

### 3.1.4 Decentralisation process

#### 3.1.4.1 Legal framework

The situation of local government in Kosovo is determined by the legal and institutional arrangements which were in place before the conflict and the legal framework developed under UNMIK; therefore it has become fairly complex and has not yet found its final shape.

*The break-up of the former Yugoslavia did not result in an explosion of local government jurisdictions;*

In the former Socialist Federal Republic of Yugoslavia, local government was based on very large municipalities vested with a general competence. According to article 116 of the constitution of 1974, all power and management functions were performed at the municipal level except for those reserved to provinces, republics or the Federation by the federal constitution. The break-up of former Yugoslavia resulted in a strong centralisation in Serbia and Montenegro as in other newly independent states, but by contrast there was no explosion of local government jurisdictions; the territorial pattern has remained unchanged. One aspect of this centralisation process has been the division of the whole territory of the Republic of Serbia into 29 districts by government decree in 1992, and the creation of a district state administration taking over a number of tasks previously carried out by municipalities, and exercising supervision over municipalities (see: law on the territorial division of Serbia, *Off. Gazette of Serbia* 47/91 and modif., law on the state administration, *ibid.* 20/92 and modif.)

This centralisation process reduced the republics from the socialist conception of self-government, and brought local government closer to West European standards as laid down in the European Charter of Local Self-Government. In Kosovo, decentralisation is part of the UN policy to give back responsibilities to elected officials.

The constitution of the Federal Republic of Yugoslavia of 1992 did not contain provisions on municipalities; this matter was left completely to the constitution of each Republic, but with a duty to implement local self-government (art.6, par.3).

As reported to the Security Council by its Mission of December 2002 (S/2002/1376), Kosovar-Albanian leaders of the provisional institutions claim not only for an accelerated transfer of authority, but for an early recognition of Kosovo's independence. However, the UNMIK Resolution 1244/1999 affirmed the commitments of all member states to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and other states of the region. From a demographic viewpoint, the proportion of ethnic Albanian population, which was near 82% at the census of 1991, is now estimated at about 91%.

*UNMIK quickly established a full government*

On the basis of the Resolution 1244, UNMIK provides transitional administration while establishing and overseeing the development of democratic self-government (point 10). UNMIK established in a very

*structure...*

short time a full government structure; 5 regional administrators and 30 municipal administrators were appointed, following the inherited territorial pattern. In addition, during the year 2000, 20 central departments were established, and a judicial system was set up. The first municipal elections took place on October 27.

*...and self-government*

Starting in 2000, UNMIK undertook to establish self-government institutions. The main step was the promulgation of the “Constitutional Framework for provisional self-government” (UNMIK 2001/9, 15 May 2001). It recognises collective rights of ethnic communities (chapter 4). It provides for a legislative assembly, a president and a government (Provisional Institutions of Self-Government – PISG). The Constitutional Framework sets out the list of the domains where the PISG shall have general responsibilities (most domestic affairs, with significant exceptions) and of subject matters in which specific responsibilities are assigned to PISG (regarding municipal and judicial affairs), whereas it provides for a list of subject matters reserved to the SRSG (including final authority on decisions released to PISG). Laws adopted by the assembly need to be promulgated by the SRSG. The legislative procedure includes a conciliation procedure at the initiative of representatives considering that a provision to be adopted would violate vital interests of their community (section 9.1.39).

*Municipalities are the basic units of local self-government*

According to the Constitutional Framework, municipalities are “basic units of local self-government” (Art.1.3). First local elections took place on 28<sup>th</sup> October 2000, with a turnout near of 80%; DLK won 21 municipalities among 27 where elections could be organised. The SRSG had promulgated a *Regulation on Self-Government in Municipalities of Kosovo* (UNMIK 2000/45, 11<sup>th</sup> August). This is still the legislation in force in this matter. It is based on the former Yugoslav legislation, with significant differences, and municipalities are under strict supervision by the SRSG (section 47), who has a representative in each municipality (section 48), with the municipal administrator appointed by him. Furthermore, municipal boundaries are a reserved competence of the SRSG. The first local elections were held for a two-year mandate (UNMIK 2000/39); the second ones on 28<sup>th</sup> October 2002 were held for a four-year mandate (UNMIK 2000/45 and 2002/11); the turnout was much lower (54%). UNMIK has worked to overcome ethnic divisions in municipalities; it succeeded in November 2002 to restore a unified municipal administration in Mitrovica.

*Municipalities perform tasks set out by UNMIK regulations, and other tasks under delegation*

Municipalities perform tasks set out by UNMIK Regulation, within the framework of the laws regulating these activities; however, the municipality is entitled to carry out “such other activities as are necessary for the proper administration of the municipality and which are not assigned elsewhere by law” (Art. 3.1,q). In another series of domains they are allowed to take actions in matters of concern for the municipality, e.g. they may undertake additional actions also when the responsibility belongs to the PISG (Art. 3.2.). Furthermore, municipal property is recognised by the Regulation, although ownership is not clearly determined. The Central Authority (e.g. the SRSG) may

delegate Municipalities other tasks and exercises supervision. It is also the appeal authority regarding claims against municipal decisions.

The Municipal Assembly is elected according to a proportional system. The Assembly elects the President, as the executive authority, and his deputy from its members; communities who are not in the majority are entitled to their deputy. The participation of lower local self-government entities, e.g. villages, city districts or neighbourhoods in the management of local government affairs, including the delegation of tasks to them, is recognised. But there is no referendum, and citizens' initiatives can only be petitions to the municipal assembly. The Regulation provides for the creation of a Communities Committee and a Mediation Committee; the first one acts to prevent discrimination, the second one deals with cases of alleged discrimination. A community office has to be created in municipalities with a significant minority. It is planned to create municipal sections with own organs, budgets and councils for minority communities.

*The transfer of responsibilities from UNMIK to local authorities may prove difficult*

The next step is the transfer of responsibilities from the UNMIK to local authorities. For this purpose, a joint council of UNMIK and of the PISG was set up in March 2003. However, remaining tensions still demonstrate the fragility of the recent institutional achievements.

#### 3.1.4.2 Institutional framework

*References in English to "regions" and "districts" can be problematic due to translation practices*

Municipalities are basic units of local self-government, and they still have the boundaries of former Yugoslavia, with minor adjustments. In 1992 the full territory of Serbia (including Kosovo and Voivodina) has been divided into districts (*okruzi*), as a jurisdiction of local state authorities. This level is currently translated as "region", in particular in the English version of UNMIK regulations; this is misleading, since it is only an administration tier, not a self-government level, and it is a rather small constituency (on average about 2,600 km<sup>2</sup> and 300,000 inhabitants).

At present Kosovo is divided into 5 districts (the fifth district was created under the UNMIK) and 30 municipalities (an additional one was created under UNMIK). The following table summarises the territorial organisation for Kosovo.

Republics & provinces	No. Inhab'ts	Km <sup>2</sup>	No. Districts	No. Municipalities
Kosovo	1,956,196	10,849	5	30

With the creation of districts, the regions (*regioni*) were suppressed. They were the channel of cooperation between municipalities.

Municipalities are rather large units with more than 65,000 inhabitants.

At the end of the nineties, there were in the whole the Yugoslav Federation only 10 municipalities under 10,000 inhabitants. Municipal territories and boundaries are a very sensitive matter, and are therefore a reserved responsibility of the SRSG; they were fixed very precisely by an UNMIK regulation (2000/43, on the basis of the cadastre). But villages, settlements and urban quarters are recognised by section 5 of the regulation 2000/45; their relation with the municipality they belong to has to be regulated by the statute of the municipality. Tasks and resources may be delegated to them by the municipality.

*Municipal boundaries and functions remain a sensitive matter*

In Kosovo the tasks of municipalities are conditioned by central regulation and funding; responsibility is shared with the municipal administrator appointed by the SRSG. According to UNMIK regulation 1999/14 as modified by regulation 2003/11, the municipal administrator "shall control, discharge or otherwise supervise the functions entrusted to public services and local governments bodies". According to UNMIK regulation 2000/45 (section 46.1), any transfer of authority is subject to the adoption of the statute and the rules of procedure of the municipality by the municipal assembly. The municipal administrator may require these bodies or services to seek his prior approval for specific decisions (1999/14: section 3.1), subject to changes reflecting the transfer of responsibilities (2003/11: section 2.1). This means that responsibilities and functions of municipalities as well as those of the municipal administrators will change over time, based on UNMIK regulation 2000/45, depending on the management and accountability systems in place in the respective municipality. However, regulations 1999/14 (as modified) and 2000/45 are not fully consistent with each other, the latter suggesting that the municipal administrator has rather more a supervisory function.

Municipal responsibilities are set out by the law regulating each field of activity. In principle, the subject matters of municipal competence are very similar to those in the region. But the personnel of education and primary health care are managed by the municipal authority, and salaries are recorded in municipal budgets. In budget appropriations for 2003, it appears that the total non municipal expenditure is 489,069,249 €, among which 148,542,874 € for reserved power organisations (i.e. under the direct responsibility of the SRSG), whereas municipal expenditure is expected to be 139,147,155 €. In this total, however, about 80 million € are devoted to education (pre-primary, primary and secondary) and primary health care, including personnel expenses.

#### *3.1.4.3 Local financing*

Funding for municipalities is mainly budgetary transfers from the central authority. Nevertheless, some "own revenues" do exist and UNMIK has laid the basis for a new local tax system.

*Budgetary transfers remains the main source of local financing*

Each municipality has a budget that has to be voted by the Municipal Assembly; the budget is subject to approval by the Municipal Administrator (UNMIK Regulation art.48.13). However, no responsibility for financial administration can be transferred to a municipality “until the independent auditor has certified that adequate budgetary and financial management systems are in place and that the municipal civil service has the capacity and capability to implement effective financial procedures and controls. Until that time the municipality remains under direct financial management by the municipal administrator (UNMIK Regulation 2000/45, section 46.2). (See below section 3.3.1.2 for details of implementation). As of Sep 2003, 29 of the 30 Municipalities had been certified.

Municipalities receive financial transfers based on objective criteria, including an assessment of financial needs, of expected resources and of spending priorities established by the central authority. Part of these transfers may be designated for specific activities; another part is undesignated (section 38)

*A property tax has been introduced...*

According to UNMIK regulation 2000/45, “Own revenues” are limited to licenses and fees, income from municipal assets and fines (section 39). However, after the implementation of a pilot programme for the imposition of taxes on immovable property (UNMIK 2001/23), a property tax has been introduced; municipal assemblies have to vote the rate (between 0.01 and 1% of the market value) and the rate may vary according to the categories of property laid down in the law (UNIMK 2003/29). The tariffs of local public utilities have to be voted by the municipal assembly.

*...and municipalities are not permitted to borrow.*

The UNMIK Regulation 2000/45 on local self-government does not allow municipalities to borrow.

In 2003, municipalities, with total revenues of 139.1 million €, are financed by three grants: the Education Grant (59.9 million €), the Health Grant (15.2 million €), and the General Grant (36.3 million €) that is free of use. Own revenues reached almost 28.8 million €.

#### 3.1.4.4 Conclusions

*While UNMIK did remarkable work in restoring local self-government in Kosovo...*

UNMIK has done a remarkable work in Kosovo, succeeding in restoring local self-government with a certain degree of financial autonomy in only four years, and organising local elections in 2000 and 2002. However, the role of the municipal administrator and the reserved powers, e.g. accountability systems, remain strong.

*...distrust between communities remains strong,*

A major problem is that the distrust between communities persists, as reflected in the number of aggressions. Local self-government should be the best level to bring communities closer together and to overcome distrust between citizens of different origins. Therefore the project to

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*Reinforcement  
of ethnically-  
based  
distinctions is a  
step in the  
wrong direction*

create ethnic distinctions within local self-government institutions and budgets seems to go in the wrong direction. Such an institutional revision would demonstrate the failure of the United Nations process, and would be a regrettable precedent.