

KOSOVO/A CIVIL SOCIETY PROJECT
KOSOVO/A STANDING TECHNICAL
WORKING GROUP
Tenth Meeting
Justice,
Human Rights, and Law and Order

Robert Curis

Grand Hotel, Pristina, 12 October 2002

ECMI Report # 39

December 2002

ECMI Report # 39

European Centre for Minority Issues (ECMI)

Director: Marc Weller

ECMI gratefully acknowledges the generous support of the Royal Danish Ministry of Foreign Affairs (FRESTA/Secretariat for Peace and Stability), the Stability Pact Fund of the German Ministry of Foreign Affairs and the Swedish Foreign Ministry.

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Published in December by the European Centre for Minority Issues (ECMI)

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I. Introduction

The Standing Technical Working Group (STWG) was established in March 2001 to address important issues of public policy in Kosovo/a at a technical level. It is composed of experts from Kosovo/a NGOs, the political parties and other civil society representatives. Its membership is fully interethnic and it prides itself on being able to conduct debate in Kosovo/a in an interethnic way. The Group reviews technical aspects of current policy and formulates proposals and critical questions in relation to them. It then seeks to engage the relevant appointed local and international representatives on these issues. In response to the changed political environment in Kosovo/a following the Assembly elections in November 2001, the Group sought to enhance its role in public policy analysis and development through the establishment of four expert working groups. These Expert Committees (ECs) have devoted their activities in 2002 to monitoring policy developments in four areas considered most relevant to the needs of all communities in Kosovo/a. One of these is the Expert Committee on Justice, Human Rights, and Law & Order.

II. The ECMI Expert Committee on Justice, Human Rights, and Law and Order

The ECMI Expert Committee on Justice, Human Rights, and Law & Order commenced its activities in April 2002 by seeking to provide a forum for fostering dialogue between the evolving ministerial authorities in Kosovo/a and local and international experts engaged in the administration of justice as well as the functioning of Kosovo/a regional and local administration. This process aimed to parallel the transference of competencies from UNMIK's Department of Local Administration to the newly elected municipal representatives and the newly hired civil servants, and assist policymakers in identifying issues of common concern to all communities of Kosovo/a. Through a series of regular meetings with the relevant policymakers and practitioners, the EC further sought to broaden the consultative process of decision-making on matters of civil service law and the management of municipalities as well as promote an exchange of ideas on ways of improving the provision of services 'on the ground'. In its consultations, the EC on Justice, Human

Rights, and Law and Order took as a starting point a monitoring report prepared by the Committee's chairman, Hysni Bajrami, on the progress in municipal administration. It also sought the advice of external expertise on how to provide a more up-to-date analysis of the state of civil service and labour laws in Kosovo/a and undertook to analyze the wider political circumstances in which reform needed to progress.

On 12 October 2002, the Expert Committee on Justice, Human Rights, and Law and Order hosted a workshop to address its concerns and outline its recommendations. The ongoing forum of the STWG was convened, and relevant local and international policymakers and practitioners from civil administration were invited. A summary of the debate is outlined below.

III. The Tenth Meeting of the STWG: Civil Service Law, Labour Law and the Regulations Managing Municipalities

The tenth session of the STWG took place at the Grand Hotel Pristina. In preparation for the meeting, the Expert Committee on Justice, Human Rights, and Law & Order had met nine times and established a number of key objectives. These were:

- to provide a forum for the majority and minority communities in Kosovo/a to discuss critical issues in civil service law and the managing of municipalities;
- to critically examine and, if necessary, suggest alternatives to regulations 2000/45 and 2000/49 in respect to the way these regulations do not provide any real mandate to municipal administrators;
- to increase awareness of the UNMIK promulgated civil service law and labour laws;
- to guide the debate and collaboratively formulate constructive policy recommendations, with the input and assistance of external experts, and with a view to translating these recommendations into operational terms.

The workshop took the form of three interrelated sessions of dialogue so as to facilitate collaboration and constructive debate. Each session was chaired by a

member of the Expert Committee, Blerim Burjani, Nexhmedin Sejdiu, and Hysni Bajrami respectively. The programme of the workshop is appended to this report.

IV. Summary of the Proceedings¹

The plenary session provided an opportunity to discuss the recommendations of the EC on Justice, Human Rights, and Law and Order with respect to ongoing issues in the areas of labour law, civil services law and the functioning of local power in Kosovo/a.

A. Labour Law

There was first a brief opening discussion to present Kosovo/a's labour law, in which the assembled group questioned whether Kosovar employers had the resources to support all provisions of this law. While the group agreed that the labour law should reflect the standards of other European countries, they questioned whether Kosovo/a's economic situation warranted adopting the European model completely. As one participant pointed out, while it may be possible for employers to grant unpaid leave, they may not be in a position to grant maternity leave over six months. It was also noted that disabled and handicapped employees had special needs that needed to be incorporated into the legislation. The need to harmonize labour laws that are currently contradictory or merely a duplication of existing laws was also discussed. Finally, it was noted that the level of protection for employees working for international organizations needed to be harmonized with those working for domestic enterprises.

B. Civil Service Law

The Law for Civil Services of Kosovo/a (LCSK), adopted as UNMIK regulation 2001/36, constitutes an important step in legislation with regard to civil service employees, as it creates an administrative legal base for an effective and impartial civil service, selected and nominated according to the principle of merit. This law

¹ The account that follows summarizes the discussion and debate of the proceedings. This account has not been reviewed by any of the participants and does not claim to reproduce the views of invited experts or each member of the Group.

determines the supporting principles that will manage the nominating procedures and the conduct of those employed in the civil service, outlining their duties and responsibilities, and other principles that display elements of best European practice in public administration. In reviewing the Kosovo civil service law, the leaders of this session's discussion questioned the implementation of the regulation, which has been in effect for the last ten months. The salient points of discussion are summarized in bullet points below:

- Although civil service employees are supposed to be apolitical in their capacity as civil service employees, the reality is that many engage in political activities. The question then is how to clarify the law and consequently to determine what kind of political activities civil servants are allowed to engage in. For example, it was suggested that civil servants could be members of political parties, but not active representatives.
- It was also questioned how it could be guaranteed that there would be an equal representation of ethnic groups at the interview stage, when in many municipalities the ethnic mix, or more accurately the lack thereof, makes this impossible in practical terms. Participants commented that though it is commendable to maintain an ethnic balance, this might prove problematic especially when recruiting professional candidates such as doctors and teachers.
- It was also pointed out that there was anecdotal evidence that at times even UNMIK officials had not followed existing civil service regulations; examples were given of Principle International Officers hiring and firing staff without regard to the legislation.
- The length of experience required to gain employment in many civil service positions was also questioned. While the present requirement of seven years' experience would guarantee experienced workers, it was nevertheless felt that this requirement would essentially rule out the possibility of identifying, nurturing and mentoring young talent.

- The manner in which the civil service law had been drafted was also addressed. Members of the STWG pointed out that there had been no consultation with local populations in the drafting of the law. However, it was conceded that as a draft law there was still opportunity for incorporating input from the Kosovar population.

C. *Managing the Municipalities: Regulations 2000/45 and 2000/49*

In discussing the legislation for municipal governance, the inherent contradictions between UNMIK Regulations 45 and 49 were central to the discussion. It was questioned why increased powers were granted to the municipalities in Regulation 45 only to be rescinded again by Regulation 49. It was suggested by the Expert Committee that part of this was due to confusion within UNMIK itself where the short duration of international administrators' appointments had reduced institutional memory and consistency in policy.

The four municipality Chief Executive Officers (CEOs) present at the meeting expressed their dissatisfaction with Regulation 49, saying that in essence it had made them 'paper tigers', lacking any true authority to manage their municipalities at the local level. In addition to the need to devolve powers to the municipal level, the CEOs stressed, the capacity of local government civil servants had to be developed through increased training. A further need to shift administrative powers from international authorities to their local counterparts at the municipal level was also highlighted.

The role of the Kosovo Trust Agency (KTA) in the privatization of socially owned enterprises (SOEs) was regarded by many members of the STWG as a further step in removing municipal powers in the management, reallocation, and privatization of municipal property and resources. The relative merits of carrying out the privatization at the central rather than the local level were also discussed.

The role of the Community Offices in municipalities was also considered by the members of the STWG. Some delegates observed that the Community Offices had essentially become parallel administrative structures in the municipalities, although

they were initially set up to facilitate integration of minority groups into the central municipal authority. International representatives at the plenary session stressed that although the phasing out of Community Offices was envisioned, they would remain in operation for the foreseeable future in order to ensure continued minority access to municipal authorities.

V. Conclusions with Recommendations

At the conclusion of the session, the Chair put the recommendations of the Expert Committee on Justice, Human Rights, and Law and Order before the assembled STWG. These recommendations had been generated through a process of consultation and discussion among members of the Expert Committee, between local and international experts, as well as members of the STWG plenary prior to the session. The plenary examined these recommendations and offered criticisms and suggestions that had been voiced during the debate. These have been incorporated into the final text.

The recommendations set out below were approved unanimously by the STWG. The EC on Justice, Human Rights, and Law and Order was then charged to actively engage the relevant policy- and decision makers in the civil service, Ministry of Labour and the UNMIK Department of Local Administration to take account of these recommendations when in future addressing questions of implementing reform.

Recommendations on Kosovo/a's Labour Law

1. Kosovo/a's labour law was drafted according to international standards and fulfils the fundamental needs of Kosovo/a.
2. The law itself requires careful reconsideration and indeed modification: Article 19 on the provision for maternity, for example, has left many families in Kosovo/a unsure as to why 'European' standards have not been applied in this case.

3. The dualism of Basic Labour Law and Civil Service Law regulations should be reviewed, as they are at odds with each other. (Simply stated, the regulations on Civil Service Law are at odds with the regulations on Basic Labour Law.)

4. Supervising the implementation of the Basic Labour Law by the Work Inspectorate of Kosovo/a is an important priority. Approval of the Inspection Law by the Assembly would as a consequence enable the Inspectorate to supervise the implementation of the Basic Labour Law. It would also obligate the employers of Kosovo/a to respect this law.

5. Local employees who currently work for international organizations operating in Kosovo/a are not included in the protection of the Basic Work Law. A mechanism must therefore be found to protect and guarantee these employees' rights.

6. The Assembly and the relevant decision-making bodies in Kosovo/a must urgently address and legislate against the alarming increase in child labour in Kosovo/a.

Recommendations on the Law for Civil Services in Kosovo/a

1. The UNMIK Department of Civil Administration needs to develop and implement an effective information campaign in order to assist civil servants in understanding the extent of their rights and responsibilities.

2. A 'Rules of Administration of the Kosovo/a Civil Service' or a similar Handbook needs to be promulgated. This will clarify the procedures for civil service nominations, employee management and the rights and individual responsibilities of civil service employees. It will also establish the necessary guidelines for the implementation of the Law for Civil Services.

3. It is particularly important that these administrative rules clarify the definition of 'political activity' in relation to the civil service. Currently, the reality is that municipal civil servants are also serving as members of the municipal assembly.

4. When establishing administrative directions relating to working conditions, particularly with regard to such rights as sick leave, maternity leave, etc., the STWG further urges the respective policymakers to consider adopting international standards with regard to maternity leave, under-age and older workers. Moreover, the 'administrative rules' should also make provision for cases where the state is the terminating party in an employment contract, e.g. with respect to civil servants, and determine the obligations it has to undertake after termination of the contract.

5. An Independent Supervizing Council should be established immediately, in order to review appeals against decisions made by the employment bodies in compliance with Article 11 of this law.

6. It is essential to establish the Committee for High Public Nominations (CHPN) as soon as possible, in order that nominations of permanent secretaries and executive agencies are made in compliance with the Law for Civil Services.

*Recommendations on the Functioning of
Local Power in Kosovo/a*

1. The STWG calls for the clarification of the role, responsibilities and competences of the municipalities e.g. by setting benchmarks for achieving a sustainable economic development, and offering municipal public services and infrastructure, which were originally determined as the responsibilities of municipalities but *de facto* never put into practice.

2. Incongruity in UNMIK's regulations should also be avoided e.g. inconsistency between Regulations 45/2000 and 49/2000. This gives rise to concomitant contradictions in Regulation 45/2000. By way of example, the management of municipal property, according to Article 3, (h) Regulation 45/2000 is put in the hands of the local institutions whereas, according to Article 48.14, municipal property is managed by the Municipal Administrator.

3. There should be total transfer of municipal responsibilities from UNMIK to local and from central to local level. The procedures that the municipal administration has

to follow to allow it to fulfil its full responsibilities must be clearly defined in order to facilitate transfer completely.

4. Some functions and responsibilities should be delegated to outlying areas, such as villages, so that people living in these locations can be provided with more up-to-date and efficient services.

5. Transparency should be increased in municipal administration and citizens more actively involved in its work. Interest groups, NGOs and public administration experts should also be encouraged to voice their opinions on issues of municipal administration. In this way, the municipal administrations should function as reception/consultative offices (they already do so in six municipalities) and this should be extended to offices in other municipalities. The concept of 'client-server' should be encouraged at the municipal level rather than the old style 'party-servant'.

6. Regulation 45/2000 should be supported with regard to separating political functionaries and civil servants.

7. Recruitment for the civil service should be done according to professional competence and merit. Administration should be effected through the working principles for civil service as foreseen in Regulation 36/2001, and staff recruited accordingly.

8. Members of Committees and civil service bodies should be drawn from sources outside the Assembly. The involvement of external experts can only enrich the work of these bodies and through them the work of the Assembly.

9. All administrative services must be uniform and in accordance with the regulations that are currently in operation. In this way, the local community offices must work more closely with their respective municipalities.

10. The definition and identification of municipal property should be undertaken as a matter of urgency, as the proper management of the municipal property lies in the municipality itself. Attention should also be paid to urban planning and land use as

well as the proper implementation of regulations on construction. In this context, a clear platform should be established for municipality competences and action with regard to illegal construction. Municipal services and infrastructure must also be improved.

11. Municipal Administration in its entirety must be organized in a way that it meets the needs of citizens, in order to provide more effective and higher quality services. This is particularly pertinent with regard to the need for updating information on civil status and registration, where the greatest number of citizens are affected and where the greatest number of problems occur.

12. Relations between the UNMIK Administrator and the Municipal Administration must be coordinated and clarified so as to avoid repeating situations where the Municipal Administrator has acted outside the scope of his competencies or has failed to fulfil those obligations which fall within his mandate.

13. It is imperative that administrative services are better coordinated, especially those that deal with issues of civil registration. At present, the procedures to issue documents such as identity cards, marriage certificates, birth certificates vary arbitrarily from location to location depending on how the local and international officials implement administrative directives.

14. Training of civil servants in the municipalities should be extended, especially on issues related to the functioning of the municipal administration e.g. establishing general administrative procedures, training for urban planning and regulations on illegal construction etc.

15. The equipment in the municipal administration needs to be modernized and the staff newly trained. As a precondition of this, there is a need to standardize procedures and programmes such that most administrative services (verdicts, judgment, different certificates) can be performed both efficiently and cost-effectively.

16. The Assembly of Kosovo/a needs to establish Commissions that are tasked to deal specifically with the problems of local power.

17. Some provisions of Regulation 45/2000 must be modified in order to provide functional solutions towards advancing local powers.

18. More work needs to be done towards adopting the new regular law on the functioning of the municipal system, in order to make it commensurate with international conventions on local governance.

VI. Annex

A. Programme of Workshop

Tenth Meeting of the Standing Technical Working Group: Expert Committee on Justice, Human Rights, and Law and Order

| Time | Activity |
|--------------|---|
| 9:30-9:45 | Introductory Remarks: Robert Curis, ECMI Country Director, and Hysni Bajrami, Chairman of the Justice Expert Committee |
| 9:45-10:45 | First Session: <ul style="list-style-type: none">• <i>Basic Labor in Kosovo</i>, Blerim Burjani• <i>Conclusions</i>, Ali Bajgora• STWG Discussion |
| 10:45-11:45 | Second Session: <ul style="list-style-type: none">• <i>Regulation on the Civil Service in Kosovo</i>, Mary Venner Head of Department for Civil Development Programme Manager, Civil Service Personnel Management Project• <i>Conclusions</i>, Nexhmedin Sejdiu• STWG Discussion |
| 11:45-12:15 | <i>Coffee Break and Snacks</i> |
| 12:15- 14:15 | Third Session: <ul style="list-style-type: none">• <i>Functioning of the Municipality System in Kosovo</i>, Andrew Michels: Regulations 45 and 49• <i>Municipalities in Practice</i>, Hysni Bajrami:• <i>Conclusions</i>, Gjylieta Mushkolaj• STWG Discussion |
| 14:15-14:30 | Adoption of Recommendations and Closing Remarks |
| 14:30-16:30 | <i>Closing Lunch and Informal Discussion</i> |

B. List of Participants

Fifty-five members of the ECMI Standing Technical Working Group attended the session. All communities of Kosovo/a were represented throughout the workshop and preparatory Expert Committee meetings.

The Standing Technical Working Group

| | Name | Affiliation |
|----|----------------------|---|
| 1 | Hysni Bajrami | Democratic Part of Kosovo (PDK) |
| 2 | Mevludin Krasniqi | Democratic Party of Kosovo (PDK) |
| 3 | Ruzhdi Hamza | Democratic Party of Kosovo (PDK) |
| 4 | Izet Sadiku | Democratic League of Kosovo (LDK) |
| 5 | Alberta Troni | Democratic League of Kosovo LDK |
| 6 | Ilir Salihu | Democratic League of Kosovo LDK |
| 7 | Besnik Osmani | Democratic League of Kosovo LDK |
| 8 | Valon Murati | Alliance for the Future of Kosovo (AAK) |
| 9 | Gafurr Podvorica | Liberal Party of Kosovo (PLK) |
| 10 | Nazmi Halimi | Social Democratic Party of Kosovo (PSDK) |
| 11 | Gjylnaze Syla | Alliance for the Future of Kosovo AAK |
| 12 | Sebahate Grajqevci | Alliance for the Future of Kosovo AAK |
| 13 | Sabrije Rama | Alliance for the Future of Kosovo AAK |
| 14 | Mejreme Mara Berisha | Alliance for the Future of Kosovo AAK |
| 15 | Fakir Spahiu | Alliance for the Future of Kosovo AAK |
| 16 | Mehmed Ćeman | Bosniac Social Democratic Association of Kosovo (BSDAK) |
| 17 | Ruzdija Krijestorac | Social Democratic Association (SDA) |
| 18 | Nebahat Doğan | NGO 'GUNES' |
| 19 | Şerafetin Ömer | Turkish Democratic Party (TDB) |
| 20 | Nexhmedin Sejdiu | Kosovo Protection Corps (KPC) |
| 21 | Luan Jaha | Unaffiliated |
| 22 | Ali Bajgora | Unaffiliated |
| 23 | Gjylieta Mushkolaj | Unaffiliated |
| 24 | Avdullah Qafani | Egyptian Party |
| 25 | Ymer Shatri | NGO 'Handikos' |
| 26 | Drita Bala | Unaffiliated |
| 27 | Gani Toska | Roma Party |
| 28 | Senad Adrovic | Unaffiliated |
| 29 | Fahri Beqa | Democratic Party of Kosovo (PDK) |
| 30 | Diamant Kastrati | Organization for Security and Co-operation in Europe (OSCE) |
| 31 | Dragan Velic | Serb National Council (SNC) |
| 32 | Fedzat Sagdati | Organization for Security and Co-operation in Europe (OSCE) |
| 33 | Ardian Jashari | NGO 'Economic Development Agency' (EDA) |

| | | |
|----|--------------------|---|
| 34 | Halit Ferizi | NGO 'Handikos' |
| 35 | Arbnor Pula | NGO 'Forum for Democratic Initiative' (FID) |
| 36 | Mirlinda Kusari | NGO 'Women Business Association' (SHERA) |
| 37 | Bersant Disha | NGO 'Kosovo Initiative for Democratic Society' (KIDS) |
| 38 | Ibrahim Makolli | NGO 'Council for Human Rights' (KMDLNJ) |
| 39 | Enver Hasani | Unaffiliated |
| 40 | Makfire Lutolli | Unaffiliated |
| 41 | Suzana Arni | NGO 'Kosovo Civil Society Foundation' (KCSF) |
| 42 | Bayram Rogova | Turk NGO 'SHEFKAT' |
| 43 | Artan Venhari | NGO 'Kosovo Initiative for Democratic Society' (KIDS) |
| 44 | Fahredin Tahiri | Unaffiliated |
| 45 | Petar Jeknic | Unaffiliated |
| 46 | Mujo Dacic | NGO 'Bosniac Citizen Initiative' (GIB) |
| 47 | Skender Kandic | NGO 'Bosniac Citizen Initiative' (GIB) |
| 48 | Adem Limani | Alliance for the Future of Kosovo (AAK) |
| 49 | Radmila Djordjevic | Serb NGO 'MARAS' |
| 50 | Xhevdet Neziri | Egyptian Party |
| 51 | Mirjana Rajovic | Unaffiliated |
| 52 | Boban Nacic | Unaffiliated |
| 53 | Abdullah Bektashi | Turk NGO 'Gunes' |
| 54 | Bekim Sejdiu | NGO 'Kosovo Civil Society Foundation' (KCSF) |
| 55 | Pavle Vasic | Unaffiliated |
| 56 | Blerim Burjani | Alliance for the Future of Kosovo (AAK) |
| 57 | Xhangyle Ilijazi | Organization for Security and Co-operation in Europe (OSCE) |
| 58 | Misket Sinani | Organization for Security and Co-operation in Europe (OSCE) |
| 59 | Valdet Muqa | Unaffiliated |
| 60 | Naim Korca | NGO 'Handikos' |
| 61 | Enesa Kadic | Unaffiliated |
| 62 | Shkendije Geci | Organization for Security and Co-operation in Europe (OSCE) |
| 63 | Rezarta Alihajdari | Democratic League of Kosovo (LDK) |
| 64 | Lendita Ajazaj | Unaffiliated |
| 65 | Justina Pula | Unaffiliated |
| 66 | Idriz Mumci | Unaffiliated |
| 67 | Laura Kryeziu | Unaffiliated |
| 68 | Lundrim Aliu | Unaffiliated |
| 69 | Haxhi Thaci | Organization for Security and Co-operation in Europe (OSCE) |
| 70 | Veton Berisha | Unaffiliated |

| | | |
|----|------------------|----------------|
| 71 | Myrvete Pantina | Unaffiliated |
| 72 | Afrim Maliqi | NGO 'Handikos' |
| 73 | Elife Krasniqi | NGO 'Partners' |
| 74 | Hajrullah Koliqi | Unaffiliated |
| 75 | Radica Berisha | Unaffiliated |
| 76 | Jovan Zivkovic | Unaffiliated |

Experts:

| | Name | Organization |
|----|------------------|---|
| 1 | Xhevdet Smakiqi | Ministry of the Environment and Public Planning |
| 2 | Shefki Kurteshi | Executive Secretary – Gjilan Municipality |
| 3 | Jakup Jahiri | Chief Executive – Vitia Municipality |
| 4 | Naim Ismajli | Chief Executive – Shtime Municipality |
| 5 | Baki Svirca | Prime Minister's Office |
| 6 | Nexhat Shabani | Ministry for Public Services |
| 7 | Andrew Michels | Former UNMIK Lawyer |
| 8 | Mary Venner | Programme Manager, Civil Service Personnel Management Project |
| 9 | Hafeez Ur Rehman | Department of Local Administration |
| 10 | Khanas Kane | Department of Local Administration, Communities Office |
| 11 | Beth Miller | American Bar Association, Central and Eastern European Law Initiative (ABA/CEELI) |
| 12 | Ahmet Hasolli | American Bar Association, Central and Eastern European Law Initiative (ABA/CEELI) |

Press coverage of the event was provided by:

Radio and Television of Kosovo/a (RTK)

Koha Ditore and Koha TV

Radio and TV 21

C. Monitoring Report

1. Introduction

Since the two-year mandate of the municipal structures that emerged from the first elections held in October 2000 is in the long run, it is time to do an evaluation of the functioning of Local Power in Kosovo, which presents the legal ground for municipal functioning.

Information also aims to give an overview of how municipal responsibilities are exercised on the functioning of the municipal assemblies and committees, on the organizational structures of municipalities, on the Municipal Civil Service, on the municipal incomes, on citizen's legal protection, on the functioning of the local community office and on the relationship with municipal administrators. It also presents the critical approach of some provisions of Regulation 45/2000 that are not in the function of advancing the Local Power.

2. General Remarks on the Exercise of Powers in Municipalities

The general conclusion as regards the transfer of powers from UNMIK structures to local ones is that there is visible progress and that the powers have been transferred in many areas. The progress is even more visible if we compare the current situation to that of the previous year. Lately there has been transfer of powers in the field of managing the currently employed staff in the registrar's divisions of the municipalities. The Municipal Directors are now responsible for running these municipal services. The local staff now has the *stamping power*, which has resulted in speeding up the procedures for issuing civil status certificates. However, there are still many problems in the civil status area, which are a result of a lack of a Law on Civil Status that would harmonize the criteria for keeping registrar's books and for the procedure of issuing certificates. There still remain some areas where the transfer is not satisfactory, and these especially include *budget management, procurement* and so on.

In every Municipality we asked whether the municipal administration exercises all the powers prescribed by Article 3 of the Regulation Nr. 2000/45. Almost in every municipality the response was that Municipalities were still facing limitations in

exercising powers stemming from Article 3.a, dealing with the *provision of basic preconditions for a sustainable economic development*, those stemming from Article 3.f, dealing with local *public and infrastructure services* and then those stemming from Article 3.h that deal with *administering municipal property*. There are other problems in exercising powers prescribed in these provisions since the Municipal powers do not have a clear concept of how to exercise them. The Regulation is also unclear in defining what does ‘the provision of basic preconditions for a sustainable economic development’ mean. Regulation Nr. 2000/49 on the Establishment of the Administrative Department for Public Enterprises deprives the Municipalities of their right to manage public municipal services and also deprives them of exercising the power on *administering municipal property*. Even though Regulation 2000/45 states that this is a responsibility of the Municipalities, other UNMIK Regulations reserve this power for UNMIK administration.

As regards the conflict between the powers of central and local powers, the situation has greatly changed as of January of this year with the introduction of the *Memorandums of Understanding* on the transfer of powers in pre-school education, primary and secondary education and primary health care. The municipalities are now exercising most of the powers in these areas, although not all of them. Currently there is conflict in the exercise of powers between central power and local powers in the area of managing Municipal Public Services since there is full collision between Regulation 2000/45 and Regulation 2000/49. Also, the management of forests and the management of public property are issues that require practical solutions. Civil registration is also an area in which municipal administrators have no approach, even though citizens are mostly dissatisfied with the services offered in this area.

The local power has practically not exercised any *administrative supervision* in any of the Municipalities in order to secure respect for the Law as prescribed in Article 3.5.

The relationship between the municipalities and villages and neighborhoods has in no municipality been regulated by an agreement that would delegate the activities and the powers of the municipalities. In fact, in some municipalities function *local offices* that exercise some registrar’s functions, even though not in full, since these only receive and complete the files and then a municipal servant from this office has to

sign and stamp them at the Municipal center. The Municipalities have been asked to compile a *list of activities and powers* that can be delegated to local offices, so that the latter can offer better services to the citizens.

Some municipalities have established village committees, or commissions (Skenderaj, Shtime, Lypjan, Mitrovica, Deçan and Gllogoc) who deal with determining the manner of cooperation between the Municipalities and villages. The Municipality of Shtime provides a good example on how to establish proper relationship between villages and the Municipality. It has established its villages committee, appointed village leaders and made the relationship between the Municipality and the villages official. In no other Municipality apart from the Municipality of Drenas do village leaders receive remuneration, something that the local officials cite as an example of not motivating village leaders for greater engagement.

Most of the municipalities have still not exercised any powers in giving names to the streets, squares and other public places, powers that stem from Article 3 of the Regulation 2000/45. In some cases, the new names have not been made official. In many cases the signs telling the names of the streets have not been changed. The case of Leposaviq Municipality is especially notable. The entrance to the Municipal Hall bears a sign that reads “Republika Srbija – Skupstina Opstina Leposaviq” (The Republic of Serbia – Municipal Assembly – Leposaviq). No other sign in this Municipality shows that Leposaviq Municipality is a Kosovar Municipality. The Municipal Administrator should have removed this sign from the entrance to the building and placed a sign as prescribed by the UNMIK Regulation 2000/45 on the Self-governance of Municipalities and the Constitutional Framework of Kosovo.

As of January 2000, after the signing of the Memorandum of Understanding, the Municipalities have gained power to administer their primary health care sector. According to the Municipal officials, the transfer of powers in this sector is satisfactory. However, there were objections to the work of the districts (regional centers), which often delay the process of payments and procurements, and in many cases, limit the exercise of powers by the Municipalities. Also, many of the municipal officials cite the problem of the surplus of health care staff in health centers, even though there are some Municipalities where there is a lack of specialist doctors. Still,

many Municipal officials state that there is not so great a surplus, because the criteria to determine the surplus are based on the 1981 population census, which does not give an accurate account of the numbers of inhabitants in Municipalities. According to the officials, the number of inhabitants is now much larger. Since Primary Health Care will in January 2003 change to Family Health Care, the Municipal Directorates should start with preparations to establish Main Family Health Care Centers and Field Family Health Care Centers in their respective Municipalities.

The exercise of powers in the field of pre-school, primary and secondary education, again based on the Memorandum of Understanding is, according to the municipal officials, very satisfactory. As of September 2002, the Municipalities will be in charge of managing the educational staff in their territory. However, there were many objections addressed to Education Officials appointed by the Ministry of Education who often limit the powers of the Municipal Directorates for Education. They also very often monitor and inspect the work of the Municipal Directorates for Education. This area, just like the Primary Health Care, suffers from politically motivated dismissals and re-appointments of staff, as a result of understanding the process of staff management as an unlimited right for changes in the staffing structure.

The exercise of powers in the area of providing public services and infrastructure, which includes water supply, sewerage, road maintenance, local transport and so on is generally one of the weakest points in all the Municipalities. Even though Regulation Nr. 2000/49 on the Establishment of the Administrative Department for Public Enterprises is in head-on collision with Regulation 2000/45 and has created total confusion as regards the relationship between the Municipalities and the Kosovar public enterprises, the Municipal administration has failed to take the necessary measures to improve this relationship. Each Municipal Assembly should, through a local regulation, establish what types of services should public enterprises provide, establish the obligations for both parties, the citizens and the public enterprises, establish fines for different types of violations and also establish inspecting mechanisms. The public enterprises should also be obliged to submit their budget to the municipality for approval. This should all be done by 1 December 2003 at latest, in conformity with Article 40.1 of Regulation 2000/45.

Even though some municipalities have made efforts to regulate these issues by issuing local regulations, they have not been successful because they lacked a clear concept of what does provision of public services include and also lacked proper mechanisms to enforce the regulations. They were also not applying the applicable Laws (most of them are not aware of the existence of these laws). Again, this area suffers from the same disease as education and health. The municipalities have mostly concentrated on the issues of managing public enterprises, which mostly means appointments or dismissals of the managers of the enterprises, dismissals that are usually politically motivated. Such is for example the case in Prizren where the “Higjieno – Teknika” public enterprise, in charge of cleaning the town, is doing a fine job, making Prizren one of the cleanest towns in Kosovo. Despite this fact, the Municipal authorities are not happy with the manager of this enterprise and have done nothing to improve their relationship with the enterprise. Of course, these on-goings reflect negatively on the provision of cleaning services, provision of drinking water, sewerage management and other issues vital to the well being of the citizens.

Most of the Municipalities have established their Supervisory Boards but the manner of their organization, their structure and the number of the members of the boards differs Municipality to Municipality. In some Municipalities these boards have been established by the Municipal Assemblies, in others by the Administrative Departments for Public Utilities and in others yet the boards have been established by internationals. A new Law should be issued in order to solve this problem and the problem of the collision between Regulations 2000/45 and 2000/49. In some Municipalities, as for example in the Municipality of Pristina, there is no clear idea as to how many enterprises operate in the Municipality and there is often a mix-up of public and private enterprises in the administrative procedures. No Municipality has asked the former public enterprises to re-register and nowhere in the Municipalities have we found documents that prove the act of the establishment of the public enterprises. These are often documents that have been issued by Municipal Assemblies in the period between 1988-1990 and are applicable because they have not been superseded by any other Regulation.

One of the most sensitive areas in the Municipalities is the exercise of powers in the management of municipal property (Article 3, point 3.1 h of Regulation 2000/45).

The management of this property is, in general, the weakest point in the functioning of the local authorities. Almost all Municipalities have problems in properly defining municipal property, something that would facilitate the proper identification of this property and would help keep it under protection. No Municipality has still been able to complete the registration of municipal property, be it land or buildings. In many Municipalities, municipal property has been manipulated and appropriated in various ways, either during the period of the abolishment of Kosovar autonomy or after the war of 1999. Very little has been done in reviewing the grounds on which property was appropriated. The number of property contests in the Courts on reclaiming property is still very low, there are no attorneys who deal with these issues and some Municipalities lack proper bodies that would deal with these issues. The Monitoring Division has made it obligatory for Municipalities to submit the Administrative Decisions together with the number of property cases in the courts to the DLA. We also required from Municipalities to identify all the cases of illegal appropriation of land and to come up with a list of municipal buildings that are rented to other entities, together with the income that is being made from the rent.

None of the Municipalities have reported to DLA so far to ask for approval when renting Municipal property for a term of more than 10 years, in conformity with Article 44.2 of Regulation 2000/45.

Illegal construction is a largely spread occurrence in all the Municipalities, especially in larger towns such as Pristina for example. The Municipalities have so far failed to give the problem the serious treatment it deserves. The strategy to fight illegal construction should be to first of all identify the illegally constructed buildings that should in no way be legalized, and then establish the criteria by which construction licenses should be issued.

In some Municipalities there is criticism on behalf of the police, who, according to the Municipal officials, are not doing enough to help in the fight against illegal construction. A typical example is the Municipality of Drenas, where the Court has issued a decision on demolishing an illegally constructed building but the decision has not been executed yet because the international administration of the Municipality does not provide the necessary assistance to the Municipal officials.

3. The Functioning of Municipal Assemblies and Committees

Apart from the Municipalities of Lypjan and Shterpce, all other Municipalities have established the obligatory committees. The Municipality of Shterpce may be excused for not having established a committee yet on the grounds that the inclusion of the Serb community in that municipality started fairly late, but there is no excuse for the Municipality of Lypjan, especially bearing in mind that other communities that live in this Municipality (Croat, Roma and Ashkali) have since the beginning been involved in the Municipal Assembly of Lypjan Municipality.

In all the meetings of the Municipal Assemblies where there are members from other communities, the invitation to the meetings and the materials for the meetings are sent in their respective languages. There are also interpreters who interpret all the discussions in the meetings.

In some Municipalities, such as in Peja, Viti, Glogoc, Skenderaj, Podujeva, the Committees on Policy and Finance have members that are not Assembly members that is contrary to Article 21.4. It seems that this Article has been misinterpreted. A typical example is that of Viti Municipality in which 5 civil servants are members of the Committee on Policy and Finance.

Almost all municipalities have established committees for most important issues. In some cases these committees are provisional, and in others they are permanent. These committees also have members that are not members of Municipal Assemblies.

In none of the municipalities did the committees for intermediation submit reports to the municipal assemblies for contests on ethnic grounds, even though in some cases there were cases of contests that should have been reported. The overall impression is that the Municipal officials still do not have it clear what the role of this committee is and do not know which cases should this committee treat.

Except for the cases of Municipalities of Viti and Malisheva, in other municipalities the chairpersons of the meetings of the municipal assemblies have never used their right to the extra vote, in cases where there is a tie of votes when voting for or against

a motion in the Municipal Assembly. The chairperson of Malisheva Municipality has used his right to an extra vote when dealing with the issue of allocation of the lands owned by his Municipality whereas the chairperson of Viti Municipality has used his right to an extra vote when deciding on the appointment of a Director of a Municipal Directorate.

When it comes to the activities of the Municipalities in issuing local regulations, that regulate issues and procedures within the scope of the powers of the municipalities, the situation differs from municipality to municipality. Some municipalities have issued a considerable number of local regulations. Numbers of local regulations issued in municipalities range from 2-4 such as in the case of Novoberda (Artana) and Decan municipalities, up to 10 local regulations such as in the case of some other municipalities. In general, it is obvious that there is a lack of experience and professionalism in drafting these regulations.

In most of the municipalities there is no transparency in the process of drafting and issuing of these regulations. In some municipalities, such as in Gjakova, Istog (Burim) and Shtime, there is public discussion prior to issuing local regulations. However, despite the clear willingness and good intent on the part of these municipalities to have proper public discussions, the discussions lack in substance. There are no cases in any of the municipalities when issues and comments raised in the public discussions were incorporated into the final drafts of the regulations. The issue of transparency should however be given a more serious treatment because it allows the active involvement of the citizens, professional institutions, NGOs, groups of interest and professionals of different profiles who would, by giving their ideas and opinions, improve the quality of the local regulations of the municipalities.

The situation with local regulations in the so-called 'Serb enclaves' is very different. These still use administrative decisions and regulations issued in the time of the Serb administration of Kosovo and they are based on Serbian legislation. These municipalities completely disregard UNMIK Regulations.

Municipalities also differ in the manner of remuneration for members of their assemblies and municipal assembly committees. Some municipalities use an estimate

pay rate, whereas others pay per-diems for each meeting. However, the amounts provided are always within the pay limits approved by the DLA.

4. The Organizational Structure

The organizational structure also differs in each Municipality. Some Municipalities like that of Shtime for example, have 6 Directorates, whereas others have 12, as do Pristina and Podujeva.

The Statutes of the municipalities should determine the number of municipal directorates, the duties of the directors, terms of reference and the term of office for the directors of municipal directorates. It is very interesting that in some municipalities the directorates are not organized even as sectors in the internal structure of the municipalities, in comparison to some other municipalities where for example the directorates for public services, the directorates for emergency or the ones for property are properly established and have the due status. Such a heterogeneous structure of organization creates complications in the vertical line of communication between the central authority and the local authorities.

Some municipalities have municipal ombudsperson offices that are usually attached to one of the directorates, even though they should be separate offices that would not fall under the authority of any of the directors. This would preserve the function and the authority of the Ombudsperson, as a person that protects the interests of the municipality.

5. The Municipal Civil Services

The number of civil servants within Municipalities is usually within the limits prescribed by the Central Fiscal Authority. Many of the Municipalities have, immediately after the elections, published job adverts, whether internal or external, in order to re-appoint or re-recruit staff, which goes contrary to Article 52 of Regulation 2000/45. According to this rule, the staffs that were appointed in accordance with the provisions and procedures in force before the elections are not subject to re-recruitment procedures.

Even though the staffing procedures are in general respected, in practice not much regard was paid to the issue of professionalism and experience of the people who were being employed. There was also disregard for the principle of political neutrality and very often the re-recruitment processes have been politically motivated. We also encountered many cases of nepotism, such as in the Municipality of Lypjan for example, and this is true both for the Board of Directors and for lower civil servants.

All this results in having incompetent staff working in the Municipalities. Often the staff are not familiar with the general administrative procedures, which results in long delays in carrying out the administrative work. This emphasizes the need to have proper training for the staff on board, especially for those staff members that are in charge of dealing with administrative procedures.

6. Municipal Revenues

All the municipalities have issued local regulations that deal with the issue of local taxes and duties. These include the revenues collected from the payment of licenses and other sorts of payments required by the municipalities, those collected from municipal assets, from fines and from the percentage on fines [sic]. The Administrative Direction Nr. 2001/23 issued by the DLA and CFA determines those areas in which municipalities can levy taxes and duties for the services they offer. According to this Direction, before a Municipal Regulation on Taxes can take effect, it has to be certified by the DLA and the CFA. So far Regulations of Fushe Kosova, Shterpce, Leposaviq, Rahovec, Z. Potok and Zvecan have not been certified. The local regulations of Rahovec and Shterpce are in the process of being certified. The intention of the Administrative Direction is to protect the citizens from having to pay high taxes and also harmonize the amount of tax payments in all the municipalities. However, this Direction has several shortcomings; although it gives a list of the areas where taxes should be collected, it fails to give limits for the amounts of those taxes, therefore leaving it to the discretion of the DLA and the CFA to decide whether the local regulations will be certified. Also, the legal grounds for this Direction are very questionable.

The central authority has, in 2001, performed independent financial audits in 20 municipalities. This was done either by the CFA or by UNMIK Regional

Administration. Since financial management still falls under powers reserved for UNMIK, the overall request of the municipal officials was that the process of transfer of these powers should be speeded up. It is necessary to require an independent financial audit, in conformity with Article 43 of the Regulation 2000/45, mainly for two reasons: a) to verify whether there is a proper financial management in place, which would then show whether the municipal civil service has the capacity to implement the financial procedures and audits, and b) based on the evaluation resulting from the financial audits, the authority for financial administration should be transferred to those municipalities that fulfill the criteria, also set out in Article 46 of Regulation 2000/45.

7. Appeals and Legal Protection

Almost in all municipalities there are cases when citizens submit appeals against the administrative decisions of the municipality. Acting on the appeal, the Chief Administrators of the municipalities have usually certified the administrative decisions, without checking the legality of these decisions. This diminishes the authority of the Chief Executives as people who should protect the rights of the citizens. In conformity with Article 35.3 of Regulation 2000/45, those who submit appeals should submit them to the central level authorities, which are in turn obliged to review a decision and decide on its legality. Usually, the central authority in cases of contests, including urban, construction, property, labor and other contests, is the DLA and not the respective Ministry. This however means that the appeals are often not reviewed at all or are decided upon incompetently. Thus, it is necessary that respective ministries start dealing with the appeals on administrative procedures.

In none of the municipalities have we come across cases when the Chief Executives are dismissed from dealing with certain cases in which they or members of their family have personal or financial interests, something that should be done in compliance to Article 32.1 of Regulation 2000/45. The same is true for Directors of Municipal Directorates.

8. Local Municipal Offices

In some Municipalities, such as in Gjilan, Lypjan, Skenderaj, Obiliq-Kastriot, Istog-Burim, Prizren and Dragash) local Municipal offices have been established. Some of

the municipalities also established local community offices. People who run these offices are members of the Boards of Directors and attend the meetings of these Boards. Apart from the officials of the Municipality of Pristina, officials of other municipalities told us that they do not have access to the work of these offices, that they never had a chance to visit them and that they are not aware of the functions and the duties of these offices. Also, apart from the Chief Executive of the Municipality of Pristina who states that these offices do not conduct parallel activities, all other Chief Executives are concerned that these offices perform *parallel administrative services, such as Registrar's services, issuing travel documents and so on.*

The approach of the Municipal Administrator of Obiliq-Kastriot Municipality is to be applauded since he has started integrating these offices into the administrative structure by allocating the staff of these offices to municipal directorates. The local offices will be closed, since there is no more need for their existence. Other Municipal Administrators should adopt the same approach since the security situation has now greatly improved. Lack of security was the main reason why these offices were established.

9. The Powers of the Municipal Administrator

The relationship between Municipal Administrators and the local administration is generally one of cooperation and coordination. However, in 12 Municipalities (Skenderaj, Gjakova, Peja, Decan, Obiliq, Mitrovica, Vushtrri, Lypjan, Kamenica, Pristina and Drenas) the Municipal Administrators have used their powers stemming from Article 48 to suspend some of the decisions of the local administration and of the municipal assemblies. This mainly happened in cases of appointments and dismissals of senior employees. In Pristina for example, the municipal administrator used this power in the cases of the appointment of the Director of 'Higjieno-Teknika' enterprise, the Director of the Health House, the Director of the 'ABC Cinema' and the Director of the Directorate for Budget and Finance. In Lypjan, this happened in the case of the appointment of the Director of the Public Municipal Enterprise 'Vllaznimi', and in many other appointments.

Such interventions from the Municipal Administrators are welcome in cases when they use their powers to ensure respect for the Law and for the administrative procedures. However, in some cases there seems to be no justification or legal

grounds for such interventions. Such is the case of the Municipal Administrator in Kamenica Municipality who has twice in a row suspended the decision of the Municipal Assembly on the Municipal Day. It is still unclear what were the legal grounds used when this Municipal Administrator appointed the Director of the Health House.

During the visits that we conducted, we have required from municipal administrators to notify the local administrators in written of their decisions and the reasons for using their powers to veto. Municipal administrators should also suggest measures for the execution of their decisions. This should ensure the validity of their decisions. For example, Pristina Municipal Administrator has suspended the Director of the Directorate for Economy and Finance of Pristina Municipality, but the latter has continued to exercise his functions. We also have a case in Leposaviq Municipality where the Municipal Administrator has never used his powers, even though the municipal administration of this municipality has never respected and implemented UNMIK Regulations, and the whole municipality functions parallel to the existing system of administration.

In most of the municipal assemblies functioning in municipalities that house communities, the SRSG has, in conformity with Article 47.3 of Regulation 2000/45, appointed additional Assembly members in order to ensure the representation of all the communities. In the Municipalities of Leposaviq, Z. Potok and Zvecan, all Municipal Assembly members are appointees. The SRSG has not suspended any members of any of the Municipal Assemblies because of misconduct. Also, there are no cases of suspensions of any civil servants because of the failure to perform or because of illegal conduct.

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