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MISSION IN KOSOVO**

**Multilingual Legislation in Kosovo
and its Challenges**

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LIST OF ABBREVIATIONS

KIPA	Kosovo Institute for Public Administration
MCO	Municipal Communities Office
MCR	Ministry for Communities and Return
MEF	Ministry of Economy and Finance
MIA	Ministry of Internal Affairs
MLGA	Ministry of Local Government Administration
MLSW	Ministry of Labour and Social Welfare
MOJ	Ministry of Justice
MOCR	Municipal Office for Communities and Return
MPA	Ministry of Public Administration
OLSS	Office of Legal Services and Support (Office of the Prime Minister)
OPOG	Office for Publication of the Official Gazette
OPM	Office of the Prime Minister
OSCE	Organization for Security and Co-operation in Europe Mission in Kosovo
UNMIK	United Nations Interim Administration Mission in Kosovo

EXECUTIVE SUMMARY

Full implementation of the legal framework that guarantees equal use of official languages in the legislative drafting process in Kosovo is a challenge. Kosovo institutions are obliged to respect the equal use of official languages in their work. Nonetheless, despite the application of a multilingual legislation system by legislative bodies, the OSCE Mission in Kosovo (OSCE) has observed that translation of draft and adopted legislation remains unsatisfactory at both the central and local levels. The legal framework in this regard provides exemplary safeguards to protect the linguistic rights of the different communities. However, corresponding implementation and enforcement needs improvement. Failure to do so may lead to the indirect exclusion of communities from public affairs and other potential human rights violations. Respect for linguistic rights not only upholds principles of equality and non-discrimination, but also provides an obligation for public institutions to create the necessary conditions for enjoyment of these rights.

The OSCE has identified a common practice of poor translation of legislation and considerable discrepancies between different language versions of legislation, both at the central and local level. Provisions regulating translations of draft laws are not sufficiently clear and awareness of their importance for the inclusion of communities is low. The practice of systematic proofreading is not established amongst legislative institutions. Furthermore, more than a third of municipalities do not translate their draft and adopted legislation into all official languages. Such practices create legal uncertainty and violate the principle of equality before the law. They challenge the coherent and fair enforcement of the rights of members of all communities. As a result, they may undermine respect for and confidence in public institutions and the rule of law. There is also room for the improvement of the supervisory role of the Language Commission and the Ministry of Local Government Administration. A solid and functioning supervisory mechanism is essential to ensure equal use of official languages in legislation, and the necessary quality of translation.

General budgetary restraints in the public sector, understaffing, a lack of qualified translators and insufficient training, along with poor public awareness of the importance of language rights, are major impediments to the multilingual legislation system in Kosovo. Therefore, mechanisms to ensure compliance with the multilingual legislation requirements need to be strengthened. In this regard, central-level ministries should ensure availability of draft legislation in all official languages during the legislative working groups. Ministries are also advised to more precisely regulate the translation of draft laws and amendments before submission of legislation to the Assembly of Kosovo. At the local level, municipalities should ensure that a translation unit is established in each municipality. The Ministry of Local Government Administration may consider ensuring the availability of all municipal acts, in all official languages of the respective municipality, as a formal part of its supervisory role. Moreover, the Language Commission, the Kosovo Institute for Public Administration, and translation units at the central level should be provided with adequate financial resources to fulfil their roles and obligations in upholding the full enjoyment of language rights in Kosovo.

1. INTRODUCTION

The OSCE is mandated, *inter alia*, to promote human rights and the rule of law. In this regard, it carries out activities to ensure that adequate mechanisms for human rights protection and public accountability are in place. In order to prevent potential human rights violations at an early stage, the OSCE reviews, *inter alia*, selected draft primary and secondary legislation for its compliance with human rights standards and rule of law principles, and reports on systematic shortcomings.¹

Legislation is the principal instrument of public institutions to regulate all spheres of life, including the conduct of individuals. Rights and obligations are created hereby. Accordingly, legislation is expected to guarantee a set of fundamental safeguards for all its addressees including the principle of legality and the principle of equality before the law.² Kosovo institutions are responsible for the creation of adequate conditions to allow for the full and effective participation of all communities in public affairs. This is deemed as a precondition to protect the interests of all communities. Language is a major tool to protect these interests as it facilitates effective participation.

Albanian and Serbian are official languages according to the legal framework.³ In some municipalities Turkish and Bosnian also have the status of official language in the municipality.⁴ Official languages hold an equal status in Kosovo institutions and all persons have equal rights with regard to their use herein.⁵

Kosovo institutions apply a system of multilingual legislation where extensive language rights of different communities are safeguarded through the legislative framework and international instruments. Therefore, all laws and other legislation should be drafted, adopted and issued in all official languages. The legal framework requires primary legislation to be published in five languages (Albanian, Serbian, Turkish, Bosnian and English).⁶ However, there are no such provisions regarding the publication of secondary legislation in these languages.⁷ Official documents are generally published in the official

¹ The OSCE reviews draft laws and other legislation and assess their compliance with human rights and rule of law standards. Its focus lies on legislation with potential human rights implications.

² The principle of legality requires legal rules to be accessible, precise and foreseeable (See *Sunday Times v. UK*, ECtHR Judgement of 26 April 1979, para 49). It is indispensable that legislation is issued and published in a correct and legally stipulated way. In the Kosovo context, this also entails that legislation is available in all official languages. Moreover, the principle of equality before the law recognizes that everyone is treated equally by the law. In a system of multilingual legislation, equality before the law can only be secured if laws and other legislation are entirely consistent in their different language versions.

³ See Article 2(1) of the Law No. 02/L-37 on the Use of Languages, as promulgated by UNMIK Regulation 2006/51, 20 October 2006. Also see Article 5(1) of the constitution.

⁴ Article 2(3) of the Law on the Use of Languages states that “In municipalities inhabited by a community whose mother tongue is not an official language, and which constitutes at least five (5) percent of the total population of the municipality, the language of the community shall have the status of an official language in the municipality and shall be in equal use with the official languages. Notwithstanding the foregoing, exceptionally, in Prizren Municipality, the Turkish language shall have the status of an official language in Prizren Municipality”. Accordingly, Turkish has the status of an official language in Prizren and Mamuša/Mamushë/Mamuša municipalities, whereas Bosnian has such status in Prizren, Dragash/Dragaš, Pejë/Peć and Istog/Istok municipalities.

⁵ See Articles 2(2) and 2(3) of the Law on the Use of Languages.

⁶ See Article 5(4) of the Law on the Use of Languages and Article 5 of the Law No. 03/L-190 on the Official Gazette, 4 August 2010.

⁷ According to Article 4 paragraph 2 item 2.8 of Law No. 03/L-190 on the Official Gazette, secondary legislation is published on the webpage of the Official Gazette only at the request of the Prime Minister.

languages, that is, Albanian and Serbian. However, the Law on Use of Languages foresees that Kosovo institutions will use the English language in their work, contacts and official documents during the mandate of the United Nations Interim Administration Mission in Kosovo (UNMIK).⁸ Therefore, secondary legislation is generally translated into Albanian, Serbian and English.

Based on the equal status of official languages, the legal framework stipulates all official language versions of legislation as equally authentic. Accordingly, full correspondence of the different versions, as well as satisfactory quality of each version, is essential.

In the light of the above, the present report assesses the current status of the multilingual legislation system in Kosovo and highlights its challenges and shortcomings. To this aim, it analyses to what extent the equal use of official languages in Kosovo is being observed in the legislative framework in Kosovo. The report is oriented primarily towards the actors involved in drafting multilingual legislation, both at the central and local level. It intends to underscore the crucial importance attributed to achieving a high quality in all language versions of draft and adopted legislation. Notwithstanding the legally-acknowledged relevance of the English language in the legislative process, the focus of this report is on the official languages.

The report comprises six sections. After a brief introduction in Section I, Section II presents an overview of the process of drafting multilingual legislation both at the central and local level. Firstly, the drafting process of central-level legislation is scrutinized from its initial stage at the sponsoring ministry until its publication in the Official Gazette, highlighting translation practices and shortcomings. Secondly, the practice and experience of the relevant stakeholders at the local level is presented. Section III focuses on the multilingual legislation and assesses the practical impact of language mistakes by displaying concrete examples. Section IV highlights the role of supervisory and training mechanisms in Kosovo with a view to monitoring and ensuring the availability of legislation in the official languages. Finally, the report closes with a conclusion in Section V and a set of recommendations in Section VI.

Methodologically, the report, as a long-term assessment, has been drawn from three main sources: a) long-term review activity and analysis of legislation in Kosovo by the OSCE up to August 2011; (b) structured interviews conducted by the OSCE. Interviewees included relevant central-level officials who are involved in the drafting process of the laws and their implementation in the long term. Also interviewed were municipal legal officers, municipal translators, communities' representatives and officials working in municipal administrative departments. The interviews were conducted by the OSCE Field Teams in the 33 municipalities that apply the Kosovo legal system in June and July 2010; and (c) data collected on an ongoing basis by the OSCE throughout municipalities via consultation with local officials who participate in the legislative process at the local level.

2. MULTILINGUAL LEGISLATION IN KOSOVO: DRAFT LEGISLATION

2.1. Draft Legislation at the Central Level

⁸ See Article 34 of the Law on the Use of Languages.

This section presents an overview of the process of drafting multilingual legislation at the central level. It scrutinizes the process from its initial stage at the sponsoring ministry, through the inter-ministerial and the Assembly of Kosovo stages, until its publication in the Official Gazette. The assessment provided in this section derives from structured interviews with relevant officials in selected ministries, the Office of the Prime Minister (OPM), the Assembly of Kosovo and the Office for Publication of the Official Gazette (OPOG).⁹

In practice, translation is done by civil servants or contracted translators. The choice of translation practice is entirely at the discretion of the sponsoring ministry because there is no legal act regulating whether or not translation must be done internally.¹⁰ In cases where translation is outsourced to a contracted translator, internal procurement procedures are applied. By and large, officials interviewed expressed satisfaction with translations provided by contracted translators.¹¹ However, instances were reported where contracted translators provided poor translation of draft legislation.¹² As a result, draft legal acts in the translated language versions regularly displayed incorrect use of legal terminology and other translation mistakes.

The staffing capacities of ministerial translation units differ widely, ranging from one translator to five translators per ministry.¹³ However, understaffing appears to be a common problem and it is difficult to recruit qualified candidates due to public sector budgetary constraints.¹⁴ As a result, persons filling positions of ministerial translators often lack adequate qualification and professional experience. According to the interviewees, professional capacity-building trainings in conjunction with motivational factors such as pay increases could successfully address these problems.

2.1.1. Ministerial Phase

The Rules of Procedure of the Government is the basic legal instrument regulating the drafting process of central-level legislation.¹⁵ It defines the individual stages of legislation

⁹ Representatives of Legal Departments were interviewed in the following institutions: the OPM (Legal Officer) on 24 June 2010; Ministry of Justice (MOJ) (Legal Officer) on 16 June 2010; Ministry of Internal Affairs (MIA) (Director of the Legal Department) on 22 June 2010; Ministry of Public Administration (MPA) (Legal Officer and Human Rights Unit Co-ordinator) on 30 June 2010; Ministry of Labour and Social Welfare (MLSW) (Legal Officer) on 30 June 2010; Ministry of Communities and Return (MCR) (Legal Officer and Human Rights Unit representatives) on 15 June 2010; Ministry of Local Government Administration (MLGA) (Director of the Legal Department) on 29 July 2010; and the Assembly of Kosovo (Director of the Legal Department) on 6 July 2010.

¹⁰ For example the MOJ uses its internal translation capacity, while the MIA mostly resorts to external contracted translators.

¹¹ Most of the interviewees shared the view that translation services provided by contracted translators were of higher quality in comparison with those provided by internal translation units.

¹² This was observed in the MOJ and the MPA.

¹³ Reported by the Language Commission based on a report drafted by former Monitoring Unit for Use of Official Languages in Central Institutions of Kosovo, April-December 2009. Interview partners have also confirmed large differences in staffing of translation services in Kosovo ministries, also due to different outsourcing practices.

¹⁴ Reportedly, qualified candidates often find better-paid job opportunities in Kosovo, including with the international community.

¹⁵ See Article 1 of the Regulation of the Government No. 1/2007 on the Rules of Procedure of the Government, 24 January 2007; on 7 September 2011, the Government issued the new Regulation Nr. 09/2011 on the Rules and Procedure of the Government. According to a OLSS representative, the relevant provisions on the legislative drafting process will be applied by the Kosovo institutions only after adoption of the Kosovo legislative strategy 2012.

drafting process both at the ministerial and inter-ministerial levels, the role of different actors engaged and specific drafting requirements.

The first draft of a legal act is prepared by the legal office of the relevant ministry in cooperation with the thematically relevant department. Subsequently, the permanent secretary of the ministry takes a decision to establish a ministerial working group¹⁶ to review the draft law. This working group consists of members from different departments within the line ministry, including a representative of the legal office who co-ordinates the working group.¹⁷ The Human Rights Unit of the respective ministry shall be invited to take part in the drafting process.¹⁸ In addition, the ministry shall conduct consultations with the public.¹⁹

The Rules of Procedure of the Government require the draft legal act to be fully prepared and made available in the Albanian, English and Serbian languages before being submitted to the government, to any ministry or agency of the government, or to any working group of any of the foregoing.²⁰ Moreover, all Kosovo institutions are obliged to keep and issue all official documents in both official languages.²¹ This also includes draft legislation.²² An explicit provision on translation during working groups on draft legislation, however, is missing.

Kosovo institutions are obliged to respect the equal use of official languages in their work. This also applies to the process of drafting legislation from its very initial stage. Pursuing a general practice of working in only one of the official languages violates the legal framework and undermines the equal status of official languages. Moreover, it contributes to an indirect exclusion of non-Albanian communities' members at the initial stage of the drafting process.

Translation practice

All the interviewed actors uniformly referred to the Rules of Procedure of the Government as their legal basis and main guide in legal drafting. However, interviews revealed that the Ministry for Communities and Return (MCR) was the only ministry which fulfilled its obligations during the legislative drafting phase by applying a practice of co-drafting in both official languages. That is, draft laws were reportedly provided and processed in the Albanian and Serbian languages from the outset of the legal drafting process and a translator was present in all working group sessions. Thus, according to MCR, all

¹⁶ The decision by the Permanent Secretary also includes the composition of the working group.

¹⁷ See Article 26(1) and following of the Rules of Procedure of the Government.

¹⁸ See Article 10(5) of Administrative Instruction No. 2007/4 for Human Rights Units in the Kosovo Government.

¹⁹ See Article 27(1) of the Rules of Procedure of the Government; however, this provision is not clear on the time and way in which public consultation shall be conducted.

²⁰ See Article 36(1)m of the Rules of Procedure of the Government. In addition, Article 27 of the Rules of Procedure of the Government holds the legal office responsible for the procedures of drafting the first draft in conformity with the drafting principles of the Rules of Procedure of the Government

²¹ See Article 4(5) of the Law on the Use of Languages.

²² Section 2(b) of the Law No. 2003/12 on Access to Official Documents, as promulgated by UNMIK Regulation 2003/32, 6 November 2003, has an inclusive definition of a "document", which covers any content regardless of its form (e.g., paper, electronic or visual) about the policies, activities and decisions of the institutions. Section 3(3.3) of the same law includes all documents held by, drawn up or received by an institution and kept in its possession within the scope of the law. Similarly inclusive provisions are used in the Law No. 03/L-215 on Access to Public Documents, which entered into force on 25 November 2010.

amendments are made in parallel in both official languages.²³ The importance of this process in complying with the legal framework lies in its ability to ensure the equal status of official languages, and provide a solid ground for the effective participation of all communities in the drafting process at its initial stage.

In other ministries the first draft of the legal text is usually prepared and reviewed by the ministerial working group in the Albanian language only.²⁴ Translation into the Serbian and English languages is carried out once the initial draft law has been finalized. Some interviewees stated that translation into English or Serbian is provided on an *ad hoc* basis, only as required by participants of the working group.²⁵ In most cases, however, the entire initial stage of the central level drafting process is conducted merely in the Albanian language.

According to the interviews, the lack of translation at different stages of the drafting process derives from a lack of qualified human and financial resources. In addition, the legislative workload of some ministries, such as the Ministry of Local Government Administration (MLGA), the Ministry of Internal Affairs (MIA) or the Ministry of Justice (MOJ), is comparatively larger than that of others like the MCR. Also, working groups are often composed exclusively of members belonging to the Kosovo Albanian community and participants from other communities who also speak Albanian. Allegedly, this further contributes to a reluctance to translate amendments during the working process of the ministerial working group. In general, the relevant actors do not appear to deem it necessary or reasonable to translate the draft laws at the very initial stage.

2.1.2. Inter-ministerial Phase

Once the draft legal act has been finalized by the respective ministry, it is forwarded to the Office of Legal Services and Support (OLSS), under the OPM, for an initial review before the establishment of the inter-ministerial working group.²⁶ The availability of the draft law in Albanian, Serbian and English is among the basic preconditions for a positive assessment by the OLSS²⁷ as well as for its recommendation to the permanent secretary of the OPM to create an inter-ministerial working group. This working group regularly comprises representatives of the OLSS, different ministries, officials from other relevant Kosovo institutions and the international community.²⁸ Furthermore, it is usually at this stage that representatives of civil society are invited to participate in the legislative drafting process.²⁹

²³ However, OSCE has received reports that such practice was not consistently applied by the MCR in meetings of the working group on the Municipal Offices for Communities and Return.

²⁴ This was observed in the MOJ, the MIA, the MPA, the MLSW, the MLGA as well as the OPM.

²⁵ This was observed in the MLSW, the MPA and the MIA as well as the OPM.

²⁶ See Article 29(3) of the Rules of Procedure of the Government; the inter-ministerial working group is also known as the "Governmental Working Group".

²⁷ See Articles 28, 31, 32 and 36 of the Rules of Procedure of the Government.

²⁸ See Articles 32 and 89 of the Rules of Procedure of the Government. Apart from ministries which take part in the working group due to their particular interest and/or expertise related to the draft law, the Ministry of Economy and Finance (the MEF) and the MOJ must always be represented in the inter-ministerial working group and provide their respective assessment of the draft law. Also the Ministry of European Integration (previously the Agency for European Integration – see Government Decision No. 2/118, 2 April 2010) must be involved and deliver its assessment on the compatibility of the draft law with the EU *acquis communautaire*.

²⁹ The Rules of Procedure of the Government do not regulate in detail the participation of civil society representatives. However, Article 26 limits the ministerial working group to seven participants; therefore

The inter-ministerial working group is typically larger in size and broader in its composition than the ministerial working group. Therefore, regular translation of amendments and of versions of the draft law is even more important during this stage as it is conducive to direct participation of non-Albanian communities in the public decision-making process.

After the draft law has been finalized in the inter-ministerial working group, it is returned to the OLSS for final review. Then, after the OLSS reviews the procedural history and makes any modifications and amendments in accordance with Article 36 of the Rules of Procedure, the government chaired by the Prime Minister decides whether the draft law should be submitted to the Assembly of Kosovo.³⁰ It should be noted that in September 2011, the government adopted a new Regulation of Rules and Procedure, which foresees the prior consultation of a drafting body with the relevant institutions, including the Consultative Council for Communities³¹, before submitting a legal act for deliberation by the government.

Translation practice

Similar to the ministerial process, amendments to draft laws during the inter-ministerial working group are usually inserted into the Albanian-language version only. Translation of amendments into English and Serbian is carried out when the draft is ready for submission to the OPM; oral translation during the working group meetings is usually not provided at all. In fact, the OSCE found that many interviewees seemed to believe erroneously that they fulfil the legal obligation by translating the draft legal text into different languages only once the working group has finalized the draft.³²

Nonetheless, oral translation during each meeting of the working group is key to facilitating the effective inclusion of non-Albanian community members. Especially regarding working groups which last several weeks, updated versions of the draft law should be translated on a regular basis in order to allow all participants of the working group to stay informed about the drafting progress and to review whether agreed amendments are reflected in the respective versions of the draft law.

An additional problem is that even when translation of amendments is provided throughout the process of the inter-ministerial working group, the quality of translation is often poor. Translators tend to translate words or phrases literally without considering the wider legal context of the respective provision. This has resulted in inaccurate or even incorrect translation, potentially changing the meaning of the article.³³

The following examples illustrate inaccurate or incorrect translation detected by the OSCE through its legislative review activities.

as an alternative, civil society representatives are usually invited to attend the inter-ministerial working group which itself is limited to 10 participants, or 15 in special cases (Article 32(2) of the Rules of Procedure of the Government).

³⁰ See Articles 32, 33 and 35(3) of the Rules of Procedure of the Government.

³¹ See Article 7, paragraph 110) of the new Regulation No. 09/2011 of Rules and Procedure of the Government of Kosovo, 7 September 2011. The new prior consultation process is in accordance with the mandate of the Consultative Council for Communities to afford communities the opportunity to comment at an early stage on a legislative or policy initiative prepared by the government.

³² This was observed in the MOJ, the MIA, the MPA, the MLSW as well as the OPM.

³³ This was observed in the MLSW.

Examples

*Article 3, draft Law against Terrorism*³⁴

The Albanian version³⁵ of this provision provided a definition of a criminal offence; whilst the Serbian version qualified the same act as a minor offence. This mistake is repeated throughout the text.

The qualification of an act as a criminal offence or a minor offence results in diverging legal consequences, potentially impacting upon the fundamental rights and freedoms of the individual involved. During the preparation of the present report, the relevant ministry submitted a newer version of the draft *Law against Terrorism* to the OLSS, but the mistake still had not been corrected.

*Article 19 (1)(1.4), draft Law on Ombudsperson*³⁶

The Albanian version of this provision read “regular and extraordinary remedies are not exhausted”³⁷; whereas the Serbian version stated that “regular and extraordinary remedies are exhausted”³⁸.

Poor translation of this provision, resulting in a discrepancy between the two official language versions, causes confusion regarding the availability of a legal remedy. Despite OSCE efforts, this inaccuracy was not remedied.³⁹ This illustrates a lack of attention to detail which ultimately hampers efforts to improve the multilingual legislative drafting process in Kosovo.

*Article 17 (5), draft Law on the Sale of Apartments Where Tenure Rights Exist*⁴⁰

The Albanian version of this provision read “transfer of ownership”⁴¹, opposed to the Serbian version which read “agreeing that tenure right be transferred”⁴².

Ownership and tenure rights are two different types of property rights, entailing different rights and obligations. The above translation mistake had not been corrected before it was submitted to the Assembly of Kosovo. At the time of writing this report, it had been sent

³⁴ This draft law formed part of the Legislative Strategy 2010 approved by the Decision of the Government No. 02/101 issued on 30 December 2009, and was drafted and sponsored by the OPM.

³⁵ Please note: for the purpose of comparing Albanian and Serbian language versions of laws and draft laws within this report, the English translation provided in examples to illustrate discrepancies is derived from OSCE translation of the articles in these respective versions.

³⁶ The draft law formed part of the Legislative Strategy 2010 approved by the Decision of the Government No. 02/101 issued on 30 December 2009, and was drafted and sponsored by the MoJ. It was adopted on 27 August 2010 as Law No. 03/L – 195 on Ombudsperson; Article 19(1)(1.4) became Article 20(1)(1.4).

³⁷ Emphasis added.

³⁸ Emphasis added.

³⁹ The Law No. 03/L-195 on the Ombudsperson entered into force on 7 September 2010.

⁴⁰ This draft law formed part of the Legislative Strategy 2010 approved by the Decision of the Government No. 02/101 issued on 30 December 2009. It was drafted and sponsored by the Ministry of Environment and Spatial Planning.

⁴¹ Emphasis added.

⁴² Emphasis added. The translation mistake had not been corrected before it was submitted to the Assembly of Kosovo in 2010; only when it was sent back from the Assembly to the Ministry of Environment and Spatial Planning and re-submitted to the Assembly in Kosovo in August 2011, this mistake had been amended.

back from the Assembly to the Ministry of Environment and Spatial Planning, which was in the process of revising the draft law.

The aforementioned examples also illustrate the need for an established proofreading mechanism, which will further be elaborated in Sub-section C of this Chapter.

2.1.3. Assembly of Kosovo Phase

The Rules of Procedure of the Assembly of Kosovo is the central instrument regulating the organisation and functioning of the Assembly of Kosovo and its bodies.⁴³ Following the same principles laid down in the Rules of Procedure of the Government and the Law on the Use of Languages, this instrument requires that every draft law introduced to the Assembly of Kosovo for debate be translated into Albanian, Serbian and English.⁴⁴

The Division for Harmonization, Standardization and Legal Advice, Research and Library⁴⁵ within the Assembly of Kosovo is tasked with reviewing draft laws after they have been submitted to the Assembly of Kosovo by the OPM. Although this primarily means examining certain formal aspects (e.g., legal basis, structure or consistency with the EU *acquis communautaire*), the Division at times also detects language mistakes or diverging language versions of the same draft law. Therefore, the preliminary report on the draft law submitted by the Division to the committees of the Assembly of Kosovo before the second reading regularly contains recommendations to amend language mistakes.⁴⁶ However, it is only after a law is approved that the Division systematically proofreads the law for language mistakes and harmonizes the three language versions.⁴⁷

Translation practice

During the Assembly of Kosovo's plenary sessions (first and second reading) simultaneous translation is provided by its translation unit from Albanian into Serbian, Turkish, English and vice versa.⁴⁸ During committee meetings simultaneous translation is always provided between Albanian and Serbian and, if explicitly required by a committee member, also between Albanian and Turkish. However, there is no language review of the draft laws in their entirety nor translation of amendments in written form during committee meetings. After the committees have decided on single amendments, they are directly inserted into

⁴³ See Article 1 of the Rules of Procedure of the Assembly of Kosovo, 29 April 2010.

⁴⁴ See Article 54(2) of the Rules of Procedure of the Assembly of Kosovo.

⁴⁵ See Regulation on the Internal Function of the Assembly of Kosovo - Annex 1 on the Description of the Duties for Officials of the Administration of the Assembly, issued by the Presidency of the Assembly on 12 October 2010; the Department for Legal and Procedural Issues comprises the Division for Harmonization, Standardization and Legal Advice, Research and Library, the Division for Plenary and Procedural Issues and the Division for Support of Assembly Committees.

⁴⁶ See Article 69 of the Rules of Procedure of the Assembly lists the permanent and functional committees of the Assembly. These committees are involved in the revision of the draft laws.

⁴⁷ This information is largely based on an interview with representatives of the Department for Legal and Procedural Issues conducted on 6 July 2010. The Director of the Department for Legal and Procedural Issues stated that draft laws submitted to the Assembly of Kosovo very often contain language mistakes. In most cases, such language issues do not affect the content of the draft law as they are mostly grammar mistakes, syntax errors and insignificant typos. However, some language mistakes are significant, causing the Division for Harmonization, Standardization and Legal Advice, Research and Library to dedicate more time to language correction than to analysis of legal aspects of the draft laws.

⁴⁸ Since the unilateral declaration of independence translation between Albanian and English is financed by the International Civilian Office; before, English translation was provided by UNMIK.

both the Albanian and Serbian versions of the draft law and any other language version if required. Once the committees have finalized their work, the Division for Harmonization, Standardization and Legal Advice, Research and Library provides translation of the draft law into English, at the latest three days before the plenary session discusses and votes on the respective law.

2.1.4. Official Gazette Phase

After a law has been adopted by the Assembly of Kosovo and promulgated by the President of Kosovo, it is forwarded to the Office for Publication of the Official Gazette (OPOG)⁴⁹ for publishing. Laws enter into force 15 days after publication in the Official Gazette unless specified otherwise by the law itself.

Translation practice

The legal act submitted to OPOG for publishing has already been adopted by the Assembly of Kosovo. Therefore, OPOG is vested with limited power and does not have the competence to review the language quality of the adopted legal text in the different language versions. Accordingly, only typing errors or minor spelling mistakes may be corrected by OPOG after consultation with the Assembly of Kosovo.

The Official Gazette of Kosovo is published in Albanian, Serbian, English, Turkish and Bosnian.⁵⁰ OPOG is responsible for providing translations of the legal text into the Turkish and Bosnian languages.⁵¹

2.1.5. Assembly Minutes – A Tool for Authentic Interpretation as a Remedy for Conflicting Language Versions of Legislation

In light of the principle of legality, it is imperative that different language versions of the same legal act coincide in their entirety. Inconsistencies between the different language versions of the same legal act must be avoided at all costs. This is particularly important in relation to the official language versions (Albanian and Serbian) which are equally authoritative.⁵² Along this line, the Law on the Official Gazette stipulates that in cases of conflict between the versions of different documents published in the Official Gazette, the official language versions are equally authentic.⁵³ Hence, when discrepancies exist between different language versions of a single law, the true will of the legislature remains subject to interpretation.

One way to successfully ascertain the true will of the legislature among contradicting, though equally authentic, language versions is to look at the minutes of the discussions⁵⁴ of the plenary session of the Assembly of Kosovo or of the committee meetings on a specific law. Minutes of plenary or committee discussions do not have legal character *per se* but

⁴⁹ OPOG was created by the Law No. 03/L-190 on the Official Gazette, 4 June 2010; it has a very similar mandate to the former Office for Management and Administration of the Official Gazette under the previous Law No. 2004/47 on the Official Gazette.

⁵⁰ See Article 5 of the Law 03/L-190 on the Official Gazette which entered into force on the 4 August 2010.

⁵¹ Turkish translation is carried out internally; Bosnian is undertaken by an external translation company.

⁵² See Article 5(4) of the Law on the Use of Languages.

⁵³ See Article 3(2) of the Law No 2004/47 on the Official Gazette.

⁵⁴ Also called *Travaux Préparatoires*.

they might serve as a useful tool to examine or identify, via teleological interpretation⁵⁵, the true will of the Assembly in adopting the law. Although Assembly deputies often do not discuss every single paragraph, comprehensive minutes are considered very helpful to avoid misinterpretations or even conflicting interpretations by judicial and other institutions.

2.1.6. Translation of Secondary Legislation

In practice, primary legislation sets out the general principles and guidelines within a given field which provide for the rights and obligations of legal or natural persons. Thus, primary laws set out a broad framework regulating a specific matter, the terms of which regularly mandate the executive branch to implement their provisions through secondary legislation. These secondary forms of legislation elaborate the respective provision in a more detailed and practical way.

According to the principle of the hierarchy of norms, each legal norm derives from a higher norm and shall be in compliance with it. In this regard, each item of secondary legislation needs to have a legal basis in a pre-existing law. Kosovo institutions issue decisions, administrative instructions and regulations necessary for the implementation of laws, all of which can be considered examples of secondary legislation.⁵⁶

As mentioned earlier, the legal framework in Kosovo requires primary legislation to be published in five languages.⁵⁷ However, there is no such provision regarding secondary legislation. In general, it is translated into Albanian, Serbian and English. However, the OSCE has observed that in some cases administrative instructions are available in Albanian only.⁵⁸

2.2. Draft Legislation at the Local Level

This section presents an overview of the process of drafting multilingual legislation at the local level. This is followed by data on the practice and experience of relevant stakeholders with the application of legislation in its different language versions. The assessment provided reflects the results of structured interviews with different municipal officials involved in the drafting process and in the application of multilingual legislation.⁵⁹

⁵⁵ Teleological interpretation looks at the objectives of the Assembly when adopting the legal act. It serves to fill gaps which may otherwise exist in the legal order and to prevent unacceptable consequences which may result from a literal interpretation of the legislation.

⁵⁶ An indicative list of the government's secondary legislation can be found at Article 4(3) of the Rules of Procedure of the Government.

⁵⁷ Albanian, Serbian, Turkish, Bosnian and English; see note 8, *supra*.

⁵⁸ This was noticed with some administrative instructions of the MOJ and the Ministry for Education, Science and Technology (MEST). See Administrative Instruction of the MOJ No. 152-126/2009 on "The Programme and the Conduct of the Bar Exam" and Administrative Instruction of the MEST No. 1/2011 on "The Criteria and Procedures on Validation and Approval of National Qualifications and Accreditation of the Institutions that Provide Qualifications in Kosovo".

⁵⁹ This includes: Deçan/Deçane, Dragash/Dragaš, Ferizaj/Uroševac, Fushë Kosovë/Kosovo Polje, Gjakovë/Đakovica, Gjilan/Gnjilane, Glogovc/Glogovac, Gračanica/Gračanicë, Hani i Elezit/Đeneral Janković, Istog/Istok, Junik, Kaçanik/Kaçanik, Klokot/Kllokot, Kamenicë/Kamenica, Klinë/Klina, Lipjan/Lipljan, Malishevë/Mališevo, Mamuşa/Mamushë/Mamuşa, Mitrovicë/Mitrovica, Novo Brdo/Novobërdë, Obiliq/Obilić, Pejë/Peć, Podujevë/Podujevo, Prishtinë/Priština, Prizren, Rahovec/Orahovac, Ranilug/Ranillug, Shtime/Štimlje, Skenderaj/Srbica, Štrpce/Shtërpçë, Suharekë/Suva Reka, Viti/Vitina, and Vushtrri/Vučitrn municipalities.

2.2.1. General Overview

Municipalities represent the basic units of local self-government in Kosovo.⁶⁰ The legislative framework foresees a high level of municipal self-regulation. In order to regulate matters under their responsibility, municipalities are entitled to issue legal acts.⁶¹ Despite the significant level of institutional independence enjoyed by the municipalities, such municipal acts must in addition be consistent in all aspects with the central-level legal framework.⁶²

Deriving from the fundamental principle of equality of all communities, municipal organs bear the responsibility of ensuring that all inhabitants of the municipality enjoy their rights without distinction of any kind.⁶³ This also includes the use of language as one of the basic characteristics pertinent to a community. As mentioned above, the official languages of the municipalities enjoy an equal status with the other official languages of Kosovo.⁶⁴

2.2.2. Drafting Process of Municipal Legislation

There is little formal guidance from central-level institutions to the municipalities on how to draft municipal legal acts. There are neither precise and clear legal drafting requirements nor a clear-cut assignment of the responsible drafting authority.⁶⁵

There are a number of actors involved in the initiation and drafting process of municipal legal acts. In general the thematically-relevant municipal directorate, mostly in co-operation with the municipal legal office, is the body which takes the initiative in drafting municipal legal acts.⁶⁶ In some cases, in addition to the directorates, legislative initiative comes from

⁶⁰ See Articles 3 and 4(1) of the Law No.03/L-040 on Local Self-Government, 19.06.2008. Also see Chapter 1(1.3) of the Constitutional Framework for Provisional Self-Government in Kosovo, as well as Articles 12 and 124 of the constitution.

⁶¹ See Article 12 of the Law on Local Self-Government. In addition, Article 40(2) of the Law on Local Self-Government provides that the Municipal Assembly may not delegate its competence to issue general municipal acts. Thus, the Municipal Assembly is the legislative body at the local level.

⁶² See Articles 11 and 16 of the Law on Local Self-Government, and Article 124(6) of the constitution of Kosovo.

⁶³ See Article 4(2) of the Law on Local Self-Government.

⁶⁴ See Article 2(3) of the Law on the Use of Languages. See notes 6 and 7, *supra*.

⁶⁵ During a Municipal Act Quality Enhancement Workshop (an OSCE-supported initiative held from 27 February–1 March 2011), the MLGA and local-level officials reported that the MLGA is in a process of drafting “Guidelines on Municipal Acts Drafting Techniques” which are intended to be finalized by the end of 2011. Also, an Administrative Instruction on “Submission, Review and the ways to Address the Municipal Acts”, shall be adopted by the MLGA in 2011. While the draft guidelines are available in Albanian, Serbian and English, the draft Administrative Instruction is available in the Albanian language only.

⁶⁶ This was observed in Dragash/Dragaš, Gjakovë/Đakovica, Gjilan/Gnjilane, Gllgovc/Glogovac, Fushë Kosovë/Kosovo Polje, Junik (where the initiative for legal acts comes from the relevant municipal directorate, but the Municipal Sanitary Inspector is the only municipal staff member to draft municipal regulations.), Kaçanik/Kaçanik, Mamuša/Mamushë/Mamuša, Mitrovicë/Mitrovica, Pejë/Peć, Prizren, Prishtinë/Priština, Podujevë/Podujevo, Rahovec/Orahovac (where initiating actors change depending on the type and nature of the municipal legislation; generally the relevant municipal directorate and the Mayor are the responsible actors), Ranilug/Ranillug, Shtime/Štimlje, Skenderaj/Srbica, Štrpce/Shtërpce (where the Municipal Director of General Administration initiates legal acts in co-operation with the Mayor), Suharekë/Suva Reka and Vushtrri/Vučitrn municipalities.

the mayor⁶⁷, the Municipal Assembly chairperson⁶⁸ or Municipal Assembly members⁶⁹. In some other cases a commission⁷⁰, a committee⁷¹ or a working group⁷² drafts or co-drafts the initial version of the municipal legal act.

After the first draft is prepared, it is presented to the mayor and the relevant municipal directorate(s) for discussion. In order to strengthen the transparency of the municipal legislative bodies and to enhance public participation in municipal public affairs, all draft acts should be subjected to public discussion. Accessibility of these acts in additional languages at this stage of the drafting process facilitates the participation of different communities in the development of municipal legislation. Once comments deriving from the debate have been incorporated into the text, the draft act is reviewed by the Policy and Finance Committee and by the Communities Committee, and afterwards submitted to the Municipal Assembly for approval.

During this process, effective participation of non-majority⁷³ communities in decision-making processes is essential. In this regard, non-majority communities have permanent representatives within the municipal structures, including the Deputy Chairperson for Communities⁷⁴, Deputy Mayor for Communities⁷⁵, the Municipal Community Office or Municipal Office for Communities and Return⁷⁶, and the Communities Committee⁷⁷. All of

⁶⁷ This was observed in Gračanica/Gračanicë, Klokot/Kllokot, Lipjan/Lipljan, Novo Brdo/Novobërdë and Viti/Vitina municipalities.

⁶⁸ This was observed in Ferizaj/Uroševac municipality.

⁶⁹ This was observed in Kamenicë/Kamenica where legal acts are also initiated by the Municipal Legal Office along with other municipal officials.

⁷⁰ This was observed in several municipalities, including Hani i Elezit/Đeneral Janković, where the Municipal Legal Officer and external experts are members of this commission. In Istog/Istok the initiative may come from the Mayor, Municipal Assembly Chairperson and members, and the relevant municipal directorate. In such cases, a commission is established upon request of the Mayor to compile the initial draft of the municipal legislation. In Malishevë/Mališevo there is no standard rule. Sometimes the initiator is the legal advisor to the Mayor. In the municipalities of Mitrovicë/Mitrovica, Skenderaj/Srbica, Vushtrri/Vučitrn, the Municipal Statutory Commission is responsible for the drafting of the municipal legislation.

⁷¹ This was observed in Deçan/Deçane municipality, where it is either the Municipal Statutory Committee or the relevant municipal directorate which takes the legislative initiative.

⁷² This was observed in Klinë/Klina, where the Municipality reports that usually the working group is composed of the Mayor, the Municipal Directors, the Legal Officer, the Municipal Communities' Officer, a number of municipal assembly members and civil society representatives.

⁷³ For the purpose of this report, non-majority refers to any community that is in a numerical minority at the municipal level.

⁷⁴ See Article 54 of the Law on Local Self-Government.

⁷⁵ See Article 61 of the Law on Local Self-Government.

⁷⁶ The Municipal Communities Offices (MCO) were originally established under UNMIK Regulations 2000/45 on Self-Government of Municipalities in Kosovo, 11 August 2000, as amended by UNMIK Regulation 2007/30, 16 October 2007. The Law on Local Self-Government did not require the mandatory creation of these offices as a municipal mechanism, meaning that not all municipalities established MCOs. On 12 August 2008, Kosovo government issued Regulation No. 02/2010 for the Municipal Offices for Communities and Return, which requires that all municipalities establish a Municipal Office for Communities and Return (MOCR). The MOCRs have replaced MCOs in the majority of municipalities where they previously existed, and are carrying out their functions in addition to an expanded range of competencies. In some municipalities, like Mitrovicë/Mitrovica, the MCOs are still functional, while in some others, the focal points for communities and returns are appointed by the mayors (Kacanik/Kaçanik; Gračanica/Gračanicë; Malishevë/Mališevo). The process of closing MCOs and establishing MOCRs was ongoing at the time of preparation of this report, and interviews with MCO officials were carried out prior to these developments.

⁷⁷ See Article 53 of the Law on Local Self-Government.

these bodies, within the scope of their respective mandates, advocate for and protect the interests of the non-majority community or communities in their municipality. This mechanism ensures the active involvement of the communities in all public affairs, including the drafting of municipal legislation.

However, interview results revealed that non-majority communities' representatives took part in the municipal drafting process in only six municipalities in 2010.⁷⁸ In most municipalities, the representatives of non-majority communities do not get involved in the municipal legislative drafting process.⁷⁹ Officials of these municipalities justify this fact by stating that only a marginal number of non-majority community members are resident in their respective municipalities. In other municipalities representatives of non-majority communities are involved in the drafting process only to a limited extent (e.g. only with regard to legislation affecting communities or to translation and language review tasks).⁸⁰

According to the legal framework all municipal legal acts should be processed, adopted and published in the official languages of the municipality.⁸¹ All official language versions of municipal legislation are equally authoritative.⁸² Consequently, municipalities are obliged to respect the equal status of official languages regardless of the demographic composition of the communities within the municipality. In other words, municipalities where only a small number of persons from non-majority communities live are still required to process and issue their legislation in Albanian and Serbian.

⁷⁸ These municipalities included Pejë/Peć (the MCO, the Deputy Chairperson for Communities and the Deputy Mayor for Communities were involved but interviews with these actors indicate that their involvement was not consistent and needed room for improvement), Istog/Istok (MCO participation), Klokot/Kllokot (Deputy Chairperson for Communities and the Deputy Mayor for Communities were involved but the MCO had not been established at the time), Novo Brdo/Novobërdë (the Deputy Mayor for Communities and the Deputy Chairperson for Communities), Prishtinë/Priština (the Deputy Chairperson for Communities), Ranilug/Ranillug (the Deputy Mayor for Communities), Mitrovicë/Mitrovica (the Deputy Chairperson for Communities and Deputy Mayor for Communities were involved at the Municipal Assembly stage).

⁷⁹ This was observed in Gjakovë/Đakovica (according to the interview results the Head of the MCO was involved in the drafting process between 2004 and 2007), Glogovc/Glogovac (where communities' representatives had not been appointed at the time of interview), Obiliq/Obilić, Klinë/Klina (in these municipalities although the Municipal Legal Officer reported that the MCO took part in the drafting process, this information was not confirmed by the MCO himself), Gračanica/Gračanicë (the position of the Deputy Mayor for Communities did not exist at the time of interview. The MCO and the Deputy Chairperson for Communities were not involved), Malishevë/Mališevo (no positions representing communities existed in the municipality at the time of interview. In addition, the Municipal Community Officer was not engaged in the drafting process of legislation.), Prizren (the Deputy Chairperson for Communities and the Deputy Mayor for Communities had not been appointed at the time of interview), Podujevë/Podujevo (communities' representatives had not been appointed at the time of interview), Dragash/Dragaš, Rahovec/Orahovac (the position of Deputy Chairperson for Communities had not been established at the time of interview), Suharekë/Suva Reka, Vushtrri/Vučitrm, Ferizaj/Uroševac, Gjilan/Gnjilane, Kamenicë/Kamenica, Hani i Elezit/Đeneral Janković, Viti/Vitina, Kaçanik/Kaçanik (in this municipality communities' representative positions had not been established at the time of interview), and Junik (communities' representative positions had not been established at the time of interview).

⁸⁰ This was observed in Fushë Kosovë/Kosovo Polje (MCO and the Communities Committee Chairperson), Lipjan/Lipljan (the Communities Committee and MCO), Mamuşa/Mamushë/Mamuşa (the Deputy Mayor for Communities), Mitrovicë/Mitrovica (MCO and the Communities Committee), Skenderaj/Srbica (MCO), Novo Brdo/Novobërdë (MCO), Shtime/Štimlje (MCO), Štrpce/Shtërpçë (the Deputy Mayor for Communities).

⁸¹ Article 7, Paragraph 7.6 of the Law on the Use of Languages No 02/L-37.

⁸² Article 7(6) of the Law on the Use of Languages; see all official languages listed in Chapter I.

In instances where the language of a non-majority community enjoys the status of official language in a municipality, the lack of translation of draft legislation or the failure to provide translation of adequate quality infringe the equal status of official languages. It also poses an additional hurdle to the effective and efficient participation of non-majority communities' representatives in the drafting of municipal legislation. Hereby, the wider mechanism (e.g. access to justice or to an effective remedy) for the protection of non-majority communities is weakened.

Translation Practice

The overall assessment amongst interviewed municipal officials indicates that 17 municipalities⁸³ process and adopt their draft legislation in all official languages. The precise timing of translation of draft legal acts varies from municipality to municipality. In some cases, it is at the very initial stage, before the first draft is submitted to the executive branch for discussion.⁸⁴ In other municipalities, translation of the text is provided before the public consultation process⁸⁵, before review by the Municipal Assembly committees⁸⁶, or before final submission to the Municipal Assembly for approval⁸⁷. Eight municipalities provide the translation of legislation into the Serbian language only after the legal act has been approved by the Municipal Assembly.⁸⁸ Finally, 11 municipalities regularly issue their legislation in the majority community language only.⁸⁹ In some instances, only legislation which the municipality deems relevant, such as the municipal statute or legislation directly related to communities' issues, is translated. In some of those municipalities, the municipal officials interviewed claimed that translation of local-level legislation or any other official document would be provided upon request.⁹⁰

Furthermore, eight Kosovo municipalities have seen no need for multilingual legislation in their area.⁹¹ Yet, these eight municipalities all confirm their awareness of the existing legal obligations regarding the equal use of official languages. Again, the main argument is the largely mono-ethnic composition of the municipalities and, alternatively, the linguistic

⁸³ This was observed in Dragash/Dragaš, Fushë Kosovë/Kosovo Polje, Gjiilan/Gnjilane, Gračanica/Gračanice, Istog/Istok, Klokot/Kllokot, Kamenicë/Kamenica, Klinë/Klina, Lipjan/Lipljan, Novo Brdo/Novobërdë, Obiliq/Obilić, Podujevë/Podujevo, Prishtinë/Priština, Prizren, Ranilug/Ranillug, Skenderaj/Srbica and Štrpce/Shtërpçë municipalities.

⁸⁴ This was observed in Klokot/Kllokot, Novo Brdo/Novobërdë, Ranilug/Ranillug, Štrpce/Shtërpçë, Dragash/Dragaš, Istog/Istok and Klinë/Klina municipalities.

⁸⁵ This was observed in Fushë Kosovë/Kosovo Polje, Skenderaj/Srbica, Podujevë/Podujevo, and Prishtinë/Priština municipalities.

⁸⁶ This was observed in Gjiilan/Gnjilane, Kamenicë/Kamenica, Gračanica/Gračanice, Obiliq/Obilić and Prizren municipalities.

⁸⁷ In Lipjan/Lipljan municipality, it depends on the workload whether translation takes place before or after approval by the municipal assembly.

⁸⁸ This was observed in the municipalities of Ferizaj/Uroševac, Kaçanik/Kaçanik, Viti/Vitina, Rahovec/Orahovac, Vushtri/Vučitrn, Pejë/Peć (translation into Bosnian language is also provided); Suharekë/Suva Reka and Deçan/Deçane (translation is not always provided. Only 30% of all official documentation has been translated in the municipality so far).

⁸⁹ This was observed in the municipalities of Shtime/Štimlje, Glogovc/Glogovac, Hani i Elezit/Đeneral Janković, Malishevë/Mališevo, Gjakovë/Đakovica, Junik, Mitrovicë/Mitrovica, Mamuša/Mamushë/Mamuša (no translation into Serbian is provided; translation into Turkish is provided at the initial stage).

⁹⁰ This was observed in Gjakovë/Đakovica, Shtime/Štimlje and Glogovc/Glogovac municipalities.

⁹¹ This was observed in Gjakovë/Đakovica, Deçan/Deçane, Shtime/Štimlje, Mamuša/Mamushë/Mamuša, Malishevë/Mališevo, Suharekë/Suva Reka, Hani i Elezit/Đeneral Janković and Kaçanik/Kaçanik municipalities.

integration of non-majority community members. Officials in these municipalities further justify this reasoning by citing a lack of human and financial resources and poor working conditions.⁹²

The assessment also shows that at the time of the interview translation units had not been established in six municipalities.⁹³ In such cases, municipal officials, who are not translators and who do not possess the relevant educational and professional background, carry out the translations when needed.⁹⁴ This flexibility and willingness of some officials to carry out tasks beyond their duties and responsibilities could be evaluated positively. However, such an example, despite demonstrating will and effort on the part of municipal officials to remedy existing shortcomings, cannot be considered an appropriate long-term solution, as it represents an ad-hoc response and does not address structural problems as such. Although municipalities are not legally required to establish specialized translation services, the OSCE considers that only separate municipal translation units can address these shortcomings.

In the northern part of Kosovo, the municipalities of Leposavić/Leposaviq, Zubin Potok, and Zvečan/Zveçan do not apply Kosovo legislation.⁹⁵ These municipalities use the services of UNMIK translators who translate documents and regulations. Requests for translation often come from UNMIK staff working in these municipalities and rarely from Kosovo Albanian community members themselves. However, there were no records available to confirm the translation of any municipal regulation into Albanian between 2008 and 2010 in these municipalities. A similar problem exists in the municipality of Mitrovicë/Mitrovica, where reportedly the municipal interpreter had been tasked by the municipal authorities to translate only two municipal regulations into Serbian since 2006 due to a lack of requests by the Serbian community.

Local institutions bear the responsibility to provide adequate translation into all official languages. This can be guaranteed only if qualified staff responsible for translation services are employed or if outsourced contractors provide proper and timely translation. Maintaining municipal legislation in only one of the official languages and providing its translation only after it has been adopted clearly falls short of the requirements set forth by the legal framework. Such practice contributes to the exclusion of non-majority community members from public affairs. Therefore, all municipalities, regardless of demographic composition, are strongly encouraged to respect the equal status of official languages and to issue all legal acts in all official languages.

2.3. Increasing the Quality of Multilingual Legislation

Municipalities are facing substantial challenges in meeting their obligations deriving from the multilingual legislation system including a lack of human, technical and budgetary resources, an ongoing overload of work and a lack of adequate qualifications and

⁹² This was observed in Deçan/Deçane, Glogovc/Glogovac, Hani i Elezit/Đeneral Janković, Rahovec/Orahovac and Prishtinë/Priština municipalities, which specify poor working conditions and lack of translation equipments as a challenge faced during translation.

⁹³ This was observed in Shtime/Štimlje, Obiliq/Obilić, Glogovc/Glogovac, Malishevë/Mališevo, Hani i Elezit/Đeneral Janković and Junik municipalities.

⁹⁴ This was observed in Shtime/Štimlje, Obiliq/Obilić, Suharekë/Suva Reka and Gjakovë/Đakovica municipalities (the last legal acts printed and published both in Albanian and Serbian were the Municipal Statute and regulations enacted in 2007).

⁹⁵ UNMIK Administration in northern Mitrovica/ Mitrovicë has two interpreters for Albanian and Serbian.

experience.⁹⁶ Municipal translators who lack experience with legal translations first and foremost struggle with the right use of legal terminology⁹⁷ often resulting in translated provisions of different legal significance. Yet, it is very difficult to recruit more qualified and experienced staff in view of the low salaries and benefits compared to other employers in Kosovo, such as international organisations.⁹⁸ In addition, some municipal translation units lack basic technical equipment for translators such as dictionaries or computer spell-check programmes.⁹⁹ Central-level officials cite similar challenges, such as human and budgetary constraints¹⁰⁰, or inadequate qualifications of translators resulting mainly in use of improper legal terminology.¹⁰¹

One structural solution to the aforementioned problems might be found in strengthening the role of the Kosovo Institute for Public Administration (KIPA). The KIPA has been established as an executive agency within the Ministry of Public Administration (MPA) as the primary training institution responsible for the general training of Kosovo civil servants.¹⁰² The KIPA implements the training strategy for the civil service developed by the MPA. In addition, it is responsible for periodically reviewing and assessing the training needs of the civil service at the central and local levels; co-ordinating training activities of civil servants in co-operation with municipalities and other Kosovo institutions; developing medium- and long-term strategic plans for an effective and efficient administration; and for providing a forum for discussions regarding the development of public administration policies. In this regard, the KIPA should play a key role in enhancing the proficiency of interpreters and translators within the civil service. Therefore, it should also provide professional certified training on advanced interpretation and translation skills which includes training on selected topics such as legal terminology.¹⁰³

Another challenge identified, linked to general shortcomings in human and budgetary resources, is the lack of an established proofreading practice at the central and local level. Proofreading refers to the process of examining a text carefully in order to detect and correct typographical, spelling, punctuation or grammar errors. In the context of the multilingual legislation system in Kosovo, systematic proofreading is particularly important to identify translation mistakes in grammar, syntax or terminology and preventing discrepancies in the different language versions prior to the adoption of legislation.

⁹⁶ This was observed in Pejë/Peć, Deçan/Deçane, Obiliq/Obilić, Fushë Kosovë/Kosovo Polje, Lipjan/Lipljan, Suharekë/Suva Reka, Dragash/Dragaš, Prizren, Mamuša/Mamushë/Mamuša, Mitrovicë/Mitrovica, Skenderaj/Srbica, Vushtrri/Vučitrn, Kamenicë/Kamenica, Klokot/Klllokot, Novo Brdo/Novobërdë, Ranilug/Ranillug and Štrpce/Shtërpçë municipalities.

⁹⁷ This was observed in Mamuša/Mamushë/Mamuša, Skenderaj/Srbica, Vushtrri/Vučitrn, Novo Brdo/Novobërdë, Viti/Vitina and Pejë/Peć municipalities.

⁹⁸ This was observed in Pejë/Peć, Prizren, Mamuša/Mamushë/Mamuša, Vushtrri/Vučitrn and Mitrovicë/Mitrovica municipalities.

⁹⁹ This was observed in Skenderaj/Srbica and Prishtinë/Priština municipalities.

¹⁰⁰ This was observed in the MCR and the MIA.

¹⁰¹ This was observed in the MOJ, the MIA as well as the OPM.

¹⁰² UNMIK Administrative Direction No. 2003/25 implementing UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo.

¹⁰³ Between 29 November and 17 December 2010, the OSCE funded and provided, in co-operation with KIPA, an intensive training for 32 central-level interpreters/translators on advanced English and Serbian language skills, followed by interpretation skills.

Although translations are often reviewed by officials from the respective legal departments,¹⁰⁴ the practice of proofreading is neither a specific legal requirement nor a widely-employed practice in Kosovo institutions at the central level, as confirmed by interviewees from the selected ministries. Likewise, systematic proofreading is not a formally established practice at the local level.¹⁰⁵ Municipal officials stated that it should be formally introduced in all municipalities, and its quality enhanced if already conducted, with a view to increasing the quality of the different language versions of legislation.¹⁰⁶ The need for an institutionalized proofreading practice has also been confirmed by the results of the legislative review activities conducted by the OSCE. It has been found that draft laws and other legislation often contain typographical errors as well as translation mistakes in grammar, syntax or terminology, which may create discrepancies between the different language versions. If these mistakes are not detected and corrected at the drafting stage, they may result in different treatment of individuals once the legislation is adopted and applied.

The following provision serves as an example.

*Article 25 paragraph 2, draft Law on Access to Public Documents*¹⁰⁷

According to the Albanian version, a fine of “1000 Euro” was prescribed as a penalty.¹⁰⁸ However, the Serbian version foresaw a fine of “100 Euro”.¹⁰⁹

As a result of discussion in the inter-ministerial working group, supported by comments provided by the OSCE, this provision was modified. Later, the provision relating to financial penalties was removed. As illustrated by this example, introducing or improving proofreading practices could help to detect and correct potential translation mistakes as well as typographical errors before legislation comes into force. This would contribute to increasing the quality of legislation in all language versions.

3. MULTILINGUAL LEGISLATION IN KOSOVO: LEGISLATION IN FORCE

As a result of the shortcomings identified, legislation is often adopted and applied with language mistakes. Such errors may pose obstacles to the everyday work of public officials, and individuals and other subjects of legislation may also be negatively affected.

¹⁰⁴ This was observed in the MOJ, MPA, MLSW, MIA as well as the OPM. (This practice does not apply in the MCR due to its co-drafting practice in the working groups).

¹⁰⁵ 12 municipalities claimed that proofreading is the formal responsibility of the legal drafter and the translator: in Gjakovë/Đakovica, Lipjan/Lipljan, Rahovec/Orahovac, Mitrovicë/Mitrovica, Hani i Elezit/Đeneral Janković, Kamenicë/Kamenica, Klokot/Kllokot, Novo Brdo/Novobërdë, Ranilug/Ranillug, Dragash/Dragaš, Kaçanik/Kaçanik and Štrpce/Shtërpçë municipalities; in ten municipalities, separate proofreading practice was not in place: in Pejë/Peć (where notably, there were discrepancies between the statements of the different officials as to whether a proofreading practice is in place), Obiliq/Obilić, Graçanica/Graçanicë, Suharekë/Suva Reka, Ferizaj/Uroševac, Viti/Vitina, Deçan/Deçane, Skenderaj/Srbica, Vushtrri/Vučitrn and Istog/Istok municipalities; in the following municipalities, separate proofreading is carried out in an informal manner on a case-by-case basis: in Klinë/Klina, Fushë Kosovë/Kosovo Polje, Prizren, Mamuša/Mamushë/Mamuša and Gjilan/Gnjilane municipalities.

¹⁰⁶ This was observed in Gjilan/Gnjilane, Ferizaj/Uroševac and Viti/Vitina municipalities.

¹⁰⁷ This draft law entered into force on 25 November 2010 as Law No.03/L-215 on Access to Public Documents.

¹⁰⁸ Emphasis added.

¹⁰⁹ Emphasis added.

The practical impact of language mistakes in existing legislation has been assessed through structured interviews conducted with stakeholders in the executive and judicial branches.¹¹⁰ These stakeholders described their experiences with the Kosovo multilingual legislation system, how they evaluate the quality of the different language versions of legislation, and whether they have faced any difficulties in their work originating from poor or incorrect translation of legislation. Through its legislative review activities, the OSCE also identified language mistakes in legal acts at the Assembly of Kosovo.

3.1. Executive and Legislative Branches

In general, municipal officials are aware of the prevalent practice of poor translation of central- and local-level legislation.¹¹¹ Among the mistakes reported are mainly grammar mistakes and the use of Croatian and Bosnian words in Serbian translations.¹¹² One official has expressed the view that poor translation at the central level makes municipalities less inclined to increase their own translation standards.

Interviews have also confirmed that municipal officials belonging to non-Albanian communities are more troubled about the poor quality of translated documents than their Kosovo Albanian colleagues.¹¹³ In this regard, one official affirmed that the failure to translate legislation into all official languages, or the poor quality of the individual language versions, impacts on the involvement of non-Albanian officials in municipal affairs.¹¹⁴ Another official explicitly stated that poor translation contributes to confusion and misunderstanding in everyday work. The consequent need to seek clarifications and explanations, and to compare the different language versions make tasks more time-consuming and difficult. Additional problems arise if the official does not speak the other official language, and therefore cannot cross-check easily with the other version of legislation.¹¹⁵

The following examples illustrate some of the translation mistakes detected in legislation. This is followed by a brief elaboration on the consequences these had or could have had.

¹¹⁰ Information related to the experience of the executive branch was provided mainly by the different non-majority community representatives (e.g. the Municipal Community Officers, the Deputy Chairpersons for Communities or the Deputy Mayor for Communities). From the judiciary, judges, prosecutors and lawyers from Prishtinë/Priština, Prizren, and Mitrovicë/Mitrovica regions provided relevant data for the present report.

¹¹¹ This was observed in Pejë/Peć, Klinë/Klina, Gjakovë/Đakovica, Obiliq/Obilić, Fushë Kosovë/Kosovo Polje, Gračanica/Graçanicë, Rahovec/Orahovac, Suharekë/Suva Reka, Skenderaj/Srbica, Ferizaj/Uroševac, Kamenicë/Kamenica, Viti/Vitina and Obiliq/Obilić municipalities.

¹¹² This was observed in Obiliq/Obilić municipality (Municipal Legal Officer, Municipal Translator/Municipal Information Officer, Deputy Mayor for Communities).

¹¹³ This was observed in Pejë/Peć, Klinë/Klina, Istog/Istok, Gračanica/Graçanicë, Suharekë/Suva Reka, Skenderaj/Srbica and Viti/Vitina municipalities.

¹¹⁴ This was observed in Pejë/Peć municipality (Deputy Mayor for Kosovo Serb Community, speaking about his involvement in the Municipal Assembly sessions).

¹¹⁵ This was observed in Pejë/Peć municipality (Head of MCO).

Example

*P – 4.19, Use of Handcuffs, I. Policy, Kosovo Police Service Policy and Procedure Manual (Version 2003)*¹¹⁶

The Albanian version sets forth that: “the use of handcuffs is a use of force and must be justified under the KPS use of force policy”¹¹⁷; whereas the Serbian version reads as: “the use of handcuffs is a use of force so that this action is taken only when other weaker measures are not efficient.”¹¹⁸

The Albanian version of the text entails that the use of handcuffs must be reported by submitting the use of force form. However, the Serbian version fully omits to mention the need to file a formal justification of the action. It stipulates that the use of handcuffs is a use of force, which is to be taken only when weaker measures are not or would not be efficient. Hereby, the threshold for the use of force in the Serbian version appears to be lower than in the Albanian version. This has a direct negative impact on the rights of the individual. Also, the respective requirement of justification enshrined in the Albanian version allows the individual to have the use of force against him undergo an effective legal scrutiny. Consequently, the Serbian version of the policy – holding an equal authentic status as the Albanian one – affects the individual in his right to an effective legal remedy. The aforementioned provision was amended in 2007; therefore, this policy is no longer in place. Nonetheless, it raises concern that the policy was in use for four years and went unreported. This presents a remarkable example of the potential extent and gravity of the consequences of a translation mistake. Following the advice and assistance of the OSCE, Kosovo police corrected these translation mistakes in the new Administrative Instruction on Use of Force by Police Officers.¹¹⁹

Example

*Article 5(d), Law on Education in Municipalities*¹²⁰

The Albanian version assigns the competence to establish a commission for appointing the directors of schools to the Municipal Assembly; whereas the Serbian version empowers the municipality without further specifications.

In one municipality, the Mayor has taken a decision to establish the aforementioned commission – in line with the Serbian version of Article 5(d) of the Law on Education in Municipalities.¹²¹ Following this decision, he was accused by the opposition of violating the law. The latter based their arguments on the Albanian version of the provision, which assigns the respective competence to the Municipal Assembly.

¹¹⁶ This legal act was in force until September 2009, when it was superseded by Administrative Instruction No. 06/2009 on Use of Force by Police Officers.

¹¹⁷ Emphasis added.

¹¹⁸ Emphasis added.

¹¹⁹ Administrative Instruction Nr. 06/2009 on Use of Force by Police Officers, issued by the General Director of the Kosovo Police on 9 September 2009.

¹²⁰ Law No. 03/L-068 on Education in the Municipalities, 15 June 2008.

¹²¹ This was observed in Suharekë/Suva Reka municipality. According to Article 58(a) of the Law on Local Self-Government, the Mayor represents and acts on behalf of the municipality.

Example

*Article 44 (1), Law on Local Self-Government*¹²²

The Albanian version reads as follows: “An extraordinary session shall be called by a written request of at least one third of the total assembly members or by the mayor’s request.”¹²³ However, the Serbian version states: “An extraordinary session shall be called by the chairperson or upon the request of at least one third of the total number of Municipal Assembly members.”¹²⁴

In this case, poor translation leads to a discrepancy as to who outside the Municipal Assembly bears the competence to call an extraordinary session of the Municipal Assembly. Moreover, only the Albanian version demands a request in written form – the Serbian text only requires a request. Such discrepancies open the door to a range of potential conflicts within the democratic process at the local level.

Example

Article 53(1), Law on Local Self-Government

The Albanian version states that “[t]he Communities Committee shall include the simple majority of the Municipal Assembly members [...] each community living in the municipality shall be represented at least by one member in the Communities Committee.”¹²⁵ On the other hand, the Serbian version does not envisage the simple majority rule but describes a different structure, where “the Communities Committee shall comprise members of the Municipal Assembly and the community representatives”.¹²⁶

In this case, the translation mistake affects the composition of the Communities Committee. Although it was foreseen to amend the Law on Local Self-Government, according to the officials of the MLGA, the amendment process of this law has been postponed for a later stage.

Example

P – 1.23, Non-discrimination, I. Policy, Kosovo Police Policy and Procedure Manual (Version 2007)

While the Albanian version makes reference to discrimination on the basis of language, political orientation, ethnical or social origin, affiliation with a national community, property, birth, disability, family status, pregnancy, or any other status, the Serbian version does not make any such reference.

As a result of poor translation, the Serbian version of this policy previously did not prohibit discrimination on the aforementioned grounds. Following the advice and assistance of the OSCE, Kosovo police corrected these translation mistakes in the new version of the Manual.

¹²² Law No. 03/L-040 on Local Self Government, 4 June 2008.

¹²³ Emphasis added.

¹²⁴ Emphasis added.

¹²⁵ Emphasis added.

¹²⁶ Emphasis added.

Example

*Article 86, Rules of Procedure of the Assembly of Kosovo*¹²⁷

The English version stipulates that at the end of the term of the Assembly, all items of business entrusted to it – except for laws adopted and forwarded for promulgation – shall be deemed unfinished. The Albanian and Serbian versions, however, state the opposite: all business shall be deemed finished.

After the dissolution of the Assembly of Kosovo in Autumn 2010, all draft laws that were not approved were sent back to the OPM for re-submission to the newly elected Assembly. Hereby, the English version – although not an official language – was followed by the officials. The two official language versions were disregarded. It is assumed that the (first) drafts of the Rules of Procedures were made in English and a mistake was made during translation into Albanian and Serbian. The official language versions seemingly do not reflect the will of the legislator. This course of action is unsatisfactory from a rule of law point of view. Amendments should be made as a matter of urgency.

3.2. Judicial Branch

Similar problems have also been experienced by the judiciary. In interviews conducted by the OSCE, some judges, prosecutors and lawyers concurred that Serbian translations of the laws, both criminal and civil, are not of good quality.¹²⁸ A judge reported not only grammar and syntax errors but also literal translations of certain legal terms as the most widespread mistakes.¹²⁹ As a result, provisions are often not understandable, create confusion or make no sense, according to two judges dealing with civil cases in Prizren and Prishtinë/Priština municipalities. Some of the interviewees¹³⁰ emphasized that legal terminology typically pertaining to criminal law is widely used in civil legal texts, in particular in the Law on Contested Procedure.¹³¹ The Serbian version of this law also contains provisions wherein apparently random Albanian words have been left without translation.

In order to overcome the lack of clarity or confusion stemming from poor translation of legal texts, two judges reported that at times they had been forced to use their own interpretation (sometimes with reference to other laws, including older laws which are no longer in force).¹³² Notwithstanding the value of the effort made by the actors to overcome the difficulties outlined, such practice may risk uniform interpretation and application of the respective provisions.

Consultations with the aforementioned judges, prosecutors and lawyers have confirmed that poorly translated laws sometimes create an additional obstacle to the smooth running of judicial proceedings. A prosecutor from Prizren municipality stated that in some cases he has to compare the Albanian, Serbian and English language versions of a law in order to find out the true meaning of the provision. He pointed out that such practice makes the current working conditions in the municipality more difficult.

¹²⁷ The latest amendments to the Rules of Procedure of the Assembly were adopted on 29 April 2010.

¹²⁸ A number of judges, prosecutors and lawyers in Prizren, Prishtinë/Priština and Mitrovicë/Mitrovica municipalities.

¹²⁹ A judge in Prishtinë/Priština municipality dealing with civil cases.

¹³⁰ Two judges respectively in Prishtinë/Priština and Mitrovicë/Mitrovica municipalities.

¹³¹ Law No. 03/L-006 on Contested Procedure, 20 September 2008.

¹³² A judge in Prishtinë/Priština Municipal Court and a judge in Prizren Municipal Court.

To illustrate the extent of potential consequences of poor translation of legislation, a judge referred to a case where a request presented by one of the parties was rejected based on the Serbian version of Article 258(4) of the Law on Contested Procedure. Consequently the legal representative of the party objected to the decision, referring to the same provision in the Albanian version. In the material case the Serbian and Albanian version of the same article are substantially different, as shown below.

Example

Article 258(4), Law on Contested Procedure

The Serbian version states that: “the court in cases under paragraph 2 of this article, shall not allow the amendment of the claim ...”.¹³³ On the other hand, the Albanian version stipulates that: “the court shall allow ...”.¹³⁴

On the basis of the Albanian version, the proposal of the party should have been granted.

Most of the judicial actors interviewed have stated that they can circumvent potential difficulties linked to the outlined language issues due to their extensive experience in the judicial system. However, they have expressed concern about the new generation of legal practitioners employed following the judicial and prosecutorial vetting process which ended in October 2010 and who lack the same level of experience.¹³⁵

4. SUPERVISORY AND TRAINING MECHANISMS

Proper implementation of the legislative framework for language use requires effective supervisory and training mechanisms. On the one hand, the supervisory mechanism should monitor the situation and, when needed, take adequate actions. On the other hand, this supervisory mechanism should be supported by a training body responsible for providing regular trainings for translators and interpreters to enhance their capacities.

The OSCE conducted interviews with representatives of different bodies involved in overseeing the equal use of official languages in Kosovo institutions. These include the Language Commission, the Human Rights Units and the MLGA. For the purpose of the present report, focus was placed on the equal use of official languages in draft and adopted legislation.

4.1. Language Commission

The Language Commission is the central body tasked with monitoring institutional compliance with the Law on the Use of Languages in Kosovo. Its supervisory mandate extends to both the central and local level. Accordingly, it takes actions to protect the equal

¹³³ Emphasis added.

¹³⁴ Emphasis added.

¹³⁵ A number of judges and prosecutors in Prizren municipality.

status and equal use of the official languages, including the preparation and issuance of legislation in the official languages.¹³⁶

In an interview with members of the Language Commission, the OSCE collected the following information about its activities. By conducting visits to relevant institutions, the Language Commission gathers information on the existence of translation units at the central and local level, their staffing capacities and technical equipment.¹³⁷ The legal framework in Kosovo does not explicitly stipulate that each public institution must have a translation unit. However, the legal requirement to provide timely and high-quality translation of all official documents into the official languages makes the allocation of adequate human and financial resources towards translation services indispensable. Interviewees reported that all ministries and most of the municipalities have established translation units, with the exception of the newly established municipalities. Nevertheless, they underscored that the operational capacity of the Language Commission is poor as it lacks both a separate and sufficient budget and office space, as well as financial or other incentives for its members. Language Commission members also pointed out that inadequate budgetary, technical and human resources pose a threat to the equal use and, thus, equal status of all official languages in Kosovo legislation. They added that, due to these reasons, the Commission needs additional support.

Despite resource problems, Language Commission members expressed satisfaction with the overall state and function of the legal and institutional framework within which the commission operates. Yet, they added that improvement is needed at the local level in particular regarding the complaint mechanism which has been introduced by the Law on the Use of Languages.¹³⁸ In general, they are of the opinion that this law is implemented by a majority of the municipalities in Kosovo. However, Language Commission members also stated that the low number of complaints can be interpreted as both an indication that the public is content with the level and quality of translation of public documents or as a sign that awareness among the population with regard to their language rights is rather low.

The fact that only four complaints were lodged between mid-2010 and August 2011 may also indicate a lack of public awareness of the role of the Language Commission and/or a lack of confidence in the system as a whole. The OSCE has sought to address this problem by organizing regional roundtables aimed at increasing public awareness of the role of the institution and the existing complaint mechanisms, as well as at sensitizing municipal officials and the general public on the linguistic rights of communities. Furthermore, the OSCE assisted the Language Commission in developing complaint forms in Albanian, Serbian, Turkish, Bosnian and Romani in April 2010. The Language Commission, in turn, reported that it had distributed them to all municipalities in electronic form and also promised to place them on its website.¹³⁹ However, to date these forms have not been uploaded. Therefore, the Language Commission is strongly encouraged to assume a more

¹³⁶ Article 32 of the Law on the Use of Languages. The work and procedures of the Language Commission is defined in more detail by the Administrative Instruction of the Government No. 03/2007 on Composition and Competencies of the Language Commission.

¹³⁷ It has been reported that information on staffing is collected only at the central level; in general the qualifications of translators are not assessed but enquiry is made whether the municipality adopted the respective regulation on the use of languages.

¹³⁸ Article 32(3) of the Law on the Use of Languages.

¹³⁹ Available at: <http://www.ks-gov.net/kgjz/home.aspx> (accessed 8 August 2011).

active and visible position by setting itself as a good example in terms of respect for the equal use of official languages in Kosovo.

In its current state, the Language Commission is unable to preserve, promote, and protect official languages and their equal status in Kosovo as envisioned by the legislator. This can mainly be attributed to the fact that the Language Commission carries out its duties and responsibilities without full-time staff and adequate resources. Hence, in November 2011, the OPM established an inter-ministerial working group to reform the Language Commission in accordance with the recommendations emanating from a workshop organized by the OSCE in May 2011 focusing on strengthening the capacity of the Language Commission. On 24 November 2011, this working group adopted a policy paper calling for the introduction of a language commissioner along with dedicated full-time staff with the requisite technical and language skills. It also proposes the creation of two supportive bodies: a language policy board and a language policy network. The establishment of a language policy board is aimed at, among others, developing language policies in co-operation with the office of the language commissioner. The proposed creation of a language policy network comprised of focal points from public institutions would help to ensure the full implementation of language policies. The working group needs to re-draft the administrative instruction which regulates the composition and competences of the Language Commission, and to draft terms of references and job descriptions which will provide the office of the language commissioner with the necessary direction and guidance.

The OSCE encourages both policy and legislative efforts aiming at reforming and strengthening the Language Commission. Its current ineffectiveness can be remedied by defining its competences both as a supervisory body and as the body competent for the promotion of a quality-control system which will ensure accurate translation services.

4.2. Human Rights Units

Since 2008, the Law on Local Self-Government has foreseen the “promotion and protection of human rights” as a direct municipal government competency.¹⁴⁰ Consequently, Municipal Human Rights Units have been established in most of the municipalities as mechanisms responsible for the promotion and protection of human rights at the municipal level.¹⁴¹

The rather broad mandate of these bodies covers many areas of human rights, including language rights of all communities¹⁴². The legislative framework also foresees that Human Rights Units within the ministries should take part in the drafting of legislation.¹⁴³

¹⁴⁰ See Article 17.1(i) of the Law on Local Self-Government.

¹⁴¹ Section 1 of MLGA, Administrative Instruction No. 2011/01 on the Establishment of Human Rights Units in Municipalities, 29 March 2011. This replaces Administrative Instruction No. 2008/02 on the amendment of Administrative Instruction No. 2007/08 on the Establishment of Human Rights Units in Municipalities.

¹⁴² For linguistic rights enshrined in international human rights instruments see Articles 26 and 27 of the International Covenant on Civil and Political Rights; Articles 2, 10, 19 and 26 of the Universal Declaration of Human Rights; the European Charter for Regional or Minority Languages; and the Framework Convention for the Protection of National Minorities.

¹⁴³ According to Article 10(5) of Administrative Instruction 2007/4 for Human Rights Units in the Kosovo Government, “The Ministry Permanent Secretary ensures the participation of HRU in the different

Accordingly, these units should hold a supplementary role to that of the Language Commission in ensuring high quality translation into corresponding languages of (draft) legislation.

4.3. Ministry of Local Government Administration

Municipalities in Kosovo enjoy a high degree of autonomy.¹⁴⁴ Nonetheless, they are obliged to act in line with existing laws.¹⁴⁵ The Ministry of Local Government Administration (MLGA) is the central institution responsible to review and ensure the legality of municipal activities. The municipalities are obliged to submit “all general acts adopted by municipal assemblies,” “decisions related to the joining and activities of the co-operative partnerships” as well as “acts adopted within the framework of the implementation of delegated competencies” to the MLGA for a mandatory review of legality according to Article 81 of the Law on Local Self-Government. Subsequently, the MLGA issues an opinion on the legality of the act.¹⁴⁶

The notion of legality denotes strict adherence to the law. This comprises all material and procedural requirements set out by the relevant legal framework. Article 3 of the Law on Local Self-Government states that the “... review of legality ... conducted by the supervisory authority [in principle the MLGA]¹⁴⁷ ... [is]¹⁴⁸ ... to ensure that municipal acts have been issued in conformity with applicable legal provisions”. Notwithstanding the substantial institutional independence which municipalities enjoy under the existing legal framework, the legality review competence vested with the MLGA should be conducted in a thorough and comprehensive manner. The legality review requires the MLGA to ensure that municipal acts are issued in conformity with the wider legal framework including the Law on the Use of Languages. Therefore, when assessing the legality of a municipal act, the MLGA should also scrutinize its material and procedural aspects including the availability of the legal act in all official languages and their respective quality.

In an interview conducted with an MLGA official directly responsible for the review process, he underscored the legal obligation of the municipalities to issue their acts in all official languages. Yet, this interview revealed that the availability of the municipal act in all official languages, or the quality of the different versions, is not considered within the scope of the MLGA review in practice. In general, the MLGA examines only the content of the municipal legal act. According to the MLGA representative, all language use issues in local-level legislation fall under the responsibility of the respective municipal Human Rights Unit. However, there appears to be insufficient co-operation and inadequate information-sharing between the municipal Human Rights Units and the MLGA.

On the other hand – as an exceptional case – the OSCE has been informed about an instance when the MLGA returned an act to the municipality for failing to provide it in all

ministerial and inter-ministerial working groups, also including the issues of drafting legislation and policy making.” See also Section 7(1)(iv) of Administrative Instruction SP/ZKM No. 2005/8.

¹⁴⁴ See Articles 4(1), 17, 18 and 19 of the Law on Local Self-Government and Article 124(1) of the constitution. This was reiterated by a recent judgement of the constitutional court, in the case of *Rahovec/Orahovac Mayer Mr. Qazim Qeska* No. KO 80/10, Judgment of 7 October 2010, para 29.

¹⁴⁵ See Article 12(2) of the constitution.

¹⁴⁶ See Articles 3 and 82 of the Law on Local Self-Government.

¹⁴⁷ Emphasis added.

¹⁴⁸ Emphasis added.

official languages. Consequently, the municipality supplied the MLGA with the requested translations.¹⁴⁹ This case displays a comprehensive review by the MLGA, and thus an exemplary demonstration of successful co-operation between the central and local levels. As a result, the municipal act is available in all official language versions, and hereby compliant with the law. This case of best practice should serve the MLGA as guidance for its future supervisory activities. However, the results of the OSCE's regular monitoring activities and the interviews conducted for this report reveal that there is no systematic supervision mechanism and no clear understanding of the MLGA supervisory role regarding availability of municipal legal acts in all municipal official languages.¹⁵⁰ Therefore, this should be explicitly regulated in the law in order to avoid ambiguities about the scope of the MLGA review in this regard.

5. CONCLUSION

The legal framework offers crucial safeguards for extensive language rights of different communities in Kosovo. All Kosovo institutions are required to respect the equal status of official languages in their work, and ensure that the equal right to access information is available to all. This entails providing draft legislation in all official languages from an early stage. In that way, institutions shall facilitate and encourage the involvement of all communities in public affairs. However, the implementation of this legal framework remains incomplete.

Usually, during the ministerial phase the entire initial stage of the drafting process is conducted in the Albanian language. Only before submission to the OPM is the draft law translated into Serbian and English. Upon request, translation also takes place during the working group meetings. Clear provisions explicitly regulating translation of draft laws are not in place and awareness of their importance for the inclusion of non-Albanian communities is often missing. In this regard, the OSCE welcomes the exemplary practice implemented by the MCR to process draft legislation in both official languages from the very initial stage of drafting. In addition, translation of draft laws is at times poor, resulting in confusion about the content of the draft law.

At the Assembly of Kosovo level, translation procedures appear satisfactory. During committee meetings single amendments are directly inserted into both the Albanian and Serbian versions of the draft law once decided upon. In each committee meeting, simultaneous translation between Serbian and Albanian is provided as well as into Turkish, if so requested. However, systematic proofreading of non-Albanian language versions is not established.

More than a third of municipalities do not translate their draft and adopted legislation into all official languages. Instead, they often maintain legal acts in one official language only. However, there are municipalities which show commendable practice and make their legal acts available in all official languages from the drafting stage. This proves crucial in the context of wider communities' participation in municipal affairs. In light of this, all municipalities are expected to uniformly apply the outlined practice, regardless of their demographic composition.

¹⁴⁹ Shtime/Štimlje Municipal Regulation on Environmental Fees and Municipal Regulation on Taxes on Immovable Property was initially sent to the MLGA in Albanian language only.

¹⁵⁰ Article 2(3) of the Law on the Use of Languages. Please see notes 6 and 7, *supra*.

Failure to provide legislation in all official languages or to ensure the quality of translation negatively impacts on the general participation of communities in public affairs. Furthermore, it may directly affect the individual subjected to the particular legal act. Hence, such practice creates legal uncertainty and violates the principle of equality before the law. It challenges the coherent and fair enforcement of the rights of members of communities. As a result, it may undermine respect and confidence in public institutions and the rule of law.

To ensure equal use of official languages in legislation, and the necessary good quality thereof, a solid and functioning supervisory mechanism is essential. The Language Commission, the Human Rights Units and the MLGA constitute the central bodies in this regard. There is much room for improvement in the work of these bodies. The operational capacity of the Language Commission is poor, as it lacks a separate budget and an office space, and its members are not paid. Without more financial support, it is not able to fulfil its mandate. Although the complaint mechanism foreseen by the Law on the Use of Languages is a useful tool, it still lacks proper accessibility and visibility by the public, which impairs its overall impact. The Human Rights Units within each ministry have proven to be an efficient mechanism to review the quality and consistency of the language versions of legislation in single cases. Yet, Human Rights Units are not granted an active role in legal drafting in most of the ministries. The MLGA, via its administrative review competence, monitors the legality of municipal activities including their compliance with the Law on the Use of Languages. However, the MLGA needs to assume a more active role to review the availability of legal acts in all official languages and the respective quality thereof.

In conclusion, the implementation of the Law on the Use of Languages remains unsatisfactory regarding the translation of draft legislation. Poor translation of legislation is prevalent both at the central and local level. According to the assessment, many of the identified obstacles to timely and accurate translation of draft legal acts are common amongst most Kosovo institutions, including the following: lack of professional qualification of translators and insufficient funding of translation units; lack of systematic proofreading; lack of public awareness and information; and insufficient supervision. Interview results also suggest that a lack of will on the part of the responsible institutions to draft and issue legislation in all official languages plays a role in a number of cases.

6. RECOMMENDATIONS

In light of the above, the OSCE recommends the following actions:

Central Level

To the Assembly of Kosovo:

- Provide adequate financial resources for the Language Commission, the KIPA and translation units at the central level to enable them to fulfil their mandate (e.g., resources for sufficiently qualified translators, capacity-building training, working space and technical equipment);

- Provide guidelines or regulations on translation of draft laws and their amendments during committee sessions in order to guarantee full participation of members of non-Albanian communities;
- Continue to provide comprehensive and professional minutes of all plenary sessions and committee meetings to avoid potential problems deriving from discrepancies between official language versions of laws.

To the Office of the Prime Minister:

- Allocate adequate financial resources for the Language Commission, the KIPA and translation units at the central level to enable them to fulfil their mandate (e.g. resources for sufficiently qualified translators, capacity-building training, working space and technical equipment);
- Empower the Language Commission to effectively monitor and facilitate the implementation of the Law on the Use of Languages through the introduction of a language commissioner, supported by dedicated full-time staff with the requisite technical and language skills and adequate resources;
- Establish proofreading on an ad hoc or “spot check” basis as a part of the legislative review process. This will ensure that all language versions of draft legislation submitted to the OLSS for review entirely correspond in their content and terminology, and that each version is of adequate quality.

To the ministries:

- Ensure that draft legislation is available in the official languages during the ministerial and inter-ministerial working groups (especially in the working groups where civil society and the broader public participate), and that each version is fully consistent with all other versions, and of sufficient quality;
- Provide guidelines or regulate precisely the translation of draft laws and amendments at different stages of the working groups on draft legislation before submission to the Assembly of Kosovo;
- Introduce the practice of proofreading of drafted/translated legislation by dedicated translation staff;
- In cases where translation is outsourced, ensure that the selection criteria of external translation agencies tasked with translation of draft legislation include certain professional requirements (e.g. specialisation or previous experience in the translation of legal texts) and introduce a common database of professional translation agencies;
- The permanent secretary of the respective ministry should invite the Language Commission to actively participate in the drafting of selected legislation.

To the Ministry of Local Government Administration:

- Consider ensuring the availability of all municipal acts in all official languages of the respective municipality as a formal part of its supervisory role. In this regard, it should require that all municipal legal acts submitted by municipalities to MLGA for legality review must be in all official languages of the municipality;
- Provide municipalities with advice and guidance related to their obligation to uphold the equal status and equal use of official languages in their work, in particular to draft and publish all local-level legislation in all official languages of the municipality regardless of its demographic composition;

- Establish closer co-operation with municipal Human Rights Units and regular co-ordination with the Language Commission, and consider their assessment of mutual consistency of different language versions of (draft) legislation when conducting legality review;
- Advise the Ministry of Economy and Finance to propose adequate financial resources for the establishment of translation units in municipalities (e.g. resources for the employment of sufficient number of qualified translators, for the provision of capacity-building trainings for translators, adequate space and equipment).
- Correct inconsistencies between the two official language versions of the Law on Local Self-Government.

To the Ministry of Public Administration:

- Establish a professional certification program for public service interpreters and translators, and ensure – together with KIPA – provision of mandatory capacity-building training for all translators and interpreters in the public sector to ensure their continuous professional development;
- Require certain minimum qualifications (e.g. education or experience) in its recruitment process for translators to be employed in the public sector;

To the Language Commission:

- Monitor whether Kosovo institutions comply with their obligation to keep and issue all official documents, including the draft legislation at the central and local level, in all official languages and whether each version is of adequate language quality. In this regard, it should engage in co-operation with municipal Human Rights Units;
- Support the MLGA in its legality review activities by providing assessments regarding language compliance of the municipal legal acts;
- Participate actively in selected working groups on draft legislation by reviewing the quality and mutual consistency of the different language versions;
- Raise public awareness on the existing complaint mechanism as well as on the rights of individuals and communities regarding the use of official languages. In this regard, awareness-raising activities, where local media and civil society are involved, are strongly encouraged;
- Monitor whether translation units have been established in Kosovo institutions, and engage in regular assessment of the performance of established central- and local-level translation units in order to identify their capacity-building needs;
- Assist with the design and implementation of suitable professional, certified training for translators in co-operation with the Human Rights Units, the MLGA, the MPA as well as the KIPA.

To the KIPA:

- Provide comprehensive and regular capacity-building training – including professional certified training on advanced interpretation and translation skills as well as specialized training on legal terminology – for interpreters and translators at the central and local level in co-operation with the Language Commission, the MPA, the MLGA, and the Human Rights Units to ensure their continuous professional development.

Local Level

To the municipalities:

- Ensure that a translation unit is established in each municipality and equipped with a sufficient number of qualified staff and adequate work conditions (e.g. space and equipment, including dictionaries, computers and software) in order to effectively guarantee the right to freedom of information;
- Establish a clear procedure for outsourcing translation jobs (e.g. compliance with the existing tender procedures, punctuality in service delivery and quality of translation);
- Keep and issue all municipal official documents, including draft legislation, in all official languages of the municipality to facilitate and encourage the participation of all communities in the drafting process;
- Introduce the practice of proofreading drafted/translated legislation by professional editors.

To the municipal Human Rights Units:

- Support the MLGA by sharing information about the availability of the municipal acts in all official languages and quality thereof.

International Community

- Support the adequate funding of translation units at the central and local level as well as the Language Commission;
- Continue monitoring language compliance of (draft) legislation in all official languages.