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LOCAL BODIES FOR INTERETHNIC RELATIONS IN THE WESTERN BALKAN STATES: STILL AN EMPTY SHELL

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The paper examines local mechanisms for interethnic dialogue which have been established in Kosovo, Macedonia, and Serbia, with the main question concerning why they have remained ineffective for such a long period of time. The focus lies on local councils (Serbia), commissions (Macedonia), and committees (Kosovo) established in the respective laws on local self-governance, as specific institutional mechanisms for both participation of national minorities in municipal affairs and dialogue among communities residing in a municipality. In all three countries these bodies have been institutionally set as consultative bodies attached to a municipal assembly which deals with the issues relevant for national equality (Serbia), relations between communities (Macedonia) or respect for rights and interests of the communities (Kosovo). The main purpose of their activity is to address recommendations and opinions, primarily to the municipal assembly. They should serve as a channel for smaller communities to express their needs and interests, and as a forum for interethnic dialogue in a municipality. Yet, although legally established almost 15 years ago in Serbia and Macedonia (2002) and 10 years ago in Kosovo (2008), these bodies still remain more of a form than a content. Legal vagueness, lack of municipal support, inactivity, poor transparency and democratic legitimacy are just some of the weak points which cause their poor performance.

Keywords: *municipality, interethnic relations, national minorities, council, commission, committee, Serbia, Macedonia, Kosovo*

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Introduction

The interethnic dimension of the conflicts in the Western Balkans has placed protection of national minorities, decreasing interethnic distance, and fostering of interethnic dialogue as inevitable issues in the states of the region. All of them have developed some legal mechanisms for protection of national minorities, but these have resulted more from the international (mainly EU) conditionality than from a genuine domestic interest in dealing with interethnic relations. The established mechanisms for the protection of

national minorities generate some sort of niches for national minorities, do not foster interaction between majority and minorities, and do not establish institutional channels for interethnic dialogue. Furthermore, policy development and decision-making are generally highly centralised, politicised and elite driven. This leaves very limited possibilities for local communities to develop their own dynamics in interethnic relations and power to set free from the influences from the centre (national government and central parties' elites).

This paper examines local bodies for interethnic relations (LBIR) which have been established in Kosovo, Macedonia, and Serbia, with the main question concerning why they have remained ineffective for such a long period of time. The focus lies on the communities´ committees in Kosovo (committees), the commissions for intercommunity relations in Macedonia (commissions) and the councils for interethnic relations in Serbia (councils), which have been established in the respective laws on local self-governance as a specific institutional mechanism for both participation of national minorities in municipal affairs and dialogue among communities (majority and minorities) residing in a municipality. The first part of the paper addresses the issues of legal basis, establishment and the position of the LBIRs in the wider institutional structure and explores how these affect their (non-) functioning. The second part of the paper deals with the composition of the LBIRs and shows which communities should be represented, what are the effects of opening the membership for local officials, and the tendency to elect/appoint members in a non-transparent and politicised manner. The third and the final part of the paper explores the weaknesses in the mandate of the LBIRs, their unclear competences, and vague and loose obligation of the local authorities to consult the LBIR when adopting decisions which (directly or indirectly) affect national minorities or interethnic relations.

1. Legal basis, establishment and position in the wider institutional structure

In all three states, the legal basis for the LBIR has been set in the respective law on local self-governance. Central in this respect are Article 53 of the law in Kosovo,[1] Article 55 of the law in Macedonia,[2] and Article 98 of the law in Serbia.[3] The most detailed regulation is contained in the law in Serbia, which regulates the status and the structure of the council (paragraphs 1 and 3), what is to be considered as an "ethnically mixed municipality" to which the norm applies (paragraph 2), nomination and election of the members (paragraphs 6, 7 and 8), competences of the council (paragraphs 4, 10 and 12), decision-making of the council (paragraph 9), and duties of the local authorities (paragraphs 10 and 11). The law in Serbia also refers to a municipal statute and decision of municipal assembly for further regulation (paragraphs 1 and 5). The law in Kosovo regulates the general structure of the committee (paragraph 1) and its scope of jurisdiction (paragraph 2). The law in Macedonia regulates the demographic threshold for establishment of the

commission (paragraph 1), its general structure (paragraph 2), scope of jurisdiction (paragraph 4), and obligation of the municipal assembly to consider opinions and initiatives of the commission (paragraph 5). Additionally, the law in Macedonia authorises a municipal assembly to regulate the election of members of the commission with the statute (paragraph 3).

Existing analyses of the LBIRs in all three states identify the vagueness of the regulations in the law as one of the main obstacles to their proper functioning. For example, in its Fourth Community Rights Assessment, the OSCE Mission in Kosovo identifies that the respective legal framework should be strengthened to ensure effective functioning of the committees (OSCE Mission to Kosovo, 2015b, p. 22). Similarly, the OSCE Mission to Skopje finds that "the legal framework (…) is too vague and does not provide clear guidelines for the establishment, membership, work and competences" of the commissions (OSCE Mission to Skopje, 2014, p. 80). In its recent Special Report on the Councils for Interethnic Relations, the Ombudsman of Serbia has referred to the findings of previous analyses and recalled that "vagueness of the law and the possibility to 'interpret' the status and the aim of these bodies" is one of the causes of their inefficient functioning (Заштитник грађана, 2017, p. 1).

Although a proper and consistent regulation in the law is a necessary precondition for establishing and functioning of the LBIRs, it is important not to overemphasise the significance of a detailed regulation in the law and to objectively assess the vagueness of its formulations. It has been set as a desirable standard that the establishment and functioning of consultative bodies in general should be safeguarded from political voluntarism. The primary tool to achieve this is to provide a clear legal status for these bodies and to entrench in law the obligation to consult them (ACFC, 2008, para. 107). A clear legal basis provides a guarantee for "regular and permanent" involvement in decision-making (ibid.), and thus it is a necessary precondition for a proper functioning of any consultative body. Bearing this in mind, it is to be positively assessed that in all three countries the legal basis for the LBIRs is set out in the law. However, the question remains as to why the norms set out in the law do not produce desired effects. As mentioned above, mostly it has been argued that these are too vague and generally of bad quality. Although these arguments are solid, it is questionable whether the vagueness of the norms *per se* hampers the establishment and functioning of these bodies. Here the question arises on the extent to which the norms in the law need to be detailed to be effective. It is wrong to presume that the more detailed the regulation in the law the more effective it is. A detailed regulation might not only be confusing, but it also bears a risk of rigidity as it might ignore the specifics of the context in which it should be applied and hamper the possibility of dynamic interpretation which acknowledges the developments in a society. In addition to this, it needs to be borne in mind that the legal basis for the LBIRs is set out in the laws on local self-governance. Thus, it is questionable whether a too detailed regulation in the law would jeopardise the right of municipalities to self-governance.

The law should set some basic institutional set-ups for the LBIR, but each municipality should further develop it according to the local circumstances and the needs for interethnic dialogue in a specific local community. Generally, it could be accepted that the regulation in the laws is vague, but even such vague regulation provides sufficient legal framework for these bodies. It seems that the vagueness of the legal framework is more used as an excuse mainly by the local authorities, but also for the central authorities to 'mask' the lack of a genuine (political) will to engage in interethnic dialogue and/or to channel some decision-making powers into bodies which are not political in their nature. If the political will would exist, then the local authorities and, more generally, the local communities would find ways to fill with the content the legal framework set out in the law. The existing gaps could be overcome with regulations in municipal statutes or decisions of municipal assembly. Furthermore, governmental ministries in charge of local self-governance or protection of national minorities could adopt secondary legislation with the aim to elaborate the rules set out in the law, without jeopardising the autonomy of local authorities. Finally, national parliaments could amend the law and improve the regulation. In this regard, only in Serbia have the norms of the law been (slightly) amended with the aim to clarify some aspects and to improve the implementation of regulation, but the effects have been limited. This experience of Serbia, although regulation in the law is far from being perfect, proves a correct observation that even the best legal instruments cannot produce desired effects, "if there is not a political climate and willingness of inter-ethnic dialogue" (Marko, 2006, p. 4).

The norms on the LBIRs set out in the law are not self-executive, and they require adoption of secondary legislation in order to be operational. Central in this respect are the municipality statute and decisions adopted by the municipal assembly. Through regulation in the statute and in decisions, the municipal assembly not only fulfils the obligations set out in the law but also has the possibility to adjust the setup of the LBIR to the specifics and needs of a local community. However, municipalities do not show much creativity in this respect, as they either incorporate norms of the law in the statutes or, in a better case, follow models which have been developed by experts and NGOs and supported by international actors (mainly the OSCE). In any case, municipalities rarely engage with the issue from the 'bottom-up' perspective and consider local circumstances, the desirable benefits of the work of the LBIR for the local community, or seriously deliberate the operational conceptualisation of the body. Unfortunately, in most cases the need to establish the body is perceived as a 'legal obligation', as something imposed from above (or even from 'outside', i.e. international actors) and the local initiatives are rather weak.

The law in Kosovo sets for all municipal assemblies the obligation to establish and maintain the LBIR (Article 51.1). The law in Macedonia and Serbia, respectively, is narrower in setting the scope of the obligation and targets only municipalities with a specific ratio of minority population. In Macedonia, the

threshold is set at 20% of the local population belonging to a national minority (Article 55.1). The law in Serbia sets two thresholds for considering a municipality as "ethnically mixed": one refers to the ratio of persons belonging to one national minority and is set at 5%, and the other refers to a ratio of a cumulative number of persons belonging to all national minorities and is set at 10%. These two are set as alternative demographic criteria (Article 98.2). Both in Macedonia and Serbia, the thresholds are measured with regards to the population census data.[4] For those municipalities in which a demographic threshold is met, the law sets an obligation to establish the LBIR. For those municipalities which do not fall under the demographic criteria, there is no obligation, but a possibility to establish a LBIR.

Although the obligation to establish the LBIR was clearly set in the law in all three countries, multiple years were needed for municipalities to establish it. In Kosovo and in Macedonia the process eventually came to an end and now all municipalities in Kosovo (OSCE Mission in Kosovo, 2015a) and all those falling under the obligation of the law in Macedonia have established the LBIR (OSCE Mission to Skopje, 2014, p. 81). In Serbia, according to the special report of the Ombudsman, out of 72 municipalities which fall under the obligation of the law, 53 have established the LBIR (Заштитник грађана, 2017, p. 3). Delays and (more covert than overt) reluctance to establish the LBIR manifest not only the weakness in the political will and lack of interest to engage into an institutionalised interethnic dialogue at the local level, but also a considerable weakness of the rule of law in these states. The establishment of the LBIR is set as a clear legal obligation for municipalities and those which fall under this obligation do not have any margin of appreciation on whether they will establish the body or not. From the point the rule is set as a legal obligation there should be no place for political calculations, but the law must be implemented and if needed enforced. Yet, neither of these two options fully works in the three states. The overall concept of the rule of law is generally weak (although to a different extent) in all these states. The general legitimacy of laws is low, they are perceived as enacted 'from above', without a comprehensive deliberation or consultation (with municipalities), whereas the implementation at the municipal level is more 'reactive' than 'active'. Implementation at the local level goes more smoothly if the local authorities acknowledge benefits from the implementation and/or when there are stronger sanction mechanisms in case of violation of the obligation to implementation (usually by the respective ministry). Difficulties with the establishment of the LBIRs which have been observed in all three countries are indicative for problems both in so-called primary (voluntary) and secondary (enforced) implementation. The fact that it took many years for municipalities in Kosovo and in Macedonia to establish the body, and that in some municipalities in Serbia it is not established yet, shows that local authorities have not seen benefits (for local community, interethnic relations, national minorities, municipality, political elites or similar) of implementing the legal obligation, i.e. establishing the body. Generally, municipalities have not shown strong

enthusiasm to implement the respective norms of the law. Yet, it must be acknowledged that both in Macedonia and in Serbia the LBIRs have been established also in municipalities which were not obliged to do so, same as that some municipalities were more supportive for the body than the others. Another aspect of the problematic implementation refers to the lack of any sanction mechanisms for the case that a municipality does not establish the LBIR. As mentioned above, the respective norms in the laws are not self-executing and action of a municipal authorities is needed to establish the body (adoption of the norms in a statute and/or adoption of a municipal decision). However, in none of the three states is there a legal instrument which can be imposed to enforce the establishment of the LBIR in a municipality which fail to do so. Neither can a ministry impose an obligation in this respect on the deviant municipality, nor it can adopt the necessary act on the behalf of the municipality. There are also no ways to bring a case before the court. Thus, there is no legal remedy to address the non-compliance with the law and to legally enforce the establishment of the body. In Serbia, there were some ideas to widen the conditions under which the government can dismiss a municipal assembly in the way that it also covers the case of ignoring the obligation to establish the LBIR. Yet, such measure might be too invasive and non-proportional. The lack of a remedy softens the legal character of the obligation for municipalities to establish the LBIR and *de facto* leaves the establishment of the body to the (free) will of the local authorities (Đorđević, 2010, p. 83). A remedy would secure the implementation of the law, but this does not imply that the implementation would fully rest on enforcement. Establishment and proper functioning of the LBIRs should not result from imposing sanctions, but from a genuine deliberation between various stakeholders within the local community.

An important aspect of the institutional setup of the LBIR is its position within a wider institutional structure. In Kosovo, the committee has been conceptualised as a permanent committee of the municipal assembly (Article 51.1). The law in Macedonia is not specific in this regard: it regulates the issue within Chapter V on organisation and work of the municipal organs (assembly and mayor), but it remains unclear whether the commission is institutionally attached to the municipal assembly or not. The fact that Article 55.5 of the law sets an obligation only for a municipal assembly to consider opinions and recommendations of the body could imply the institutional linkage between the municipal assembly and the commission. In Serbia, the law initially did not contain any reference to the institutional status of the council.[5] After amendments in 2007, the law has specified the council as "a self-contained working body" (Article 98.1). This formulation is not very precise and consequent for two reasons. First, it is not clear for which municipal institution the council acts as 'a working body'. Second, the combination of 'self-contained' and 'working body' can be perceived as an oxymoron, because it is in the nature of a working body to be institutionally linked to an institution which establishes it. Bearing in mind that the municipal assembly regulates

the central issues of the functioning of the council and elects its members, it is usually perceived as a working body of a municipal assembly. However, this concept is not consequently developed, because a general principle of a working body is that it is composed of MAs. Here, this is not the case because persons who are not MAs can also be members of the council. Furthermore, the recent amendments to the law contain a ban on local MAs to be members of the body (Article 98.6). The idea of the legislator was to establish a consultative, and to some extent controlling, body which is free from the influence of the local authorities. Although the municipal assembly plays a central role in establishing the council, electing its members, and securing its functioning, it would be wrong to perceive the council simply as a permanent working body of a municipal assembly. The unclear institutional status of the council weakens its position and its power to influence decision-making of the local authorities (Đorđević, 2010, p. 84).

A few additional comments might be useful for the understanding of the position of the LBIRs in a wider institutional structure. In Kosovo, the committee is part of the institutional set-up which has been established with the aim to support minority communities and stabilise interethnic relations at the local level. In addition to the committee, three more institutions serve this goal: Deputy Chairperson of the Municipal Assembly for Communities (Articles 54 and 55 of the law), Deputy Mayor for Communities (Article 61 of the law) and Municipal Office for Communities and Returns (OSCE Mission in Kosovo, 2014, p. 4). Thus, the committee is a part of a wider structure of a specific 'power sharing' which has been established in Kosovo with the primary goal to secure the position of Serbs, but also to safeguard smaller minorities from being neglected in the cleavage between two major groups (Albanians and Serbs). Yet, it remains questionable to what extent these four mechanisms are effectively interlinked and whether they can be considered as a comprehensive 'system' for minority participation at the local level. In Macedonia, the establishment of the commissions resulted as a segment of the Ohrid Framework Agreement of 2001, which ended the armed conflict in Macedonia and also introduced some elements of 'power sharing'. In the case of Macedonia, decentralisation was perceived as a tool to ease the interethnic conflict and "to offer limited autonomy to Macedonian's ethnic communities, in particular the ethnic Albanians" (Lyon, 2011, p. 28). One of the elements in a decentralised system was to establish a specialised (consultative) body for communities at local level,[6] together with the Committee for Inter-Community Relations at the central level (set out in the Amendment XII to the Constitution). However, there are no institutional linkages between the respective bodies set at the local level and the Committee set at the central level. In addition, there are no other "formal mechanisms for coordination with other institutions that have complementary mandates and can be crucial for the work" of the commissions (Memeti & Latifi, 2014, p. 71). In Serbia, the main institutional channel for minority participation in decision making are the national councils of national minorities. These are conceptualised as

bodies of minority cultural self-governance and can adopt decisions or participate in decision-making by the public authorities in the areas of education, culture, media and use of language. There are two important features of national councils which can be complemented with the councils at the local level. First, national councils are conceptualised as centralised bodies, and although they have significant competences at the local level, decision-making within a national council is centralised. The respective local councils enable persons belonging to national minorities who live in a local community to participate in decision-making in their community. Yet, national councils to great extent monopolise minority representation, and their powers are much stronger than those of the local councils. Second, national councils each represent one single national minority. They have indeed established the 'Coordination' as an informal body for facilitating their communication and coordination, and can deliberate on their common position at the central level within the governmental Council for National Minorities,[7] but their formal action and exercise of competences remain individual. A quality of the local councils is the institutionalism of interethnic dialogue at the local level; they provide a forum "in which to bring together all issues of inter-ethnic relations at the local level" (ACFC, 2013, point 197). The sole institutional linkage between the national councils and councils for interethnic relations is established through the right of the national councils to nominate candidates representing a respective minority in the latter body. Yet, this has not always been a smooth process, mainly due to political tensions between a national council and local authorities. Furthermore, national councils were not always supportive for the local councils if they (wrongly) perceive that these could jeopardise their monopoly in minority representation.

2. Composition

In all three states, the LBIR is conceptualised as a joint body, i.e. a forum for different ethnic groups. The ratio for such a solution is twofold: to provide a channel for smaller communities (especially those which are not represented in the local assembly) to have a say with regards specific decisions made at the local level, and to provide a forum for an interethnic dialogue within a local community. The law in Kosovo regulates that every 'community' which lives in a municipality shall be represented in the committee by at least one representative (Article 53.1). The norm is interpreted widely, meaning that even if a single one person is registered in the census to belong to one community, this community shall be represented in the committee. Yet, this does not work so smoothly in practice. According to the results of the OSCE monitoring, many committees do not comply with the rule that each community residing in a municipality should be represented (OSCE Mission in Kosovo, 2016). Most often unrepresented are Bosniaks and Turks (ibid.). The law in Kosovo does not set any rule with regards the internal structure and/or balanced representation of communities in the committee. In this respect it is important that communities smaller in numbers are not

marginalised by being outnumbered; yet, in practice, this does occur. Similar as in Kosovo, the law in Macedonia regulates that every community residing in municipality shall be represented in the commission. Interestingly, the threshold for the obligation to establish the commission is set at 20% of persons belonging to one community, but when the threshold is met the access to the membership in the commission is open to all communities. Different than in Kosovo, the law in Macedonia sets a rule that equal representation must be secured: regardless of their numerical size, communities shall have an equal number of representatives (Article 55.2). This does not mean that each community must have only one representative (as it has been wrongly interpreted in some municipalities). Indeed, it is possible that several members represent one community, but this number must be applied to all communities (it is against the law that one community has, for instance, two representatives and another has three). In Serbia, the law conceptualises the council as a body gathering representatives of Serbian people and national minorities (Article 98.1). Membership in the council is open for representatives of those national minorities which amount to more than 1% of the total population in the municipality (Article 98.3). According to the law, the composition of the council should secure even presence of representatives of Serbian people and national minorities, and neither Serbian people nor one national minority can have the majority of members in the council (Article 98.7).

An important aspect of the composition of the LBIR is whether it is set up as a 'mixed body' (composed both of representatives of the local authorities and representatives of communities) or solely as a representative body for the communities (both majority and minorities). There is no uniformity in this respect in the three states. In Kosovo, the committee is conceptualised as a mixed body, because both local MAs and representatives of communities are its members (Article 53.1). The law also stipulates that members representing communities shall have the majority in the committee (Article 53.1). The law in Macedonia and in Serbia, respectively, only specifies that the members of the LBIR shall be representatives of communities, but it does not further regulate whether these representatives could also be persons holding some office at the local level or not. As a consequence, it is left to the municipality (precisely, municipal assembly) to further specify the structure of the LBIR and to set it up either as a mixed or solely representative body. In Macedonia, it has been recommended that membership in the commission should not be limited only to the local MAs, but that external representatives should also be its members (Хазири et. al., 2009, p. 11). According to the special report of the Serbian Ombudsman, in 22 municipalities local MAs cannot be members of the Council (Заштитник грађана, 2017, p. 6). However, this does not exclude persons who hold executive positions in the municipality to be nominated and elected as members of the council (ibid.). The recent amendments to the law, which have been adopted in June 2018, have made a clarification in this respect, as they provide that local MAs cannot be members of the

council (Article 98. 6). The question on whether to conceptualise the LBIR as a mixed body or not is a tricky one and with no clear solution. To a great extent, the answer depends on the general purpose of the LBIR. If the focus is laid on the enhanced communication between the minorities and the local authorities, then a mixed body can provide a suitable channel for such a communication. In this case, the main principle is that "the proportion between minority representatives and officials should not result in the latter dominating the work" (ACFC, 2008, para. 109). In this respect, the minimal standard is that the ratio of members representing local authorities and members representing minorities (or all communities) is set as at least fifty-fifty, or, what is more welcome, that representatives of minorities are in a majority. On the other hand, if the main purpose of the local body is to aggregate positions of different ethnic communities and the focus is laid on the minority representation, then the membership should be reserved to representatives of communities. Both concepts have positive and negative aspects. Opening membership in the LBIR for local officials is good as it provides a stronger channel to influence decision-making at the local level, and the members holding offices in the municipality can act as a specific bridge between the LBIR and the local authorities. A negative aspect is, however, the risk of dominance of political figures in the LBIR and/or political control over it, low enthusiasm for a well-functioning of the LBIR, absence from the meetings which can jeopardise deliberation, and decision-making within the LBIR. Contrastingly, if the LBIR is composed solely of external members, this could weaken its capacity to influence decision-making of the local authorities, but it could strengthen independence and authority of the LBIR in the local community. Unfortunately, practice shows that these pros and cons are not well balanced in any of the three states. If conceptualised as a mixed body, the LBIR faces problems of dominance of local officials and/or lack of interest among these members, which hampers its proper work of the local body. In such cases when the local body is composed solely of external members, it is usually neglected by the local authorities and much more effort, personal authority and persistence is needed for a voice of the LBIR to be heard.

The election of the members of the LBIR is one of the most important issues, mainly because it defines the level of influence of local authorities on personal composition of the LBIR. The law in Kosovo contains no reference to the election of members of the committees. In Macedonia, the law stipulates that the modalities of the election of members of the commissions shall be regulated in the municipal statute (Article 55.4). According to the law in Serbia, the election of members shall be regulated with a decision of a municipal assembly (Article 98.5). Initially, the only clarification was made with regard to the members representing national minorities, who shall be nominated by respective national councils of national minorities (Article 98.7). But, with the recent amendments to the law (of June 2018), a clause has been added that members who represent Serbian people shall be nominated by the permanent working body of the municipal assembly in charge of human

resources (personnel) (Article 98.7). In all three states, members of the LBIR are elected by the municipal assembly. This is not problematic *per se*, and even provides a strong democratic legitimacy for members of the LBIR. However, a problem can arise if the circle of those who can nominate candidates for members is narrow and the municipal assembly misuses the electoral procedure to gain extensive control over the LBIR. The central questions here concern who can nominate candidates for the membership in the LBIR, whether civic associations (especially those of national minorities) are involved in the selection process, and to what extent municipal assemblies are free in (s)election of the members. The selection process should enable a wide range of views to be genuinely represented in the LBIR (ACFC, 2008, para.111). A balanced representation is needed in the sense that gender, age, education, social status, living areas (urban and rural) are also taken into consideration. If a LBIR is perceived as a representative body of communities, then these should have an impact on the selection of the members. It is against the good practice to appoint members of the LBIR without prior consultation with minorities (Weller, 2010, p. 442). Furthermore, it is desirable that the municipal assembly has only a limited margin of discretion when selecting members from the nominated candidates. To secure this, it is essential that the whole election process (together with selection criteria) is public, transparent and inclusive (DH-MIN, 2006, para.53). The general impression of the election of members of the LBIRs in all three states is that it does not meet the mentioned standards and is strongly politically biased. The observation that the process is often instrumentalised for political purposes, made with regards to Macedonia (ACFC, 2016, para 82), could easily be applied to Kosovo and Serbia as well. Interestingly, the municipality assembly can misuse its powers in electing the members of the LBIR not only in active way, but also by being passive. As practice shows, a municipal assembly can block the functioning of the LBIR simply by ignoring to elect its members (see Заштитник грађана, 2017, p. 17). Another, often highlighted, issue is gender imbalance and the significant underrepresentation of women as members of the LBIRs (see for example OSCE Mission in Kosovo, 2015b, p. 22 and Заштитник грађана, 2017, pp. 5-6).

3. Competences

Competences give the 'substance' to the LBIR and are one of the decisive factors for the quality of outcome of its activity and the strength of its influence on decision-making at the local level. Relevant in this respect are its general scope of work, specific powers/functions, and the quality of interaction with the local authorities.

The definition of the scope of work of the LBIRs provided in the respective laws in all three states is vague, open to interpretation, and causes many difficulties to determine what the LBIR should do and what its position in the process of decision-making at the local level should be. According to the law in Kosovo (Article 53.2) the general scope of the work of the committee lies in the area of respect and protection of rights and

interests of the communities and fostering their identities. In Macedonia, the commissions should deal with the "questions related to the relations between the communities residing in the municipality" (Article 55.4). In Serbia, the councils shall consider "questions of implementing, protection and promotion of national equality" (Article 98.4). It proves to be very difficult in practice to identify areas in which the LBIR should operate. Generally, in practice there is a tendency to interpret the scope of work in one of the two extreme ways: either in the terms of prevention/mediation of interethnic conflicts, or in the terms of promotion of minority culture. In the case of the former, the LBIRs tend to justify own inactivity by indicating that there is no need for activity as there were no interethnic conflicts. In the case of the latter, the LBIRs turn into a 'NGO' for the promotion of minority culture and organisation of cultural events. Actually, the LBIR should 'monitor' developments both within the local authorities and within a local community and perform some sort of mainstreaming, as well as to identify how these developments affect the rights and interest of minorities and interethnic relations. Of relevance in first instance are issues directly related to the protection of the minority identity: education, use of languages, cultural issues, media in minority languages, just to name a few. The issues which refer to the status of minorities and persons belonging to them, such as equality, participation, social welfare, are also important. As a matter of fact, "persons belonging to national minorities should also have a say on issues which are not of exclusive concern to them but affect them as members of the society as a whole" (ACFC, 2008, para. 17). Thus, the activity of the LBIR should not be narrowed simply to interethnic conflicts or cultural matters, but it should cover various issues which affect the status and lives of minorities and the quality of interethnic relations in the local community. However, it would be wrong to perceive every issue as potentially relevant and to interpret the scope of work too wide. This would lead to additional ethnicization of politics, shift the balance from the civic to the ethnic dimension of decision-making, and have counterproductive effects on the quality of interethnic relations in the local community.

In Macedonia, indicative for identifying the areas in which the commissions could act are the norms regulating double majority voting in the municipal assembly. According to Article 41.3 of the law on local self-government decisions on culture, use of languages spoken by less than 20% of local population, and symbols of the municipality shall be adopted according to the principle of double majority. These issues could also form a core of the activity of the commission, but it should not be limited only to them. In Kosovo, the principle of double majority is set only for the national parliament and does not apply to the local level. Yet, the areas for which the constitution reserves the adoption of "legislation of vital interest" (Article 81 of the Constitution) might be helpful. Relevant issues might be municipal boundaries, municipal participation in inter-municipal and cross-border relations, use of language, local elections, protection of cultural

heritage, religious freedoms and cooperation with religious communities, education, and use of symbols. In Serbia, the legal framework does not provide further explanation of the concept of 'national equality'. The constitution defines four central areas for the protection of minority identity: language, culture, education, and media (Article 75.2 of the Constitution), but the demand for equality among majority and minorities goes beyond these four areas and covers various aspects of political, social and economic life.

Another aspect of the competences of the LBIR are any special powers given to it. Again, these are vaguely regulated with the respective laws. In Kosovo, the law (Article 53.2) vaguely defines what the duties of the committee are, but it does not stipulate its instruments and powers. The committee shall review compliance of the municipal authorities with the applicable law (1), review all municipal policies, practices and activities relevant for rights and interest of the communities (2), recommend to the municipal assembly measures it considers appropriate for protection and promotion of the identities (3) and ensure adequate protection of the rights of communities within the municipality (4). Further specification is missing, and it remains unclear in what form the committee should perform these tasks and how it should bring the issues before the local authorities. The Administrative Instruction of the Ministry of Local Government Administration is not very helpful in this respect as it does not contain any further specification.[8] The only indication in this respect is the (non-binding) rule that the committee adopts recommendations (Article 11.1). More helpful in this respect is the assessment of the performances of the committees undertaken by the OSCE Mission in Kosovo, which takes into consideration the following duties: issuing recommendations on specific issues relating to the protection/promotion of community rights to local authorities; providing guidance to local authorities on the protection/promotion of community rights; reviewing municipal policies, practices and activities; advocating for equal communities representation within the municipal civil service; arranging opportunities for communities to participate in developing relevant strategies and policies; monitoring and reporting to the municipal assembly on the implementation of communities projects; consulting and/or coordinating with the municipal office for communities and return on the selection of projects to benefit communities; and reviewing municipal policies, practices and activities related to the budget (OSCE Mission in Kosovo, 2016).

In Macedonia, the law stipulates that the commissions shall provide opinions and recommendations with regards the questions relevant for intercommunity relations (Article 44.4). The practice reveals that the commissions have acted regarding: changing the names of streets and public schools; overcoming tensions that broke out as consequence of fight between students from different ethnic groups; organising cultural activities for the presentation of communities' culture; initiating the construction of a new school for Albanian students; addressing the disagreements on the location for construction of a new church; and issuing a recommendation to the

municipal assembly that the ethnic structure of employees in the municipality should correspond to the ethnic structure of the local population (Petkovski, 2014, p. 148).

In Serbia, the law puts councils in both an active and re-active position. In the case of the former, the council can address the local assembly with its positions and recommendations (Article 98.10). In the case of the latter, the council should provide opinions on the relevant draft decisions of local authorities (Article 98.11). The law empowers the council to initiate the procedure of the norm control before the Constitutional Court against a decision or other general legal act of the municipal assembly if it finds that this violates rights of persons belonging to the Serbian people and national minorities (Article 98.12). Similarly, the law empowers the council to initiate the procedure before the Administrative Court for a review of a decision or other legal act of the municipal assembly and its compliance with the municipal statute (Article 98.12). The amendment to the law adopted in June 2018 envisages involvement of the council in the procedure of the changing of topographic names in municipalities in which a minority language is also in official use (Article 93.2). The special report of the Serbian Ombudsman provides an insight in the issues the councils usually deal with: information (media) in minority languages; reviewing reports and programmes of local cultural institutions and local public media; residence registration of Roma; employment in the centre for culture; funding of the projects in culture and art; Roma integration and education; scholarships for students belonging to Roma minority; change of street names; and local budgeting (Заштитник грађана, 2017, pp. 7-9).

The LBIR should not be some kind of a 'debate club' or an NGO for promoting culture (although these aspects of its activities are not to be neglected), but its activities should have some impact on the decisions made by the local authorities. Thus, communication with the local authorities and their responsiveness to its recommendations and opinions are necessary for the LBIR to fulfil its purpose. An important prerequisite here is that the LBIRs have access to information. They can properly function only if they have sufficient information about the drafts, policies, programs and other activities of the local authorities. This presupposes a primarily active position of the LBIR: it has the right to ask for information and the addressed local institute is obliged to provide the information. On the other hand, authorities also have to be active. It is not sufficient that they only react to the initiatives and provide information only when the LBIR asks so. They should provide information on their own initiative if they find that information could be relevant for the work of the LBIRs. Moreover, the interpretation of what is to be considered as relevant should be wider.

The situation with regard to the impact of the LBIRs on decision-making at the local level is not very positive in any of the three states. In Kosovo, the law does not contain any reference on the duty of local authorities to consider opinions and recommendations of the committee. In Macedonia, the municipal assembly is obliged to consider opinions and recommendations of the commission and to

decide upon them (Article 55.5). Similar regulation is contained in the law in Serbia, but it also specifies a deadline in which the municipal assembly must react: it is on the very next session or at latest in 30 days (Article 98.10). The law in Serbia also obliges local authorities (municipality and executive organs) to submit drafts of all decisions relevant for national equality to the council for the opinion (Article 98.11). Yet, neither in Macedonia nor in Serbia are these regulations implemented in practice and the interaction between the local body and the local authorities is generally poor.

The performance of the LBIRs in all three countries is deficient and they are generally considered as inefficient. The analysis of the OSCE shows that the percentage of the committees undertaking substantive duties ranges (depending on the duty) only from 18% to 55% (OSCE Mission in Kosovo, 2016).[9] The commissions in Macedonia are perceived to be "often not functional" and not to have "any impact on relevant decision-making processes" (ACFC, 2016, para 82). The special report of the Serbian Ombudsman shows that only six councils (out of 53) provided an opinion or recommendation in 2015 and 2016. There are indications that 15 councils also did so, but there is no further evidence on this (Заштитник грађана, 2017, p. 9). Thus, the observation that the councils are "underused" and that authorities should promote their effective functioning is still valid (ACFC, 2013, para. 96 and 202).

The LBIRs in all three states face severe problems in their every-day functioning, which also affects their poor performance. They usually lack clear working methods and rules of procedures. Although it is in the nature of such bodies to meet on a regular basis and ensure frequent consultation and permanent dialogue (Weller, 2010, p. 443), the LBIRs do not do so (OSCE Mission in Kosovo, 2016 and Заштитник грађана, 2017, p. 7). One of the main obstacles for their proper work is the lack of adequate resources: working space, administrative and logistical support, financial remuneration for the members per meetings and budget for the activities (OSCE Mission to Skopje, 2014, p. 88). Municipalities are not very eager in supporting the LBIR and it is usually low positioned among the priorities of the local authorities. The institutional capacity of the LBIRs is also hampered with the lack of continuity in work and the lack of institutional memory; it seems as if with every new term the LBIR starts from the scratch. Finally, the work of the LBIR is generally not sufficiently transparent, people are not aware of its existence and activities, and usually it does not manage to position itself as a prominent (and respected) actor in a local community.

Conclusion

The rationale of the regulation of the LBIRs in the respective law in all three states has been to establish a channel for minorities (especially the smaller one, who are not represented in the municipal assembly) to voice their views, and to provide a forum for a dialogue between the communities (majority and minorities) at the local level. Although the legal basis for the establishment of the LBIRs is strong (they are an institution regulated with the law), this has failed to

secure their institutional stability and proper functioning. Problems in the implementation of the respective norms of the laws reflect the general weakness of the rule of law in all three states, but also manifest the general lack of interest both at the governmental level (to clarify and strengthen the position of the LBIR with secondary legislation) and at the local level (to "fill" the institution with more content and to engage into an institutionalised interethnic dialogue). Severe weakness exists with regard to the institutional positioning and powers of the LBIRs in local decision-making. The obligation to consult these bodies and to consider their positions is not clearly set in the laws, hampering their possibility to formally participate in the adopting of the relevant decisions. The context where democracy is still perceived as a government of the majority (primary political majority, but also ethnic majority) and where deliberation is not developed as a tool for decision-making, additionally weakens the position of the LBIRs. Strong politicisation, but also centralisation of decision-making (present to different degrees in all three states) also hampers deliberative decision-making and a stronger role of the LBIRs. Finally, the concept of interethnic dialogue is perceived wrongly as either through the prism of solving (and to some extent, preventing) interethnic conflicts or solely through the prism of presenting and promoting different cultures and traditions. Such a narrow perception of the role of the LBIRs deprives them of the capacity to be a forum for a dialogue on various issues which affect both majority and minorities as members of a wider local community, and thus to strengthen social cohesion at the local level.

Notes

[1] "Ligji për vetëqeverisjen locale/Zakon o lokalnoj samoupravi", 2008/03-L40, Official Gazette of the Republic of Kosovo no. 2008/28.
[2] "Закон за локалната самоуправа", Official Gazette of the Republic Macedonia no. 5/2002.
[3] "Zakon o lokalnoj samoupravi", Official Gazette of the Republic of Serbia no. 129/2007, 83/2014, 101/2016 and 47/2018.
[4] In Macedonia, the issue of the population census is highly disputable. The last census was competed in 2002. In Serbia, the census data are more accurate, but nevertheless there are some problems (especially with regards the numbers of Albanian and Roma minorities).
[5] See Article 63 of the Law on local self-governance adopted in 2002 and derogated in 2007. ("Zakon o lokalnoj samoupravi", Official Gazette of the Republic of Serbia no. 9/2002, 33/2004).
[6] In the matter of fact, even the Law on Local Self-Government of 1995 has provisioned establishment of commissions for interethnic relations, but these were never established (Petkovski, 2014, p. 144).
[7] See article 18 of the Law on Protection of Rights and Freedoms of National Minorities ("Zakon o zaštiti prava i sloboda nacionalnih manjina", Official Gazette of the FR Yugoslavia 11/2002).
[8] Administrative Instruction (MLGA) No. 03/2014 on the Procedure of Establishment, Composition and Competences of Standing Committees in Municipality.
[9] According to the OSCE monitoring, only the committees in Prishtinë/Priština and Shtime/Štimlje have performed all duties in 2016.

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