapted to various online teaching activities that are not present in traditional education. To this end, the Accreditation Agency in Kosovo does not foresee prerequisites for programs to be offered in the online or hybrid format.

Finally, based on the assessment policies adopted for online education are concerned, the predominant opinion of stakeholders of the first workshop is that assessment policy should be a part of the internal framework of the higher education institution, but in the conditions of distance learning, it must define principles and conduct training on how the professors choose the right assessment method for an online course. The focus of the assessments has to be also the student's participation and course monitoring tools that are usually assigned to the tutors, who are required to gauge the participation level of individual students and to determine whether (and to what extent) they are getting to grips with the various issues that content experts consider central to a given topic.

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[1] http://onlineclasses.cloud/?page_id=7

In response to the second research question, it is the predominant opinion of stakeholders of the second workshop that Kosovo universities have operated with full autonomy in adapting their didactics and pedagogy to online learning, lack a uniform format of course structure adapted to the online education, and have not adapted the assessment policies to the online education. Apart from the adoption of online infrastructure, Kosovo universities are in the beginning phase of transforming the educational processes towards online learning.

## 5. DISCUSSION

Next, the discussion section interprets the results, compares the results with those from previous studies, discusses the findings' implications for research and practice, and discusses the limitation of each study result separately.

As far as regulation of online education by law is concerned, it is the predominant opinion of stakeholders that Kosovo Law lacks clarity, only superficially mentions the term of distance education, and online education has not been the focus at all in the strategic documents of the Ministry of Education of the Republic of Kosovo. As Frydenberg (2002) argues, the quality of online education can be provided only through clear stipulation by national law. For instance, in Romania, online education was not stipulated by law and was only introduced with the decision of the Ministry of Education after the COVID-19 pandemics (Dobrilă, 2020). The authors of this study believe that the Ministry of Education of Kosovo should initiate the amendment of the Law on Higher Education in Kosovo and stipulate more clearly the form of online education and make it one of the regular forms in addition to full-time, part-time, and distance education. Online education should also become a clear focus in all strategic documents of the Ministry of Education of the Republic of Kosovo.

The stipulation of online education by law does not suffice if it is not harmonized with national accreditation standards. Following the national accreditation, it is the predominant opinion of stakeholders involved in this study that the national accreditation standards of Kosovo lack formal requirements related to the delivery of online distance learning and recognize only the traditional forms of on-campuses education. In this regard, Dunn (2021) argues that many countries have adopted policies to harmonize their legislation with accreditation standards that would permit the standardization of online education. Nevertheless, the standardization of online education is not complete, if it is not associated with the recognition of online education by professional associations and bodies that regulate professional licensure (Davis et al., 2020). This finding implies that Kosovo Accreditation Agency must include in its Accreditation Manual, in its standards the online form of teaching delivery and recognize the accreditation of online education, which is absent at the moment. On the other hand, the Kosovo government and universities must work closely with the professional bodies and associations in the regulated professions to amend their respective regulations and bylaws that will allow online education as a formal requirement for licensure.

Furthermore, online education has many implications concerning the strict observance of copyrights laws. It is the predominant opinion of stakeholders of this study Kosovo Copyright Law is superficial and mentions only the reproduction of the material for educational purposes without clearly stipulating the reproduction of audio-visual material for online teaching purposes. Although copyright laws regulate the issues of the reproduction of copyrighted materials in face-to-face teaching activities, the so-called TEACH Act (sections 110(2) and 112(f)), in the United States designed specifically the clauses that deal with copyright issues related to online distance learning. Given the unique challenges posed by the digital environment for copyright, particularly the ease with which digital material can be copied and distributed, the TEACH Act in the United States imposed several requirements on distance learning that do not apply to face-to-face teaching (Gormley, 2020). Therefore, the authors of the present study think that the Kosovo government should incorporate the trends of online education in the Copyright Law by making more specific clauses related to the reproduction of material during the online classes. As universities are quicker in self-regulating this issue, Kosovo institutions should act faster in regulating the copyright issues related to online education and not leave freedom for self-regulation by Kosovo universities.

Additionally, as far as faculty support towards shifting to digital education, it is the predominant opinion of the stakeholders of the present study that Kosovo universities did not provide sufficient support for professors to adapt their didactics and pedagogy to online learning. As Dayagbil et al. (2021) argue many qualitative universities in their transformation efforts towards online education have provided full support not only for professors and administrative staff but also for students. The smooth transition to online education must be accompanied by the training and support for academic staff to adapt their didactic methods to the new format of teaching delivery (World Bank, 2020). The present finding implies that Kosovo universities must provide training and support to staff and adopt guidelines on how to adapt didactics and pedagogy to new online education.

In the same fashion, the effective transformation of education towards a digital environment requires course restructuring and redesign and a uniform format, which according to the stakeholders of the present study, Kosovo universities lack. Many universities offering online education have redesigned the learning outcomes and course structures that must conform with online education's unique circumstances (Coates & Lennon, 2014). Therefore, Kosovo universities must work together to adopt guidelines that constructively align the redesigned learning outcomes specific to the online delivery mode with teaching and learning activity that is unique for the digital environment.

Finally, the transformation process towards the digital environment demands a huge shift towards more modern assessment policies. The stakeholders of this study think that Kosovo

universities have not adopted any formal internal framework with unique assessment policies relevant to online education. Nevertheless, other authors found that universities that underwent successful transformation towards online education adopted suitable assessment strategies, whereby some even eliminated the assignments, whereas others amended the forms of measuring the student achievement (Johnson et al., 2020). Therefore, the authors of the present study think that Kosovo universities have the autonomy to design their assessment strategies and this should not be regulated by any administrative directive at the central level. It is in the autonomy of each Kosovo university to adopt suitable assessment strategies that take into account the specifics of online education. Perhaps, the practices of various companies that offer online certificates such as Coursera, edX, Udemy, and others should be taken into account, in addition to the practices used by renowned universities.

## 6. CONCLUSION

The present study analyzes the documentary evidence such as laws, bylaws, and other strategic documents of the Ministry of Education and the Kosovo Accreditation Agency and analyzes the predominant opinion of key stakeholders of higher education in Kosovo.

The study used the qualitative method by analyzing the documentary evidence but also using workshop discussions with a purposive sample of stakeholders.

The study finds that Kosovo regulatory framework lacks clarity, standardization and does not specifically foresee the reproduction of audio-visual material for online teaching purposes by its copyright regulations.

The study further finds that in the transformation efforts undertaken by Kosovo universities during pandemics, they have supported to staff in adapting their didactics and pedagogy to online learning and adopting in certain cases assessment guidelines specific to the online education, despite the lacking of uniform format of course structure appropriate to the online education. The new hybrid model of education will emerge in the future and Accreditation Agency in Kosovo can foresee prerequisites for programs to be offered in the future online or a hybrid form. Depending on these requirements or standards, the conformity assessment will be done and the evaluation of the quality of the implementation of the programs.

The higher education institution must adapt this form of education with the courses' content, to ensure that assessments and learning methods are aligned with the intended learning outcomes and to define in detail how entire works will be performed, including audiovisual works as part of the online learning and under what conditions or factors should this be possible.

The limitation of the present study is that it only analyzes the legal framework and whether the transformative processes were undertaken by Kosovo universities, without delving into the specific challenges and hindrances faced by Kosovo universities during their transformation efforts and the effect on the quality of teaching and learning process.

Finally, the present study paves the way for a new research direction that will explore and examine the benefits and challenges of online education in Kosovo.

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