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AMERICAN UNIVERSITY OF KOSOVO

In partnership with

ROCHESTER INSTITUTE OF TECHNOLOGY

Master of Science Degree in Professional Studies

**IMPLEMENTATION OF KOSOVO'S ACTION PLAN ON
DECENTRALIZATION**

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Submitted as a Capstone Project in partial fulfillment of a Master of Science Degree in
Professional Studies at the RIT Centre for Multidisciplinary Studies

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EU	European Union
CEC	Central Election Commission
ICO	International Civilian Office
IMGD	Inter-ministerial Group on Decentralization
LLSG	Law on Local Self Government
MFE	Ministry of Economy and Finances
MLGA	Ministry of Local Government Administration
MoU	Memorandum of Understanding
NGO	Non-governmental Organization
PMU	Pilot Municipal Unit
PPP	Public Private Partnership
UNMIK	United Nations Mission in Kosovo

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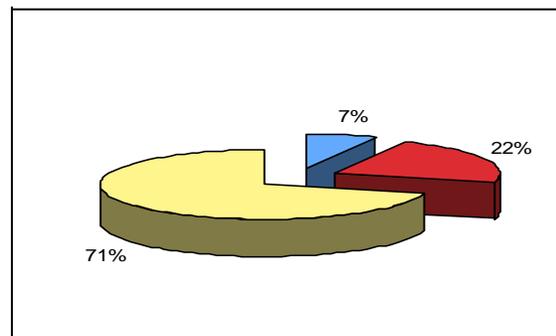
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Executive Summary

Kosovo is passing through a dramatic transitional phase of political, economic and social development. In these circumstances decentralization has taken primacy among political and institutional developments. This capstone project addressed the problem of the implementation of the Action Plan on Decentralization in Kosovo, used by the government as a “tool”, to implement the local reform in Kosovo. The capstone project examined the main issues through the process of decentralization, including the acceptance of the decentralization by the Albanians, being the ethnic majority in Kosovo, and the impact of implementation of decentralization on the integration of Serbs. In order to have to have a clear understanding of what citizens think regarding the decentralization process, there was a survey conducted with 100 citizens, plus 30 responsible people from Government, Municipalities, NGO-s and the Political Parties.

Level of satisfaction with decentralization

The survey from this capstone project showed that only 7 % were satisfied with decentralization. Over 71 % of interviewees were not satisfied enough and 22 % were not satisfied at all. (see figure)



The capstone project highlights that decentralization process in Kosovo is characterized by two issues: the legal and political. Under the legal, there need to be a transfer of power from central level toward the local authorities and politically there must be a strategy to overcome and resolve the concerns of minority communities.

The decentralization process must be organized on a more professional level. It must not be established on an ethnicity basis. In this regard, around the 56 % of the project survey respondents consider that the decentralization process did not improve interethnic relation. Decentralization needs to be politically rational and in advance to have a comprehensive consultation with citizens. In this regard, around 82% of respondents think that citizens have to be consulted in cases of the establishment of the

new municipalities. In general, there is an impression that decentralization was a benefit just for minority groups. Around 20% of the respondents think that from the decentralization benefits all citizens. The other part of respondents thinks that from decentralization benefited minorities groups only.

Recommendations of the capstone project show that the decentralization should be understood as part of local government reform and not only be understood as beneficial to minorities. The main outcome from the capstone project was to highlight the progress and the challenges of decentralization as a part of the local reform in Kosovo. This resulted with three main areas of recommendations:

- The legal framework on local self government to be reviewed and to be completed. The package of e-governance laws, Law on city of Prishtina, Law on naming the villages and settlements, are some of new laws that need to be approved. The existing legal framework should be reviewed, such as Law on local Self Government, Law on Public Private Partnership, law on Public Enterprises and Law on Managing the Municipal Property.
- After the decentralization process in terms of the "Ahtisaari package" has taken its form, the process of reform and decentralization should continue in the coming years fully in accordance with the European Charter of Local Self-Government¹. In this context, they should not be based only on ethnic criteria. Upon the creation of further new municipalities, it is needed to have preliminary consultations with citizens
- The decentralization reform must focus also on: administration reform (such as the size of the administration and institutional memory); political reform (to avoid the second round - ballot in the local election for electing the Mayor); and financial reform (to increase the financial autonomy of the municipalities).

¹ European Charter on the Local Self-Government

I. GENERAL INFORMATION ON THE ORGANIZATION AND FUNCTIONING OF LOCAL GOVERNMENT IN KOSOVO

Since 1999, Kosovo passed the transition from a centralist system toward a system of democratic values and free market. In this context, local government has had its steady progress over the years. In 1999, in accordance with the terms of the new situation created after the conflict, is the origin of a modern system of local government that aspires to be as close as possible to and to serve the citizens of Kosovo. In the same year the United Nations Mission in Kosovo² has began the process of transfer of competences.

In the wake of this process, Kosovo institutions have undertaken a range of activities for the implementation of the process of local government reform in terms of creating the legal framework to ensure a wider autonomy to municipalities. Regulation 2000/45 was the first modern organic law which paved the road and created conditions for the functioning of local governance based on principles of the European Charter of Local Self Government. In this regard, the main territorial unit of local government in Kosovo was the municipality, which exercises all powers that are not expressly reserved to the Central Government. Based on this regulation, the mayor was elected by the Municipal Assembly. In 2001 the "Constitutional Framework for Provisional Self-Government in Kosovo" entered into force. In that time the Central Government had a wide range of responsibilities in relation to local government level.

The Ministry of Local Government Administration was established in December 2004, as an effort of central government to create structures that would be exclusively in charge of local governance issues. The creation of the Ministry of Local Government Administration helped to create favorable conditions for policy making and sponsoring legislation for local self-government, to encourage and promote local self-government in accordance with the European Charter of Local Self Government, and to increase the coordination between the levels of governance.

² United Nations Resolution 1244

Since 2006, decentralization and its implementation as a process, was a topic of discussion in the negotiating table in Vienna³ when the Kosovo institutions began negotiations to define the final status of Kosovo. On February 2007, the UN Special Envoy, Martti Ahtisaari, delivered a draft status settlement proposal⁴ covering a wide range of issues related to Kosovo's future, in particular measures to protect Kosovo's non-Albanian communities. In the same year came a major step towards reforming local government in Kosovo. For the first time the citizens had the opportunity to elect directly their mayor.

On February 2008, the Kosovo institutions declared the independence of Kosovo⁵ and in these circumstances it was necessary to make changes in the legislation. Kosovo Assembly had expressed commitment to implement the "Ahtisaari Plan", which is incorporated even in the Constitution⁶ and in the laws which were approved by the Assembly of Kosovo. The decentralization chapter of the Ahtisaari package⁷ contained the basic provisions regarding the local reform. To implement this kind of reform for policymakers in Kosovo was needed, firstly, political consensus, number of certain laws to be approved by the parliament⁸, and public campaign, in order to inform the citizens particularly because community acceptance of the decentralization process, by both Serbs and Albanians, had two opposing dynamics.

Decentralization, however, took on negative connotations for the Serb community when decentralization was linked to, and understood as coming from, the package that paved the way for Kosovo Independence⁹. On the other hand Albanian population believed that the expansion of new Serbian municipalities into majority Albanian villages and the creation of new municipalities with a Serbian majority creates and strengthens Serb controlled areas. Because of this situation government officials faced various

³ Annual report of the ministry of local government Administration (2006)

⁴ Comprehensive settlement for final status of Kosovo, Ahtisaari document

⁵ Declaration of independence of republic of Kosovo, 17 February 2008

⁶ Constitution of republic of Kosovo, entered to power on 15 of June 2008

⁷ Chapter 3 of the Ahtisaari document

⁸ The Assembly of Republic of Kosovo, has passed 41 laws, in order to fulfill obligations regarding the Ahtisaari package;

⁹ Document, decentralization, 1 year on, published by Kosovo Local Government Institute

difficulties and challenges when attempting to proceed with the decentralization process. In this regard was needed time and resources to try and explain the benefits that decentralization brings Kosovo and its citizens. In this process was needed also a great deal of cooperation and coordination at both the horizontal level (central government level) and vertical level (centre and local government), on one hand and with citizens on the other hand. To implement the decentralization process it was needed to inform citizens through the public campaign¹⁰ and to have a wide range of political consensuses.

In this process, one of the greatest challenges for implementing the decentralization plan in Kosovo has been the level of acceptance from Kosovo Communities. Despite Government efforts, opposition from the both the Kosovo Serb and Kosovo Albanian communities has created a very delicate situation. In these circumstances, the situation was made even worse with the influence that came from Belgrade politics which had a negative impact on the integration of the Serbian community in the public institutions and public life in Kosovo.

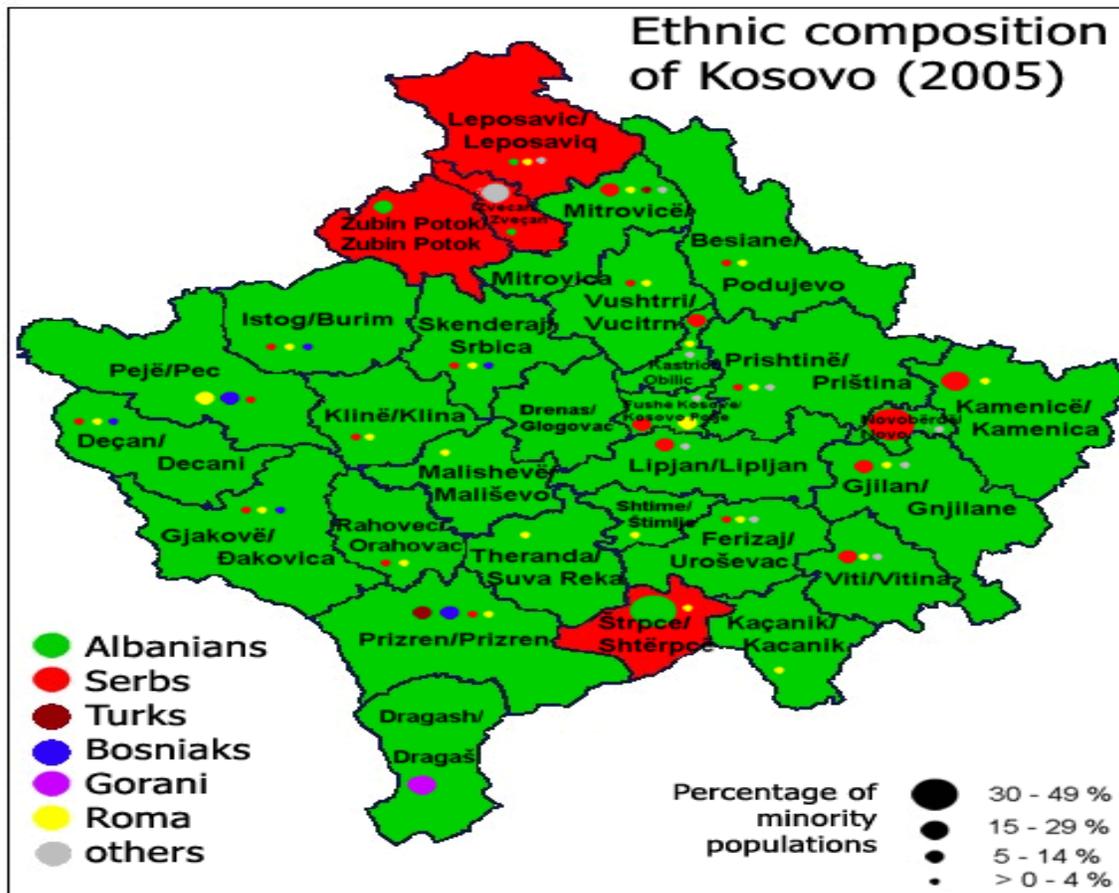
Meantime an Action Plan for the Implementation of Decentralization¹¹ was prepared to help implement the process of Decentralization. Recently, with the new constitution in place, after the declaration of independence, and with new laws that regulate the local government in the Republic of Kosovo, the territory has been expanded into 38 municipalities¹². The new Serb municipalities have been created and this will be the starting point for a long term integration of Serbs within Kosovo's social and institutional life.

¹⁰ Public campaign organized by Ministry of local Government Administration, since 2008

¹¹ Action plan on Decentralization, approved by government of Republic of Kosovo, may 2008

¹² Law on Municipal Boundaries

Figure 1. Ethnic Composition in Kosovo, year 2005



1.1 The current system of organization and functioning of Local Government

The organization and the functioning of the local government in Republic of Kosovo is guaranteed by the highest political and legal act, the Constitution of the Republic. With the entry into force of the Constitution of the Republic of Kosovo, the President of the Republic of Kosovo on June 15, 2008, has signed 41 new laws emerging from the Comprehensive Proposal for Kosovo's final status (the Ahtisaari package), the laws of course having been approved in advance by the Assembly. Within this package of laws were a series of laws dealing with the organization and operation of effective local government in the Republic of Kosovo including: the Law on Local Self-Government, the Law on Municipal Boundaries, (a law which has determined that the Republic of Kosovo consists of 38 municipalities of which 27 municipalities are governed by the Kosovo-

Albanian citizens, who in number are over 90% of all citizens throughout the state, and the majority in these municipalities; 10 municipalities led by Kosovo-Serbian citizens, who constitute about 5% of the country's citizens and the majority in these municipalities; plus, a municipality governed by Kosovo-Turkish citizens), the Law on Municipal Elections, Law on Education in the Republic of Kosovo Municipalities, and the Law on local government finances (see figure 2.6).

2. LEGAL FRAMEWORK FOR LOCAL SELF-GOVERNMENT IN THE REPUBLIC OF KOSOVO

Local government reforms, including the decentralization of authority from central to municipal level, should promote transparency, good governance, accountability, and effectiveness in public services. The legal framework on local self-governance in Kosovo meets the pre-conditions for establishing an advanced local government system, and provides a broad autonomy for the local leadership¹³. In this regard, this chapter will provide information on the legal framework for local self-government in the republic of Kosovo such as the basic principles of the European Charter of Local Self Government, brief history of the legislation, Constitution of Republic of Kosovo, Law on Local Self Government, Law on Local Election, Law on Local Finances etc.

2.1 Basic Principles of the European Charter of Local Self Government

The European Charter of Local Self-Government was adopted on October 15, 1985¹⁴ in the form of the Convention by the Committee of Ministers of the Council of Europe (see Annex I) and is open for signature by member states of the Council of Europe. It describes basic principles for local government and serves as a reference to the legal framework for local government in all member countries of the Council of Europe. The Charter establishes the principle of local self-government¹⁵. The concept of local self-government is stated in Article 3 of the Charter and includes "the right and ability of local authorities, within the limits of the law, to regulate and manage a substantial part of public affairs under their own responsibility and in the interests of the local population". Article 4 continues to describe the scope of local government including a basic description of "own" competencies and "delegated" powers. Paragraph 3 of this article requires that "public responsibilities be exercised generally, by preference, by those authorities which are closest to the citizen. Assignment of responsibility to another

¹³ Capacity assessment of municipal capacities, published by MLGA on 2009

¹⁴ European Charter of Local Self-Government has signed and ratified by 43 of the 47 member states of the Council of Europe

¹⁵ Article 2 of the European Charter

authority should consider the extent and nature of the task and demands for efficiency and economy". This principle is otherwise known as the principle of subsidiarity. Given the importance of the principle of subsidiarity, the Committee of Ministers of the Council of Europe adopted Recommendation no. R (95) 19 to implement the "principle of subsidiarity". Therefore, the Kosovo authorities had in mind the principles of the European charter during the overall process of drafting the new constitution and the basic legislation for local governance. Through the European charter are guaranteed some of the basic principles as described below:

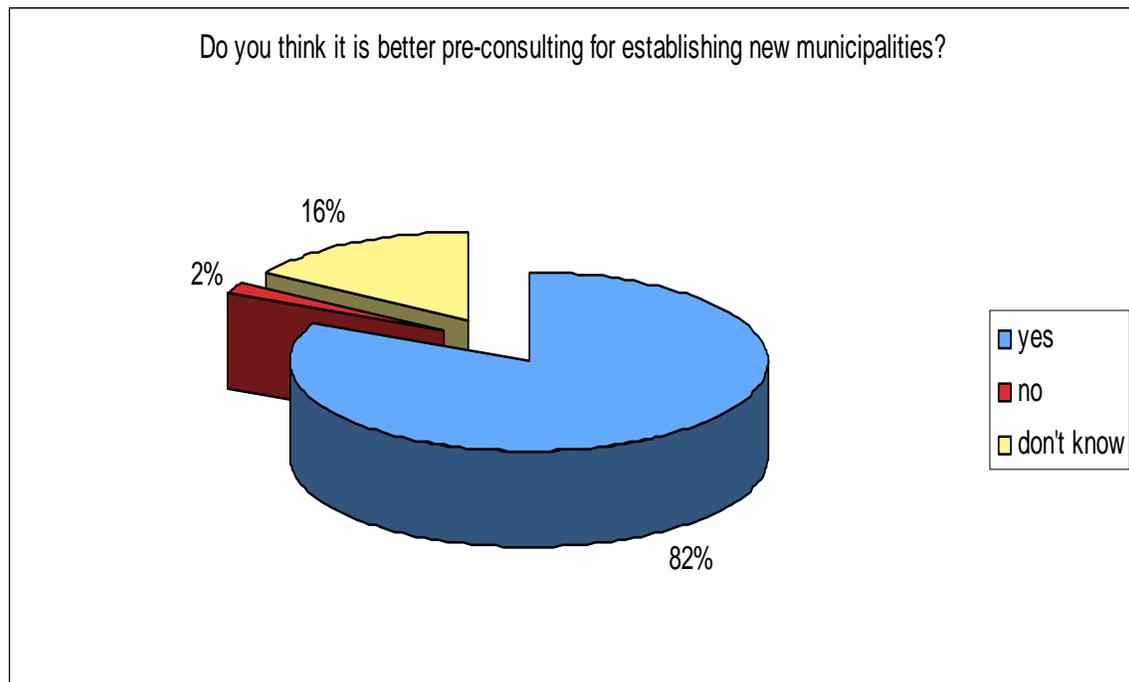
- The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
- Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
- Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
- Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly¹⁶.
- Proposals for changes to its boundaries, of which amalgamations with other authorities are extreme cases, are obviously of fundamental importance to a

¹⁶ European charter of local self government, article 4

local authority and the citizens whom it serves. Whilst in most countries it is regarded as unrealistic to expect the local community to have power to veto such changes, prior consultation of it, either directly or indirectly, is essential. Referendums will possibly provide an appropriate procedure for such consultations but there is no statutory provision for them in a number of countries. Where statutory provisions do not make recourse to a referendum mandatory, other forms of consultation may be exercised¹⁷

As we can see, most of the principles of the Charter have been adopted within the constitution and other laws, except consultation with citizens in the case of changing the boundaries. In the question toward the respondents “do you think it is better pre-consulting for establishing new municipalities, 82 % of respondents answer yes, 16% do not know the answer, and only 2 % say not (see figure 2.1)

Figure 2.1 “Do you think it is better pre-consulting of the citizens in cases of the establishment the new municipalities” (capstone project questionnaire, January 2011)

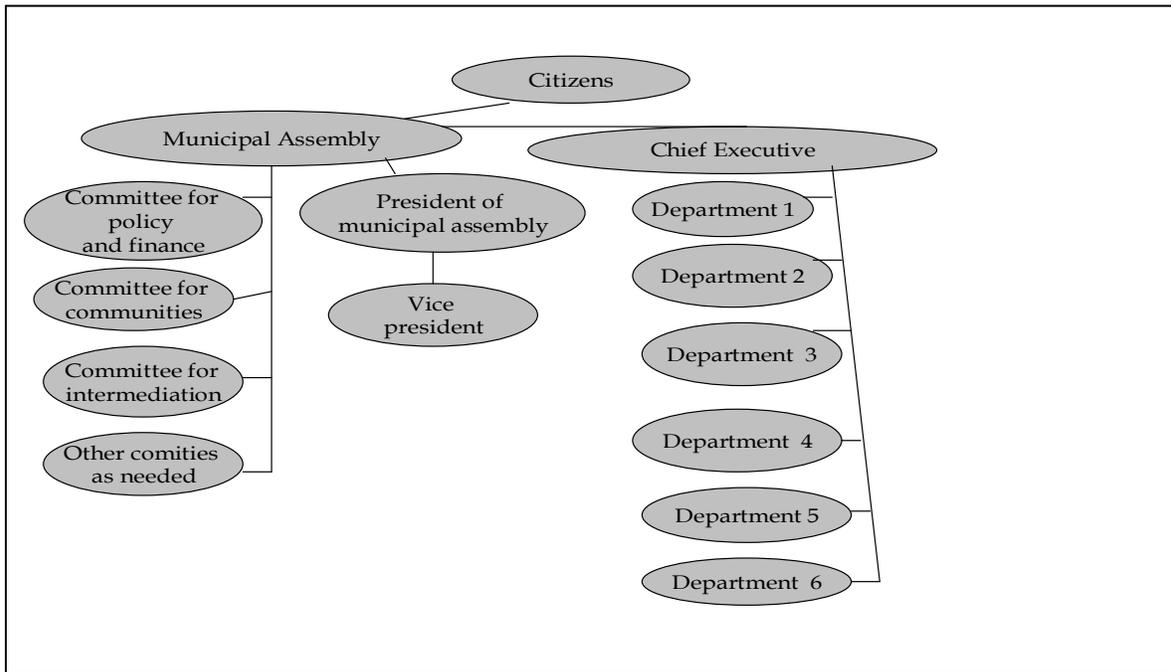


2.2 Legislation, Brief History (1999-2007)

¹⁷ European charter of local self government

Fundamental changes in political and economic system are accompanied by a comprehensive reform of the legislation that deals with local government. Principles of organization of local government are given by the UNMIK regulation 2000/45 which has provided the legal basis of Self-Government¹⁸.

Figure 2.2. Municipal organization based on UNMIK regulation 2000/45



In 2007, UNMIK repealed the old Regulation on "Municipal Elections in Kosovo"¹⁹ and promulgated a new one which created the legal basis for holding direct elections for mayors and municipal assemblies. This led automatically to change the UNMIK regulation 2000/45. The regulation 2007/30²⁰ was the new regulation that created the legal basic for organizing functioning of the local government in Kosovo. Regulation 2007/30, changed the organization and structuring of local government in Kosovo. It intended to strength the authority of the Mayor as the highest executive body elected directly by citizens. The Mayor of the municipality acted also as Chairperson of the Municipal Assembly. Based on this regulation the Municipal administration consist of the Department of Administration and Personnel, the Department of Health and Social Welfare, the Department of Education and Culture, the Department of Finance,

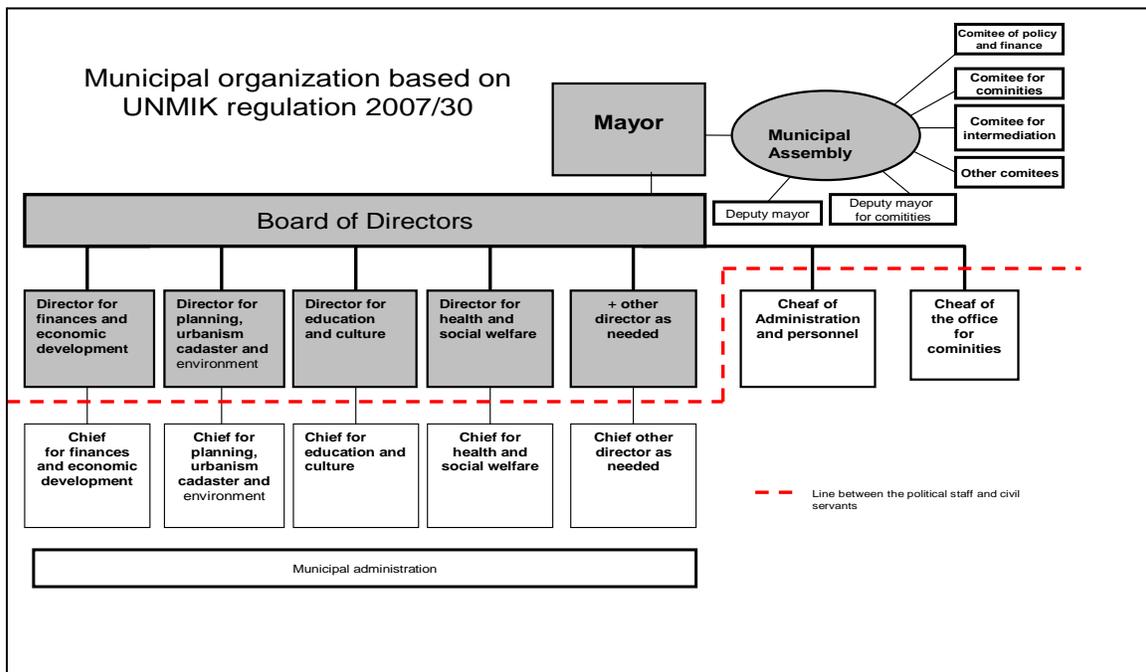
¹⁸ UNMIK regulation 2000/45 on Local self government of municipalities of Kosovo

¹⁹ UNMIK Regulation 2007/27 on Local elections

²⁰ UNMIK regulation 2007/30 on Local self government of municipalities of Kosovo

Economy and Development, the Department of Urban Planning, Cadastre and Environmental Protection, the Municipal Community²¹Office and such other Departments as deemed necessary and appropriate to carry out the functions and responsibilities of the Municipality. Each Municipal Department had a Director appointed by the Mayor and was responsible for direction and management of the Municipal Department. This regulation foreseen that each Municipal Department comprising municipal civil servants have a Head recruited in accordance with the applicable law on the Kosovo civil service²².

Figure 2.2.1 municipal organization based on UNMIK regulation 2007/30



On June 15, 2008 entered into force the Constitution of the Republic of Kosovo²³ as the highest legal act of the country which are defined the general principles of local self-government and the organization and functioning of local government. Pursuant to the constitution the most important step towards the advancement of the competencies of the local government and increased local autonomy is considered to be the new Law on Local Self Government. This law has been the basis of the democratic functioning of

²¹ Article 29.1 of the regulation 2007/30

²² Article 29.5 of the regulation 2007/30

²³ See chapter 10 of the Constitution of Republic of Kosovo

institutions at local level, based on the principles of European Charter for Local Self-Government.

2.3 Constitution of Republic of Kosovo

Chapter 10 of the constitution has defined the general principles of local governance as requiring that local self-government be explicitly regulated by law. Local government bodies should be elected directly by citizens in accordance with law. Exercise of the responsibilities of local authorities should be fully in accordance with the law and the European Charter of Local Self Government.

The constitution guarantees respect for the basic principles of local government which include good governance and the transparent, efficient, effective delivery of public services consistently for all citizens. The municipality remains the main unit of local government but has a higher degree of power and competencies. Article 13 of the Constitution of the Republic foresees that the Capital of the Republic of Kosovo, Prishtina, will have a special status and different organization. With the provisions of the Constitution (Article 124) is guaranteed the right of municipalities to cooperate with each other within their areas of competence, in order to perform the function of common interest in accordance with the principles of European Charter of Local Self Government. Also, municipalities have the right to cross-border cooperation and to enter into cooperative agreements within their own competencies and enhanced competencies. Administrative review of acts of municipalities will be covered by the central authorities, and is limited just to ensure the compliance with the Constitution and Law.

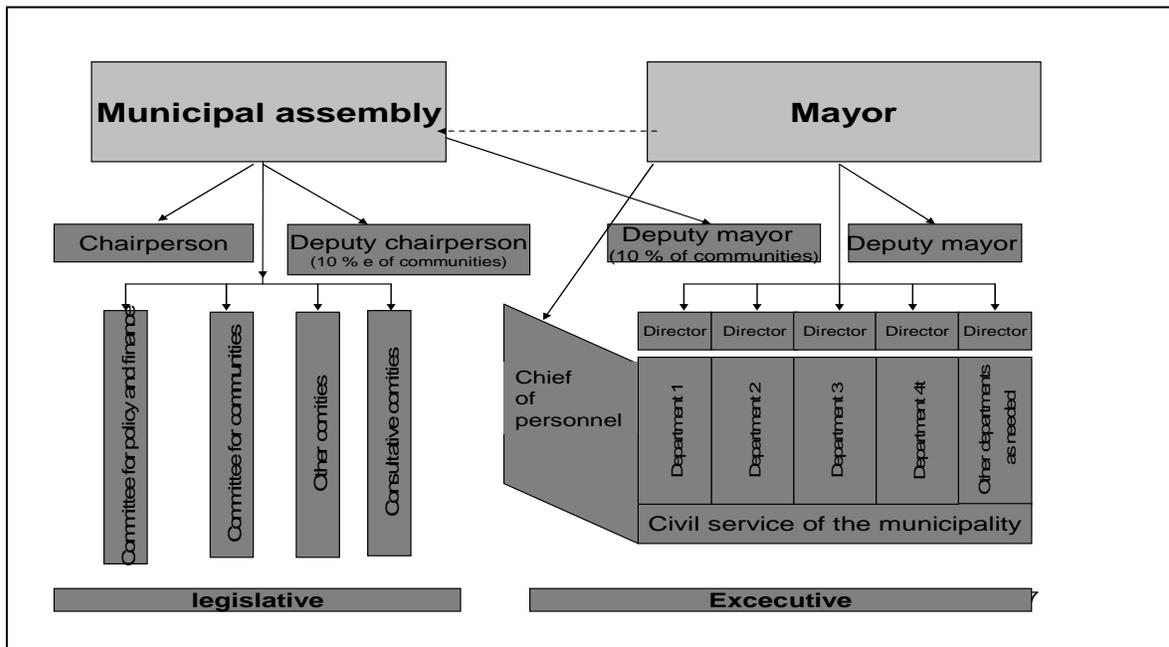
2.4 Law on Local Self-Government

The Law on Local Self-Government²⁴ has XI chapters (90 articles in total). This law defines the legal status of municipalities, the powers and principles of municipal finance, organization and functioning of municipal bodies, inter-municipal cooperation, including

²⁴ Law on Local Self Government No. 03/L040

cross-border cooperation and relations between municipalities and central government. This law also provides a one-tier system of local government with the municipality is defined as the main unit of local government, consisting of a community of citizens in a defined territory, as is foreseen by law, and shall exercise all powers which are not expressly reserved for the central institutions. Based on this law, the organs of a municipality are the Municipal Assembly and the Mayor²⁵. Municipalities exercise their own, delegated and enhanced competencies. Based on this law the Mayor of the Municipality shall be elected by a direct election in accordance with the law on local elections²⁶ and the mayor doesn't chair the municipal assembly. Also Directors of the municipal departments are appointed by mayor and there is no chief of department as it was foreseen with UNMIK regulation 2007/30²⁷ (see figure 2.4).

Figure no 2.4 municipal organization based on Law on local self government



2.5 Law on Local Elections

²⁵ Article 10 of Law on local self-government

²⁶ Article 56 of Law on local self government

²⁷ These two issues were the main changes between the new law on local self government and pervious UNMIK regulation 2007/30

The Law on Local Elections in the Republic of Kosovo is an act to determine the organization and conduct of direct elections for local assembly members and for mayors. The issuance of this law results in strengthening local governance through permitting direct election by citizens. The law is designed in conformity with legal standards with the aim of establishing a stable functioning system of local government in the territory of Kosovo, in providing better conditions for all citizens of municipalities, improving the efficiency of public services. Regarding the Electoral system, each municipality is considered a single electoral area. A voter may vote only for one (1) political entity that is certified in the official list of candidates. Each certified political entity is required to present in an "open list" of candidates for each municipality in which the certified political party is contesting the election. Voters may vote for up to ten (10) candidates from the list of candidates of a single political entity. The distribution of seats in the municipal assembly is made according to a general formula set by law. The Law on Local Elections also defines criteria for candidates for mayor. Apart from other general conditions they must have been a municipal resident for at least (3) years. The candidate is elected as Mayor if he wins more than 50% plus one (1) vote of the total valid votes. If no candidate wins more than 50% plus one (1) vote of the total valid votes cast in that municipality, the CEC organizes a second round of elections between the two candidates who received the most valid votes. The candidate who receives the most votes in the second round is elected Mayor. The mandate of the Municipal Assemblies and Mayors ends in the same month in the fourth year after the date of regular elections. The Mayor and members of the Assembly may not be members of any other elected body. Local elections are set and announced by the President of Kosovo, after consultation with political parties. Elections to local self-governing bodies are held on a Sunday every four (4) years. Final election results are certified by the Central Elections Commission.

Other issues that are foreseen in the law respecting international standards are:

- Right to vote,
- registration and certification of candidates;

- Code of Conduct for political parties,
- candidates and their supporters; elections
- costs for local branch
- announcement of elections and events;
- campaigns for political
- media during the election campaign,
- observers;
- election
- Central Elections Commission;
- municipal election commissions;
- advice of polling;
- the polls;
- voting abroad;
- vote of persons with special needs;
- process of counting ballots and election results;
- announcement of elections
- informing the voters and the media, and commission for complaints and appeals.

2.6 Law on Municipal Boundaries

Law for the administrative boundaries of municipalities regulates the territorial organization of local self-government in the Republic of Kosovo, establishes new municipalities, delineates the territory of a municipality as the unit of local self-government, defines the administrative municipal boundaries, names and residencies of the municipalities, sets forth the provisional arrangements between the existing and new municipalities established under this law, as well as defining the procedures for alteration of administrative municipal boundaries²⁸

²⁸ Article I of the Law on municipal boundaries

Figure 2.6 Map of the Municipalities of Kosovo (based on Law on Municipal boundaries)



Figure 2.6.1 List of the Municipalities Regulation 200/43

1. Deçan
2. Gjakovë
3. Glllogoc
4. Gjilan;
5. Dragash
6. Istog
7. Kaçanik
8. Klinë
9. Fushë Kosovë
10. Kamenicë
11. Leposaviq
12. Lipjan
13. Obiliq;
14. Rahovec
15. Pejë
16. Podujevë
17. Prishtinë
18. Prizren
19. Skënderaj
20. Shtime;
21. Shtërpcë
22. Suharekë
23. Ferizaj
24. Viti
25. Vushtrri
26. Zubin Potok
27. Zveçan
28. Malishevë
29. Novobërdë
30. Mitrovicë

Fig 2.6.2 Three PMU-s created by UNMIK Administrative Order on 2005

1. Junik
2. Hani i Elezit
3. Mamushë

Figure 2.6.3 Five +1 new created Municipalities by law on municipal boundaries

1. North Mitrovica
2. Graçanicë
3. Ranillug
4. Partesh
5. Klllokot +
6. Extended Novobërda

The law on municipal boundaries foresees that establishment of new municipalities, merger, separation, alteration of administrative municipal boundaries, and delineation of the name or residency of the municipality shall be effected through a revision or amendment of this Law. The administrative boundaries of municipalities shall not be altered prior to consultation with citizens of municipalities or parts of municipalities affected by such alteration²⁹, The Territorial Organization of Local Self-Government is foreseen by law on municipal boundaries³⁰. (see figure no.2.6.1)

2.7 Law on local finances

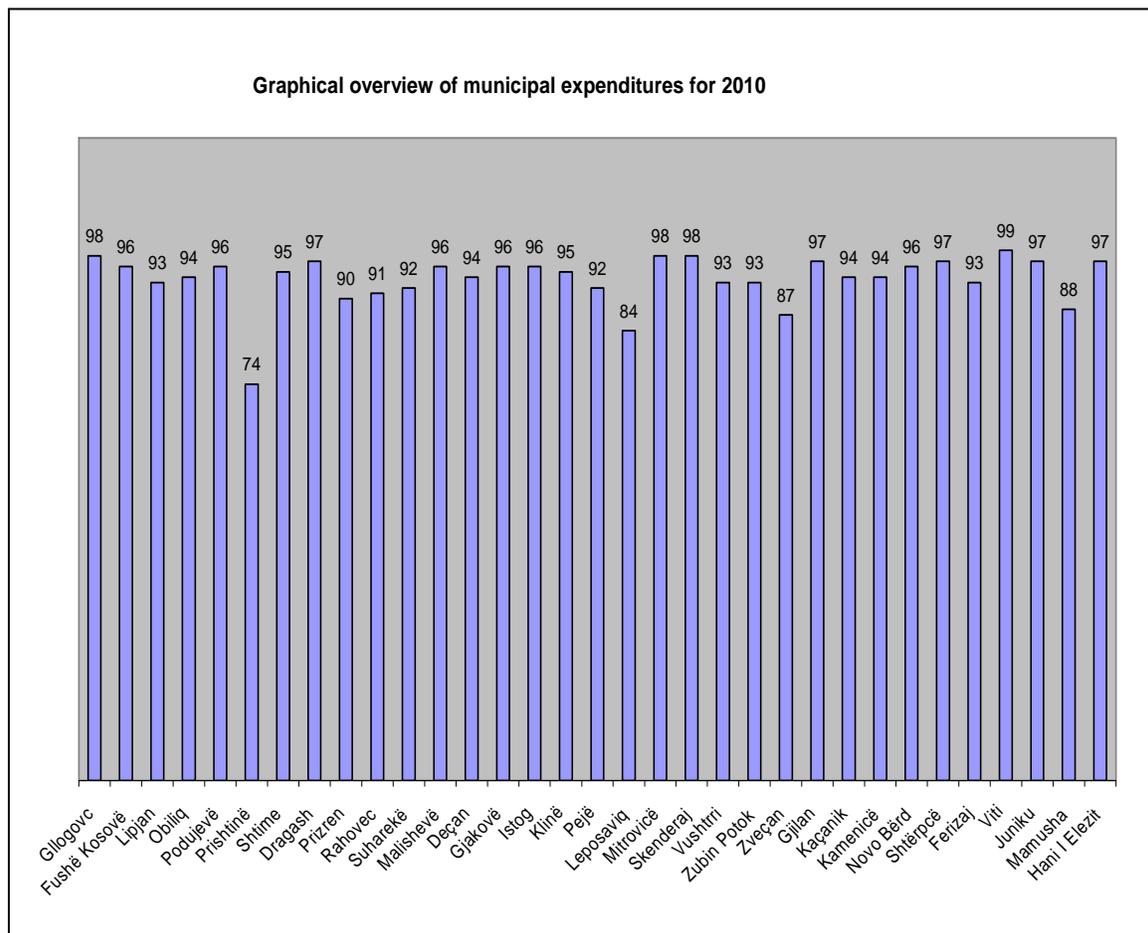
The law guarantees the independence of local finance in accordance with national economic policies and considering fiscal sustainability of municipalities and the Government of Kosovo. The law creates a solid foundation for the independence of the municipal budget and categorizes the sources of municipal financing. Based on this law, Kosovo municipalities shall be entitled, within national economic policy and having due regard for the municipalities and the central government fiscal sustainability, to adequate

²⁹ Article 9 of the Law on Municipal boundaries

³⁰ Article 5 of the Law on Municipal boundaries

financial resources of their own that they may dispose of freely in the discharge of their municipal competencies in accordance with the applicable laws of Kosovo³¹. This law guarantee the municipal autonomy, consists of municipal financial recourses; Categories of Own Source Revenues; Charges, Rents, Fines and Co-Payments and Other Own Source Revenue; governmental grants and other institutional provisions. Below is a table which shows the balance of municipal expenditures for the years 2010³².

Figure no 2.7 "Municipal expenditures for 2010"



³¹ Article 2 of the Law on Local Finances

³² Municipal Financial Report, 2010, published by Ministry of Local Government Administration

3. REFORM OF LOCAL GOVERNMENT AND DECENTRALIZATION IN KOSOVO - OPPORTUNITIES AND CHALLENGES

The decentralization process is associated with other important political developments in the country, namely the independence of Kosovo on February 17, 2008. With the proclamation of Kosovo as an independent, sovereign and democratic state, the Assembly has expressed commitment to implement the Comprehensive Proposal for Kosovo Status Settlement³³, which is incorporated in the Constitution and national legislation of the Republic of Kosovo³⁴. In this chapter will be treated the political aspect of reform and decentralization and the administrative aspect of the reform and decentralization

3.1 Political aspect of reform and decentralization

Kosovo has inherited the system of local self-government from ex-Yugoslavia, as it was part of it until 1999. Since the establishment of international administration until now, Kosovo has gone through a long process of reform of local government and decentralization. From time to time, decentralization and reform of the power of local authorities has been used as a tool that ensures integration of communities and it has consistently been the subject of negotiations in attempts to resolve the final status of Kosovo. However, after this period, after the declaration of independence of Kosovo, decentralization has played a key role in efforts to integrate the Serb community in social and institutional life. Even further, decentralization remains one of the main issues following the new state because, especially in the north part of the country, the Serb minority is unwilling to accept the decentralization plan, and one new municipality for their benefit is still only partly completed.

³³ Ahtisaari document

³⁴ Concept paper on presenting the decentralization on Public (document published by Ministry of Local Government Administration)

In another aspect, the decentralization process was followed with the transfer of powers and responsibilities to municipalities guaranteed and defined by Regulation 2000/45³⁵. Based on this Regulation, the municipalities were obliged, inter alia, to deliver the social services, housing, primary health care to urban planning and public services, including emergency and fire services³⁶. In addition to these powers, municipalities can also take action in relation to other matters of interest to the municipality, such as tourism, culture, sports, youth activities and economic and civic promotion³⁷.

Responsibilities of local government were expanded into areas that reflect directly on the services they provide to citizens, including competence in the field of preschool, primary and secondary education, primary health service, local economic development, planning and rural development, public housing, naming of streets and public squares, and other municipal services.

Some years later, in the wake of efforts to reform local government, decentralization was used as a tool that helps in reducing ethnic tensions in Kosovo after the war. At the request of the Presidential Declaration addressed through the Security Council on April 30, 2004, was established a Working Group on Local Governance co-chaired by UNMIK and the Provisional Institutions of Self Government in Kosovo. The resulting 'Framework Document' aimed at a better local governance for all citizens of Kosovo, to show more power transferred to municipalities, to create a line of demarcation between the powers of central and local level, to create an effective system of oversight of legality in municipalities, creation of new municipalities as pilot projects on the basis of ethnic composition, and increasing citizen participation in decision-making processes. Meanwhile, in the wake of efforts of the central government, within its organization to have a structure that would be responsible for local government, the Ministry of Local Government Administration was established. This ministry is responsible for matters relating to the promotion of effective local government.

³⁵ UNMIK regulation 2000/45 on local self government of Municipalities of Kosovo (11 August, 2000)

³⁶ See article 3 of the UNMIK regulation 2000/45

³⁷ See article 3.2 of the UNMIK regulation 2000/45

In 2005, the idea for the creation of some pilot municipalities, within the existing territory of the municipalities materialized when UNMIK issued an Administrative Order for Pilot Projects. According to the Administrative Order it was foreseen to establish five pilot municipal units specifically Junik, Hani i Elezit, Partesh, Graçanica and Mamusha. Two of these with a majority Serb population (Partesh and Graçaniça) were not realized because of their refusal.

In 2006, the process of local government reform and decentralization was the topic of discussion at the negotiating table in Vienna, when the Kosovo institutions have begun negotiations to define the final status of Kosovo. The international community insisted in creating several Serb-majority entities as this seemed like an opportunity for their integration.

Later on, in 2007³⁸, is considered to be the main step of speeding the local government reform in terms of developing a genuine local democracy. For the first time, the mayor was elected directly by citizens. Election to the municipal structures arises as a result of the election system with open lists for the Municipal Assemblies and the direct election of mayors by citizens. There is a strong mayor with executive powers and at the same time a municipal assembly which is voted through the open lists. The political aspect of local government reform and decentralization extended to the creation of new municipal structures.

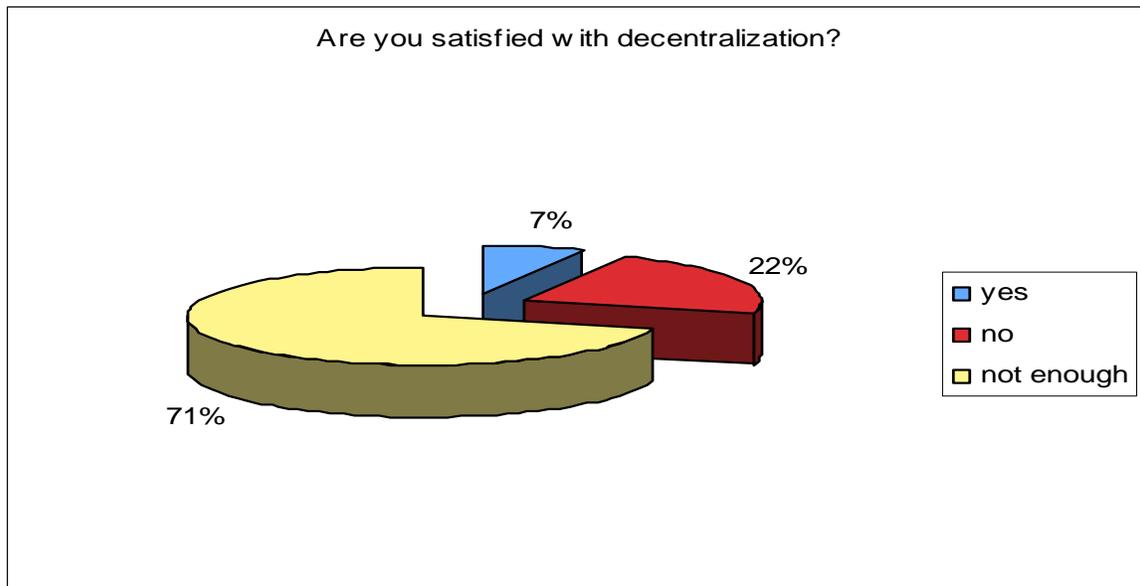
In 2009, were held the first elections after the independence of the state. Through this elections were created new municipalities: Graçanica, Rranillug, Klllokot and expanded Novo Bërdë. Progress in the establishment of new municipalities has continued with the municipality of Partesh. On June 2010, were successfully held the local elections for the new municipality of Partesh³⁹. New municipalities (Graçanica, Ranillug and Klllokot) have adopted the necessary legislation to continue their work. Municipalities have also organized their administration and have completed their staff. By October 2010, the process of hiring staff in these municipalities was over 70% complete and meets their

³⁸ UNMIK regulation 2007/27 on local election

³⁹ Inter-ministerial Group on Decentralization Report (February-August, 2010)

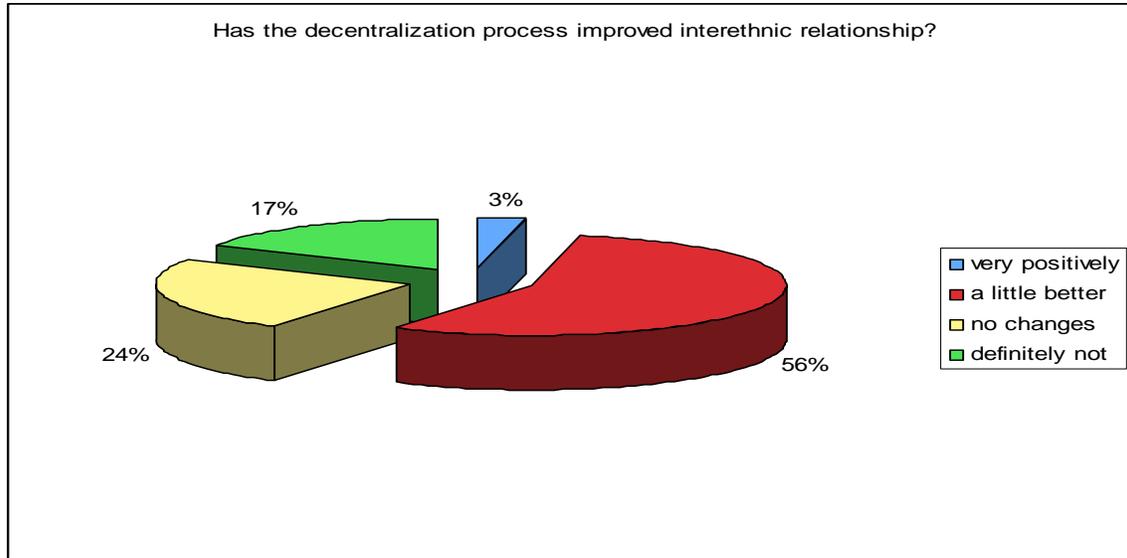
needs depending on the management of these municipalities. These new municipalities have their budgets and documentation was systematically transferred from 'mother' municipalities. The municipalities of Gracanica, Klllokot, Ranillug and Novo Brdo received most of cadastral documentation, property tax records, financial records and registry entries from the Municipalities of Pristina, Fushë Kosova and Lipjan, Gjilan, Viti and Kamenica respectively. On the other hand, even though there is considerable progress in establishment and functionalizing the new municipalities, there has not been enough progress in creating the new municipality of Mitrovica North. Because of the tense situation and ethnic problems, the ongoing process of creation of this municipality is still facing with difficulties. Sometimes the integration of Serb minorities through the decentralization process seems to be in doubt. Three existing northern municipalities, Leposaviq, Zubin-Potok and Zveçan, have no collaboration with the Kosovo authorities. On the question of whether respondents are satisfied with decentralization, in only 7 percent of cases the answer is yes, 71 percent say no and 22 percent say not enough. From discussions with focus groups, the respondents say that decentralization has isolated Serbs and put barriers to their integration, concentrating them only in certain territories, and limiting their participation in the political and social life throughout the territory of Kosovo.

Figure 3.1 "Are you satisfied with decentralization" (Capstone project questionnaire, January 2011)



On the other question, if decentralization in political terms has improved interethnic relations, the answer was slightly better in 56 percent of cases, 24 percent had not noticed any change, 17 percent are of the opinion that there are definitely no changes and just 3 percent of the respondents think that this process has had a positive effect.

Figure 3.1.2. "Has the decentralization process improved the interethnic relations?" (Capstone project questionnaire, January 2011)



3.2 Administrative aspect of the reform and decentralization

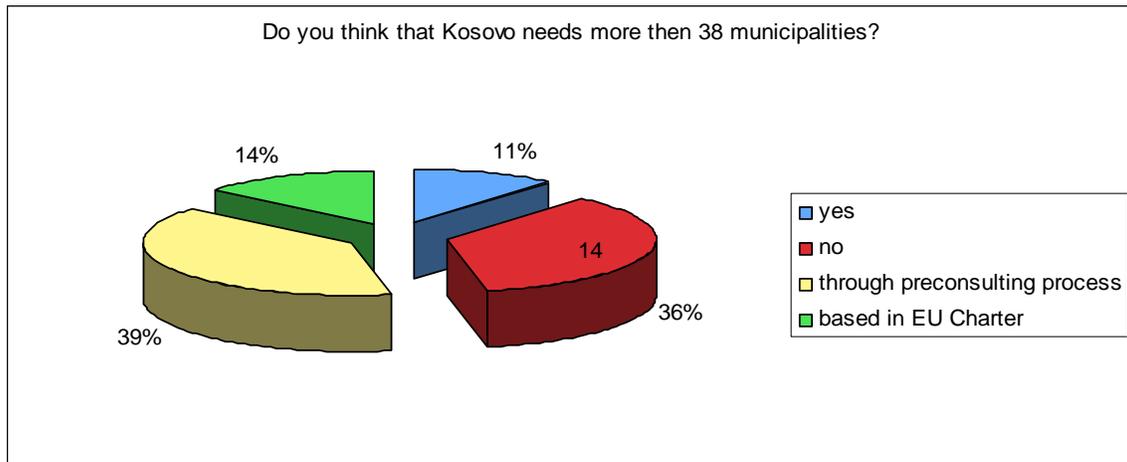
Administrative aspects of reform in terms and conditions of a normal functioning of a state should have the right proportion among three main components:

- The number of municipal officials
- Territory
- Population

The demographic changes that occurred in Kosovo after 1999 made a misbalanced relationship between the territory, population and the number of staff of the municipal administration. A challenging element in terms of local government reform is the establishment of administrative territorial units in small and rural areas. The experiences of other countries, shows an increase in the expenses for municipal staff and imply high cost of service delivery in general. It can be argued that smaller units spend more budget

for the administration expenditures, while providing very small percentage of revenue from taxes and fees, as own revenues. This indicates that smaller units with their budget just manage to keep the administration, but struggle to meet the minimum essential public services. Kosovo is a small country, around 10,887 km². A large number of local government units may be a burden on the poor budget of the country. Currently, the total number of units of local government is 38⁴⁰. However, it seems that the existing number of municipalities will be increased, because other communities have already distributed their requests. In this regard, when the respondents have been asked, if Kosovo needs a larger number than 38 municipalities answer was as follows: 36% of respondents answering no, 39% of respondents think that this should be done through a consultative process, 14% answer as is prescribed by the European Charter, while only 11% respond yes.

Figure 3.2 “Do you think that Kosovo needs more than 38 municipalities?” (Capstone project questionnaire, January 2011)



In addition, one of the key components for the effective functioning of administration and local government reform is also the professionalism of the staff of the Municipal Administration. If we consider that in rural areas the level of education is lower and given the experience with the PMUs⁴¹ where there were difficulties in recruiting professional staff, we can conclude that the low level of professionalism can bring about a reduced quality of work of the local administration, at a time when the demands of

⁴⁰ Law on Municipal boundaries

⁴¹ Report on developing the Municipal Pilot Units, year 2007, published by Ministry Of Local Government Administration

decentralization is deepening. Thus, we can see the risk from the number of new municipalities that have lower populations and a large percentage of administrative staff without higher education. This phenomenon has limited options for selecting the professional staff of the municipal administration of new units that are located in rural areas with a small population. On the other hand, if we start from an assessment of the real situation in the field the level of capacities of municipalities in general is in a medium level. Even though most of them have tradition, the lack of capacities is evident especially in the following areas: communication, strategic planning, public utilities, human resource management and local finances⁴². The new approach of the reform should move in the opposite direction to the creation of new municipalities with a significant ethnic element. Size has an important and complex impact on the capacity of local and regional authorities to function and perform their tasks as well as on the effectiveness of local and regional democracy. Efforts are rightly focused on achieving the optimal size, however there is no standard optimal size applicable to all situations. The optimal size is dependent on factors such as the distribution of competences between levels of government, the degree of financial autonomy and the existence of financial equalization systems. In the case of Kosovo, the establishment of new municipalities should take into account criteria such as the number of inhabitants of the municipality. For example a minimum of 7000 to 8000 inhabitants, the suburban residence distance from the center of the unit is less than 20 km, the traditional historical-geographical connection is respected, etc. Principles on which the community must rely on the creation of new municipalities should be efficiency and effectiveness, functionality and stability, subsidiarity, citizen's participation and consultation; these principles will ensure local self-functionality and sustainability⁴³. According to an analysis of the Ministry of local government administration in relation to services provided per capita in the municipality appears to have a total disproportion and numerically can reflect as follows: in Novobërda the number of administrative staff that provide services total one employee for 69 inhabitants, and in Prizren, a worker provides for 711 inhabitants (see the table below).

⁴² Capacity Assessment Report of the Municipalities, published by Ministry Of Local Government Administration, year 2009

⁴³ Principles and criteria's for establishment if the new municipalities, document published by Ministry of Local Self Government

Figure 3.3 Number of the municipal staff based on the approval budget for 2008⁴⁴

No.	Municipalities	Population	number of municipal staff, conform the approval budget for the year 2008	number of municipal staff toward the number of inhabitants
		1	2	3=1/2
1	Glllogoc	60,000	140	428.57
2	Fushë Kosovë	35,000	136	257.35
3	Lipjan	75,000	186	403.23
4	Obiliq	26,000	92	282.61
5	Podujevë	117,000	221	529.41
6	Prishtinë	400,000	678	589.97
7	Shtime	28,000	85	329.41
8	Dragash	35,000	128	273.44
9	Prizren	214,963	302	711.80
10	Rahovec	63,000	163	386.50
11	Suharekë	80,000	156	512.82
12	Malishevë	52,000	155	335.48
13	Deçan	38,240	114	335.44
14	Gjakovë	115,000	269	427.51
15	Istog	44,000	138	318.84
16	Klinë	44,000	139	316.55
17	Pejë	115,000	305	377.05
18	Leposaviq	19,000	118	161.02
19	Mitrovicë	110,000	376	292.55
20	Skenderaj	56,000	190	294.74
21	Vushtrri	75,000	223	336.32
22	Zubin Potok	15,000	126	119.05
23	Zveçan	16,000	63	253.97
24	Gjilan	110,000	271	405.90
25	Kaçanik	32,861	111	296.05
26	Kamenicë	55,000	184	298.91
27	Novobërdë	5,000	72	69.44

⁴⁴ Evaluation of the municipal staff based on the approval budget for 2008, published by Ministry of Local government Administration

28	Shtërpcë	11,000	69	159.42
29	Ferizaj	111,000	243	456.79
30	Viti	51,000	166	307.23

Although the Government of Kosovo, has made an effort to determine the criteria for the size of municipal administration the decision has still not been implemented. The governmental decision brings two (2) criteria:

- (I) basic criteria: - that all municipalities regardless of their size, based on obligations arising from the operation of their legislation need a minimum staff of 55.
- (II) A ratio of staff to municipal size

Unfortunately the specific ratios proposed in the decision are confusing, however, considering the text of the decision and the included illustrative table, the proposed number of staff would seem to be that for municipalities with more than 100,000 inhabitants there should be 1 administrative officer to serve 750 citizens except Pristina that should have 1 for 1,000 citizens. Municipalities that have fewer than 100,000 inhabitants should have 1 administrative officer to serve 620 citizens.

Staff calculated according to the supplementary criteria, is available to the relevant municipal authorities, to allocate according to local municipal policy goals, priorities, etc.⁴⁵.

If you do an analysis of the EU practices today, we see as a tendency of the European Union member states and candidate countries to decrease the number of administrative units. A reform in relation to the reduction of local government units is made by a number of Balkan countries. In this respect Greece some years ago, has made a substantial reduction of administrative units. The Czech Republic⁴⁶ and Slovakia during the last decade have reduced 50% the number of local units.

⁴⁵ Government decision on the criteria's of the municipal staff no. 10/45, date 03.12.2008

⁴⁶ <http://publius.oxfordjournals.org/cgi/content/abstract/34/1/35>

Experiences of countries that have carried this reform show that there is not a universal model that can be exported to be implemented; this means that territorial reform is more an “political compromise” than a science that can be applied equally everywhere.

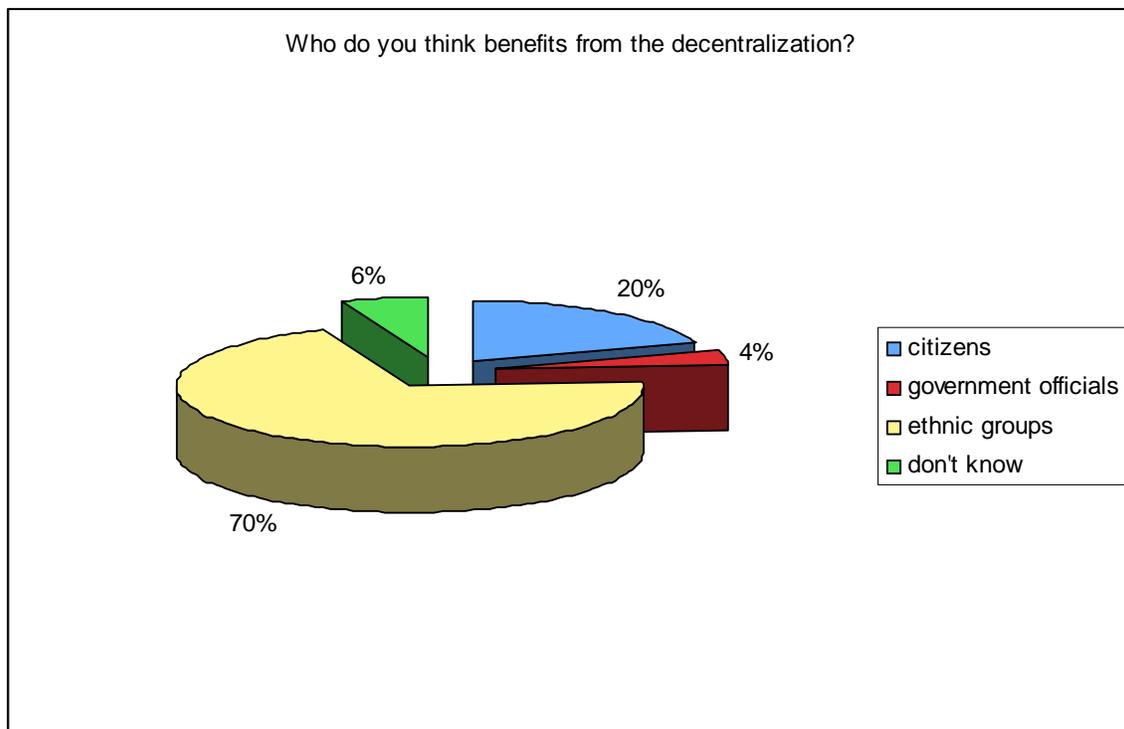
During the last three decades most European countries have passed through a politico-administrative reorganization. Decentralization and territorial administrative reforms have been the dominant patterns of these reforms. Within the process of reorganization have passed almost all older member countries of the EU and other new member countries (such as the Czech Republic, Poland, Slovakia) in order to adapt to the reform policies in the EU). In the case of Kosovo, in addition to the aforementioned elements in the process of government reform and implementation of decentralization, should be reconsidered also the creation of new municipalities.

In this regard decentralization as part of local government reform aims to mobilize the contribution of central and local level to ensure local autonomy in order to create consolidated and sustainable local institutions, to improve effective administration capable of providing services for citizens and communities, and for the public good. In this regard, in terms of implementation of a genuine reform, will remain many joint actions of central and local institutions, ranging from the census, implementation of new legislation of local governance and functionalizing the new municipalities.

4. DECENTRALIZATION, THE CASE OF KOSOVO

The idea to promote decentralization, did not happen spontaneously, but rather was politically motivated. All was materialized with the comprehensive document for the final settlement of the status of Kosovo (the Ahtisaari document)⁴⁷. There were many controversies at that time and there was an impression that decentralization was a process that favored only the Serb community. This can be seen from the responses of respondents: 70 percent said that they think that the Serb minorities benefited through this process, 20 percent think that all citizens benefited, 6 percent said do not know and 4 percent think that from this process benefited the governmental officials.

Figure 4. "Who do you think benefits from the decentralization?" (Capstone project questionnaire, January 2011)



⁴⁷Chapter 3 of the comprehensive proposal for the final status of Kosovo

On the other hand, a complex situation was the extent of sovereignty in the north of the country. Whilst we had the situation of three municipalities with Serbian majority which have no communication with the central government in Prishtina, and are outside of the jurisdiction of the state of Kosovo, based on the respondents opinion could be considered that there was no need to create new entities within the territory to integrate the Serb community into social and political life. As a bad example of no collaboration of the three municipalities in the north (which claim territorial autonomy as expressed by an assembly held at one of the municipalities in the north) at the same time to create new structures across the country was very confusing for citizens. One aspect of this was that even Albanians refused to be part of this process. We have the case of Gjilani municipality where some citizens should now travel for 22 kilometers for services, instead of two kilometers to reach services in Gjilan municipality, because with the new division of the territory they are part of the municipality of Novobërdë.

Decentralization under normal circumstances is considered a long term process and evaluation of the advantages and results requires longer period of time. Decentralization is a multidimensional phenomenon and includes a wide range of changes deriving from transfer of competencies, respectively, transfer of authority and responsibility from central to local level.

Responsibilities of local authorities are continuously expanding into areas that reflect directly on the services they provide to citizens, including additional powers in the fields as follows:

- preschool, primary and secondary education;
- Primary Health Service;
- Local Economic Development,
- Planning and rural development;
- Public Housing;
- Naming of streets and squares, and
- public utility services

Recently, with the approval of the legislative package in the field of local government, there is thrown another step towards the transfer of responsibilities and powers, but the achievement of goals and targets is very challenging. Another important element is the institutional commitment towards capacity building at local level. This introduces a problem when we consider that the treatment and professional capacity building in municipalities is done without any coordination between local institutions and donors.

In addition, the process of decentralization should go hand in hand with the strengthening of fiscal autonomy. The new law on local finances of the Assembly of Kosovo enables the necessary resources needed by the local government to exercise its functions. However, we are dealing with an area that needs ongoing systematization and requires extensive involvement of local communities on issues of governance, tax collection rates and fiscal policy in correlation with the capacity and local economic development parameters. The data shows that even the states with a strong economic position and high democratic participation reach the highest percentage of local budget for municipal administration in comparison to with the overall public spending (some over 30%⁴⁸) as illustrated below:

- Switzerland 27.9%
- Denmark 31.28%
- Finland 29.5%
- US 32.0%

The current figure for Kosovo is 24.9%

An important aspect concerning decentralization as part of reform remains absolutely coordination and cooperation with major donors to implement their programs. In this regard, the World Bank and other interested partners, national and international, may be involved in implementation of the decentralization process with special focus on assistance to municipalities in the development of management capacity to successfully take over new responsibilities.

⁴⁸ The financial Resources of Local Authorities in Relation to Their Responsibilities,, Council of Europe, Strasbourg, April 1998.

If we consider that decentralization improves governance qualities in terms of efficiency as well as in strengthening accountability, increasing transparency and involvement of citizens and communities in governance, the project for local government reform should be in full compliance with the Charter European Local Self Government.

There is an inevitable tension between economic efficiency and decentralization. The closer you get to citizen participation in smaller units you get further away from the efficient scale of larger units. It can be illustrated that the socialist states represent a high level of economic efficiency, however, the exclusion of the mass of people from participation in decision making has (demonstrably in Eastern Europe) led to a complete collapse of the system, including economic collapse. The 'ideal' is a balance between small units (high decentralization) that allow people to be involved, and efficiency (in the use of scarce financial resources).

In upcoming years the program of local government reform will focus on the following components:

- Fiscal autonomy of municipalities that will change and improve collection of their own taxes and fees. At the same time transfers from the consolidated budget is transparent, objective, based on analytical formula and based on performance criteria of the municipalities in relation to the provision of citizen services;
- Territorial boundaries and administrative units as established by law;
- The creation of new municipalities to be based on democratic and functional criteria, excluding an ethnicity based element;
- Efficient public administration, devoted to law enforcement and provision which means stable and better services for citizens, able to produce and implement policies, with civil servants recruited and assessed by professional qualities, experience, merit and commitment to tasks.

- Management and transfer of public utilities, social and cultural and public property;
- Exercise of powers in education, health, social services, primarily based on the coordination of activities, partnerships, decentralization and deconcentration of power, in relation to central government.

Finally, the decentralization process aims to provide decision-making closer to citizens, the expansion of local autonomy, including the expansion of powers in many areas. But, to all these above mentioned elements of decentralization, in the case of Kosovo is added another component that is based on a comprehensive plan for Kosovo's status, addressing the specific concerns of non-majority communities⁴⁹. This is a main reason that in the future, when Kosovo has fulfilled all the obligations regarding the international community in the name of independence, to revise this system and to establish another system based in the principles of the local democracy.

⁴⁹ Ahtisaari document, chapter 3

5. IMPLEMENTATION OF THE PLAN OF ACTION ON DECENTRALIZATION

On 2008, after the entry into force of the legislative package for Local Government was opened the way for implementing the decentralization process in Kosovo. In this case, with the proposal to have a comprehensive coordination of all activities was approved an action plan on implementation of decentralization in Kosovo. In the action plan is reflected the strategic goal of the Government to establish a stable and effective system of local government throughout the territory, which will provide better conditions of living for all its citizens by appropriate attention to special needs of non-majority communities in Kosovo⁵⁰.

The Decentralization Action Plan was approved by the Government and based on it was established the Inter-Ministerial Group on Decentralization (IGD), composed of most of the Ministers of the Government. This governmental body is responsible for coordinating the government policies in implementing the decentralization process in the Republic of Kosovo. The mandate of the IGD was set by the Decision of the Government⁵¹. This group is co-chaired by the Ministry of Local Government Administration and the International Civilian Representative Office in Kosovo. Within the inter-ministerial group on decentralization, the action plan 2008 operated five working subgroups: Subgroup to Reform Legislation; subgroup for Transfer of Competences and Resources; subgroup for Establishment of New Municipalities; Subgroup on Capacity Building and Donor Coordination and Subgroup on Information Campaign for Decentralization.

Working group on the Reform and Legislation has treated entire existing legislation and has given recommendations for harmonization of new laws relating to local government. This group has compiled a list that identifies collision of laws,

⁵⁰ Action Plan on decentralization

⁵¹ Governmental decision no.04/14, date 3 April 2008

especially with the Law on Local Self-Government. This group has made proposals for amending laws where it is seen as necessary, and depending on the sectoral areas has created functional committees from the field of education, culture, youth, sports, health; committee for administration, security and social welfare; committee for finance, economy, trade, industry, energy and mining; committee for urbanism, cadastre, agriculture, spatial planning and environment.

Working group on Establishment of New Municipalities, the main task is the establishment of new municipalities and leading the process towards the establishment of new municipalities, as an essential part of a comprehensive plan for resolving the Kosovo's status, which is incorporated in the Law on Local Self-Government, at the part of extended competences and implementation of the Law on Administrative Municipal Boundaries, namely, establishment of 5 new municipalities and 1 extended municipality with a Serbian majority, as foreseen in the Comprehensive Plan for Kosovo status settlement (Ahtisaari document). The group has analyzed the financial costs for the establishment of new municipalities and in the fourth meeting of the IGD has presented the document "Guidelines/description of duties for the establishment of municipal preparation teams and new municipalities". In July 2008 were established Municipal Preparation Teams which have as a main task to provide preconditions for establishment of new municipalities in order to be prepared and to be ready to be led by municipal elected officials immediately after new local elections.

Working group on the Transfer of Competences and Resources, immediately after establishment, this group has prepared the final document where are listed all the competences of central and local level and the list of competencies to be transferred from central to local level. In October 2008, was formalized the transfer of competencies in the field of education, for road safety and local transport. In the meantime, during 2008, also with the Ministry of Internal Affairs was established the Commission on Appointing Senior Posts in the Police. There have been formalized local, municipal and regional commanders for police stations. Municipal competences are transferred to finance the archives. Regarding public services and Public enterprises are

transferred to municipalities as provided by law, while the group has coordinated all activities in relation to MEF and municipalities. In 2008, also in the field of social services competences, in cooperation with the MLSW were made all preparations and coordination of all activities for the transfer of this competence from the Ministry to the Municipality. Municipalities have exercised these competences by early 2009. During 2009, similar focus groups were formed in fields of culture, health and business registration, management of public transport enterprises, cadastre, forestry, which according to an agenda are being transferred to municipalities. In October 2009, the management of theaters and libraries were transferred to the competence of the municipality. We can consider that the process of transferring of own competencies to municipalities has been closed. There are some other issues to deal with the delegated competencies. Then in further years, based on the Law on Local self government, should start the process of transferring enhanced competencies.

The Working group on Capacity Building and Coordination with Donors in its composition has created three other subgroups: working sub-group on capacity building; sub-group on infrastructure; and working sub-group on coordination with donors. The work of this working group is focused on three components: the development of capacity for existing municipalities, in strengthening the capacity of pilot units and, municipal capacity building in the new municipalities.

In this regard are prepared relevant documents, such as assessment of capacities of existing municipalities, based on which were made concrete plans for professional capacity building of municipal officials; plans for PMU capacity building and capacity building plans for new municipalities. Simultaneously these documents were presented in front of the donors, in order to accomplish coordination of activities with training providers, various donors involved in capacity building on the one side, and coordination with donors in terms of investment, towards implementation of decentralization, on the other side.

The Working group on Information Campaign throughout the entire process has intended that by organizing information campaign will make available to citizens the

relevant and the right information related to decentralization as part of local government reform. Through the information campaign is affirmed the process of local government reform where the citizens are informed about the territorial reorganization of municipalities, establishment of new municipalities, and recognition with new legislation that created the basis for implementation of the decentralization process. This subgroup, through print and electronic media, has launched information and has organized debates with various key players in the process, in terms of informing the citizens.

The original Decentralization Working Group and all other subgroups that were part of its mandate ended in 2010 and then with the decision of the new Government of Kosovo⁵² the mandate of this group was continued until 2012. Under the new Government decision, some groups were merged and were created four new working subgroups: Subgroup for Establishing New Municipalities; subgroup on Legislation and Transfer of Competencies; Subgroup on Capacity Building and Donor Coordination, and the subgroup for informational campaign.

5.1. Legislation reform, challenges

Implementation of the new legislative package was challenged in the early days of its implementation. New legislation on local self-government of municipalities was passed when the municipalities were at the beginning of a new mandate, had constituted their bodies, and were on the way to approve revised statutes, based on UNMIK regulation 2007/30. Whilst local elections were held in late 2007, in the first half of 2008 the new legislation came into force and municipalities had to implement this legislation. They were obliged for a very short period of time to adopt their statutes and to choose the chairperson of their assemblies. This led municipalities to a confusing situation. The new law on local self-government had a retroactive effect, with obligations to the municipalities. Through this process they had to adopt new statutes, and were in the difficult position to absorb a large set of new municipal competencies. Some

⁵² Governmental decision no. 3/119, date 07.04.2010

municipalities had to reconsider their boundaries, to respond to changed results of the government grants formulae, to review the number of pupils, nurses and teachers, to reduce the number of employees in administration, etc. Practically the 41 laws from the Ahtisaari package (which entered into force on the same day alongside the country's constitution and through an accelerated extraordinary procedure) often contradict each other and in cases are impossible to implement. In this case, the subgroup on the legislation reform identified all legislation and checked all the laws that came into collision with each other and addressed these problems to the Inter Ministerial Group on Decentralization in order to start an amendment procedure.

Three years later, despite the proclaimed process of transferring powers and resources, there is a growing trend of withdrawal of powers from the local level. This is because sectoral legislation began to undermine the autonomy of municipalities, and strengthened the central power.

On the other hand, the process of supervising of the municipal legal acts became more challenging. Such a consideration is given to progress reports to the European Commission. The lack of a municipal official gazette exacerbated these problems. Identification of cases of violation of the laws, and lack of political will, resulted with these cases never being addressed through the courts. Therefore, violations of the laws remained unaddressed until now, except some sporadic cases that have been resolved by intervention at the Constitutional Court. On the other hand there are some other practical problems. The lack of a legislative package on e-governance to municipalities is one such and brings difficulties in providing services. Other laws of a political nature, such as the naming of settlements law, or the local law on referendum, are still listed each year in the government's legislative agenda but never proceed to the Assembly. The situation got even worse when a number of laws were turned back to the government because of the dismissal of the Assembly on 2010. Even in early 2011, all laws which were underway returned to the zero point of the design. Nevertheless, a sectoral law like the law on public enterprises, which limits municipalities to establish such enterprises, was not in compliance with the basic law for local government. Even

though municipalities have in their own competencies the delivery of public utility services this law gives the right to the government to manage the regional utility enterprises.

The Law on Public Private Partnership and the law on municipal managing of the public property is contrary to democratic principles. Under these laws, municipalities are limited to give their properties for use for only 40 years. This puts municipalities in difficulty especially in relation to attracting foreign investment. On the other hand, Kosovo needs to go through a revision process of all the legislation related to local governance. There are also a considerable number of laws to approve (In terms of e-governance), such as:

- Law on Personal Data Protection
- Law on electronic communications
- Public information law
- Electronic Signature Law
- Administrative Procedure Law
- Civil Procedure Law
- Notary Law
- copyright law

This entire legislative package will enable citizens to access online services and to use the benefits of e-governance. This would reduce costs and avoid problems of lack of physical space in the municipality and the financial resources needed to pay the salaries of employees who currently perform these services.

5.2 Transfer of powers, challenges

The process of transfer of powers is achieved through various stages. Currently, the situation is as follows:

- The transfer of the own competencies of the municipalities has been completed;
- The transfer of delegated powers is ongoing
- The transfer of enhanced competencies has not begun

- During the year 2009 are fully transferred all powers that are exclusive to the municipalities. The municipal competencies are listed as follows:

Figure 5.2 Competencies and responsibilities of the municipalities⁵³

Field of competency	Municipal competencies			Central government competencies
	Own competencies	Delegated competencies	Enhanced competencies	
Administration				
Selection of police commanders			X	X
Local emergency response;	X			
Cadastral records		X		
Civil registry		X		
Voter registration		X		
Business registration and licensing		X		
Distribution of social assistance payments (with the exception of pensions)		X		
Protection of forests located in the territory of municipality within the competences delegated from the central authority, including issuance of licences for woodcutting pursuant to rules adopted by the Government		X		
Human rights protection	X			
Naming of streets, roads and other public areas	X			
Licensing of public utilities and buildings, including those related to entertainment, cultural and leisure activities, food, shelter, markets, street vendors, local public transport and taxis	X			
Application of construction regulations and standards for construction control	X			
Education				
Pre-school	X			
Elementary school	X			
Secondary school	X			
university			X	X
Registration and licensing of educational institutions, recruitment, paying salaries and training education instructors and administrators	X			

⁵³ Hand-book of the Law on local-Self Government, published by USAID, September 2008

Field of competency	Municipal competencies			Central government competencies
	Own competencies	Delegated competencies	Enhanced competencies	
Social welfare				
Care for the old people	X			
care for vulnerable people, family shelter	X			
care for children	X			
registration and licensing of these care providing centers, recruitment, payment of salaries and training of social welfare professionals;	X			
Public housing	X			
Health care				
Public primary health care	X			
Public secondary health care			X	
Hospitals			X	X
Public health	X			
Culture, sport and leisure activities				
Theatres	X			
Museums and libraries	X			
Sport and leisure activities	X			
Cultural buildings	X			
Cultural heritage			X	
Tourism	X			
Cultural and leisure activities	X			
Municipal public services				
Water supply	X			
Sewerage and drainage,	X			
Heating schemes	X			
Local roads	X			
Transport				
Local	X			
Urban	X			
Railways				X
Urban Development				
Local economic development	X			
Urban Rural Planning	X			
Mjedisi dhe Bujqësia				
Waste management	X			
Land use and development	X			
Local environment protection	X			
Provision and maintenance of parks and public space	X			

Recently, it was a tendency to recover the municipal competencies by sectoral ministries and Government. This was introduced due to a lack of institutional coordination and lack of control and harmonization of legislation in the country's entire legal order. Problems are also presented on the technical nature to lack of financial and

professional capacities of the municipalities, to absorb all the set of the competencies guaranteed by the law. Problems were evident due to the lack of feasibility studies for the exercise of municipal competencies.

The transfer of competencies has also been realized at another level. Besides the transfer from central to local level, transfers occurred between the existing municipalities and new municipalities. This process began with the establishment of the PMUs and then continued in 2010 after the new municipalities have been created.

MoUs for transfer of documentation from the Parent municipalities to the new Municipalities were signed regularly by the Ministry of Local Government Administration, Ministry of Finance, and the respective ministries and municipalities. The transfer to this level has happened in the following areas: Marital status, Property Tax, Urban Planning and cadastre, Property tax etc. Even in this process are obvious difficulties, especially with the limited professional staff.

5.3 Coordination with donors and capacity building, challenges

Central Government has continuously made efforts to coordinate with donors, but this still remains challenging. Consistently different donors have invested similar projects in municipalities. Often donors are trying to invest in areas that have been targets of their projects without taking into account all the needs of municipalities. This highlights the lack of inter-institutional coordination although continuous efforts are made to coordinate the donors, such as creating a database where everyone will have access to all projects financed by different donors; this database still remains inoperable.

Regarding coordination with donors in relation to municipalities, central government, in cooperation with important donors, has supported municipalities in the implementation of infrastructure programs.

In terms of professional capacity-building of government, until 2009 there was not a comprehensive approach. The institute for public administration, because of lack of funds, had only a limited number of capacity development programs with which to face the multiple needs of the municipalities

Only in 2009, for the first time, began a comprehensive approach to the development of professional capacities. Evaluation of the capacity of training programs for professional capacity building of local institutions mainly focused on increasing the capacities of local administration to ensure effective governance, the promotion of decentralization, and the assumption of responsibilities and powers in important sectors. The purpose of this assessment was to identify the assets and weaknesses in capacity at the municipal level, in the context of decentralization, coupled with the transfer of powers to municipalities, and to generate a clear understanding of positive values and needs for capacity. This resulted in formulating an effective, coordinated and sustainable capacity development. Capacity assessment findings constituted the basis of recommendations for assistance and capacity development. This was presented in front of municipalities and donors involved in the development of professional capacity at the local level and as an essential part of the efficiency of administrative work. According to the needs of municipalities special training programs and capacity building were also designed. However, municipalities still have continued the tradition of old, not taking into account these estimates too. On the other hand, changes in legislation on civil service are also reflected in the work of the municipality. Municipalities still have no plans for capacity building of officials who could directly affect the efficiency of their administrations. But the lack of capacity remains in two main areas of the municipal competencies: the financial strategic planning and communication. In this case, despite a large number of projects from different donors, capacity building still is at a fragmented level

5.4 Establishment of new municipalities, challenges

One of the main challenges of all the process of decentralization was the establishment of new municipalities. The decentralization process in Kosovo has been more often associated with territorial division of the country which has caused concern among the

majority population in Kosovo. Furthermore, the process is seen as an imposition by the international community necessary to achieve the major objective - independence.

Another dimension of decentralization - the bringing of services closer to citizens is given very little attention in public⁵⁴. Establishment of new municipalities was provided in the Ahtisaari package⁵⁵. Then, through legislation in the field of local governance are incorporated all the provisions of the package, and the establishment of municipalities is done by the Law of the administrative boundaries of municipalities. After an extensive consultation process and central government efforts to convince the Serb community they participated in the local elections in November 15, 2009. The elections were held in the newly created municipalities, Graçanica, Ranilug and Kllokot. It should be noted that during the holding of these elections was extended the territory of the municipality of Novobërdë. Participation of citizens in voting for these three municipalities was as follows: 23.0% Graçanica; Ranillug 12, 4%, and 25.2% Kllokot. While on June 20, 2010 in the municipality of Partesh held local elections, where turnout was 55, 94%⁵⁶.

These municipalities were able, in a short time, to constitute their bodies and to consolidate their administrations. They are municipalities with full authority and are undergoing a process of transfer from mother municipalities. They have their own budgets and administration staff. While we can say that the process of establishing these municipalities can be considered as a success story for the political decentralization that happened in Kosovo, there remains the challenging process of creating the new municipality in North Mitrovica. There is a preparation team, and the government has consistently insisted on creating these structures. Problems are presented even with citizens because they are organically separated and are linked with the three other municipalities in the north. There are functionally the parallel structures that take guidelines and exercise power, based on the Belgrade directives. Thus, the problem of the north sometimes puts into question the whole process of decentralization in

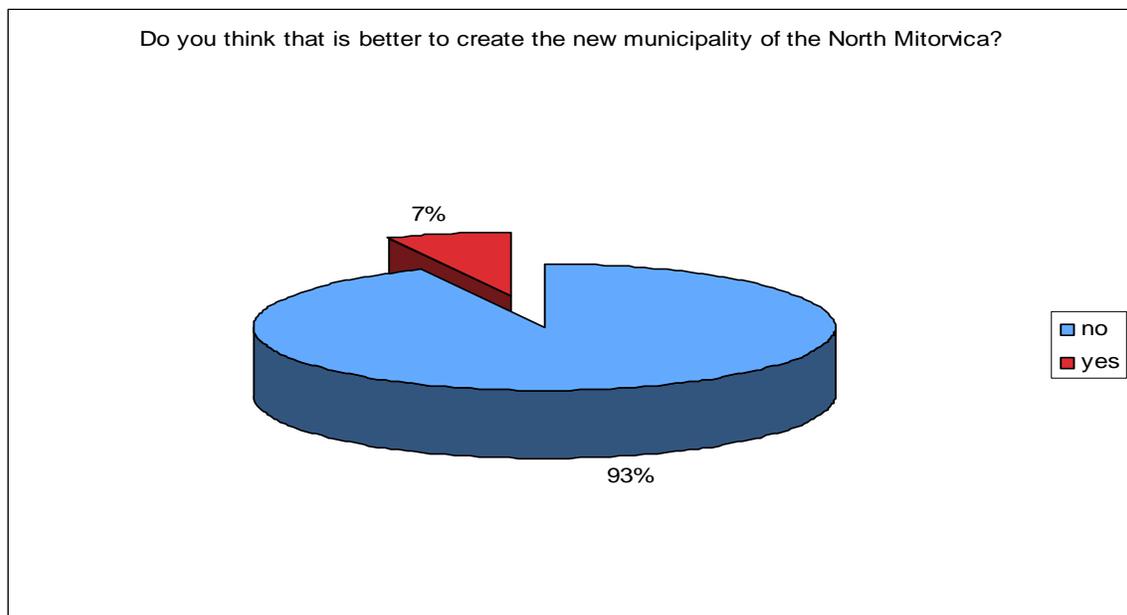
⁵⁴ http://kcdf.org/kcdf/index2.php?option=com_docman&task=doc_vieë&gid=33&Itemid=108

⁵⁵ Chapter 3 of the Ahtisaari package

⁵⁶ <http://www.kqzks.org/SKQZWEB/al/zgjedhjetekosoves/materiale/rezultatet2009/komune/Statkk%20sipas%20vendotim eve%20-%20Partesh.pdf>,

Kosovo. When respondents were asked what they think about the creation of the municipality of northern Mitrovica, then 93% of the cases said that they do not think to functionalize the municipality. In discussions with focus groups, they think that this situation is difficult whilst there are some parallel municipal structures with a Serb majority. Precisely in that part of Kosovo practice has shown that for a period longer than 6 years these structures do not communicate at all with governmental structures (even though they get salaries from the Kosovo's budget), so then why should a new municipality be added in the north? They think that first should be solved the problem of these three municipalities, and then to continue with the new municipality (see figure 5.4.1).

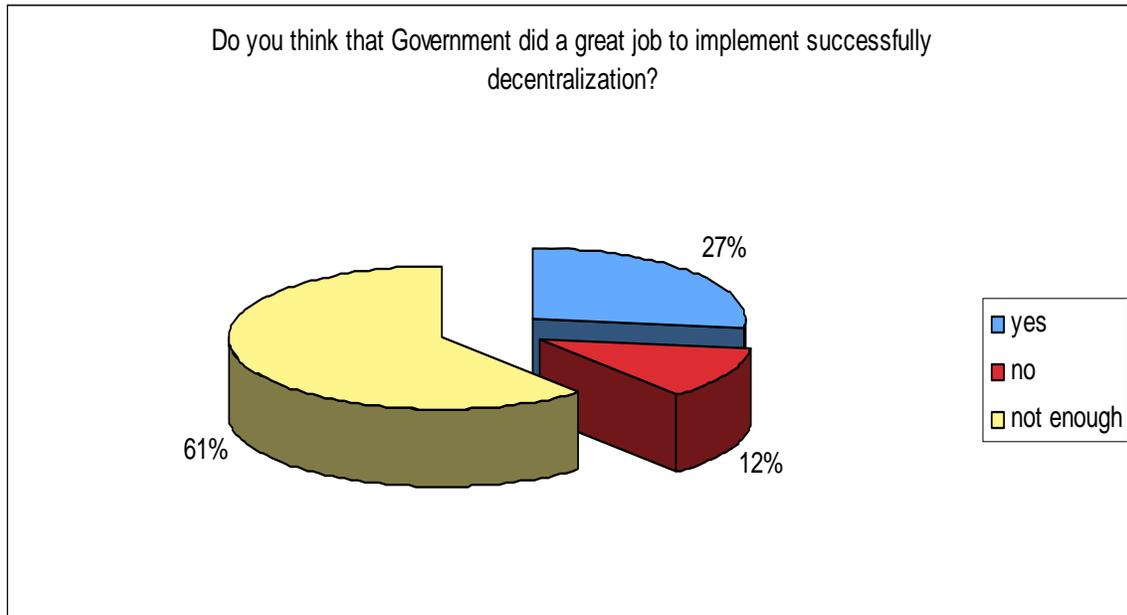
Figure 5.4.1 "Do you think that is better to create the new municipality of the north Mitrovica" (capstone project questionnaire, January 2011)



However, the research done in the North appears that even Serbian citizens are not satisfied with parallel structures. They have difficulty getting services and have so many problems with the rule of law. Especially, after declaring independence in 2008, and the burning of customs points, this part of the country is turning into a dangerous area where even members of the Serb population were in a very bad position. There are smuggled goods and fuel and controlling the situation only a small group of people who have links with Belgrade and who have no interest at all to improve the life of citizens.

Although the central government's efforts were to integrate this part, making a strategy for integration of the north, in many cases had overlapping activities. On one hand an ICO - MLGA structure had created a municipal preparatory team to pave the road for the new municipality to be established; on the other hand the government had appointed a coordinator for the northern strategy. The absence of coordination has often put in an uncomfortable position citizens living in that part of the country. In this regard, the question of the respondents, if they are satisfied with the work done by the government, in 12% of cases no, 61% responded not enough and only 27% responded positively (see figure 5.4.2).

Figure 5.4.2 "do you think that Government did a great job to implement successfully decentralization" (capstone project questionnaire, January 2011)



In further developments, we are aware that the extent of sovereignty throughout the territory will be an unavoidable challenge. Although recently the government in cooperation with other relevant partners has taken steps to control the border in the north and is making all efforts to establish rule of law in that part of the country, it has still work to do, in order to prevent ethnic conflict and to create a peaceful climate. In this regard, Government should work in improving the services toward the citizens, because most of the citizens there are facing with the difficulties in terms of delivery public services.

6. THE PROCESS OF REFORM OF LOCAL GOVERNMENT IN THE COUNTRIES OF REGION

6.1 Macedonia

Macedonia is divided into 84 municipalities (opatini, opatina singular), divided into 8 regions (regioni) which play no administrative role. On August 13, 2001, the Ohrid Framework Agreement ended the conflict, forcing significant reforms to better represent minorities and has provided a new Constitution. Under the terms of the agreement, the 1991 Constitution was amended to only reference Slavo-Macedonians are the only nation state charter. Macedonian company is now considered to be established by representative citizens of different ethnic groups. The agreement also introduces a system of "double majority" in Parliament, which means to pass something, the text must earn a minimum of one vote, minority or other group representative of ethnic minorities. Macedonia faces a single-tier system of local self-government. Municipalities are units of local self-government while the City of Skopje faces a slightly different status. The Legislation gives municipalities the right to set-up and devolve powers to neighborhood units. Autonomous municipalities are in the execution of their legally and constitutionally determined spheres of competence. Municipalities are not subject to administrative instruction; they only have to conform to the provisions of the legislation. Municipalities have autonomy and are guaranteed their own sources of revenues. A municipality covers the territory of one or more settlements linked by the common needs and interests of the local population and possess the capacity for economic and social development and citizen participation in the decision-making process⁵⁷. The average size of municipalities is around 306 km² with 24.078 inhabitants⁵⁸. The transfer of competences EAS the "D-day" of decentralization and started on 1 July 2005. The sectors of transfer were: Culture, Sport and Recreation, Urban Planning, Education, Local Economic Development, Health Care, Social and Child Protection, Environmental Protection, Communal Activities and protection and Rescue

⁵⁷ Local government in center and eastern europe, chapter 6

⁵⁸ This number is much smaller than the Kosovo average

of Citizens and Goods; Also, Financial Management and Tax Administration⁵⁹. Local government units are classified as urban, composed of a single town and possibly a number of surrounding villages, or rural, made up of a single village or a group of villages. Thus, every settlement does not necessarily comprise a local government unit. The only administrative distinction between an urban and a rural municipality is the existence of a city architect in the urban municipal structure. The City of Skopje is a special type of local government and is regulated by a specific law, which is discussed below.

6.2 Albania

Albania had a Communist totalitarian past, and centralized powers and the process of creating local units and the transfer of power to local government units was relatively long. The population is about 3M. Since 1992 until 2000, Albania had three Levels of Government:

1. Central Level
2. Intermediate level of 36 districts
3. Basic level of government, 65 municipalities and 313 communes

From 2000 with different number of counties and municipalities which are presented as follows:

1. Central Level
2. Intermediate level of 12 counties and 36 districts as subdivisions of counties without elected bodies
3. Basic level of government, 65 municipalities, 11 boroughs of the city of Tirana and 308 communes⁶⁰. The average municipality is 43,478 people⁶¹.

Current legislation and Constitution acknowledge the right of local community members to express themselves directly on issues of interest to them. As a form of

⁵⁹ Presentation of Macedonia- annual international conference on local self-government, 4-6 may, 2010, Prishtina

⁶⁰ Presentation of Albania- annual international conference on local self-government, 4-6 may, 2010, Prishtina

⁶¹ This number is also smaller than Kosovo's average

direct democracy, local referendums are organized on issues such as the division or merger of administrative units, local taxation, et cetera. The Constitution considers local referendums to ⁶²be a right of self-governance equal to that exercised through local representative bodies.

Today, Albania is composed of 304 communes, 69 municipalities, 12 counties. Decentralization reform benefits and contributes the necessary reforms in the Albanian naturally materialized on the priorities of governments, as they have to do with the rule of law and fighting corruption, simplification of administrative procedures and facilitating the loading of unnecessary fiscal integration the country's Euro-Atlantic structures and a greater participation in the wider region, making healthier public finances and reducing tax evasion, the orientation of the Albanian society for higher standards in education, health, communication, information technology, and effective governance, etc⁶³.

⁶² Local government on central and eastern Europe, chapter 2

⁶³ Decentralization Strategy of local government in Albania

7. DISCUSSION, CHALLENGES AND RECOMMENDATION

The legal infrastructure in Kosovo is in compliance with international standards but it still faces implementation obstacles due to the lack of financial and human resources, administrative defects and lack of appropriate political will.

This capstone project gave general information on the organization and functioning of local government in Kosovo since 1999.

The capstone project highlights the opportunities and the challenges of the decentralization process. Kosovo's action plan on decentralization has had various difficulties in terms of administration reform, political reform and the financial reform. The administrative aspect of the reform needs to be a priority, for example, the establishment of criteria for the number of staff and number of municipal departments should be fixed by law and it cannot not consider as intervene in the local autonomy. While there are criteria for the number of representatives in municipal assemblies even if there will be some criteria for the departments it cannot be considered as an intervention in the municipal autonomy. In this regard, the changes of the basic legislation will reflect into creating professional administration and sustainable institutional memory. In this context it is necessary that the capacities of local administration staff are increased.

A comprehensive approach to professional development and appropriate capacity building is required to occur periodically. Although the law on local finances creates a solid base for financial independence, municipal budget dependency is considered to be too high. Today, this dependence reaches up to 80% while are lacking the governmental incentive scheme for municipalities, which could encourage competition between them in terms of benefit funds. Till now, besides the governmental grant that is distributed through a formula, allocation of the governmental funds to the municipalities has been mainly based on party affiliation. Although municipalities are guaranteed by the local government law a large number of competencies, they often fail to exercise them due to

limits on the number of staff and financial capacity. Municipalities have to create conditions to increase the degree of budgetary independence, expand the range of incomes and raising the level of local revenue collection. Of course, it should be noted that will taken into consideration the ability of municipalities to create their own budgets, especially the municipalities with significantly below-average levels of municipal development.

Kosovo has made progress with the decentralization process in general. The surveys in this project showed however that the majority of the respondents believed that decentralization only benefited the minority groups (see figure 3.1.2) and has limited results to the citizen's life in general. Decentralization on an ethnic basis adds extra difficulty on the community integration process. The focus group discussions of the surveys showed that the respondents believed that there is a risk for minority groups to become more isolated and to have limited opportunities for integration into the wider national socioeconomic life.

The satisfactory participation of Serbs in the elections, through which new municipalities were legitimized as local authorities, is a big step forward. This is a positive trend for the future of interethnic relations in Kosovo⁶⁴. This participation was ten times higher than in November 2007. For the first time in two decades, Kosovo Serbs returned to the moderate political forces, sending signals of cooperation and inclusion within the institutional framework in Kosovo.

This capstone has considered the issues related to the good practices of other countries. In this regard, the experience of the other countries shows that the key to the success of local reform is not only decentralization. The reform process is multifaceted and includes elements of political and economic power. The analyzing of the situation on the field highlights also that the creation of new local government units has to be in correlation with the criteria of demographic, territorial and local economic development.

⁶⁴ Decentralization in Kosovo: local elections and participation of the Serb minorities, published by NGO KIPRED

The capstone project showed that it is necessary to complete and harmonize the legal infrastructure. These include adopting the local legislation and regulations that have been adopted by the municipalities of Kosovo, in accordance with new laws and advanced international practices. Completing the legal basis of other laws like the law for the City of Prishtina, to change the law on administrative boundaries, completion of the legal basis for e-governance and the avoidance of collision in the legislation, are necessities. In this direction it is necessary to strengthen the oversight mechanisms of the legality of acts of municipalities. Publication of a municipal official gazette or creating an administrative court may be one of the options for achieving this.

There are challenges and difficulties that bring to the risk the reform of the local government. The insufficient care of the central government to local level include the slow reform of tax policies and municipal revenues, inappropriate allocation and non-transparent methods for municipalities, inadequate development planning, delays in the privatization process, lack of development strategies for different areas, insufficient use of direct citizen participation and financial shortages are risks that, in the future cannot be permitted reflect in the reform process.

Recommendations

The three most important recommendations are:

- I. The legal framework for local self government should be completed. The package of the laws for e-governance such as:
 - Electronic Signature Law;
 - Law on electronic communications;
 - Law on Personal Data Protection;
 - Public information law;
 - Administrative Procedure Law;
 - Civil Procedure Law;
 - Notary Law

All the above mentioned laws will reflect directly to the efficiency of the delivery services because citizens will have the possibilities to have on-line access to services. In the other hand there is a need for other laws.

Also, there are some other new laws as listed below that need to be approved by the Assembly:

- The law of the city of Prishtina;
- Law on local Referenda;
- Law on naming of the Villages and Settlements and
- Law on system of addresses
- Law on municipal official gazette

In addition, the existing legal base should be reviewed. The amendment of the Law on local self government that will guarantee “checks and balances” system among various branches of the administration is necessity.

There is a need to amend some law and to avoid the collision among some others.

In the process of amendment should pass also these laws:

- The law on public enterprises,
- The law on public-private partnership and
- The law on managing the municipal property.

This package of laws will help municipalities to attract foreign investments that directly will reflect in local economic development.

2. For further new municipalities (beyond the existing 38), they should be established according to criteria such as number of population, territory and economic sustainability. In this context, they should not be based only on ethnic criteria. Upon the creation of further new municipalities, it is needed to have preliminary consultations with citizens.

3. Decentralization to be realized in the context of local government reform should be focused in three main directions:
- Administrative aspect of the reform such as the institutional memory and size of the municipal administration. Regarding the institutional memory, it is needed to change the legal framework on local self government. The municipal directors should be civil servants, in order to ensure the continuity and the institutional memory that direct reflect to the service delivery to the citizens. Regarding the size, should be implemented the governmental decision, in this regard, the municipal staff should be consistent with the municipal population.
 - Political aspect of reform means the avoidance of the second round (ballot). This would increase the effectiveness of the local election process, shortening the expenses, affecting in good terms in sustainability of the local administration during the electoral process.
 - Financial aspects of reform should increase the local financial autonomy. This means establishing of effective and objective state grant equalization system and transparent allocation of the fund from the central government level.

In addition there are a number of recommendations which are important to improve Kosovo's local government reform. They are:

- Enhancing institutional relations between different local authorities and central authorities;
- Distribution of competencies in accordance with the principal of subsidiarity;
- Establishment of a balanced, transparent and stable system of allocation of revenues to local authorities;
- Establishing effective and objective state grant equalization system;
- Develop new legal framework for local property and PPP

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APPENDIXES

1. Questionnaires
2. Database
3. List of questions for the focus group discussions
4. References