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Relationships between Central and Local Institutions

Municipal Acts

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
1. INTRODUCTION.....	4
2. CURRENT FUNCTIONING OF THE SYSTEM OF COMMUNICATION BETWEEN CENTRAL AND LOCAL LEVELS	5
2.1 Pre-adoption phase: Consultation process during the drafting of municipal acts	6
2.2 Pre-adoption phase: Information on upcoming municipal legislative activities	6
2.3 Post-adoption phase: Information on approved municipal acts.....	7
3. NEWLY ESTABLISHED MECHANISMS IN SUPPORT OF THE ADMINISTRATIVE REVIEW PROCESS	8
3.1 Inter-ministerial commissions for oversight of legality of municipal acts ...	9
3.2 Appointment of municipal focal points for communication with the central level	9
4. LACK OF JURISPRUDENCE ON LOCAL GOVERNANCE LEGISLATION 10	
5. MUNICIPAL LEGAL CAPACITIES – STRUCTURE, COMPETENCIES AND CAPACITY BUILDING.....	10
6. CONCLUSIONS	12
7. RECOMMENDATIONS	13

EXECUTIVE SUMMARY

This report presents a follow up to the Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE) report *Relationships between Central and Local Government - Municipal Acts* published in September 2009.¹ It outlines observed developments, with a special focus on concrete actions undertaken by local and central level institutions in order to further develop and improve the system of communication and co-operation during the drafting, adoption and review process of municipal acts.

Co-operation between institutions in the central and local level of governance is of utmost importance for fulfilling the responsibilities of local government. The process of adoption and review of municipal acts goes through several phases and for the municipalities to fulfil their duties efficiently and lawfully, well established co-operation between the local and central level of government is essential.

Data shows that communication between local and central institutions during the drafting process and the review of municipal acts has improved. This is especially the case regarding the awareness of the central level of governance on municipal legislative activities and the use of the preliminary consultation tool by municipal institutions prior to the adoption of municipal acts. Another significant improvement is the increased involvement of municipal legal officers in legal drafting processes and intensified capacity building efforts. The recent establishment of mechanisms to improve the process of administrative review, such as an inter-ministerial-commission for reviewing of municipal acts and the appointment of municipal focal points for communication with the central level, is another positive effort identified.

The OSCE notices the progress made in improving the communication between the central and local level of governance to advance the drafting process of the municipal acts. The Mission however, recommends, among other things, that the Ministry of Local Government Administration (MLGA) further increases its monitoring activities of municipal assembly meetings, encourages the appointment of municipal focal points for communication with the central level and identifies further training needs of municipal personnel. Further capacity building should target members of inter-ministerial commissions in charge of reviewing municipal acts.

Municipalities, on the other hand, should assign clear roles and responsibilities regarding the administrative review process, and ensure that the list of approved acts for review is submitted in a timely and structured fashion.

Finally, in cases of prolonged disputes between the central and local level on the legality of municipal acts, and as stipulated by the legal framework, the Mission recommends the relevant ministry to challenge the issue to the respective court. This will avoid further delays in the administrative review process.

¹ Available at: <http://www.osce.org/kosovo/67462>. The 2009 OSCE Report on “Relationships between Central and Local Government- Municipal Acts” (the “2009 OSCE Report”)

1. INTRODUCTION

The European Charter for Local Self-Government (the Charter) is a key international document in the field of local self-government. The Charter outlines the concept and scope of local self-government and states that the domestic system of local self-government shall be regulated by domestic legislation.²

The legal framework in Kosovo makes clear references to the Charter. The constitution stipulates that its principles should be respected and implemented.³ Furthermore, the Law on Local Self-Government (the “Law”), which outlines the central-local government relationships in Kosovo, refers in its preamble to the principles enshrined in the Charter.⁴ The Law explicitly foresees the obligation for co-operation between local and central level government institutions during the review process of municipal acts.⁵ It also provides mechanisms to enable and ensure this communication, including adherence to explicit legal deadlines to be presented later in this report.⁶

The Law sets out clear objectives that should be achieved through the administrative supervision of municipal activities. These include ensuring the lawfulness of municipal activities and the upholding of residents’ rights and interests and strengthening the ability of the local self-government bodies to fulfil their responsibilities through advice, support, and assistance.⁷ This process can be effectively conducted through an established system of information sharing between the municipalities and the central level. Hence, effective communication between the central and local level in the pre- and post-adoption phase of municipal acts is crucial for achieving the set objectives. The oversight of municipal legislative activities is done by the MLGA and line ministries.⁸ One such legislative activity of municipalities is the adoption of municipal acts which must be in compliance with the legal framework and applicable international standards.⁹

The communication cycle between municipalities and the central level in the pre-adoption phase can start in the drafting phase of municipal acts. In this regard, the Law foresees a non-mandatory mechanism of preliminary consultation. Before adopting an act, municipalities can request to consult the respective supervisory body by submitting the draft act and the specific issue for which the advice is requested. The supervisory body is obliged to respond within 30 days of receipt of the written request.¹⁰ Another important communication tool in the pre-adoption phase of municipal acts requires municipalities to notify the central level MLGA of the date and content of meetings of the municipal assembly at least seven days prior to the meeting.¹¹

² Articles 2, 3 and 4 of the Charter, which was adopted by the Committee of Ministers of the Council of Europe on 15 October 1985. The Charter is an international treaty ratified by 45 out of 47 Council of Europe signatory parties.

³ Article 123, paragraph 3 of the constitution, 15 June 2008.

⁴ Law No. 03/L-040 on Local Self- Government , 4 June 2008.

⁵ *Ibid* e.g. Article 77.1.

⁶ *Ibid* e.g. Articles 43 and 83.

⁷ *Ibid* Article 74.

⁸ International standards deriving from the European Charter of Local Self Government and its Protocols.

⁹ Representative from the MLGA: hereinafter referred to as “central level official”.

¹⁰ *Ibid* Article 83.

¹¹ *Ibid* Article 43.5.

In order to easily identify the progress made in the development of the relationship between local and central level institutions during the drafting, adopting and administrative review phase of municipal acts since 2009, this Report follows the same structure as the 2009 OSCE report. Following this introduction which also outlines the regulatory framework governing the process of administrative supervision with an emphasis on the legally established communication line between the central and local levels, section 2 presents the factual situation on the ground and the level of implementation of the legal framework. Section 3 describes recently established mechanisms in support of the communication and administrative review process; Sections 4 describes the current lack of jurisprudence on the interpretation of local governance legislation. Section 5 presents developments in regard to the structure of municipal legal offices, their involvement in drafting the municipal acts and capacity building efforts. Section 6 and 7 provide general conclusions and a list of recommendations.

This report is the result of structured interviews conducted by the OSCE with municipal officials such as mayors and directors of administration and with officials from the MLGA.¹² Data was gathered by the OSCE Municipal Teams, which are located throughout Kosovo, and by the Democratization Department's Local Governance Section for 34 municipalities between May and September 2011 through comprehensive questionnaires developed specifically for this assessment. The comprehensive questionnaires were developed specifically for this assessment and covered topics such as the municipal acts revision process on municipal level and the organizational structure of municipal offices as it is reflected in this report. Questions for the central level officials focused on the municipal act revision process taking into account the different tasks and responsibilities of the municipal and central level. The purpose was to gather information from both levels enabling the Democratization Department's Local Governance Section to analyse the situation in a comprehensive manner and to identify the progress made. Furthermore, the report serves to analyse the effects of projects developed by the OSCE in cooperation with the MLGA in line with the findings of the 2009 report aiming to improve the level of communication and cooperation between central and local level authorities and to improve the conduct of administrative review in general.

The report is primarily aimed at municipal representatives, MLGA, and international organizations engaged in the local government reform processes. It is meant to serve as a tool and a needs-indicator for further capacity building at the local and central levels.

2. CURRENT FUNCTIONING OF THE SYSTEM OF COMMUNICATION BETWEEN CENTRAL AND LOCAL LEVELS

This chapter presents findings on the use of communication tools between municipalities and the central level, distinguishing between the pre- and post-adoption phases of municipal acts. It assesses the level of implementation of the legal framework and compares it with findings of the previous report from 2009.

¹² The MLGA was established in 2004 based on UNMIK Regulation No 2004/50.

2.1 Pre-adoption phase: Consultation process during the drafting of municipal acts¹³

As discussed above, the Law provides an opportunity for the local level to consult the central level on the legality of municipal acts already in the drafting phase.

Out of 34 municipalities, 22 have confirmed that they do consult the central level on draft acts.¹⁴ The vast majority of those municipalities ask for advice on an *ad hoc* basis, while several have consulted the central level on one occasion only. Exceptionally, the municipalities of Prizren and Novo Brdo/Novobërdë consulted the central level for nearly all draft municipal acts prior to their approval. These pre-consultations took place through formal and informal means, such as meetings, e-mail correspondence or phone calls. None of the municipalities submitted requests for pre-consultation as described in the Law, i.e., a written request containing the draft act and information about the specific issue for which the advice is requested with respect to legality and/or reasonability of the draft act in question.

The remaining 12 municipalities have stated that they do not consult the central level during the drafting phase of municipal acts.¹⁵

The number of municipalities which consult the central level on their draft municipal acts has slightly increased since 2009, according to information gathered from the municipalities, as confirmed by the representatives of the central level (MLGA). However, as stated above the process of seeking advice on draft municipal acts is still not standardized, structured and fully functioning as envisaged by the Law.

2.2 Pre-adoption phase: Information on upcoming municipal legislative activities¹⁶

The obligation of municipalities to inform the central level about municipal assembly meetings enables central level officials to monitor the work of the municipal legislative branch by being present in the meetings in which municipal acts are deliberated and adopted.

Out of 34 municipalities,¹⁷ 33 fulfil this obligation and inform the central level about upcoming municipal assembly meetings, according to information provided by central and local level institutions.¹⁸ The central level is informed about municipal legislative activities through invitations sent electronically, in hard copy, or in some instances by telephone.¹⁹

During the reporting period, central level representatives have been present in the vast majority of municipal assembly meetings. The exception is the region of Pejë/Peć, where MLGA officials did not attend municipal assembly meetings on a regular basis.

¹³ In accordance with Article 43.5 of the Law.

¹⁴ In the 2009 OSCE Report 15 out of 30 municipalities reportedly used the pre-consultation tool.

¹⁵ Podujevë/Podujevo, Obiliq/Obilić, Pejë/Peć, Deçan/Deçane, Viti/Vitina, Štrpce/Shtërpçë, Ranilug/Ranillug, Parteš/Partesh, Kaçanik/Kaçanik, Hani i Elezit/Đeneral Janković, Kamenica/Kamenicë and Malishevë/Mališevo.

¹⁶ In accordance with Article 43.5 of the Law.

¹⁷ The exception is the municipality of Parteš/Partesh.

¹⁸ In the 2009 OSCE Report 29 out of 30 municipalities reported compliance with this legal obligation.

¹⁹ According to the information provided by municipalities and central level official.

For example, in the municipality of Dečan/Dečane, the MLGA is rarely present; in three other municipalities, MLGA representatives only occasionally attend municipal assembly meetings.²⁰

In summary, the latest findings are similar to those of the previous assessment. Almost all municipalities fulfil the obligation to inform the central level about their legislative activities, and central level representatives are present in the vast majority of municipal assembly meetings.

2.3 Post-adoption phase: Information on approved municipal acts²¹

By the tenth day of each month, the mayor's office is responsible for sending to the central level the list of approved municipal acts that might be subject to regular review of legality.²² According to information received from local level institutions, apart from two municipalities, all others of the surveyed municipalities send the list on a monthly basis.²³ Such lists are sent electronically and/or in hard copy, usually accompanied by attached copies of adopted municipal acts.

However, a central level official stated that the level of compliance of municipalities with the legal framework is not sufficient in both aspects: sending the list regularly on a monthly basis as well as to accompany and deliver the adopted acts themselves. Nonetheless, they named several municipalities which are in compliance with the legal framework.²⁴

The mayor's office is legally responsible for processing the list of adopted acts for the central level.²⁵ In this regard, the findings show that in 20 municipalities, this task is performed by the mayor's office while in 13 municipalities the list of approved municipal acts is forwarded to the central level by the municipal assembly support office. In the municipality of Prizren, both the mayor's office and the municipal assembly office are responsible for processing the list of approved municipal acts. Moreover, the survey identified a broad list of municipal officials responsible for processing the list of approved acts to the central level.²⁶

²⁰ Pejë/Peć, Junik/ Junik and Istok/Istog. A central level official stated that due to limited resources they cannot cover every municipal assembly meeting.

²¹ In accordance with Article 80.1 of the Law. See above chapter 2.2.

²² Article 80.1 of the Law. In addition, any municipal act that is subject to mandatory review of legality or a review of expediency shall be forwarded to the central level within 7 days from the day of its issuance in accordance with Art 81.2 of the Law.

²³ In 2011, only Glllogovc/Glogovac and Prishtinë/Priština reported not to send the list and acts. While in the first case the municipality has started to process the list of approved acts to the central level in September 2011, the municipality of Prishtinë/Priština continues to not send lists, but claims to make them electronically available to the central level. In the 2009 OSCE Report 10 out of 30 municipalities reported to comply "generally" with the legal requirement to send the list of adopted acts in a timely manner.

²⁴ Kačanik/Kaçanik, Vushtrri/Vučitrn, Suharekë//Suva Reka, Istog/Istok, Obiliq/Obilić, Viti/Vitina, Shtime/Štimlje, Dragash/Dragaš and Gjilan/Gnjilane.

²⁵ Article 80.1 of the Law.

²⁶ Municipal Assembly (MA) Coordinator, Mayor's Office, MA Chairperson, MA Session Preparation Officer, Municipal Protocol Office, MA Secretary, Mayor's Legal Office, Legal Unit Secretary, Director of Municipal Administration, MA Affairs Officer, Head of Personnel, MA Legal Assistant, Municipal Legal Officer, Office of Public Relations, Personnel Manager, Head of MA Administration, Municipal Clerk, MA Legal Advisor and Chief of Assembly Section.

In general, the level of awareness of the obligation to send the list with the respective acts has increased at the local level. However, a standardised method to implement the legal responsibility cannot be identified yet.

2.4 Post-adoption phase: Feedback of the central level on the review outcome²⁷

The central level is obliged to communicate with the local level by providing feedback on the legality of any municipal act that is subject to mandatory review.²⁸ However, the formal opinion on the review outcome is not always issued by the central level to municipalities, according to municipal officials. This is especially the case if the outcome of the review is positive regarding the legality of the act. In such cases, the established practice is that a given act is considered to be legal after the deadline for providing the feedback has expired. However, according to a central level official, a review outcome is always issued on municipal acts deriving directly from the Law, such as municipal statutes, rules of procedures and regulations on transparency.

Nine out of 34 municipalities²⁹ reported that they always receive formal feedback from the central level. However, the data gathered shows that 25 municipalities³⁰ claim not to receive feedback on the review outcome or, if so, infrequently. Furthermore, six municipalities out of those 25 reported that they received a formal notification on the review outcome only if it is negative.³¹

The current practise of “silent- confirmation” may lead to situations in which it is not clear if a municipal act has been determined to be legal, has not been reviewed within the required time frame, or has not been reviewed at all. The result is uncertainty as to whether or not certain municipal acts can be considered as legal.

3. NEWLY ESTABLISHED MECHANISMS IN SUPPORT OF THE ADMINISTRATIVE REVIEW PROCESS

To further facilitate the process of efficient review of municipal acts and strengthen communication between the local and the central level, MLGA took the lead in the establishment of inter-ministerial commissions for review of municipal acts and supported the appointment of municipal focal points responsible for communicating with the central level.³²

²⁷ In accordance with Article 81.4 of the Law.

²⁸ Article 81.4 of the Law.

²⁹ Gračanica/Gračanicë, Mamuša/Mamushë/Mamuša, Dragash/Dragaš, Pejë/Peć, Viti/Vitina, Štrepce/Shtërpçë, Klokot/Vrbovac/Kllokot/Vërbovc, Kamenicë/Kamenica and Gjakovë/Djakovica..

³⁰ In the 2009 OSCE Report the number of municipalities which have stated not to receive the outcome feedback form the central level was 13 municipalities out of 30;

³¹ Parteš/Partesh, Ranilug/Ranillug, Prizren, Prishtinë/Priština, Skenderaj/Srbica and Istok/Istog.

³² Kosovo government Decision No 2/119, issued on 7 April 2010 establishes 17 inter-ministerial commissions for review of municipal acts from the area of own competencies, four inter-ministerial commissions for municipal acts from the area of enhanced competencies and six for review of municipal acts deriving from the area of municipal delegated competencies. The MLGA is represented in each of these commissions.

3.1 Inter-ministerial commissions for oversight of legality of municipal acts

In its effort to improve the level of oversight aiming to increase compliance of municipalities with the legal framework, the central level established inter-ministerial commissions responsible for revision of the legality of municipal acts falling within their areas of responsibility and distinguishing between municipal acts deriving from the area of own, enhanced and delegated competencies.

While MLGA receives all approved municipal acts, it reviews only those that fall under its competencies. Municipal acts which derive from other areas of competence are forwarded to respective inter-ministerial commissions for review.

The latest effort of the central level to facilitate the process of review of municipal acts is a good initiative in improving the efficiency of the review process. However, the communication and review process in regard to such inter-ministerial commissions needs further consolidation.

3.2 Appointment of municipal focal points for communication with the central level

Another central level initiative aimed at streamlining and facilitating communication between the local and central levels is the appointment of municipal focal points. This initiative resulted from an event sponsored by the OSCE in April 2010, where MLGA and mayors agreed on the appointment of municipal directors of general administration as focal points for communication with MLGA. Following the event, the Minister of Local Government Administration sent a letter to all mayors reminding them on the importance of appointing a municipal focal point, who is responsible for the exchange of information between the local and central levels.

Thus far, focal points have been appointed in 28 municipalities, 18 of which have issued written decisions on the appointment.³³ Although the majority of focal points are municipal directors of general administration, as agreed with MLGA, other posts have also been chosen for the focal point role. For example, three municipalities have appointed staff members of the municipal assembly support office as focal points.³⁴ Two municipalities have assigned legal officers as focal points for communication with the central level.³⁵

Out of the 28 appointed focal points, 20 send municipal acts for review to the central level and nine focal points confirmed that they are the recipients of the review outcome from the central level. Meanwhile, central level representatives stated that the review outcome is usually sent to the mayor and the municipal assembly chairperson.

The focal points improve communication in general between the central and local level, however their role in the administrative review process needs to be clearly defined by municipalities.

³³ Seven municipalities have not appointed municipal focal points for communication with the central level: Gillogovc/Glogovac, Mitrovicë/Mitrovica, Rahovec/Orahovac, Dragash/Dragaš, Gjilan/Gnjilane, Ranilug/Ranillug, Gjakovë/Djakovica and Pejë/Peć.

³⁴ Malishevë/Mališevo, Parteš/Partesh and Vushtrri/Vučitrn.

³⁵ Podujevë/Podujevo and Suharekë/Suva Reka.

4. LACK OF JURISPRUDENCE ON LOCAL GOVERNANCE LEGISLATION

Municipalities and the central level regularly interpret certain provisions of the relatively new legislation on local governance in different ways. Conflicting interpretations sometimes develop into disputes, which are a necessary process for developing a set of common and standard interpretations of the legislation that can ease the implementation of the law for similar cases in the future.

The Law specifically provides the possibility for the central level to challenge municipal acts when municipalities fail to revise such acts, which are, according to the central level, not compliant with the legal framework. Article 82.4 of the Law provides that, if a municipal body fails to respond within the given time-frame or rejects the central level requests for revision, the central level may challenge the acts before the competent court.

According to MLGA, municipalities generally respond to central level requests for revision of their acts. Nevertheless, there are also cases in which municipalities failed to revise acts which, in the MLGA's legal opinion, do not comply with the legal framework. For instance, of the 49 legal opinions of (non)-legality of municipal acts issued by MLGA since the start of the 2011, municipalities have so far failed to amend the acts to comply with MLGA's interpretation of the regulatory framework in 15 cases.³⁶ Although MLGA is responsible for, *inter alia*, co-ordinating the administrative review of municipalities according to the Law, MLGA itself has not forwarded any of the unresolved cases to the competent court since its establishment.

The resulting lack of jurisprudence hinders the ability of municipalities to effectively and efficiently carry out of their tasks, as there is no legal certainty as to whether or not the municipal legislation is in compliance with the overall legal framework. Lack of jurisprudence also hinders the effective and efficient supervision of municipalities by MLGA and in similar cases other line ministries. This shortcoming was also explicitly mentioned in the European Commission Kosovo 2011 Progress Report³⁷ and remains one of the key requirements for the development of a sound basis for the interpretation of the legal framework on local self-government.

5. MUNICIPAL LEGAL CAPACITIES – STRUCTURE, COMPETENCIES AND CAPACITY BUILDING

The following section evaluates the structure of municipal legal components and overall competencies of municipal legal officers. The findings from the previous report³⁸ have been used as a base to assess progress.

The organizational set up of municipalities is regulated by municipal statutes. Therefore, municipalities have the discretion to organize their offices to best serve their needs. This is also applicable to the question whether a municipality establishes a legal office within its municipal structure or if they allocate their legal officers to different municipal departments. The organizational structure chosen by municipalities during the reporting period has changed slightly, with a reduced

³⁶ The data corresponds to the time period from January to August 2011, according to information provided by a central level official.

³⁷ European Commission Kosovo 2011 Progress Report, page 8.

http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf

³⁸ The 2009 OSCE Report

number of municipalities where municipal legal officers are dispersed through out municipal departments. Out of 34 municipalities, 17 municipalities³⁹ have now centralized legal offices composed of one to four legal officers responsible for municipal overall legal matters while in 11 municipalities⁴⁰ legal officers are dispersed through out municipal departments.⁴¹

Involvement of legal officers in the drafting process, whether as part of a centralized legal office or dispersed throughout various municipal departments, has improved during the reporting period. Moreover, their role in the drafting process is better defined, and mostly includes the harmonization of municipal draft acts with the legal framework. In some municipalities, legal officers play even a central role in the drafting process, such as in Skenderaj/Srbica municipality, where the municipal legal officer is also the chairperson of the statutory commission responsible for the review of draft municipal acts.

However, the latest findings show that six municipalities still have neither a legal office within their organizational structure nor a legal officer employed.⁴² In these municipalities, legal matters are being dealt with by various municipal staff members.⁴³

In general, lack of staff and lack of space continue to be cited as obstacles to efficient performance of municipal legal offices.

The training activities for municipal legal officers increased significantly. The number of municipalities in which municipal legal officers attended training sessions on various legal topics has increased from 16 to 25 since the 2009 assessment.⁴⁴ Training sessions have been provided by various local and international organizations, as well as MLGA. Regular meetings of Legal Collegiums of the Association of Kosovo Municipalities (AKM) have often been mentioned by municipal legal officers as a forum where they get information and training on particular legal issues.⁴⁵

Overall, the centralization of municipal legal offices continued. The competencies of legal officers are better defined, while their role in the municipal legislation process has significantly increased. However, the latest assessment identifies a number of municipalities which have no legal component at all or in which legal matters are addressed by municipal officials who usually perform other non-legal duties.

³⁹ Obiliq/Obilić, Podujevë/Podujevo, Lipjan/Lipljane, Fushë Kosovë/Kosovo Polje, Vushtri/Vučitrn, Gllgovc/Glogovac, Gjakovë/ Đakovica, Pejë/Peć, Kline/Klina, Istog/Istok, Deçan/Deçane, Klokot-Vrbovac/Kllokot-Verbovac, Ferizaj/Uroševac, Gjilan/Gnjilane, Hani i Elezit/Deneral Janković, Dragaš/ Dragash and Prishtinë/Priština.

⁴⁰ Prizren, Rahovec/Orahovac, Malishevë/Mališevo, Viti/Vitina, Kaçanik Kačanik, Štrpce/ Shtërpçë, Junik, Mitrovicë/Mitrovica, Shtime/Štimlje, Gračanica/Gračanicë and Kamenicë/Kamenica.

⁴¹ In the 2009 OSCE Report 11 municipalities have reported to have their legal officers dispersed in their thematic directorates.

⁴² Ranilug/Ranillug, Parteš/Partesh, Novo Brdo/Novobërdë, Mamuša/Mamushë/Mamuša, Suharekë/ Suva Reka, and Gllgovc/Glogovac.

⁴³ For example, in Suharekë/Suva Reka municipality, legal issues are addressed by the chief of municipal services while in Mamuša/Mamushë/Mamuša municipality the person responsible for legal matters is the chief of administration.

⁴⁴ See 2009 OSCE Report.

⁴⁵ Other organizations and institutions engaged in capacity building of municipal legal offices: OSCE, EULOG, UNDP, USAID, MDA (Management Development Association), AKM Legal Collegiums, ATRC (Advocacy Training & Resource Centre), KIPA (Kosovo Institute for Public Administration), and MLGA.

6. CONCLUSIONS

This report shows that the communication process between the local and central levels as foreseen by the legislative framework exists and its effectiveness has improved since 2009. However, these improvements should be further consolidated. Continuous efforts by the local and central levels to consolidate the system of communication in the pre- and post-adoption phase of municipal acts have been noted. Nevertheless, some areas of concern in the overall communication process continue to exist, such as a lack of a standardized system or practice of communication. The way municipal officials communicate with the central level varies, e.g., in terms of the means of communication used and the posts within the local administration responsible for being the point of contact with the central level. Therefore, further efforts are necessary to establish a more unified system of communication between the central and local level.

The number of municipalities using the pre-consultation mechanism to ask for support from the central level during the drafting process of municipal acts has increased.⁴⁶ However, even though the legal framework stipulates that municipalities should make a formal request by sending the draft act to the central level for comments, the use of informal means such as telephone or email correspondence still prevails. Central level representatives' awareness of municipal legislative activities is another area in which improvement has been observed. Nevertheless, further consolidation of the communication system is needed, aiming for stronger adherence to legal procedures and means in regard to the communication process. Regular attendance of central level representatives at municipal meetings and an increased utilization of the pre-consultation tool on the legality of draft municipal acts will certainly improve the quality of municipal acts prior to their approval.

The processing of information on approved municipal acts to the central level improved, even though compliance with the legal framework is assessed differently by central and local level representatives. A number of municipalities have been specifically referred to by the central level as being fully compliant with the legal framework. However, there is still room for improvement to achieve a constant and structured flow of information between both levels, as well as in regard to the broad list of municipal officials responsible for communicating with the central level.

The process of informing municipalities about the outcome of the mandatory review of municipal acts is operating almost to the same extent as previously reported. The established practise of silent confirmation continues.

Although most municipalities have appointed municipal focal points, the process is not completed yet. In addition, their role in the administrative review process should be clearly defined. This will facilitate efforts of the central and local level in establishing a standardised system of communication.

Creation of inter-ministerial commissions for review of municipal acts marks a positive development in the process of further establishment of a sustainable system. However, further efforts are necessary to enable such commissions to function as it is envisaged, including e.g., capacity building programmes for commission members.

⁴⁶ See above, section 3.1

The lack of jurisprudence on disputed municipal acts where central and local level institutions' interpretation of the regulatory framework differ, is a significant obstacle to the necessary development of a legal commentary on which local and central level institutions could then base their arguments for future cases.

Restructuring of municipal administrations to establish one unified legal office and greater involvement of municipal legal officers, with clearly assigned duties, in the legislative drafting process, are two positive developments which have been undertaken in a number of municipalities. It has been observed that efforts to promote the professional development of municipal legal officers through training continued during the reporting period, with legal drafting techniques the most frequent training topic. However, the absence of any kind of municipal legal structure has been identified in a significant number of municipalities, including newly established municipalities.

7. RECOMMENDATIONS

To further consolidate the communication process between the local and central level and to enable municipalities to exercise their responsibilities more efficiently and in compliance with the legal framework, the OSCE recommends:

To the Ministry of Local Government Administration:

1. Further increase the Ministry's monitoring activities at municipal assembly meetings.
2. Encourage municipalities to use the pre-consultation tool more frequently before adopting an act.
3. Ensure that municipalities comply with the legal requirements for submitting municipal acts for review, and take necessary actions against those that do not.
4. Carry out an assessment at the central and local level to identify training needs of the municipal personnel involved in drafting and reviewing municipal acts; based on the needs assessment, set up regular training courses to improve the quality of municipal acts, targeting legal officers, municipal assembly members and members of inter-ministerial commissions.
5. Always provide a written opinion on a reviewed municipal act that is subject to mandatory review to the municipality in a timely manner, regardless of whether the evaluation is negative or positive.
6. Improve the level of performance of inter-ministerial commissions for review of municipal acts by providing more capacity building efforts to commission members. In addition, address the issue of current performance of such commissions to the respective parts of the Government to ensure that the review process takes place within the required timeframe.
7. Encourage the appointment of focal points for communication with the central level in municipalities where this has not yet been done.

8. In case of continued differing legal opinions between central and local level institutions, challenge the act in the appropriate District Court.

To the municipalities:

1. Continue to further consolidate a standardized system for communication by appointing municipal officials who are responsible for communication with the central level.
2. Clearly assign duties for municipal focal points regarding the administrative review process.
3. Establish a standardized system for communication with the central level including entry/exit records for correspondence.
4. Continue to make increased use of the possibility for preliminary consultation with the central level when drafting a municipal act.
5. Ensure that the mayor's office is responsible for sending the list of approved acts for review in a timely and structured fashion.
6. Inform central level institutions in a timely manner about municipal assembly sessions, providing information on venue and agenda, as well as associated background material.
7. Continue to institutionalize the legal capacity of the municipal administration into one separate directorate and establish legal offices in those municipalities where the legal component is missing.
8. Continue to provide training opportunities for legal officers with a focus on legal drafting techniques.
9. Municipal legal officers should continue to use AKM Legal Collegiums regular meetings as venues for *ad hoc* trainings, discussion of common challenges and exchange of best practices.