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**Relationships between
Central and Local Authorities in Kosovo**

Legal, Administrative and Fiscal Aspects

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EXECUTIVE SUMMARY

The division of responsibilities between different levels of government is also a blueprint for the governmental system chosen. In Kosovo, we are beginning to see a gradual decentralization of government. Immediately following the emergency phase in 1999, it was necessary for the United Nations Interim Administration Mission in Kosovo (UNMIK) to put in place a strong centralized administration. Throughout the past years, however, UNMIK has been retracting its executive engagements while transferring competences to the Provisional Institutions of Self-Government and the municipalities. Given this development, the Kosovo authorities must continue to define and clarify the relationships between central and local levels.

The concept of the local self-government, as expressed in the European Charter on Local Self-Government, denotes the right of local authorities to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population. Assessing subsidiarity and local autonomy can be done from a variety of different perspectives. In the present report, the OSCE Mission in Kosovo limits its assessment to the legal, administrative and fiscal aspects of the central-local relationships.

The report contains two main sections. The first one presents administrative and judicial aspects focusing on the different types of municipal competences and the respective forms of oversight by the executive branch as well as the judiciary. The second section attempts to provide a comprehensive overview over the four main pillars of the process of fiscal decentralization: expenditure assignments, revenues, intergovernmental transfers and borrowing. Finally, the report presents conclusions on the topics as well as a set of recommendations.

The report reveals a legal and administrative situation that is highly complex, mainly as a result of the unique situation in Kosovo, combined with the ongoing process of decentralization planning. Correspondingly, the report shows a lack of clarity in certain provisions that regulate the supervision and oversight by the central level. The legal framework must be very concise in view of the types of competences allocated to the local level as well as the extent to which the central level has been allocated supervisory powers. On the other hand, a degree of municipal dependence on the competence and power of the central level is also visible, perhaps resulting from the lack of local capacity or the centralized socialist tradition in which Kosovo was governed until 1999.

From the fiscal perspective, the report calls for a local finance reform that is based on efficiency as well as political stability. There needs to be greater clarity in the allocation of power between the central level and the municipalities. Furthermore, a grants system should be developed: which defines a new role for the Grants Commission; which is built on quality statistics; and which encourages greater analytical capabilities. In the long run, the success of local fiscal reform projects is highly dependent on reliable population data.

As a conclusion, the report welcomes the ongoing process of strengthening local self-governance. At the same time, it calls for a high degree of detail and precision in the future legal framework. Proper attention must be paid to the details of the decentralization process, so that future steps are taken with responsibility and so that mistakes are avoided. Clear delineation of competencies between the central and municipal levels is one of the main elements that will help ensure more effective governance at the local level. Further, the legislature needs to ensure that a proper institutional and financial infrastructure is established in order to implement the competences allocated. This needs to include regulations to deal with political or financial instability as well as day-to-day interaction between the central and the local level. However, no legislative framework can replace the need for mutual respect and democratic culture between public institutions at the central and at the local level.

INTRODUCTION AND BACKGROUND

The OSCE Mission in Kosovo (OSCE) carries out activities to further support and promote the principles of good governance in the municipalities across Kosovo. One of the OSCE's activities for 2007 was to assess the framework regulating the relationship between the central and the local (municipal) level with a view to addressing incompatibilities and to support bridging gaps.

The present report assesses the legal and fiscal relationships between the central and local level authorities in Kosovo in light of the European Charter of Local Self-Government.¹ Considering that local government reform – i.e. decentralization – is beginning to take place in Kosovo, the report explores the present situation and identifies areas of possible deficiency, with a view to addressing such deficiencies, such as through future legislation governing local self-government. In addition to legal, administrative and judicial aspects of central/local relations, an extensive analysis is provided in the area of fiscal relations.

The first section begins by setting out some of the major principles included in the European Charter of Local Self-Government. The Charter sets out the general principles according to which most Members States of the Council of Europe have committed themselves and which also constitutes the main guideline for local governance in Kosovo. In addition, Section I of the report examines administrative and judicial aspects of central/local relations. It addresses issues such as: municipal competencies according to the applicable law, including own and delegated competencies; central executive oversight of municipal activities, including the administrative appeals and supervision; and judicial oversight over final administrative acts. Section II of the report contains an extensive analysis on fiscal relations, and includes chapters on expenditures, own source revenues, intergovernmental transfers and borrowing. The report closes with conclusions and a list of recommendations.

Methodologically, the report has been drawn from a long-term analysis of the legal, administrative and fiscal framework, conducted by the OSCE Local Good Governance Section (now Governance Section), as well as data collected by the OSCE Municipal Teams throughout Kosovo.

The report aims to show all actors engaged in decentralization and local governance reform in Kosovo how the legal and financial framework for local governance in Kosovo complies with international standards. It is oriented towards the Provisional Institutions of Self-Government, UNMIK, and Kosovo municipalities, as well as other international and non-governmental actors.

¹ European Charter of Local Self-Government, Council of Europe, Strasbourg, 15 October 1985.

SECTION I: LEGAL AND ADMINISTRATIVE ASPECTS

Section I begins by introducing the European Charter of Local Self Government, which delineates the Europe-wide accepted principle of local self-government. It then presents the current competencies of municipalities in Kosovo foreseen in the applicable legislation as well as some future aspects on the competencies likely to be introduced in the near future as a result of the legal reform of local self-government. This is followed by an explanation on executive oversight by the central authorities over the municipal activities and ends with elaboration on the judicial oversight over the final administrative decisions, normative acts and judicial protection of the local self-government as such.

A. The European Charter on Local Self-Government

The European Charter on Local Self-Government (the Charter) was adopted in the form of a convention by the Committee of Ministers of the Council of Europe. It was opened to signature as a convention by the member states of the Council of Europe on 15 October 1985.² The Charter represents the most important international document delineating the principle of local self-government. It has had considerable influence on the laws of most Council of Europe member states regulating local self-government.

The Charter determines that the principle of local self-government shall be recognized in domestic legislation and where practicable in the constitution.³ The concept of local self-government, as envisaged in Article 3 paragraph 1 of the Charter, includes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population. UNMIK Regulation 2007/30 amending UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo in its preamble refers explicitly to the Charter and makes particular reference to its Article 3.

In addition to this, the scope of local self-government has been foreseen in Article 4 of the Charter, paragraph 3 of which requires that “[p]ublic responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.” This principle is otherwise known as the principle of subsidiarity. According to the Charter’s explanatory report, which is an official source, Article 4 paragraph 3 articulates the general principle that the exercise of public responsibilities should be decentralized.

² The Charter has been signed and ratified by 43 out of 47 member states of the Council of Europe. Montenegro has signed but not ratified the Charter yet. Andorra, Monaco and San Marino have not signed the Charter.

³ Article 2, European Charter on Local Self-Governance. This proposed solution to recognise it either in law or the constitution has been made for reason that the incorporation might require changes in the constitution of member states which is sometimes a difficult process and even more some States do not have a written constitution.

The Charter, apart from making reference to “own” competencies under Article 3, also makes reference to “delegated” competencies in Article 4 paragraph 5. It refrains from defining precisely what affairs local authorities should be entitled to regulate and manage. This is resulting from the fact that the traditions of the member states of the Charter differ greatly and may vary between countries and over time. However, the intention of the Charter is that local governments should have a broad range of responsibilities which are capable of being carried out at local level.⁴ In view of that, the Charter in Article 4 defines the scope of local self-government in abstract terms and not with reference to specific areas of competence. In addition it provides that the local authorities, where powers are delegated to them by a central or regional authority, shall be allowed discretion in adapting their exercise to local conditions.

Taking into consideration the importance of the principle of subsidiarity, as mentioned in Article 4.3 of the Charter, the Committee of Ministers of the Council of Europe has adopted Recommendation No. R(95) 19 on the implementation of the principle of subsidiarity.⁵ It recommends to the governments of the member states *inter alia* to “specify in the relevant legislation a core set of powers pertaining to each level of local and regional authorities in addition to any assumption of general competence; [...] to set up procedures or mechanisms, of a legal or political nature, where these do not already exist, to promote the implementation of the principle of subsidiarity and to deal with any possible associated dispute; to apply all these provisions not only to relations between central government and local authorities, [...]”⁶

Regarding central level oversight over municipal activities, the Charter foresees in Article 8 such administrative supervision that is provided for by a constitution or statute and exercised in proportion to the interest, which it intends to protect. It should normally be limited to the questions of legality of municipal action and not its expediency.⁷ However, an exception is made with regard to delegated competences, where the authority delegating may wish to exercise some supervision over the way in which the task is carried out. With regard to judicial oversight, the Charter in Article 11 calls for the municipalities’ right of recourse to a judicial remedy to secure the principle of local self-government.

Therefore, Kosovo authorities should take into consideration the principles of the Charter in a future Law on Local Self-Government, which should further define municipal competencies. Within this process, municipalities should be consulted in an appropriate way due to the importance of the particular matters that are of concern to them directly. Clear distinctions of competencies at the municipal level would support the exercise of public functions at the municipal level as well as the identification of legal relationships with central level authorities. A future Law on Local Self-Government, which is in compliance with the Charter’s principles, would be a step forward for Kosovo on its way towards harmonization of laws with European democratic standards.

⁴ European Charter of Local Self-Government 1985, Explanatory Report to Article 3 paragraph 1.

⁵ Adopted by the Committee of Ministers on 12 October 1995.

⁶ For more detailed information, see page 2 of the Council of Europe Committee of Ministers’ Recommendation No. R (95) 19.

⁷ European Charter of Local Self-Government 1985, Explanatory Report to Article 8 paragraph 2.

B. Competencies of municipalities

1. Competencies of municipalities – currently

The current framework for local self-government in Kosovo was initially established by UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo.⁸ It was promulgated in August 2000 by UNMIK in order to organise and oversee municipal self-government in Kosovo. This Regulation was a tailor made normative act for the UNMIK centralized administration structure, which through Municipal Representatives had a direct administrative link to the central level – the Special Representative of the Secretary General supported by the UNMIK Civil Administration Pillar. In 2007, the Regulation has been amended by UNMIK Regulation 2007/30⁹ in order to regulate election related changes mainly connected to the introduction of direct election of mayors in municipalities. Concerning the general competencies of municipalities, however, little has changed.

UNMIK Regulation 2007/30 maintains that municipalities are competent to issue normative acts at the municipal level in relation to matters within their area of competence. Municipalities, in exercising all powers not expressly allocated to other public bodies including the Special Representative of the Secretary General – formerly “Central Authority” – regulate and manage public affairs in their territory within the limits set up by the law.¹⁰ This is specified further by Section 3.1 of the Regulation, which explicitly stipulates areas where the municipalities have regulatory competencies. Regulatory competencies, otherwise known as municipal “own” competencies, are for example: providing basic local conditions for sustainable economic development; urban and rural planning and land use; licensing of building and other development; local environmental protection; the implementation of building regulations and building control standards; and service provision in relation to local public utilities and infrastructure (for the complete list see Annex 1 below).

In addition to these competencies, the new Regulation envisages additional areas, which *may* be regulated at the local level. These “voluntary” competencies include activities related to tourism, culture, sports, youth activities, economic and civic promotion.¹¹

As a separate category, the Regulation in addition to municipal legislative competencies establishes the obligation of municipalities to *implement* central legislation at the local level that has been delegated to them. This applies often to areas where a degree of uniformity must be maintained throughout Kosovo. This category includes for example cadastral records, civil registries, voter and business registration and additional responsibilities within the competencies of the Provisional Institutions of Self Government that are explicitly delegated.¹² Such competencies are referred to as “delegated” competencies of the municipality.

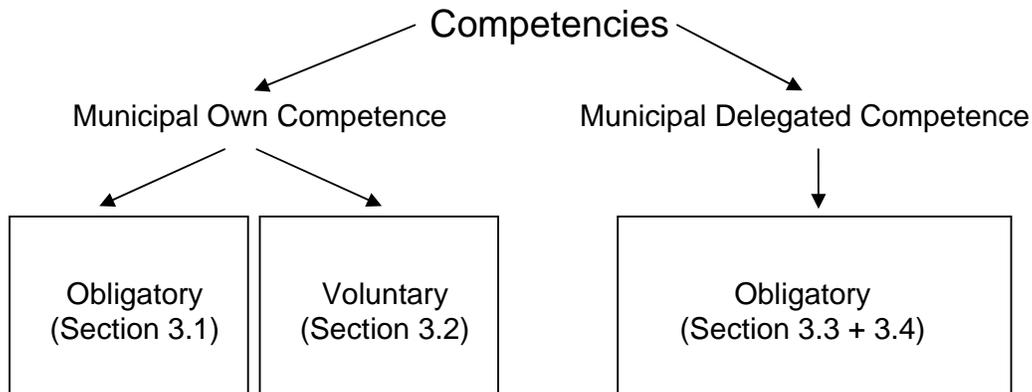
⁸ Promulgated and entered into force on 11 August 2000.

⁹ Amending UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo, 16 October 2007.

¹⁰ Section 2.2, UNMIK Regulation 2007/30.

¹¹ Section 3.2, UNMIK Regulation 2007/30.

¹² Section 3.3 and 3.4, UNMIK Regulation 2007/30.



Although UNMIK Regulation 2007/30, as UNMIK Regulation 2000/45 before it, does not expressly refer to the terminology of “own” and “delegated” competencies, it implies similar concepts. Within own competencies, municipalities are responsible and have full discretion to regulate issues of common interest at the local level, while regarding delegated competencies the central level authorities entrust the local level to implement central level policies within a substantive framework and financed by the central level.

This approach was taken by the Ministry of Local Government Administration when it issued an Administrative Instruction in 2005¹³ regulating the monitoring and supervision of municipalities. It, among others, defines “own” and “delegated” competencies. This instruction was apparently issued to fill in a gap left by UNMIK Regulation 2000/45 at a time when the draft Law on Local Self-Government was on hold in order not to anticipate results from the status talks in Vienna.

The instruction defines “own” competencies as:

“competencies allocated to the municipality by means of legal or conventional [Alb. version: constitutional] provisions. The municipalities are responsible and have full administrative authority, service, investing and regulatory authority for realization of these competencies according to rules, criteria and standards determined by constitution and Law.”¹⁴

On the other hand “delegated” competencies are defined as:

“functions of the central government or other central level institutions delegated to municipalities according to law, which shall be executed temporarily or permanently by municipalities as determined by government and other central institutions.”¹⁵

¹³ Administrative Instruction 2005/7 for Implementation of Responsibilities of the Ministry of Local Government Administration in Relation to Monitoring and Supervision of Municipalities.

¹⁴ Definition of terms, Section 2, Administrative Instruction 2005/7.

¹⁵ Definition of terms, Section 2, Administrative Instruction 2005/7.

As a note of caution, the OSCE believes that such an important central issue should not be regulated by secondary legislation, or at least not without a proper and detailed legal basis in primary legislation. It is the responsibility of the legislature rather than the executive branch to define relations between central and local levels. However, for the sake of completeness, this report refers to this instruction as applicable.

2. *Competencies of municipalities – future plans*

Changes in the structure of municipal competencies are likely to happen in the near future. This will probably take the form of a new draft Law on Local Self-Government, which is currently being prepared by the Government, based on the principles contained in the Provisional Institutions of Self-Government's Action Plan for the Implementation of Decentralization (Action Plan). Regardless of whether the Action Plan will be implemented in the current form, it will likely continue to serve as the primary model for the Government's decentralization strategy in Kosovo.

The Action Plan foresees as the first step of decentralization a legislative reform. The legislative reform shall include: adoption of three new basic laws (Law on Local Self-Government, Law on Municipal Boundaries and Law on General and Local Election); revision and amendment of the existing legislation having impact on municipal competencies; and adoption of new laws necessary for the local government system. It indicates that local self-government shall be based upon the principles of the European Charter on Local Self-Government, in particular the principle of subsidiarity, and protect and promote internationally recognized human rights standards, having particular regard for the needs of the non-majority communities and their members.

According to the Action Plan, the future Law on Local Self-Government shall reinforce the powers and organization of municipalities. The municipal competencies, to be provided for in the future Law on Local Self-Government, are likely to be referred to as municipal own competencies, enhanced own competencies and delegated competencies, in line with the Charter. The own competencies are the core competencies of municipalities, within the scope of which they are entitled to freely regulate and manage municipal affairs. Enhanced own competencies are those competencies deriving from an asymmetric decentralization process with the aim of better accommodating the interests of those communities which are not in the majority in the territory of Kosovo. In other words, enhanced own competencies have not been envisaged for all municipalities, but only for municipalities inhabited mostly by the Kosovo Serb community, whereas in the other municipalities these competencies will continue to be exercised by the central level institutions. Delegated competencies are central level competencies that in order to offer better services for inhabitants are exercised by municipalities.

a) Own competencies

Municipalities are likely to have full and exclusive powers in certain areas, while respecting the applicable legislation of Kosovo. The list of competencies currently include: local economic development; urban and rural planning; land use and development; implementation of building regulations and building control standards; local environmental protection; provision and maintenance of public services and utilities; and local emergency response.

Such competencies are likely to be provided for in the future Law on Local Self-Government and will be similar for all municipalities across Kosovo. The municipal activities within the areas of own competencies may be subject to administrative review by the central authority. However, such administrative review should be limited to only ensuring whether such activities are in compliance with future constitutional arrangements and the applicable law.¹⁶

b) Enhanced own competencies

Enhanced own competencies are planned to be for certain municipalities where the Kosovo Serb community is in the majority. These enhanced competencies are foreseen in order to address political concerns and better accommodate the needs of the Kosovo Serb community. Examples include: higher education, including registration and licensing of educational institutions; secondary health care, including registration and licensing of health care institutions, recruitment, payment of salaries and training of health care personnel; and cultural affairs, including protection and promotion of Serbian and other religious and cultural heritage within the municipal territory, as well as support for local religious communities and enhanced participatory rights in the appointment of Police Station Commanders.

By enhancing such competencies, the Provisional Institutions of Self-Government would in effect be legitimising parallel structures linked to Belgrade. Such a strategy would allow for integration of existing Serbian parallel structures into the public sector providing services to all the people in Kosovo.¹⁷

c) Delegated competencies

In the future structure, central authorities should continue to be able to delegate competencies to municipalities. There are areas where central uniformity is necessary, such as cadastral records, civil registries, voter registration, business registration and licensing, distribution of social assistance payments (excluding pensions), and forestry protection. Other appropriate competencies can be delegated in accordance with the law.

The process of transformation of the local self-government from a system created by UNMIK into the system to be established by the Kosovo authorities with more competencies for municipalities will have an impact also in the functioning of municipalities. The OSCE advises the legislature to strive for more concise definitions of municipal competencies. Confusion in the exercise of competences should be avoided. The legislature should make an effort to better define municipal competencies in a future Law on Local Self-Government.

¹⁶ For more detailed information, see under Judicial Oversight below on page 23.

¹⁷ See also OSCE report on Parallel Structures in Kosovo, 2006-2007.

C. Executive oversight

Municipalities as basic territorial units, exercise their powers within their areas of responsibilities in order to achieve certain goals and to provide services for the residents as well as to restrict their rights under conditions and procedure determined by the respective laws. In addition to applying the law, municipalities may also legislate within their area of competencies (own and delegated). They can issue municipal regulations to address a *multitude* of social relations, and municipal decisions to address *individual* issues. However, both forms of acts require a legal basis in the applicable law, since they are regulating rights and responsibilities of the people in Kosovo.¹⁸

The issue of oversight of the local level arises given that all municipalities need to comply with the applicable law.¹⁹ Local self-government occurs in a broader system of State organization, but it also needs to be separate from the central level executive power, i.e., the government. As long as the central authority is formally vested with UNMIK, the legal basis remains UN Security Council Resolution 1244. However, as more and more competencies are transferred to the Provisional Institutions of Self-Government, as UNMIK reduces its day-to-day influence, the questions of central level oversight by ministries enters the legislative agenda.

Also the Charter in its Article 8 takes into account the relationship and points to the principle of legality, differentiates between own and delegated competences and finally stresses the importance of the principle of proportionality. In this part we will examine the current legal framework in view of the extent to which it allows for central level oversight.

Until recently, the legal framework allowed for two types of central executive oversight of municipal activities. The first type included the right of central authorities to review the legality of administrative decisions taken as a result of an appeal submitted by affected parties (*bottom up*). Such proceedings were initiated by a person claiming that his or her rights had been infringed by an administrative decision of a municipality resulting from an appeal, the administrative decision was reconsidered by a higher authority. As explained below, this second layer has been eliminated by UNMIK Regulation 2007/30.

The second type of oversight includes the right of central authorities to supervise (*top down*) the activities of municipalities in their areas of competence. Top down central level supervision consists of observation of the municipal activities and directions for their execution. Such supervision still exists, and is likely to be better articulated once there is a new comprehensive law on local self-government. Both types of executive oversight – an appeal against administrative decisions and supervision – will be discussed in the next paragraph.

¹⁸ On the scope of hierarchy of norms, see the OSCE, Implementation of Kosovo Assembly Laws, Report III, 2007, page 36.

¹⁹ Sections 2.2 and 4, UNMIK Regulation 2007/30.

1. Appeal against administrative decisions

The legal framework regarding the right to appeal against an administrative decision of a municipality has been recently changed by UNMIK Regulation 2007/30. While this Regulation still guarantees the right of an individual to file complaints and to require judicial protection against administrative acts issued by a municipality, the layer of central government executive review has been eliminated.

UNMIK Regulation 2000/45 foresaw that a complaint against an administrative decision of a municipality was submitted in writing to the Chief Executive Officer or made in person in the respective office.²⁰ The Chief Executive Officer re-examined both the legality of the decision and the administrative process by which it was reached and gave a reasoned response in writing to the complainant.²¹ In case the complainant was dissatisfied with the response of the Chief Executive Officer, the matter could be referred to the Central Authority (Section 35.4).

With the promulgation of UNMIK Regulation 2007/30, complaints from individuals are now submitted to the Head of the Department of Administration and Personnel, who re-examines the decision and makes recommendations to the Mayor. The Mayor is then responsible for providing the complainant with a reasoned response in writing, which constitutes a final administrative decision, subject only to judicial review.²²

Similar to UNMIK Regulation 2000/45, UNMIK Regulation 2007/30 regulates some areas of the administrative appeal procedure. These specific articles (*lex specialis*) are to be applied preferentially in relation to the general Law on the Administrative Procedure (*lex generalis*).²³ The latter applies only to administrative processes that are not regulated otherwise.

The complaints procedure according to the Law on the Administrative Procedure is much more detailed. According to this law, natural and legal persons are entitled to request revocation, abolishment or modification of an administrative act in compliance with the rules for administrative appeal: a) through a request for redress or review submitted to the person responsible for the act; or b) through appeal sent to higher bodies.²⁴ Any interested party has the right to appeal against an administrative act or unlawful refusal to issue an administrative act. The body reviewing the appeal has four options - it shall decide: a) to confirm the validity of the act and reject the appeal; b) to abolish/revoke the act and endorse the appeal; c) to modify the administrative act by partially endorsing the appeal; or d) to instruct the competent body to issue an administrative act when its issuance has been unlawfully rejected.²⁵ In this form, higher administrative decision-making bodies review and control the legality and consistency of the administrative decisions of the municipalities based on

²⁰ See Section 35.1, UNMIK Regulation 2000/45.

²¹ See Section 35.2, UNMIK Regulation 2000/45. A complaint relating to a decision taken by or on behalf of the Chief Executive Officer can be referred to the President of the Municipality (Section 35.5).

²² Section 35, UNMIK Regulation 2007/30.

²³ Promulgated by UNMIK Regulation 2006/33. See specifically Sections 126–136.

²⁴ See Article 126 of the Law. When the administrative appeal is in the form of request for review, it shall be submitted to the body that issued the challenged administrative act or refused to issue it whereas when the administrative appeal is in the form of appeal, it shall be submitted to the higher bodies (Article 129).

²⁵ See Article 136 of the Law.

the request submitted by persons affected by those decisions. In addition, natural and legal persons are entitled to ask for judicial review of a final administrative decision.²⁶

In contrast to this, UNMIK Regulation 2007/30 provides solely for a one-layer administrative review process prior to judicial review. Furthermore, no distinction is made between review of actions based on municipal own or delegated competencies. The idea of excluding the central authority of the administrative appeal process and not making a distinction between own and delegated competencies seems to be either an omission or the result of a political decision.

The legislature will have important decisions to make regarding the municipal complaints procedure, in the context of the future Law on Local Self Government. It will have to decide whether to maintain a one layer appeal, as in UNMIK Regulation 2007/30; or whether to allow for the Law on Administrative Procedure to apply. It also will have to consider how this applies to own and delegated competences.

The OSCE recommends that clear procedures are established in the future Law on Local Self-Government. The OSCE considers that complaint procedures should be transparent and similar throughout the whole public administration of Kosovo, central and local government. The OSCE also recommends to make a distinction between review of actions based on municipal own or delegated competencies.

2. Supervision

As explained above, apart from the competence to implement and apply legislation, municipalities may legislate within their area of competence. No local regulation is valid, however, if it is in conflict with the applicable law.²⁷ It is thus necessary to determine who is competent to decide whether a regulation or decision of municipality is in conflict with the applicable law.

UNMIK Regulation 2000/45 established two supervisory alternatives. First, the *Central Authority* could exercise executive oversight over all municipalities' activities to ensure compliance with the law and the regulatory framework and the maintenance of recognized standards. Second, the Special Representative of the Secretary General could set aside any decision of a municipality, which he considers to be in conflict with United Nations Security Council Resolution 1244 or the applicable law, or which does not take sufficiently into account the rights and interests of the communities which are not in the majority in the territory of the municipality.²⁸

The *Central Authority*, within the meaning of UNMIK Regulation 2000/45, was UNMIK. UNMIK did not make any distinction on types of competencies allocated to a municipality. UNMIK supervised activities of the municipalities regardless of whether a municipality exercised own or delegated competencies.²⁹ Nevertheless, with the establishment of the Provisional Institutions of Self-Government by UNMIK

²⁶ For more information, see under Section I, part C of the report.

²⁷ Section 4.2, UNMIK Regulation 2000/45 remained unchanged in UNMIK Regulation 2007/30.

²⁸ Section 46.2, UNMIK Regulation 2007/30 has an identical wording as 47.2 UNMIK Regulation 2000/45.

²⁹ This distinction was at least not made formally in the legislative framework. De facto it might have been a parameter for Special Representative of the Secretary General intervention.

Regulation 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo (Constitutional Framework), UNMIK equipped the executive branch,³⁰ and more exactly the Ministry of Local Government Administration, with certain functions in the field of local administration.

Reference to *Central Authority* is no longer contained in UNMIK Regulation 2007/30, however, the Special Representative of the Secretary General still maintains the authority to set aside decisions of municipalities, as described above.

With regard to the distinction between own and delegated competencies, also the supervisory role of the central authorities needs to be adapted accordingly. Usually the competencies to oversee municipal activities in the area of delegated competencies are much stronger than regarding own municipal competencies. In a strict sense, the central authority is not delegating the competence; rather, it is charging the municipality with the implementation of a particular administrative policy. This means that the competencies are still vested with the central authorities, but their exercise is delegated to the municipal authorities. As a result, the central authorities, in addition to assessing compliance with future constitutional arrangements and with legislation are usually entitled to review the *expediency* of such municipal decisions and acts. That is, they should exercise supervision over the way in which the task is carried out. If the central authority finds that a given municipal decision is inexpedient, or in contradiction with future constitutional arrangements and legislation in force, it should be able to subsequently suspend, modify or replace, as appropriate, the execution of the decision. This dynamic is assessed further below.

a) *Own competencies*

The legal basis for review, by the Provisional Institutions of Self Government, including the Ministry of Local Government Administration, of legislative acts issued by municipalities in relation to municipal “own” competencies, remains unclear. The Ministry of Local Government Administration did pass Administrative Instruction 2005/7 for the implementation of responsibilities of the Ministry of Local Government Administration in relation to monitoring and supervision of municipalities. This Administrative Instruction strengthens the supervisory powers of the Ministry of Local Government Administration considerably. But it is doubtful whether this is in accordance with the applicable law. This Administrative Instruction is analysed below in sub-section b).

UNMIK Regulation 2001/19, as amended, gives the Ministry of Local Government Administration the responsibility for providing legal guidance and advice to municipalities.³¹ An ambiguous provision allocates the competence to oversee

³⁰ The Executive Branch of the Provisional Institutions of Self Government has been established by UNMIK Regulation 2001/19 on the Executive Branch, as amended.

³¹ Annex XIV 3. (g), UNMIK Regulation 2001/19.

compliance of municipalities with certain delegated competencies.³² This is also discussed below.

(1) Supervisory role of the Ministry of Local Government Administration over municipal competencies

The Special Representative of the Secretary General has recently given the Ministry of Local Government Administration more concrete responsibilities in the area of civil service. With the promulgation of UNMIK Regulation 2007/18³³ the Ministry of Local Government Administration has recently assumed the competence to refer any decision or action taken by municipal authorities related to the employment, extension, renewal, suspension and dismissal procedures of Chief Executive Officers and Municipal Directors, which the Ministry considers non-compliant with the applicable legislation, for determination to the Independent Oversight Board. The Ministry of Local Government Administration, in case of unreasonable failure of the municipal authorities to implement the decision and orders of the Independent Oversight Board, in co-ordination with the Prime Minister can suspend or set aside the municipal decision or action in question. In addition, the Ministry of Local Government Administration received discretionary power to assess compliance with the applicable legislation of any decision or action of a general nature taken by municipal authorities in the exercise of its own competencies [...] and through the Prime Minister, make recommendation for the suspension or setting aside by the Special Representative of the Secretary General of the municipal decision or action where non-compliance has been identified.

According to our interpretation, UNMIK Regulation 2007/18 does not really give the Ministry of Local Government Administration an authorization to decide on the legality of any decision or action of a general nature taken by municipal authorities. Rather, it gives the Ministry of Local Government Administration the explicit competence to make recommendations to the Special Representative of the Secretary General for suspension or setting aside of decisions or actions of general nature. Therefore, the control of the legality of municipal legal acts in the area of own competences is still reserved to the Special Representative of the Secretary General.

(2) Future legal acts

In contrast to the current legal situation, the Provisional Institutions of Self-Government's Action Plan for the Implementation of Decentralization (Action Plan) implies a different solution. It seems to suggest that administrative review by the central authorities of municipal activities in the areas of their own competencies will be limited to only ensuring compliance with future constitutional arrangements and applicable law. The supervising administrative authority would then be allowed to request that the municipality re-examines a decision or other act considered to be inconsistent with a constitution or laws. If the municipality accepts the request, it could decide to suspend the execution of the decision or other act pending deliberation

³² Annex XIV 3. (i) UNMIK Regulation 2001/19.

³³ See Section 1, UNMIK Regulation 2007/18 amending UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self Government.

by the municipal authorities. It is likely that a future Law on Local Self Government will also contain this basic structure. However, such policies would require reflection in new legislation regulating competencies of the courts in Kosovo, namely the Law on Courts.

b) Delegated competencies

The Ministry of Local Government Administration was originally established by UNMIK Regulation 2005/15 amending UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo. It provides, in Annex XIV, paragraph 3 (i) that the Ministry of Local Government Administration shall perform functions in the field of local administration, including *inter alia* “overseeing compliance of municipalities with responsibilities and powers delegated to the municipalities...”. It is not clear what the legislature had meant with this formulation. For example, it is unclear whether the Ministry of Local Government Administration is responsible to decide on the legality of legal acts issued by municipalities within the scope of delegated competencies. If so, it is unclear what are the rights of municipalities and how municipalities can ensure that their rights have not been violated.

(1) Ministry of Local Government Administration, Administrative Instruction 2005/7

The Ministry of Local Government Administration, in order to further define its supervisory role, issued Administrative Instruction 2005/7 for implementation of responsibilities of the Ministry of Local Government Administration in relation to monitoring and supervision of municipalities.

aa) Content of the Administrative Instruction

This Instruction determines, *inter alia*, that the Ministry of Local Government Administration as a supervisory organ responsible to supervise municipalities, can supervise legislation and compliance of municipal acts with delegated competencies.³⁴ At the same time, other organs of the central government that delegate competencies shall conduct the supervision of those competencies.³⁵ Supervision of municipalities in exercise of delegated competencies includes the supervision of lawfulness of acts and of compliance.³⁶

Supervision of lawfulness is “the control conducted by a supervisory organ, in order to ensure that normative and administrative acts of municipalities are promulgated in accordance with rules and relevant procedures, and are not in contradiction with any legal provision, or do not exceed the competencies of organs who issued such acts.”³⁷

Supervision of compliance is more comprehensive and is defined as “the right of the supervisory organ to control if the delegated competencies are realized according to rules, criteria and standards determined by central level, if such competencies are

³⁴ Sections 2 and 5.1, Administrative Instruction 2005/07 issued by the Ministry of Local Government Administration.

³⁵ Ibid, Section 5.2

³⁶ Ibid, Sections 6.1 and 6.2.

³⁷ Ibid, Section 2.

conducted in the way and measure determined by the central level and if the undertaken measures fulfil the objectives and results determined by the central level.”³⁸

The municipality may consult the Ministry of Local Government Administration before promulgation of acts related to competencies delegated by this Ministry.³⁹ In any case, upon promulgation, each municipality is obliged to deliver all normative acts to the Ministry of Local Government Administration, within seven days.⁴⁰ The Ministry of Local Government Administration (if the supervision has not been allocated by another ministry)⁴¹ has the right to request revocation of a municipal act if the municipality has violated the law, or the act is not in compliance with delegated competencies, while the municipality is obliged to review the act.⁴² If the municipality fails to perform the revocation, the Ministry of Local Government Administration can repeal the act or replace municipal act as well as to propose intervention of Special Representative of the Secretary General.⁴³ Finally, the Administrative Instruction foresees that the municipality, in accordance with the applicable law on administrative disputes, has the right to complain to the competent court against every measure taken by the Ministry of Local Government Administration (Section 16).

bb) Legal basis of Administrative Instruction 2005/7

The Ministry of Local Government Administration has, as the legal basis of Administrative Instruction 2005/7, listed the main legal acts applicable in Kosovo, regulating the authorizations and responsibilities of the Provisional Institutions of Self-Government, local self-government and the executive branch of the Provisional Institutions of Self-Government.⁴⁴ Moreover, the Section 1.3 d) of UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo foresees that “[e]ach Minister shall, in accordance with policies set by the Government issue decisions and administrative instructions in order to regulate the activities of the Ministry in general or its particular fields of activity.”

Although the above-mentioned Section 1.3 d) establishes general authorization for Ministries to issue Administrative Instructions, it does not give them free reign to regulate any matter. Instead, there must exist a specific authorization in primary legislation. The principle of separation of powers, which is enshrined in Chapter 2 of the Constitutional Framework,⁴⁵ is based on the idea that the legislative, executive and judicial powers should be independent, preventing any person or group from gaining too much power. The legislative branch in Kosovo (UNMIK and Assembly of Kosovo) is primarily responsible for making the law as well as altering or repealing the existing law. The legislative branch can delegate certain legislative powers to other actors, for example the executive branch or an independent agency, but it must explicitly authorise the respective body by the law to issue subsidiary acts on a certain

³⁸ Ibid, Section 2.

³⁹ Ibid, Section 14.1.

⁴⁰ Ibid, Section 13.

⁴¹ Ibid, Section 5.1.

⁴² Ibid, Section 9.

⁴³ Ibid, Sections 10 to 12.

⁴⁴ See the preamble of the Administrative Instruction 2005/7. It lists as legal basis: the Constitutional Framework, UNMIK Regulation 2000/45 and UNMIK Regulation 2005/15 amending UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government.

⁴⁵ UNMIK Regulation 2001/9.

issue. The executive branch body may only issue subsidiary legislation to the extent specified in the law.

However, the legal basis of that secondary legislation in primary legislation is lacking. The reference by the Ministry of Local Government Administration in the preamble of the Administrative Instruction, to our knowledge, does not give such authorization to regulate the issues in question. Nevertheless, the content of this Administrative Instruction could be used as model for addressing the legal relationships of the Ministry of Local Government Administration and other bodies of the executive branch with the municipalities in the future Law on Local Self-Government.

cc) Application of Administrative Instruction 2005/7 by municipal officials

The OSCE, through its Municipal Teams, has conducted an exercise on the awareness and application of the Ministry of Local Government Administration Administrative Instruction 2005/7 by the municipalities Kosovo wide.

According to the information provided by the officials of Kosovo municipalities, most of them are aware of the Administrative Instruction 2005/7 and have been provided copies. However, there are some officials who stated not to be informed about this Administrative Instruction as their municipalities did not receive copies by the Ministry.⁴⁶ On the other hand, the Ministry itself has specifically asked most of the municipalities to provide their municipal normative acts. Sometimes, such requests have been received from the other line ministries.⁴⁷ In addition, most of the municipalities routinely provide the Ministry of Local Government Administration with the normative acts. One municipality stated that they send normative acts during the drafting process to the Ministry of Local Government Administration and the relevant ministries for comments and after the adoption the normative acts are again sent to the Ministry of Local Government Administration.⁴⁸ In another case a municipality reported that it does send regulations and decisions to the Ministry and if within the period of 14 days no comments have been given, the normative act enters into force.⁴⁹ Sometimes the subject matter of the legislation determines if it is sent to the Ministry of Local Government Administration, as in the case of the municipal regulation on property tax or municipal revenues.⁵⁰ On the other hand, there are some

⁴⁶ Zvečan/Zvečan, Leposavić/Leposaviq, Gjilan/Gnjilane, Kamenicë/Kamenica, Pilot Municipal Unit Mamuša/Mamushë/Mamuša. For example, the OSCE Municipal Team Kamenicë/Kamenica provided copies of the Administrative Instruction to municipal officials. Also, there are some officials such as legal officers and municipal information officers within the municipalities which were provided with copies of the Administrative Instruction, who were not aware of it (Novobërdë/Novo Brdo, Deçan/Deçane and Klinë/Klina). This is due to the lack of information sharing between the receiving officials, usually Municipal Assembly Presidents, Chief Executive Officers and other civil servants of municipalities.

⁴⁷ For example, in Prishtinë/Priština municipality such request has been received by the Ministry of Transport and Telecommunications for the normative acts from the field of work of this Ministry.

⁴⁸ Viti/Vitina.

⁴⁹ Dragash/Dragaš.

⁵⁰ Mitrovicë/Mitrovica and Vushtrri/Vučitrn reported sending the municipal regulation on property taxes to the Ministry of Local Government Administration on yearly basis. On the other hand, officials of Istog/Istok municipality stated that the only normative act that was reviewed by the Inter-Ministerial Commission of the Ministry of Finance and Economy and Ministry of Local Government Administration before being adopted by the Municipal Assembly is the Regulation on Municipal Revenues.

municipalities which do not send normative acts to the Ministry on a regular basis, but instead they regularly provide periodical reports which also include information on issued normative acts.⁵¹

Regarding co-operation of municipalities with the ministries, a considerable number of municipalities reported to have good co-operation with the Ministry in the process of drafting normative acts. Some municipalities send the normative acts for review to the Ministry of Local Government Administration before adoption by the Municipal Assembly.⁵² Some other municipalities consult respective ministries during the drafting process,⁵³ or have consultations with the Ministry of Local Government Administration during the drafting process of normative acts.⁵⁴ According to some municipalities, this co-operation should be in more depth in the future.⁵⁵ However, there are several municipalities that do not have regular or specific co-operation in the drafting process with the Ministry of Local Government Administration, as such co-operation exists only upon specific request of the municipality.⁵⁶

The majority of municipalities reported that they need more support from the Ministry of Local Government Administration and the central authorities in general, and in the drafting process in particular. Besides that, some municipal officials proposed organising training sessions on drafting and approval procedures.⁵⁷ Another municipality requests from the Ministry of Local Government Administration to regularly and timely provide the municipality with Administrative Instructions, Directives and other normative acts including the creation of a legal library.⁵⁸ However, some municipalities also stated that they need less supervision from the central level while drafting normative acts.⁵⁹ For example, one municipality⁶⁰ reported that it does not need more support from the Ministry of Local Government Administration, but more autonomy from the central level especially concerning financial management and appointment of school directors. Some other municipalities consider that the current level of support is satisfactory.

There were actually very few cases where the Ministry of Local Government Administration, based on Administrative Instruction 2005/07, has reviewed any municipal regulation or decision, either on its own initiative or upon a resident's request has contested legality of a normative act. Only two municipalities reported that the Ministry of Local Government Administration has had some remarks on the

⁵¹ Štrpce/Shtërpçë, Prishtinë/Priština, Lipjan/Lipljane and Shtime/Štimlje.

⁵² Gjiilan/Gnjilane, Ferizaj/Uroševac, Pilot Municipal Unit Hani i Elezit/Đeneral Janković, Obiliq/Obilić, Glllogovc/Glogovac, Prishtinë/Priština, Pejë/Peć, Pilot Municipal Unit Junik and Dragash/Dragaš.

⁵³ Gjakovë/Đakovica.

⁵⁴ Gjakovë/Đakovica, Pejë/Peć, Istog/Istok, Deçan/Deçane, Mitrovicë/Mitrovica, Vushtrri/Vučitrn and Klinë/Klina.

⁵⁵ Pejë/Peć. Podujevë/Podujevo officials believe that a mechanism between the Ministry of Local Government Administration and the municipality should be established to facilitate and enhance communication between local and central level authorities.

⁵⁶ Kamenicë/Kamenica, Štrpce/Shtërpçë, Viti/Vitina, Skenderaj/Srbica, Lipjan/Lipljane, Podujevë/Podujevo and Shtime/Štimlje.

⁵⁷ Glllogovc/Glogovac and Lipjan/Lipljane.

⁵⁸ Klinë/Klina.

⁵⁹ Gjakovë/Đakovica, Prizren. Dragash/Dragaš municipality stated that the municipality should be given financial independence.

⁶⁰ Malishevë/Mališevo.

Municipal Statute, but the corrections were made accordingly.⁶¹ In one municipality, the Ministry of Local Government Administration asked to change some decisions, but these requests were not based on Administrative Instruction 2005/07.⁶² In one case, a municipality reported that after approval of the Municipal Regulation on Municipal Taxes, the Ministry of Economy and Finance reviewed the regulation and came up with remarks and suggestions. Only after being reviewed, corrected and harmonized with central level legislation, the Ministry of Local Government Administration certified the regulation.⁶³

All municipalities reported that the Ministry of Local Government Administration officials regularly visit municipalities.⁶⁴ The visits usually focus on issues such as the functioning of the municipal administration, civil service, decision making process of Municipal Assembly, compliance with the transparency standards, reporting, capacity building of officials or specific normative acts. However, some municipalities reported that the Ministry of Local Government Administration officials visit them very rarely, mostly when there is a certain problem regarding the municipal legislation or functioning of the Municipal Assembly,⁶⁵ or in cases when there is a big event scheduled, or when the Ministry of Local Government Administration wants to evaluate the performance of the municipality.⁶⁶

(2) Future legal acts

With respect to delegated municipal competencies, the Action Plan implies an alternative solution. It seems to suggest that the central authorities would review the expediency of a given municipal decision or other act, in addition to its compliance with future constitutional arrangements and with legislation to be adopted in the future, and it could subsequently suspend, modify or replace, as appropriate, the execution of a municipal decision or other act. The competence of the central authority is likely to be rather strong regarding delegated competences; similar to other legal systems. However, the bodies that would have competence to review the municipal activities over delegated competences should be determined and the procedure should also be envisaged in the new legislation. The OSCE recommends that the legislature refers to the Slovenian Law as a good model for review of delegated competences.

⁶¹ Novobërdë/Novo Brdo and Skenderaj/Srbica.

⁶² Obiliq/Obilić municipality has been asked by the Ministry of Local Government Administration to review the decision on construction in the vicinity of the Gazimestan memorial, based on Administrative Instruction 2007/11 on the Temporary Interdiction of Object Construction within Protective Zones issued by the Ministry of the Environment and Spatial Planning.

⁶³ Klinë/Klina.

⁶⁴ Note that the following municipalities Zvečan/Zvečan, Leposavić/Leposaviq, and Zubin Potok do not co-operate with the Provisional Institutions of Self-Government.

⁶⁵ Kaçanik/Kaçanik, Štrpce/Shtërpçë.

⁶⁶ Klinë/Klina.

D. Judicial oversight

Article 13 of the European Convention on Human Rights⁶⁷ guarantees an effective remedy before a national authority, where an individual has an arguable claim to be the victim of a violation of the rights set forth in the Convention.⁶⁸ The European Convention on Human Rights does not guarantee a remedy allowing normative acts as such to be challenged before a national authority on the ground of being contrary to the convention or equivalent domestic norms⁶⁹ – a so called abstract norm control. In view of this it is advisable also here to distinguish between judicial review of administrative acts and normative acts of the municipality.

1. Final administrative acts

Persons affected by an administrative decision may address the case to the court. This right is guaranteed by the Constitutional Framework:

“Each person claiming to have been directly and adversely affected by a decision of the Government or an executive agency under the responsibility of the Government shall have the right to judicial review of the legality of that decision after exhausting all avenues for administrative review.”⁷⁰

The applicable law requires that interested parties should have exhausted all administrative remedies of appeal before they can exercise the right to address a competent court.⁷¹ In absence of administrative courts, the Supreme Court of Kosovo is competent to decide on the legality of administrative acts in administrative disputes.⁷²

The administrative dispute procedure is regulated by the Law on Administrative Disputes.⁷³ An administrative dispute can be initiated only against an administrative act. This refers to an act through which a State authority, acting within an administrative competence, decides upon specific rights or obligations of individuals or organizations.⁷⁴ An administrative dispute can be initiated against final administrative acts, which are acts issued by a second instance authority or acts of a first instance authority against which no appeal is allowed.⁷⁵ Further, an administrative dispute can also be initiated, if an authorized body has not issued any administrative act although requested or as a result of an appeal of a party.⁷⁶

⁶⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, Rome 4 November 1950.

⁶⁸ Leander v. Sweden, No. 9248/81, § 77 ECtHR 26 March 1987.

⁶⁹ Leander v. Sweden, No. 9248/81, § 77 ECtHR 26 March 1987.

⁷⁰ See Section 9.4.2, UNMIK Regulation 2001/9.

⁷¹ See Article 127.4, Law on Administrative Procedure.

⁷² See Article 31, Law on Regular Courts, “Official Gazette” of Socialist Autonomous Province of Kosovo, No. 21/1978.

⁷³ “Official Gazette” of Socialist Federal Republic of Yugoslavia, No. 4/1977.

⁷⁴ See Article 6, Law on Administrative Disputes.

⁷⁵ Article 7, Law on Administrative Disputes.

⁷⁶ Article 8, Law on Administrative Disputes.

The level at which an administrative act becomes final is closely dependent on the possibility to appeal a decision by a public authority. UNMIK Regulation 2007/30 amending UNMIK Regulation 2000/45 does not foresee a central level executive review of municipal decisions. The decision of the Mayor will constitute a final administrative act subject to judicial review by the competent court.⁷⁷ Since, according to the current court structure, only the Supreme Court of Kosovo can decide on administrative disputes, this solution will present an additional burden to an already overloaded Supreme Court. Furthermore, taking into consideration the small number of judges in this court, where only two of them deal with administrative matters, the solution does not seem promising. The international and local actors currently working on the draft Law on Courts should have this situation in mind when discussing administrative chambers.

On the other hand, the Action Plan suggests for the future that the administrative authority may challenge the decision or other act in the District Court competent for the territory of the municipality, in case the municipality rejects the request or upholds its decision or act on review. The District Court would then be able to order, by interim measure, suspension of the application of the contested decision or other act. It remains to be seen what solution will be provided in the future Law on Courts.

2. *Municipal normative acts*

UNMIK Regulation 2007/30 on Self-Government of Municipalities in Kosovo authorises municipalities to adopt municipal regulations. A regulation, in contrast to a decision, is a legislative tool to regulate in an abstract and general way a multitude of cases while a decision usually regulates an individual and concrete case.⁷⁸ The Law on Administrative Procedure does not apply to administrative acts of a regulatory character such as municipal regulations.⁷⁹

The current legal framework regulates that no local municipal regulation shall be valid if it is in conflict with the applicable law⁸⁰, which in any case can be set aside by the Special Representative of the Secretary General by virtue of his powers under UNSCR 1244.⁸¹ UNMIK Regulation 2000/45 established a unique hierarchical structure with all executive powers concentrated in the position of the Special Representative of the Secretary General at the top and exercised through his Municipal Representatives in the municipalities, including the power to review normative acts. Nevertheless, the recent UNMIK Regulation 2007/30, contrary to the previous regulation on local self-government, recognises the role of the Ministry of Local Government Administration to monitor the compliance of action or decisions taken by municipalities with the applicable law and exercise administrative oversight in accordance with the UNMIK Regulation 2001/19, as amended.⁸² However, the current applicable law does not envisage *judicial* review of municipal normative acts. It remains to be seen how this issue will be addressed in the new legislation regulating local self-government as well as the draft Law on Courts. The OSCE would

⁷⁷ Section 35.3 UNMIK Regulation 2007/30.

⁷⁸ See OSCE Report on Legislative Activities in Kosovo Municipalities, August 2007, p. 7/8.

⁷⁹ Article 1.4. a), Law on Administrative Procedure.

⁸⁰ Section 4.2, UNMIK Regulation 2007/30.

⁸¹ Section 46.2, UNMIK Regulation 2007/30.

⁸² See Section 3.5, UNMIK Regulation 2007/30.

recommend in the future to establish the possibility of constitutional review of normative acts.

3. *Judicial protection of local self-government*

The European Charter of Local Self-Government foresees in its Article 11 the legal protection of local self-government:

“Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.”

The recourse in the Charter to a judicial remedy refers to municipal access to: “a) a properly constituted court of law, or b) an equivalent, independent, statutory body having the power to rule and advise on the ruling respectively, as to whether any action, omission, decision or other administrative act is in accordance with the law.”⁸³

However, the efficiency of judicial remedies depends very much on judicial capacity in resolving disputes in general. In several countries the constitutional court is competent for the protection of local self-government, since the central-local relationship is seen as a constitutional issue.

The institution in Kosovo that currently comes closest to a constitutional court is the Special Chamber of the Supreme Court on Constitutional Framework Matters. However, the Constitutional Framework does not foresee that municipalities can address a case to the Special Chamber of the Supreme Court on Constitutional Framework Matters in order to question the constitutionality of a law or action of the Government that can infringe their rights; standing is only foreseen for central level bodies.⁸⁴ UNMIK Regulation 2000/45 relied on UNMIK ensuring the application of the law; ultimately with the powers of the Special Representative of the Secretary General.

The OSCE recommends that future legislative reforms regarding local self-government of Kosovo provide provisions such that municipalities may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues before the competent court; possibly a constitutional court.

⁸³ See Article 11, Council of Europe Explanatory Report on the Charter.

⁸⁴ See under 9.4.11, UNMIK Regulation 2001/9.

SECTION II: FISCAL ASPECTS

This section addresses what are commonly referred to as the four main pillars of the process of fiscal decentralization: expenditure assignment, revenues, intergovernmental transfers and borrowing. Each paragraph starts with providing a brief description of the main concepts. Then the current situation in Kosovo is illustrated and assessed leading to a set of recommendations in the end of the report. Where applicable, reference is made to the European Charter of Local Self Government (the Charter).

The main concept with regards to the process of fiscal decentralization is the reduction of the centralized nature of a government. In order to reduce the centralized nature, governments can de-concentrate, delegate or devolve. De-concentration is a process of shifting decision making power from central government officials in the capital to central government officials outside the capital at the local level. Delegation is the process of shifting expenditure responsibilities from the central government to the local government for which the central government carries full financial burden as well as decision-making power. Devolution is the process of transferring responsibilities for government functions and expenditures from the central level to the local governments for which they are granted decision-making authority.

Fiscal decentralization is a process of allocating fiscal decision-making powers and management responsibilities to lower levels of government in a devolved governmental system. Thus, local governments are granted decision-making authority over some government functions *and* are assigned power to finance these functions as well as responsibility to manage. Further, in a devolved decentralization system local governments are fully accountable for their activities toward their residents, whereas in a delegated decentralization system local governments are accountable to the central government.

A. The European Charter on Local Self-Government

The concept of the local self-government, as reflected in the Charter, denotes the right of local authorities to regulate and manage a substantial share of public affairs under their own responsibility and in interest of the local population (Article 3). The local authorities shall exercise their initiatives up to the extent and nature of the task and requirements of efficiency and economy, i.e., in accordance with the subsidiarity principle and their powers shall not be undermined by another regional or central authority (Article 4). Local authorities shall be entitled to adequate financial resources of their own, of which they may dispose freely within the framework of their powers. The protection of financially weaker local authorities calls for the institution of financial equalization, which should be designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. As far as possible the grants to local authorities shall not be earmarked (Article 9). These articles of the Charter form the framework against which the process of fiscal decentralization in Kosovo will be analysed in this section.

B. Expenditure responsibilities

The first pillar of decentralization is the expenditure responsibilities assigned to the municipalities. In the process of fiscal decentralization, municipalities are granted decision-making authority over some government functions and are assigned responsibility to finance the expenditures for managing these functions. The key principle in determining which level of government (central or local) should be responsible to finance the expenditures of the respective function, is the principle of subsidiarity.

The subsidiarity principle is used to ensure that public responsibilities are exercised by those authorities which are closest to the citizens (Article 4 of the Charter). Government services should thus be provided at the lowest level of government that is capable of efficiently providing that service. This implies that, “unless the size of the nature of a task is such that it requires to be treated within a larger territorial area or there are overriding considerations of efficiency or economy, it should generally be entrusted to the most local level of government.”⁸⁵

Of course, there is no absolute way in abstract to decide which level of government should be responsible for which function, since the adequacy highly depends on the goals and objectives set up by the central government as well as factual limitations in size and nature of the local government. The current allocation of competences to the local level in Section 3 of UNMIK Regulation 2007/30 seem to be in line with the principles described; however, there are some issues that should be addressed regarding the system of expenditure assignment in Kosovo.

Moreover, the defined functional responsibilities in UNMIK Regulation 2007/30 (see Annex 1) require clarity of fiscal assignments between the central government and the municipalities. As part of that, explicit assignments of functional responsibilities between the levels of government should be included in a future Law on Local Self-Government rather than individual sector laws.⁸⁶ Functional clarity supports fiscal clarity.

C. Municipal own source revenues

Once responsibilities are assigned to municipalities it should be defined what sources of revenues are available in order to finance such responsibilities. In general terms, there are two typical sources of revenues: own source revenues and transfers from the central government. In the following, the concept of own source revenues will be analysed in relation to Kosovo municipalities, by following general principles from the public finance literature and discussing the sufficiency of own source revenues. Transfers from the central government will be considered under C.

In general, the best own revenues for municipalities are those that are stable and easy to administer, so that the tax base (the source or “base” that is being taxed) is easy to separate across municipalities. In accordance with the Charter the local authorities

⁸⁵ European Charter of Local Self-Government 1985, Explanatory Report to Article 4 paragraph 3.

⁸⁶ For example, in the education sector, the local self government law could define who will be in charge of founding and registering schools, financing and administration, organisation of transport, catering for students, accommodation in students dormitories, curriculum design, and so forth.

shall be entitled to adequate financial resources of their own, of which they may dispose freely within the framework of their powers (Article 9).

Kosovo municipalities have various possibilities to generate own source revenues. For example, according to the Law on Public Financial Management and Accountability,⁸⁷ a municipality may set and collect fees and taxes. UNMIK Regulation 2007/30 allows municipalities to raise revenues by licenses and fees, income from municipal assets and fines or proportion of fines. Furthermore, UNMIK Regulation 2003/29, on Taxes on Immovable Property in Kosovo, devolves certain powers to the municipalities. The Municipal Assembly can set property tax rates between 0.05% and 1% depending on the market value of the property. In addition, municipalities are responsible for property tax valuation, preparing and issuing bills, managing the property tax information system, enforcing and collecting property taxes as well as for the administrative appeals.⁸⁸ In implementing the Law on Public Management and Accountability the Ministry of Finance and Economy has issued the Administrative Instruction 2007/2 on Own Source Revenues of Municipalities, which provides for the types of municipal own revenues, as follows: immovable property tax, tax on municipal services, tax on municipal administrative services, traffic fees and fees for violation of municipal regulation, and other revenues regulated by law (Article 2).

1. Sufficiency of own source revenues

Ideally, the total municipal own source revenues should be enough to cover the provision of services to the public. The advantage of a high share of own source revenues is obviously local financial independence. More importantly, it is also expected that voters would hold their elected officials more accountable if local public services are financed to a significant amount from local sources as opposed to grants from the central level. But municipal revenue-raising capacities often fall short of the ability of municipalities to mobilise sufficient resources from their own sources to cover the provision of services to the public.

The sufficiency in the case of Kosovo is not only a question of a lack of revenue-raising capacity of municipalities, but also of their capacity for planning and managing projects. The issue of past under-investment at the municipal level (as is the case in many transitional countries) will result in a relatively high potential need for infrastructure capital investment in the near and distant future and the capacity need from municipalities to plan and manage capital projects. These requirements from municipalities could be enhanced in the future also in view of the European Union-related legislation regarding environmental protection as well as quality and standards of services.

The sufficiency of own source revenues is also dependant on the size of a municipality. The uniform treatment of the urban and rural municipalities should be reconsidered in a future reform of local government. Different municipalities have different abilities to deliver and finance services. The central government should at least take into consideration the size and the rural character of municipalities in Kosovo when addressing the question of sufficiency of own source revenues. This is

⁸⁷ Promulgated by UNMIK Regulation 2003/17 on 12 May 2003.

⁸⁸ See Section 6 and 10, UNMIK Regulation 2003/29.

even more important when additional pressure arises from the expected increase in public awareness and commensurate expectations for better performance.

2. Principles of own revenues

There are essentially two types of own revenues that local governments can mobilise themselves — taxes and fees. Whereas fees are payments directly in return for services rendered by local governments, taxes are generally linked to particular types of economic activity, like wealth.

There are basic principles of own source revenues. In what follows we will apply these to the property tax system in Kosovo.

1. The municipalities should be allowed to set tax rates.
2. The tax base should be relatively immobile.
3. The taxes raised should be borne primarily by local residents.

UNMIK Regulation 2003/29 on Taxes on Immovable Property in Kosovo devolves the power to municipalities to set tax rates and to administer property taxes. Thus a certain degree of fiscal autonomy is secured, the property tax base is immobile and borne by local residents.

4. The tax yield should be adequate to meet local public spending requirements.

The tax yield in Kosovo is not adequate to meet local public spending requirements. On the contrary, in Kosovo the share of municipal own source revenues is low and there is high level of fiscal dependency on transfers from the central level. Own source revenues account for around 20% of the total municipal revenues in Kosovo.⁸⁹ Any decentralization reform in the near future should address this fiscal over-dependence of municipalities at the central level. This could include sharing taxes and increasing own source revenues of Kosovo municipalities under their expenditure discretion.

5. The tax yield should be able to grow in response to increases in spending requirements without altering tax rates.

The need for automatic changes in the tax base can be a result of change in inflation, growth of the national economy, population growth or income changes of the population. However, the effect of external measures should be assessed thoroughly. For example, in Kosovo tax deduction of the first €10,000 from the taxable value of a property was introduced in 2003. As a result of that, some municipalities in 2007 could not achieve the same level of invoiced and collected property tax revenues as in 2003. As for the revenue collection ratio (collected over invoiced) there is also an indication that it is not the income level of taxpayers that matters as much as the public's awareness to pay taxes.⁹⁰

⁸⁹ The comparable “dependency ratio” for local governments in the average European Union country is 45%.

⁹⁰ From a visit of the municipality of Skenderaj/Srbica in November 2007 and an interview with the Director of Economy and Finance.

6. The tax yield should be predictable and not prone to substantial variations from year to year.

Property taxes in general are easily predictable but in Kosovo, however, more tax awareness is needed. To support that aim, transparency from local level administration on where revenues are invested and on what projects, are crucial.

In summary, the Kosovo revenue system foresees some municipal fiscal autonomy, since legal framework provided the municipalities with sufficient own revenue sources. However, the dependency ratio is too high. The OSCE recommends to consider introducing a revenue sharing system in order for the municipal own source revenues to increase. An increase of municipal own source revenues will create adequate financial resources of their own, of which they may dispose freely within the framework of their powers. In addition, it is expected that the voters will hold their elected officials more accountable if local public services are financed to a significant amount from local sources. Further, in Kosovo the capacity for planning and managing projects at the municipal level needs to be strengthened taking into account that due to different characteristics different municipalities have different abilities to raise own source revenues. Last but not least, the municipalities in Kosovo should be more transparent to their residents in order to achieve a higher level of awareness of the need to pay local taxes.

D. Intergovernmental Transfers

As mentioned in paragraph C above, municipal revenue-raising capacities often fall short of the ability of municipalities to mobilize sufficient resources from their own sources to cover the provision of services to the public. Thus, transfers from the central government should fill in the gap. This paragraph will illustrate how the transfers, the grants from central government to municipalities in Kosovo, are organized and structured. It will also touch upon the issues of vertical and the horizontal equalization.

1. The organization of the grants

The Kosovo consolidated budget is distributed to UNMIK, for the delivery of its reserved functions, to the central government of the Provisional Institutions of Self-Government and to municipalities.

a) The Grants Commission

The Ministry of Finance and Economy has authority over the area of fiscal and economic policy. Public financial management at the municipal level is regulated by UNMIK Regulation 2003/17 on Public Financial Management and Accountability (the budget law). The budget law also regulates the operation of the Grants Commission. The Grants Commission consists of seven members out of which three are nominated by the Association of the Kosovo Municipalities. The remaining four members are high ranking officials from Kosovo: the Prime Minister, the Minister of Finance and Economy, another Minister appointed by the Government and the Chairman of the Budget Committee of the Assembly.⁹¹

⁹¹ Section 58, UNMIK Regulation 2003/17 on Public Financial Management and Accountability.

The role of the Grants Commission, as defined in the budget law, is: to recommend to the Minister of Finance and Economy the amounts to be appropriated as general grants and as specific operating (education and health) grants; to establish a formula, based on objective criteria, for the allocation to the municipalities of funds appropriated as general and specific grants; and to recommend to the Assembly of Kosovo the nature and scope of the powers that should be granted to municipalities for the purpose of levying and collecting fees, charges, and local taxes. Thus, the Grants Commission should provide stable and transparent estimates of the level of grants to the municipalities.

Article 9 of the Charter points out that, as far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. Moreover, local authorities shall be entitled to adequate financial resources of their own, which they may dispose of freely within the framework of their powers. In order to fulfil the requirements of the Charter, local government reform in Kosovo needs to focus on increasing discretion regarding local policy making.

The official statistics on which the transfers are based are not reliable. Many initiatives from the Association of Kosovo Municipalities, for example, to improve the system by including other variables, are not taken into account.⁹² Even though some improvements through the budget process have been introduced recently, for a few municipalities budget ceilings are still adjusted through negotiation, which is not of course in accordance with the ambition for a neutral, stable and transparent grants division.

b) Note on population data

The methodology for grants distribution is based on the official population estimates established back in 2001.⁹³ In a fast growing society such as Kosovo, more than five years difference in the population data could lead to a situation where the grant distribution is out of phase with the actual need at the local level.

The 2001 population data are challenged both by examples from municipalities and by the estimates from a questionnaire conducted by the Ministry of Local Government Administration.⁹⁴ Such differences have the potential to create discrepancy between municipalities and as a result to hamper the needed stability of the transfers.

There have been recent attempts at improvements. For example, in the recent budget circulars the formulas for the distribution of education and health grants are presented transparently. However, the calculations are still based on the 2001 population data.

⁹² Information from the visit of municipality of Skenderaj/Srbica in November 2007 and interview with the Director of Economy and Finance.

⁹³ Compare the Budget Circular 2008/02 - Municipalities, of the Ministry of Economy and Finance from 11 June 2007.

⁹⁴ Ministry of Local Government Administration 2005–2006 Annual Municipal Statistical Report. In that report it is stated that for the purpose of an efficient monitoring, the Department for Supervision, Effectiveness and Reform of Municipalities has drafted a questionnaire that was delivered to all municipalities and Pilot Municipal Units. The Department also states that it intends to create a basic set of data through this questionnaire that will serve the Ministry, and that can be used by civil society, government, donors and the municipalities themselves. This questionnaire provides also information about the results and obstacles faced by the municipalities of Kosovo. Still, the 2001 population data remain widely used.

The budget circular provides information on the initial amount of intergovernmental transfers and advises municipalities on the preliminary projections. The committed provision for municipalities is usually around 22.5% per annum of the projected annual central budget revenue to municipalities in the form of grants. The clearly stated percentage of the total transfer has the aim of providing a definition of stability of the transfers (as it is stated in the budget circular).⁹⁵ However, in a well designed system the stability is expected to be more as a result of the stable share given to municipalities from the total transfer on whom they can exercise their own policy decisions, rather than the stability of the total percentage. If the share of their own resources is downsized for the benefit of earmarked health and education grants, then the system is likely to become unstable. Further, the system shows extreme variability of the grants year by year, which additionally hurts stability.⁹⁶

Especially in the fiscal field the accuracy of the data used as the basis for Kosovo wide calculation has a crucial impact on the outcome. However, this need for accurate data should be balanced with the indispensable need to meet international standards when conducting a population census. The political climate in Kosovo continues to be characterized by uncertainty. Thus, it is very questionable if a census could meet the fundamental principle of *universality* requiring the inclusion of every member of the community within the scope of the census without omission or duplication.⁹⁷

This dilemma between the need for accurate data and the political sensitivity of the issue needs periodic assessments in order establish the right point in time to conduct a population census in Kosovo. The OSCE recommends to currently delay a population census until such time it can be conducted in conformity with international standards.

c) Local finance reform

The further development of the decentralization process in Kosovo will require a new separate law on municipal finances. In that law the grants system should be reformed in at least four dimensions: 1) a new grant scheme; 2) a new role for the Grants Commission; 3) quality statistics; and 4) analytical capabilities.

First, the grants scheme should be based on a transparent formula type of definition. More resources should be allocated to municipalities for them to make their own spending priorities. In other words, part of the transfers should be unconditional and this should be stated clearly in the new municipal finance law. Transfers for horizontal equalization should be explicit and based on firm statistics, and after clear goals are identified as to what should be equalized. For example whether it is the fiscal capacity, expenditure needs, economic goals, demographic goals, and so forth.

Second, the composition and role of the Grants Commission should be amended. The Grants Commission could consist of decision-making authorities, including

⁹⁵ The Ministry of Economy and Finance Budget Circular 2008/02 – Municipalities dated 11 June 2007.

⁹⁶ See “Kosovo Public expenditure and institutional review” World Bank 2006.

⁹⁷ See Principles and Recommendations for Population and Housing Censuses, Revision 2: A General Outline, Demographic and Social Statistics Branch, United Nations Statistics Division, August 2005, page 3.

representatives from municipalities, but should monitor and evaluate the system. It should not negotiate the allocation of resources, as this will be regulated by the future law on municipal finances. If the Grants Commission finds that the system needs changes, this should be done in a proper manner through recognising and discussing the problem with stakeholders and changing the variables of the formulae, or amending laws or subsidiary legislation, instead of ad hoc decision making with regard to budget items. Also, the decision makers should consider having a majority of the Commission members constituted from the municipalities.

Third, a stable and transparent grants distribution system should be based on accurate statistics, in order to assure confidence in the calculations and credibility of the system itself. The most important statistics in this regard are reliable population data that should be gathered as soon as the political situation in Kosovo allows for a population census in accordance with international standards.

Fourth, a strong analytical unit in the Ministry of Finance and Economy is needed, in order to analyse fiscal and other data coming from municipalities and to support the Grants Commission.

These four dimensions constitute the cornerstones for a reform of the local finance system. However, a system is only as good as the capacities of the people that should implement it. The practice of Kosovo shows that needs assessment and capacity building especially at the local level should be high on the agenda. A well trained administration with professional skills to implement policies of the municipalities will raise the confidence and awareness of residents, not only with regards to paying taxes but also with participation in the budget process.

2. *Structure and type of transfers*

a) Purpose of municipal grants

The general operating grant is made available to fund all aspects of municipal operations. That means the municipality has full discretionary power to determine on what activities the budget will be spent. Some parts of the general operating grants however are earmarked: the property tax incentive, an amount for education and an amount for health.

The property tax incentive programme constitutes a part of the earmarked grant. The property tax incentive programme funds are available to municipalities only when they achieve the property tax collection target set for a certain year. The municipality, following its internal budget process, identifies capital or investment projects which will be financed from the property tax incentive funds. Such projects are prepared and approved according to public investment program procedures.

Other parts of the general operating grant are earmarked for education and health purposes respectively. The education and health grants are structured such that the municipality determines to which education or health units (such as a school or a health house) the grant will be distributed and the amount to be available in the budget for each unit. To the extent that the health and education grants are not sufficient to

meet the needs in these areas, the general grant and/or municipal own source revenues should also be directed towards meeting these social needs.

b) Distribution of the grants

The general operating grant is distributed in two allotments: the first part is a fixed amount distributed to all municipalities equally. The second part is divided between municipalities based on their percentage share in the 2001 official population estimates.⁹⁸ The amount earmarked for the property tax incentive is withheld from the total general grants amount and appropriated at the beginning of the fiscal year to a municipality subject to its achieving the annual target set for property tax collection.

The education grant uses a formula developed by the World Bank which differentiates between majority and minority populations to award a percentage of the funds available. The formula utilized is as follows: for wages and salaries, the number of minority and majority pupils in a municipality is divided by the pupil/teacher ratio for the respective community; for administrative staff the normative number of administrative staff should be used (even though there are no clear and consistent numbers available); for goods and services a fixed amount per school is added to a fixed amount per student differentiated by majority and minority students; for capital outlays 5 euros per student is calculated.

The health grant is distributed solely on the percentage of population in the municipality based on the official 2001 population estimates.

c) Fair share financing

In order to provide adequate protection for communities which are not in the majority in the territory of a municipality, a specific proportion of municipal expenditures should be allocated to those communities in each municipality according to the system of fair share financing. This proportion has been determined by UNMIK regulations on the approval of the Kosovo consolidated budget. According to fair share financing regulations, each municipality should allocate to non-majority communities from their own source revenues, general, education and health grant received from the Kosovo General Budget at least the proportion per municipality in accordance with a schedule indicated in the regulation. The fair share financing should ensure that the needs and legitimate interests of villages, settlements and urban quarters populated by non-majority communities are adequately provided for.

The proportions per municipality may be revised periodically to reflect the effects of movements by internally displaced persons or returnees. The proportions can be revised periodically in co-ordination with the ministries of health, education, finance and economy, and the municipal assembly. If municipalities do not meet the set of proportions or do not comply, then sanctions can be imposed.

The OSCE considers fair share financing a most important instrument to promote the integration of non-majority communities into Kosovo society. However, in order to assure continued and sufficient support to the principle of fair share financing it is important that the formulas are up to date and accurate. To our knowledge the proportions for fair share financing have not been revised frequently and the method

⁹⁸ See The Ministry of Economy and Finance Budget Circular 2008/02 – Municipalities.

of revisions is not known. Fair share financing requires solid statistics and regular consultation with municipalities. Even though it is stated that the proportions per municipality for allocating to non-majority communities of the municipality, may be periodically revised in co-ordination with the Ministry of Health, the Ministry of Education, the Ministry of Finance and Economy, the Ministry of Local Government Administration and the municipal assemblies concerned, to our knowledge such a revision has not been initiated. The OSCE recommends to update the formulas for fair share financing in good co-operation with the municipalities of Kosovo.

3. *Issues on fiscal equalization*

Fiscal equalization policy commonly takes two forms: vertical equalization and horizontal equalization.

Vertical equalization means that each level of government should have separate and independent revenue sources sufficient to finance the expenditures assigned to that level. In Kosovo the fiscal autonomy of municipalities is rather limited as a result of the fact that in 1999 the interim administration started with a very central system and then continuously has been transferring powers also to the local level. Further transfer of competencies to the local level could be assessed, but would need to be weighed against the level of capacity to plan and manage at the local level.

Horizontal equalization implies that there should be a system of transfers that would reduce or eliminate the differences in service provision by tying the transfers to each jurisdiction, to relative tax capacity and to the relative need for and cost of providing public services. Thus, the system needs to take into account that there are differences between municipalities. Also the Charter states that the protection of financially weaker local authorities calls for the institution of financial equalization, which shall be designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. The equalization system in Kosovo is implicitly defined in the general grant, out of which a fraction is divided between municipalities based on their percentage share in the 2001 official population estimates. In this regard the population figures are likely to support equalization, since they are not reflecting the migration to the bigger cities in the last years.

In general, the financial equalization policies contribute to a certain equal opportunity between local authorities. Their purpose is to moderate the vertical imbalances, to diminish the tax competition, to limit the risks of uncertainties and also to maintain the social cohesion. For the future it needs to be pointed out that systems that are a result of policy decisions taken in the area of fiscal equalization should, however, be explicitly defined in the future Law on Municipal Finances with clearly stated formulas.

E. *Borrowing*

The Charter states in Article 9 that, for the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

The budget law in Kosovo puts restrictions on borrowing to all budget organizations including municipalities. It authorizes the Ministry of Finance and Economy to be the

sole authorized agent for all borrowing activities of budget organizations in Kosovo. The OSCE agrees that the current situation in Kosovo justifies such restrictive measures imposed. Borrowing at the municipal level in Kosovo first requires a stable fiscal system, strong financial management in municipalities, a developed credit market and proper legislation to regulate financial instability as well as insolvency and reporting standards, at least at the municipal level. This is not the case yet in Kosovo. However, the OSCE is also of the opinion that once these conditions are set the legal framework should be adjusted to allow municipalities to borrow from the capital market.

SECTION III: CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

The assessment shows that municipal competencies are not clearly defined in the primary legislation, i.e. UNMIK regulations, in the form of the own and delegated competencies. The lack of such definition has forced the Ministry of Local Government Administration to issue an Administrative Instruction that defines these concepts even though such issues should be regulated in primary legislation. As Kosovo is likely to undertake a legal reform on local self-government in the near future, it is of great importance to seize this opportunity to define the municipal competences in order to ensure the proper exercise and avoid uncertainty in the functioning of municipalities and central level institutions. A clear definition of municipal own and delegated competences is also a precondition for effective and efficient fiscal decentralization.

The central authority institutions have some competencies regarding supervision of municipal activities. However, the current legal framework does not provide clear guidance when and under which circumstances central authorities – the Ministry of Local Government Administration and other line ministries – can exercise supervisory powers with regard to own competencies and delegated competencies.

Regarding the administrative process based on an appeal against an administrative decision of a municipality, UNMIK Regulation 2007/30 has recently eliminated the layer of central executive review and with that has introduced a new administrative process. This new process does not make a distinction as to whether the municipal decision has been issued within the framework of a municipality's own or delegated competences. Therefore, every decision of the Mayor would be subject to judicial review, that is currently by the Supreme Court of Kosovo. The legislature needs to draw a clear distinction between the process of administrative review of municipal acts and judicial review of a final administrative act.

In addition, the protection of local self-government is not ensured in the applicable law, as it does not foresee that municipalities can address a case to the special chamber of the Supreme Court on constitutional framework matters in order to question the constitutionality of a law or an action of the central government. The Charter provides for protection of local self-government. Therefore, the Kosovo legislature should regulate the protection of local self-government in the new legislation to be drafted.

Major fiscal decentralization reforms are envisaged and needed in Kosovo in the near and mid-term future. Political stability and territorial cohesion are the primary goals, and fiscal decentralization is likely to be one of the tools to achieve such aims. However, inside this framework it is also crucial that the principle of economic efficiency guides the work of governments at the central and at the local level.

The dependency ratio is high. Notwithstanding the fact that Kosovo in the initial emergency phase needed a centralized system of government, municipal own source

revenues now need to be increased. For example, a revenue sharing system should be introduced or municipal fiscal autonomy should be further developed. The existing uniform grants distribution system between the urban and rural municipalities should be reconsidered, since different municipalities have different capabilities in delivering and financing services. The municipalities in Kosovo should be more transparent to residents in order to achieve a higher level of awareness for paying local taxes.

All local fiscal reform projects are unlikely to achieve their goals if the basic data for the calculation of the grants does not reflect the reality in Kosovo. Despite the political sensitivity, the logistical difficulty and costs of having a population census in Kosovo, it is important to hold such a census as soon as possible. No grant distribution system can be adequately supported without such data.

As a part of local finance reform, a new law on municipal finances is needed, which will develop the grants system in at least four dimensions: a new grant scheme, a new role for the Grants Commission, accurate statistics and increased analytical capabilities. For the reforms to be successful, there is not only a need for a functional legal framework, but also well-trained and skilled civil servants in the administration. Further, a new municipal finance law should introduce an explicit horizontal equalization scheme defined with a clearly stated formula. Finally, a new legal framework needs to regulate situations of financial instability and insolvency as well as limits for borrowing, so that municipalities, after establishing a strong financial management and reporting practices, can generate debt.

B. Recommendations

Local Self-Government:

- The future Law on Local Self-Government should be guided by the principles of the European Charter on Local Self-Government.
- The own and delegated competencies should be clearly defined in the new legislation.
- Executive oversight over municipal activities needs to be regulated clearly, by taking into account the difference between own and delegated competences.
- The legislature should draw a distinction as to when a municipal decision becomes directly subject to judicial review, and when they are subject to administrative review by the central executive bodies.
- The legislature should ensure a municipal right of recourse to a judicial remedy in case of a dispute over competencies.
- The Ministry of Local Government Administration should repeal Administrative Instruction 2005/7 and address the issue of oversight over municipal activities in the future Law on Local Self-Government, that is currently being drafted.

Fiscal Decentralization:

- The local government reform process should take into account that finance needs to follow function. Municipal competencies need to be clearly defined in primary legislation as well as respective funds allocated.
- The allocation of competences to the local level should be accompanied with a reduction of the dependency ratio, taking into account that an increased amount of own source revenues can facilitate autonomous fiscal and own spending policies at the local level.
- A future Law on Local Finance needs to introduce a new grant scheme and a further developed role of the Grants Commission. Accurate statistics must be ensured, while the analytical capabilities of officials must be improved at both the central and local level.
- A future Law on Local Finance should introduce an explicit horizontal equalization scheme with clearly stated formulae. Prior to this, the fiscal needs and the fiscal capacity of the municipalities should be estimated.
- A future Law on Local Finance should regulate situations of financial instability and insolvency as well as preconditions and limits for borrowing.
- A sensitive instrument such as fair share financing requires updating and consultation with municipalities.

Central/Local:

- In general, the consultation and partnership between the local and central government should rest on equality. In that regard, the capacity of the Association of Kosovo Municipalities should be strengthened.
- Mechanisms to co-ordinate the relationship between the central and the local level should be strengthened. Here the Association of Kosovo Municipalities could play a vital role.
- Civil society (the public and NGOs) needs to be encouraged to participate in the municipal budget processes.
- Studies of awareness to pay local taxes should be conducted.
- Capacity building in the area of financial management is needed, especially at the local level.
- A proper monitoring and evaluation system for decentralization should be established at the central government level in close co-operation with the local level. Such monitoring must assess at least the legal framework, its implementation and application at the local level, as well as the need for training and capacity building.

ANNEX 1. COMPETENCIES AT THE LOCAL LEVEL IN KOSOVO⁹⁹

Table 1. Competencies at the local level in Kosovo

Within the laws regulating each activity the municipalities in Kosovo shall be responsible for (obligatory own competencies):
<ol style="list-style-type: none">1. Providing local conditions for sustainable economic development2. Urban and rural planning and land use3. Licensing of building and other development4. Local environmental protection5. Implementation of building regulation and building control standards6. Provision and control of public services and utilities7. Fire and emergency services8. Management of municipal property9. Provision of pre-primary, primary and secondary education10. Provision of primary health care11. Social services and housing12. Consumer protection and public health13. Licensing of local services and facilities14. Fairs and markets15. Naming of roads, streets and other public places16. Provision and maintenance of public parks, cemeteries and open spaces
Municipalities may take actions in relation to (voluntary own competencies):
<ol style="list-style-type: none">1. Tourism2. Cultural activities3. Sport and leisure activities4. Youth activities5. Economic promotion6. Civic promotion
Municipalities shall also be responsible for implementing the applicable law regarding (delegated competencies):
<ol style="list-style-type: none">1. Cadastral records2. Civil registries3. Voter registration4. Business registration

⁹⁹ The content of the table is based on UNMIK Regulation 2007/30 amending UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo.

