

3 Governance & Public Administration

3.1 Key elements of the administrative environment

3.1.1 Administrative culture, law implementation and enforcement capacity

The Yugoslav administrative tradition provides a legal framework.

When the UN entered Kosovo it was not a 'law-free-zone:zone': Kosovo had inherited the Yugoslav administrative culture and with it a long tradition of administrative law, but the legacy of past decades of authoritarian rule, coupled with the fact of a parallel administration set up by the Albanian majority to circumvent the Serb administration during the last years of the Milosevic regime, left an administrative culture that seemed to be governed by personal relationships and marked by general distrust towards State institutions.

UNMIK was required to restore Rule of Law

UNMIK was charged with restoring/establishing the rule of law and international democratic standards. However, international staff in charge of developing a new legal framework, and new machinery for implementation of the law, often lacked adequate knowledge and experience for this task. This has resulted in a very fragmented and often inconsistent legal framework, based on different legal traditions from other countries and cultures.

In addition an institutional structure has emerged which is not reflected in the new legislation, and *vice versa*.

Administrative capacity is weak

Capacity to implement and enforce the law are seriously hampered by this legal framework, consisting of old Yugoslav legislation, later UNMIK rules, and new, often inconsistent, Kosovo legislation. In addition, the administrative capacity of the PISG is still weak: this is at least partly due to the fact that the international advisors have missed the opportunity to train their local counterparts during the JIAS phase. Finally, implementation and enforcement is also hampered by unclear responsibilities of various institutions, and a weak judiciary.

Furthermore, the Kosovar administrative system, supported by the international community, is developing in a direction which is different from the prevailing administrative system in Serbia and Montenegro. There is little evidence of any plan to reconcile these diverging systems at any time in the near future, except for the adoption of the

acquis in the areas where it applies, which would at least provide a common framework of “European” values and approaches.

3.1.2 Administrative legal framework and civil service

The "administrative legal framework" is here defined as all laws and by-laws necessary to ensure that the administration as a system functions in line with generally accepted principles, e.g. rule of law, transparency, accountability, and legal certainty. This implies that the administrative legal framework also includes, besides general administrative laws such as the Law on Administration, Law on Administrative Procedures and legislation covering redress and appeal, laws regulating the general management systems of the public administration. The most important of these laws are: the law on civil/public service, the organic budget law, laws on financial control and internal audit, and as external audit. In addition, it encompasses such laws as freedom of information, data protection legislation, law on the ombudsman, law on conflict of interest, and other “annex” legislation which is intended to ensure the implementation of accepted administrative principles.

In all the SFRY successor countries, a basic element of the normative framework is the so-called “Rule Book” which specifies the internal arrangements of State and Government bodies (including Ministries). Each body has its own Rule Book which has to be approved by the Government. This usually defines the workplaces in the bodies, job descriptions, professional and other requisites for job placement, numbers of civil servants and employees, as well as other issues arising from the specific or general laws. Where a civil service law is in place, the Rule Book usually specifies which positions are to be occupied by civil servants. The legal foundation for the rulebook is usually in the relevant Law on Administration or the Civil Service Law.

In this chapter only general administrative laws, some aspects of the Law on Civil Servants, and some “annex” legislation, will be discussed, as the other main components of the administrative legal framework (regarding public procurement, public expenditure management, financial control and internal/external audit) are discussed in the relevant sections elsewhere in this Assessment.

The current administrative legal framework of Kosovo is rather fragmented

The administrative legal framework of Kosovo is for the time being rather fragmented. The law in force has three different sources, namely pre-war Yugoslav law, law prepared and adopted/imposed by the SRSG, and laws prepared by the new Kosovo administration (mostly with the assistance of international experts) and adopted by the Kosovo Assembly and promulgated by the SRSG. To clarify this difficult legal situation, UNMIK adopted Regulation 1999/24 which defines the law applicable in Kosovo as: (a) the regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued there under; and (b) the law in force in Kosovo on 22 March 1989. This Regulation determines also that in case of conflict the Regulations and Subsidiary Instruments issued by

the SRSG shall take precedence. As an exception, legislation adopted after March 1989 may be applied if it is not discriminatory and if it is the only legislation covering the given subject matter. Finally the Regulation specifies that the SRSG is the highest authority to clarify and interpret legislation.

Legislation enacted by UNMIK often reflects Common Law practices

The incoherence of the administrative legal framework is due, in part, to the little attention paid by the international community to the existing legal and institutional framework. The legal system of Kosovo, as derived from the overall Yugoslav legal system, is continental and rooted in the Austrian legal system. However, as many international staff and in particular of a number of international lawyers with a Common Law background were heavily involved in the legislative activities of UNMIK, legislation enacted by UNMIK was often drafted according to Common Law practices and based on Common Law principles.

The pre-existing (Yugoslav) legal system could have offered a workable base for developing alignment with general European standards, as is happening elsewhere in the region.

The Constitutional Framework states the basic principles for the work of the Government (Chapter 2). A new Civil Service Law, prepared by international experts, was promulgated by the SRSG on 22 December 2001 (UNMIK Regulation 2001/36). Some experts voiced reservations about the structure, quality and implementability of the draft, however it was adopted because that was a condition for a major donor (DFID) project to support civil service development. The Civil Service Law sets out a contract-based employment system based on a contract length of three years, which may be extended. The law is applicable to all employees being paid by the Kosovo consolidated budget (KCB), i.e. it includes staff of municipalities.

New laws on Public Administration were not passed by the end of 2003

The PSIG and the newly elected Kosovo Assembly adopted a large legislative programme, including a Law on Public Administration and amendments to the Law on Administrative Procedures. However, as of the end of 2003, new legislation in the above areas was not passed by the Assembly. As a consequence the laws regulating these areas are still the pre-1989 Yugoslav laws. These could provide a workable base for administrative activity, but implementation is difficult due to a lack of qualified staff and the changes in institutional structures and responsibilities, which are no longer in line with the legal provisions. In addition, ordinary laws adopted within the current constitutional framework tend to incorporate their own, specific procedures. This contributes to the proliferation of different procedures in the administration.

With the support of the international community, the legal/administrative system in Kosovo has evolved since 1999 in directions which distance it from the system in Serbia and Montenegro. As time passes, the gap is widening between the two systems, making

their technical reconciliation more and more costly and, in the final analysis, unlikely.

3.1.3 Central policy capacity

3.1.3.1 Legal framework

The decision-making system by the Government of Kosovo (PISG) is a system in continuing transition. As the role of the Government changes, as more competences are transferred from UNMIK to PISG, and as the definition of "transfer" itself changes, the responsibilities of the government gradually increase. With this increase in responsibilities, there is a concomitant need for greater capacity in the areas of policy development and drafting in Ministries, and for improved leadership and coordination at the Office of the Prime Minister (OPM).

Greater policy development and drafting capacity is needed

The legal framework for government decision-making is still uncertain. Recently, the EAR project in the OPM prepared a draft Rules of Procedure for PISG. This is a substantial draft, modelled on similar document in former Yugoslav countries. The draft was submitted to the OPM (the Permanent Secretary and the Principal International Officer) in February 2003, but so far there appears to be little interest in developing and adopting this document.

In the near-term, there is no doubt that Kosovo will need to develop and adopt rules for the preparation of policy and legal documents, and the preparation and coordination of decision-making.

3.1.3.2 Institutional framework

The Office of the Prime Minister (OPM) is presently a skeletal organisation. Some of the units normally required in a Centre of Government do exist, and are at least partially staffed. However, some of the units lack a clear definition of responsibilities, and the staffs are mostly new and untrained. There is only rudimentary management structure in the OPM, and no clear system of delegation and internal accountability. Linkages to Ministries are variable, and Ministries do not normally view the OPM as providing leadership to their policy activities.

There is no developed management structure in the OPM: meetings of the Government do not serve as a forum for decision-making

The strong impression is that the focus of activity in the OPM is the political Cabinet of the Prime Minister, and that this Cabinet serves the PM, not the collective government. This mirrors the political reality of the present coalition, where the capacity and/or incentive of the government to act as a body appear rather limited. Meetings of the government are used primarily for quasi-legislative tasks, not as a forum for collective decision-making or discussion and policy matters.

The following units presently exist within the OPM. They generally operate at low levels of capacity and sophistication:

Political Cabinet of the Prime Minister: The office includes 5 Political Advisers. In practice, it appears to be led by the Principal International Adviser (PIO). The PSIG Stability Pact Office is attached to the Cabinet and headed by one of the advisers. Its main activity is facilitating the participation of Kosovo businesses in regional initiatives.

Permanent Secretariat: The secretariat includes 6 Policy Advisers and two support staff. Each of the Advisers is loosely assigned to act as a contact point for one or more Ministries. They provide logistical support for the meetings of the government and of the Permanent Secretaries, and are involved in rudimentary efforts to monitor the activities of Ministries. In general, the role of the Advisers is poorly defined and in practice and activities are assigned to them on an ad hoc basis by the Permanent Secretary.

The OLSS acts as a “mini” Ministry of Justice

Legal Services (OLSS): There is a Head of Service, and the staff of the unit recently increased from 3 to 11. In practice, the OLSS acts as a “mini” Ministry of Justice, and does a lot of the drafting, often with major participation of foreign drafters. Donor support to the OPM is presently focussed on the OLSS.

Office of Public Information: This is a rudimentary operation, having few staff, with no clear role, space, or equipment. The appointment of staff in this office, especially the Spokesperson, has been the subject of intense political interference by the Cabinet. A spokesperson and a Director have been selected on three and two occasions respectively. However, the appointments were stopped due to objections by the Cabinet.

The STM Unit has the potential to become a future European Integration Unit

SAP Tracking Mechanism (STM) Unit: This unit was established very recently to manage the STM, which is the EU process for Kosovo that parallels the SAP in the rest of the region. Officially, the head of this unit is the Permanent Secretary himself, but in practice it consists of one person selected and paid for by the European Office (Pillar IV). The intention is to have a counterpart assigned to the unit in each Ministry, and to facilitate a regular process of dialogue on the basis of the EU questionnaire. This unit has the potential to be developed into a future European Integration Unit.

Advisory units: The OPM includes a number of units that handle specific policy issues. These include an Advisory Office on Good Governance (anti-corruption, transparency), Human Rights, Equal Opportunity and Gender Equality, and an Advisory Office for Communities. These units appear to be specifically related to issues of transferred and reserved competencies: they carry out a combination of policy development, consultation and coordination in fields that are presently reserved, but where the government needs to have some

involvement without having a Ministry.

3.1.3.3 Co-ordination capacity

Upon its election, the Government set out on an ambitious programme which focused primarily on the immediate-and medium-term priorities of economic development, community integration and reform in two crucial sectors: health and education. The Assembly adopted the Programme in May 2002. The Programme represents a general policy statement by the Government on its plans and priorities for the transferred areas. In fact, the Programme was drafted by foreign experts, and does not enjoy a meaningful political commitment by the Government. The Programme was never translated into concrete steps for its implementation. Moreover, the Programme has not been properly costed in any detail. In addition to this Programme, there are other “strategic priorities” that – from the perspective of one or another player -- give rise to operational requirements. These include the UNMIK “Benchmarks”, the Government’s desire to obtain additional transfer of powers, and the EU’s objective of achieving progress related to SAp.

OPM’s attempt to monitor progress in achieving the Government’s goals was abandoned in 2003

An attempt by the OPM (commencing in 2002) to monitor the progress of Ministries toward meeting the objectives of the Government Programme was essentially abandoned without producing any results. Presently, DFID is starting a new project to assist the OPM and the line Ministries to increase their policy capacities.

In practice, much of the policy development and legislative drafting in Kosovo remains in the hands of foreign experts, often according to priorities that are established by UNMIK or by donors.

The existing rules for preparing material for the Government, including inter-ministerial consultations and deadlines for submission of material to the sessions are vague, and are generally not respected in practice. In an effort to provide some coordination of the activities of the Government, the Permanent Secretary of the OPM chairs a weekly meeting of all the Permanent Secretaries. These meetings are used for agenda planning and discussion of current issues, and are a useful coordination tool which should be further developed as a means to support collective decision-making by the Government. However, Ministers are suspicious of their Permanent Secretaries, and sometimes see the meeting of Permanent Secretaries as a parallel Government meeting. They fail to recognize the preparatory role that the Permanent Secretary meetings could perform.

The Donor Co-Ordination Unit in MoFE is

In addition, there is a Donor Coordination Unit, located in the Ministry of Finance and Economy. The Unit is generally considered to be doing

considered to be effective

a good job, in terms of aid planning, donor coordination, and database management. The EU Pillar is reluctant to see this Unit weakened or transferred to the OPM. The issue of managing donor coordination and linking it to the planning activities of the Government remains under discussion.

3.1.3.4 Assessment

Weakness of the OPM. The OPM is an organisation at the earliest stages of development. It generally lacks sufficient capacity to organise and service the meetings of the Government, to provide strategic and policy coordination support, to plan the work of the Government, and to monitor implementation. Its internal management system is also weak. The OPM has insufficient trained people to carry out its responsibilities.

Weakness of the policy formulation, drafting and planning capacity in the Ministries. All the Ministries are in the early stages of development and of transition to self-management. The Ministries are particularly weak in the areas of policy formulation and drafting, and these activities continue to be carried out largely by foreign experts. Ministries' ability to plan their work and to proceed according to an agreed plan is also weak.

Lack of agreed procedures for preparation of material for the Government. The draft Rules of Procedures prepared by the EAR project is a good start, but the Government needs to agree procedures for preparation of material by Ministries and for the work of the Government. Ideally, the process of adopting a suitable legal framework will continue to be encouraged by the EAR project.

Limited capacity in the OPM. The OPM has only limited capacity to absorb donor assistance. The present projects are taxing this capacity, and future projects would have to be carefully tailored to ensure that they proceed in lock step with increasing absorption capacity.

Rudimentary structures to coordinate activities related to European Integration. Recently, through the STM process, the European Office began to support the development of capacity in the OPM to take on the responsibilities related to integrating Kosovo into the EU's regional activities. Building this capacity within the OPM and the Ministries should be an important priority.

3.1.3.5 Recommendations

The PISG should give priority to the development of the OPM

The Government of Kosovo should give priority to developing the OPM, and in particular to improving its capacity to plan, coordinate, and monitor the implementation of the Government's priorities.

The concept already developed by the OPM can provide a starting-point, but it should be improved prior to implementation so as to benefit from the experience of other similar systems, and to ensure that the

OPM itself develops in a coherent and sustainable manner.

Both the OPM and donors should ensure that assistance to the OPM is coordinated, that it does not lead to fragmentation and confusion, and that it does not exceed the absorption capacity of the OPM.

The present EAR project in the OPM, and the DFID long-term assistance to the OPM should, between them, cover all aspects of reforming and strengthening the OPM. This should include: adoption and enforcement of Rules of Procedure, preparation of the Government sessions, policy coordination, planning, monitoring, legal review, and the management of activities related to European Integration (STM, etc.).

Given the limited absorption capacity of the OPM, the EAR should not, at this point, develop additional projects in the OPM. Instead, the EAR might consider:

- extending the present project beyond the original 18 months;
- ensuring that the present project continues to be well coordinated with existing and future support to the OPM provided by other donors;
- As soon as possible, programming a project to assist the Ministries in developing planning and monitoring systems, and policy formulation and impact assessment capacity in relation to their involvement in the European Integration/STM process.

3.1.3.6 External Assistance

There is clear understanding in the OPM of the need to strengthen this body so that it can become a focal point for the Government's policy coordination and strategic planning. In late 2002, the OPM prepared a Reform Concept regarding the establishment of policy and strategic capacity. The document concludes that "the Government will need to establish a strategic policy and planning capacity. Such capacity has been developed in countries in the region and is an integral part of western governmental structures. These structures have proven indispensable in ensuring consistency of overall governmental policy and ensuring that immediate, intermediate and long-term challenges are matched with commensurate resources."

There is significant donor interest in assisting the development of strategic planning and policy-making in Kosovo in general, and in assisting the OPM in particular.

In order to assist the OPM in building on the initial Reform Concept, DFID is implementing two separate projects. The first is the short-term assistance to the OPM (mentioned above) to design and implement an operational planning and monitoring system. A second project lasting

about two years provides comprehensive support for organisational restructuring and capacity development in the OPM.

The EAR is supporting capacity - development in the OPM, focussing on the Office of Legal Support Services

The EAR is supporting capacity development in the OPM, focussing on the Office of Legal Support Services (OLSS). The objectives of this 18-month project are to assist the OLSS in all aspects of preparing legislation with special emphasis on ensuring harmonisation with the *acquis*. The project began in early 2003, is now operational within the OPM, and is working inside OLSS to train staff in legal drafting and EU matters, to develop procedures for *acquis* translation and compliance checking, and other matters related to the legislative process, including development of the Rules of Procedure mentioned above (section 1). It is viewed very positively within the OPM, although it is experiencing some difficulties related to the limited absorption capacity of the OPM.

There are ongoing discussions between the EAR and DFID to ensure that their respective projects will work closely together so as to cover all the aspects of the necessary reforms of the OPM, covering policy coordination, operational and strategic planning, legal review, monitoring, and management of European Integration.

Other projects proceed: Sigma has provided advice on some draft laws to ensure compliance with EU requirements

There are also a number of other projects within the OPM. There is a long-term USAID project within the OLSS that focuses on drafting of specific laws, especially economic laws. In some cases (e.g., the Procurement Law) Sigma is involved in providing comments on drafts, especially in order to ensure that they meet EU requirements. In April, the US National Democratic Institute (NDI) conducted a review of the Office of Public Information in the OPM, at the request of the Cabinet of the Prime Minister. The NDI report was submitted to the Cabinet in May, but follow-up has not yet been agreed. In addition, USAID is providing short-term training to OPM staff in June, focussing on the Cabinet of the Prime Minister.

In addition, the EAR is presently in the final stages of awarding a contract for a project to develop analytical and planning capacity in the Assembly. Synergy between this project and the reform of the OPM is anticipated.

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

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

*local
government
jurisdictions;*

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
structure...*

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 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 28th 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, 11th 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 28th 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 km² 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 ²	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

In Kosovo the tasks of municipalities are conditioned by central regulation and funding; responsibility is shared with the municipal

*functions remain
a sensitive
matter*

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,

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

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 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.