

3.1.4 Decentralisation process

3.1.4.1 Legal framework

The Constitution adopted in 1991 provides the legal basis for local self-government as, according to article 8 (para. 1), it is a citizens' right. According to the Constitution, local government units are the municipalities (art. 114), and Skopje is a separate unit of local government (art. 117); neighbourhoods may be established by municipalities as a form of local self-government (art. 114). The citizens' right to self-government is exercised either directly or through elected representatives. Municipalities are financed from own sources determined by law and revenues transferred by central government; however, this financing hardly exists in practice. Local powers are subject to court revision, but any local authority is entitled to turn to the Constitutional Court to protect its own rights.

The new local government law of 2002 extended the responsibilities of municipalities

The Constitution of the Republic of Macedonia has two distinctive features regarding local government compared to other countries. First, a basic law on local government is provided and has to be passed by a two-thirds majority of deputies in the National Assembly (art. 114). Second, article 115 determines the substantive areas in which citizens participate in decision-making on matters of local importance. It is quite unusual to set out the responsibilities of local government in the Constitution of a unitary state. As a result, changes – although they might be needed – are more difficult to bring about. Other responsibilities may be determined by law. The new local government law of 2002 has extended the responsibilities of municipalities. According to the Constitution, municipalities perform their responsibilities independently, and are subject only to legality oversight. Central government tasks may be delegated by the Republic, but in this case a law is not required.

Article 117 contains no specific rule, but refers to a special law on Skopje.

The Republic of Macedonia is confronted with ethnic problems, which have been exacerbated by influx of refugees, in numbers which are very high relative to the total population of the country. A new census was carried out recently, and the results have been submitted to the government but have not yet been made public. According to 1997 data, native Macedonians represented 66.4% of the population and native Albanians 23.1%; at that time Turks were less than 4% of the total population and other groups even less numerous. The Constitution tries to cope with this diversity. According to article 7, the Macedonian language in the Cyrillic alphabet is the official language, whereas minorities are entitled to use their own language and alphabet for official intercourse in those local government units where minority members are in the majority.

No local finance law has been passed other than provisions in the Law on Budgets of 1993

On the basis of constitutional provisions, an important legislative package was passed in 1995-1996, focusing on: *Local Self-Government; Territorial Division of the Republic of Macedonia and Determining the Territory of Municipalities; the City of Skopje; Local Elections* (in 1996); and *Law on Regulating the Relations between the New Units of Local Self-Government and the Units of Local Self-Government from which they Derive*. However, no local finance law has been passed other than some provisions in the *Law on Budgets of 1993 (the organic budget law)*. Numerous other laws regulating different functions were also passed during these years. The objective was to get closer to European standards, as expressed in the European Charter of Local Autonomy of the Council of Europe. The territorial reform of 1996, resulting in smaller municipalities, was also aimed at this objective.

The country still remains centralised, with local government expenditure below 2% of total public expenditure, a figure which has not changed in recent years. In May 2000, a mission of the Congress of Regional and Local Authorities concluded that the local government law was not implemented, that municipalities had neither local self-government nor financial autonomy, and that competencies were neither comprehensive nor exclusive and were inadequately funded; serious problems were also pointed out in Skopje.

Local government reform resumed with the *Strategy of Reform*, adopted by the government in November 1999. A working group undertook the preparation of a new law on local self-government, with the support of the association of municipalities (ZELS) in 2000; however, progress was interrupted by internal political disputes related to conflicts involving neighbouring countries. It was not until August 2001 that representatives of the main political parties signed a Framework Agreement in Ohrid on common political goals, including agreement on the development of local self-government. This agreement included a legislative programme and proposals for amendments to the Constitution. A new local government law was thus adopted on 24 January 2002; other pieces of legislation, in particular the local finance law and the new territorial division law, were expected to be passed in 2003 or at the latest before the local elections of 2004. The new territorial division law is particularly important, since the IMF stated in its report of May 2002 that a new territorial division was a prerequisite for the finalisation of a new Law on Local Government Finance. Fiscal decentralisation cannot proceed prior to the adoption of a new territorial division law.

Since January 2002 draft laws on local finance and territorial division have not been passed

However, since January 2002 draft laws on local finance and territorial division have been prepared to support the implementation of the new *Local Government Law*, but none on these has been passed. The reason for this delay is the uncertainty, and probably political disagreements, about the new territorial division.

3.1.4.2 Institutional framework

The Republic of Macedonia is divided into 123 municipalities plus Skopje, which is a special local government comprised of seven municipalities. This territorial organisation of a single-tier system of local government was established in 1996 by the *Law on the Territorial Division of the Republic*. Previously there had existed only 34 large municipalities. These constituencies still exist as the seats of the territorial branches of the various government administrations (state regional offices). This territorial reform was considered necessary in order to establish self-governed municipalities.

The IMF is requiring concentration of municipalities prior to the adoption of the local finance law

The territorial pattern is characterised by the size of Skopje (554,000 inhabitants or one quarter of the total population), the existence of mountainous areas, and large differences between municipalities. The population of municipalities varies from 500 to 120,000 inhabitants, with 46 municipalities of under 5,000 inhabitants and four of under 1,000. This territorial pattern is currently very much criticised, and is generally considered as inadequate in view of the new extended municipalities. However, the size of the current municipalities is similar to that of other European countries, and the number of inhabitants per municipality is the same as in Denmark. Various schemes are currently being explored to overcome what is considered as excessive fragmentation, ranging from a return to the former structure of 34 large municipalities to the maintenance of the present situation but with an increase in co-operation. According to article 14 of the *Local Government Law*, municipalities may establish joint administrative authorities, agencies and other administrative bodies. In addition to administrative co-operation, municipalities may also join funds in order to accomplish common interests and perform common tasks falling within municipal responsibilities. Indeed, co-operation could suffice to adjust functions to size and would be politically less troublesome than amalgamation. It is therefore difficult to understand why the IMF is requiring the implementation of territorial reform that concentrates municipalities prior to the adoption of the local finance law.

According to Art. 82 of the *Local Government Law*, neighbourhoods are sub-municipal self-governments established by the Council. Certain tasks of direct interest to the local population may be delegated to the neighbourhoods (Art. 86). A directly elected decision-making body may also be established in the neighbourhood (Art. 84), guaranteeing democratic legitimacy for the sub-delegation of certain municipal responsibilities. Local offices acting as a kind of one-stop information and delivery office could also be set up in the neighbourhoods.

Municipal councils are elected by proportional representat-

Municipalities are managed by a Council elected by proportional representation; mayors are also directly elected. However, in Skopje, several councillors (14 among 39) are delegated by the seven component municipalities.

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According to Art. 20 of the local government law, municipalities have general competence in all local matters. They have the right to perform any activities of local scope in their territory that are not excluded from their competence or that do not fall under the competence of state authorities. The list of possible municipal responsibilities given in Art. 22 is fairly comprehensive, including:

- social welfare services
- child protection
- education
- health care
- urban and rural planning
- communal activities (comprising e.g. water supply, drainage, public hygiene, waste administration, public transportation, construction and maintenance of local roads)
- sport and recreation

However, Art.22 para. 3 calls for special legislation to actually devolve new tasks to the municipalities. Full decentralisation of all listed possible local responsibilities would require about 80 new legislative acts.

Municipal responsibilities are in practice limited in comparison with the ones they could exercise under the new law

For the time being, as by-laws have not been passed, municipal responsibilities are determined by default by the old legislation, under which municipalities are granted limited responsibilities in comparison with the ones they could exercise under the new law.

At present, municipal responsibilities comprise only urban planning, some local services, and infrastructure. However, some larger municipalities have their own public enterprises responsible for certain additional activities, e.g. the local water system. As their managements may not be willing to give away, the adoption of the above mentioned by-laws may thus be hampered.

3.1.4.3 Local financing

Local finance is the major weakness

Local finance is the major weakness of municipalities in the Republic of Macedonia. Municipalities have no stable and adequate financial basis.

Municipalities receive taxes on property transfers, inheritance tax, property tax (real estate and immovable assets), and various other minor taxes, as well as fees. Although no precise detailed data is available, this tax revenue is very low. Furthermore, municipalities are entitled to a share of VAT, a grant for delegated state tasks, subsidies for backward areas, and investment subsidies. There is no equalisation scheme. Transfers are also very low. This is due to the fact that resources are allocated on the basis of expenditure estimates, and expenditures are at a low level, since most of the responsibilities devolved to municipalities have not yet become a reality. Total local

government expenditure does not reach 2% of total public expenditure, and local taxes are under 0.5% of GDP.

Municipalities are allowed by article 63 of the local government law to take a loan or issue bonds; this law establishes no condition.

According to article 38 of the state budget law, municipalities may take a loan to cover a deficit only from the budget of the Republic. This does not rule out a wider interpretation of article 63, e.g. borrowing for purposes other than covering a deficit and therefore from other lenders. In this case, however there is practically no regulation.

3.1.4.4 Conclusions

The main issue is to implement decentralisation

The main issue is to implement decentralisation as currently foresees. It is probably more effective to transfer only those responsibilities that municipalities can perform, including through various forms of co-operation, rather than undertake another territorial reorganisation, which would again postpone decentralisation for several years. In some cases, the devolution of tasks could be subject to the condition of establishing a joint authority. Sufficient resources have to be allocated to municipalities along with the devolution of tasks, and among these resources attention has to be paid to own taxes and to equalisation.