



Review of Decentralization – Functioning of Serb Majority Municipalities



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I. Introduction

Kosovo is entering a new phase of development concerning inter-ethnic relations with the implementation of decentralisation, which derives from the Comprehensive Status Proposal (CSP). The participation of Kosovo Serbs in the municipal elections on November 15, 2009 has created a convenient climate for co-existence between two main communities – Albanians and Serbs – sealing the success of the decentralization process in Kosovo.

Creation of new municipalities across ethnic lines has brought the power closer to the communities living there. So far, four new Serb-majority municipalities were created. The fifth municipality, the one of Mitrovica North, remains to be created later this year. In addition to this, Kosovo authorities have created two new municipalities in areas inhabited by Albanians, Junik and Hani i Elezit, and a municipal unit in Mamusha, a settlement inhabited by Kosovo Turks.

The overall Serb turnout in these elections, which were the first to be organised in the independent Kosovo, was ten times higher than the turnout in November 2007 elections, which were organised by the UN Mission in Kosovo (UNMIK). Serb turnout was also higher than the turnout in Serbia-organised parallel elections of May 2008 and August 2009. A remarkable success of this electoral process was the election organised in the newly created municipality of Partes. More than 65% of the Serb registered voters in this municipality casted their ballots in Kosovo-organised election on June 20, 2010.

Kosovo Serb majority municipalities, excluding Partes, have constituted municipal assemblies and local governments in these municipalities. The process of making these municipalities fully functional is ongoing, with a gradual transfer of powers from the central level and strengthening of capacities for execution of local powers. The new administrations are faced with high demand for services from their local population. This indicates a success of the decentralization process, showing that Serbs' are willing to integrate within the Kosovo legal and institutional framework. This process is effectively discrediting the idea of partition of Kosovo and giving new impetus to a multi-ethnic state-building process.

The success of decentralization provides the strongest institutional and legal framework within which the Albanians and the Serbs have a historic opportunity to work together. This improves the opportunity for co-existence given two decades of institutional separation that followed the armed conflict. This turnout was a clear signal that Kosovo Serbs, especially those living south from Iber river, have lost their confidence in Serbia's government and it's parallel structures operating in Kosovo. Although constitution of local governments did not end the existence of such structures, it is considered to be the major turn in political and social sentiment of the Serb population living in Kosovo.

In this policy brief, KIPRED will take a look at the recent developments in the decentralization process, following the successful closure of the local electoral process and constitution of Serb-majority local authorities in the newly created municipalities. KIPRED will examine the decentralization process, transfer of competences from central to local authorities, transfer of files to the new municipalities, but also the political and social connotations of this process.

II. Legal Framework and Legislative Agenda

Municipalities are the basic units of self-government in Kosovo that execute their exclusive and delegated powers. The new Law on Local Self-Government has broadened the areas where municipalities have exclusive competences¹. This law, together with the Law on Administrative Municipal Borders, and Law on Local Government Finances, regulate the local governance in Kosovo.

This legal framework determines that municipalities shall exercise its competences in accordance with the principle of subsidiary.² It also takes into account the principles of local self-government enshrined in the European Charter of Local Self Government and its Protocols, the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the European Outline Convention on the Transfrontier Co-operation between Territorial Communities or Authorities and its Protocols.

While implementing the decentralization plan, in accordance with the CSP, Kosovo authorities had to initiate changes in some 35 laws, in order to descend the decision-making process from the central government to municipal governments.

The last round of legislative changes that will affect the decentralization process and the municipal governance in general, has to do with laws that will increase the quality of municipal services. The law on Civil Servants has been put in the legislative agenda of the Assembly. With adoption of this law, the Ministry of Local Government Administration (MLGA) sees the legislative framework for the decentralization process as complete.³ However, since most of the legislation has been drafted or amended in a very short period of time, some gaps and mismatches have been identified in due time.

The MLGA has initiated a working group to amend the law on Local Self-Government. Members of the civil society were also involved in this working group. The suggested changes had to do with transparency of municipal work, direct democracy and citizen participation mechanisms in the municipal level.⁴ The MLGA has proceeded with the changes, which will be looked at an inter-ministerial group before they are sent to the Assembly for adoption.

Kosovo government has been criticised for delaying adoption of the law on debts, based on which municipalities can apply for grants and debts independently.⁵ The law that has been drafted by the Ministry of Economy and Finances (MEF), has not been processed to the Assembly, because the government is still considering whether this power should be delegated to municipalities.⁶ The MLGA considers that municipalities do not have the

¹ The new Law on Local Self-Government, which entered into force in June 2008, defines that municipalities have full competences in all local issues, including local economic development and taxation policies.

² Law on Local Self-Government, Chapter I

³ KIPRED interview with Besnik Osmani, Permanent Secretary of the MLGA, April 2010

⁴ KIPRED was among three civil society organizations that participated in this working group

⁵ The government doesn't trust financial issues to municipal authorities (Qeveria nuk ua beson çështjet financiare drejtuesve komunalë), Koha Ditore June 28, 2010, page 7

⁶ Ibid

needed capacities in order to manage foreign debts and loans.⁷ However, such a competence is foreseen in the Law on Local Self-Government, based on the CSP, while the special law is supposed to determine details about how can municipalities apply for loans and other grants in national and international level.

On the other hand, according to the current legislation, Kosovo municipalities are autonomous in exercising their exclusive and delegated competences.⁸ The MLGA is the overall supervisory authority of municipalities' acts.

The Government of Kosovo cannot annul municipal acts - legislative or executive - even if they are not in line with Kosovo law or with the Constitution.⁹ In such cases, the Government may request that the municipality re-examines such decisions or acts.¹⁰ The request shall state the grounds of the alleged violation of the constitution or law and shall not suspend the execution of the municipal decision or other act at issue.¹¹ Municipalities are then, obliged to respond to such requests for re-examination within 30 days of notification. If municipalities do not respond within the given timeline, or respond negatively regarding reconsideration of a particular act, the Government can only bring the issue to a competent court or to the Constitutional Court.¹²

This lack of possibility for governmental intervention is the single factor behind the central government's fear for fully functionalising new municipalities. The central government fears that in a few years time the new municipalities will take act in violation of Kosovo's Constitution and other laws. However, this fear is groundless. The Government has the full legal authority to dissolve municipal assemblies and call for new municipal elections. This irrational fear has become a "political driver" for slowing down the overall decentralization process.

III. Local Elections – Sealing the Success

Kosovo elections of November 15, 2009, and the runoff of December 13, 2009, were crucial for the success of the decentralization process. A satisfactory participation of Kosovo Serbs in these elections has legitimised the creation of new municipalities, and has produced legitimate local Serb leaderships. In the municipal elections organised throughout Kosovo, the Serbs won in three new municipalities – Gracanica, Ranilug, Klllokot/Vrbovac and Strpce; lost in the enlarged Novo Brdo and won in Strpce. There was virtually no participation in the three municipalities in the north – Zvecan, Zubin Potok and Leposavic. At this time, elections in Partes and Mitrovica North were not organised, as these two municipalities were not created by that time.

Elections in the municipality of Partes were organised in June 20, 2010, after the preparation for this newly created municipality were finished. Some 65% of the 3,508 registered voters casted their ballots, electing members of the municipal assembly and

⁷ Ibid

⁸ Law on Local Self-Government, Chapter I

⁹ Law on Local Self-Government, Chapter X

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

two candidates for a mayoral runoff. The runoff was held in July 18, 2010, where Nenad Cvetkovic from the Citizens' Initiative Zavicaaj won 58% of the votes, beating his rival Todor Mirkovic of the United Serbian List. Cvetkovic had a great support of the Kosovo government, including financial support, whereas Mirkovic was supported by the Serbia government.

The great turnout of the local Serbs in elections organised by Kosovo authorities has been sealing the success of the decentralization plan and creation of new municipalities. This turnout was also the strongest opposition given by the Serb community to parallel structures of Serbia operating in Kosovo.

The turnout came as a surprise to international players in Kosovo as well, especially to the members of the Quint, who were hesitant in proceeding with formation of the new municipalities in late 2009.¹³ Constitution of the new municipalities and election of their mayors and assemblies was a great success, despite all the hampering. Most of the decisions regarding the creation of the new municipalities for 15 November elections were made at the last moment.¹⁴ The lack of a consensus between international stakeholders in Kosovo regarding the creation of the new municipalities paralyzed the Government of Kosovo. Furthermore, the collision within the international community presence in Kosovo almost brought the entire decentralization process to the brink of failure. The final list of municipalities where elections would be held was decided just a few hours before the deadline of the Central Election Commission (CEC) for certification of candidates that would run in these elections. Some Serb candidates complained that they could not apply for certification, as they were not aware whether there would be new municipalities to run in or not.

The elections showed that the Independent Liberal Party (SLS), which participates in the institutions of Kosovo, emerged to be the most dominant Kosovo Serb political entity. The SLS won in Gracanica, Klllokot / Vrbovac, Ranilug and Strpce. The Serbs lost in Novo Brdo despite the fact they constitute roughly 75% of the total population in the municipality. The turnout was low due to extreme pressure from the parallel institutions and Belgrade. All in all, the participation of Kosovo Serbs in these elections was ten times higher than the participation in the elections of 2007, which were organised by the UN Mission in Kosovo (UNMIK).

IV. The Transfer of Powers and Documentation

In all three new municipalities Gracanica, Ranilug and Klllokot/Vrbovac, the municipal assemblies have been created and became functional. Municipal Assembly of Gracanica was constituted on December 29, 2009 the Municipal Assembly of Ranilug on January 4, 2010, and the Municipal Assembly of Klllokot/Vrbovac on January 8 2010. These assemblies have adopted the necessary legislation for their work. The assemblies also set up the mandatory committees -- committee for budget and finances and committee for communities -- that are required by law. Municipalities have also initiated building up the administration and recruiting staff. The staff-hiring process has progressed to some 60% level.

¹³ Decentralization in Kosovo II - Challenges of the Serb majority municipalities, KIPRED, December 2009

¹⁴ Ibid

This percentage is somewhat lower in the Municipality of Partes, where the municipal structures have been elected only in June 2010. This municipality is due to become functional in August-September 2010.

According to the decentralization working groups that are coordinated by the MLGA, the process of transfer of powers from central authorities to municipalities has been almost completed.¹⁵ The powers that the municipalities will gain with the decentralization process have been categorised in three categories. The first category is the one of municipality own competences as defined by Law on Local Self-Government.¹⁶ All the powers and competences from this category have been transferred to the municipalities.¹⁷

The second category consists of delegated powers, namely cadastral records, civil registries, voter registration, business registration and licensing, distribution of social assistance payments and forestry protection.¹⁸ So far, there has been no progress in transferring the power of distribution of social assistance payments, forestry protection powers are in process of getting transferred, and business registration and licensing has been transferred only in 10 municipalities.¹⁹ The rest of the powers were successfully transferred to the municipalities.²⁰

The third category is the one of enhanced municipal competences, namely competences in secondary health care²¹, university education²², area of culture²³ and participatory rights in selection of local police station commander.²⁴ None of these powers have been transferred to any of the municipalities so far.

In addition to transfer of powers from central authorities, which affects all the municipalities in Kosovo, the newly created municipalities are also in process of receiving the needed documentation from the so-called “mother municipalities”. On March 31, 2010, this transfer of documentations was formally initiated by the MLGA, when all the

¹⁵ KIPRED interview with a senior MLGA official, July 2010

¹⁶ Local economic development; urban and rural planning; land use and development; implementation of building regulations and building control standards; local environmental protection; provision and maintenance of public services and utilities; local emergency response; provision of public pre-primary, primary and secondary education; promotion and protection of human rights; provision of public primary health care; provision of family and other social welfare services; public housing; public health; licensing of local services and facilities; naming of roads, streets and other public places; provision and maintenance of public parks and spaces; tourism; cultural and leisure activities.

¹⁷ Periodical report of the decentralization working groups in the MLGA, March 2010, and KIPRED interview with MLGA officials, June, July 2010

¹⁸ Law on Local Self-Government, Article 18

¹⁹ Periodical report of the decentralization working groups in the MLGA, March 2010

²⁰ Ibid

²¹ Law on Local Self-Government, Article 20, defines that municipalities of Mitrovica North, Gracanica and Sterpce, shall have the competence for provision of secondary health care

²² Law on Local Self-Government, Article 21, defines that municipality of Mitrovica North, shall have the competence for the provision of higher education

²³ Law on Local Self-Government, Article 22, defines that Kosovo municipalities in which Kosovo Serb community is a majority, shall exercise responsibility in cultural affairs

²⁴ Law on Local Self-Government, Article 23, defines that Serb majority municipalities shall have an enhanced participatory right in selection of local police station commander, in accordance with Law on Kosovo Police

new municipalities have signed memorandums of understandings with the municipalities that have been geographically and administratively affected by their creation, the MLGA, the Ministry of Economy and Finances (MEF), the Ministry of Internal Affairs (MIA), and Kosovo's Cadastral Agency (KCA).

This transfer of files and other data is scheduled to be finished within a period of three months from the date when MoUs were signed. However, the agreement foresees that in case of any delay, parties will coordinate extension of this timeline, without being obliged to formally sign any additional agreement. The data that will be transferred to new municipalities include all the files in hard copies and electronic format. Municipalities have already appointed key officials to deal with the transfer. The government ministries and the KCA are supervising the transfer.

This transfer has, however, been delayed in different municipalities. Initially, the main reason for this delay has been the lack of political willingness in the mother municipalities to proceed with the transfer. Later, many technical obstacles emerged. Among the list of documentation that needs to be transferred is also the civil registry, which is not categorised geographically, so many municipalities had to do a manual selection of the files that need to be transferred. In some municipalities these registries are available in hard copies only, which has made the transfer even more problematic.

The Municipality of Gracanica needed to gather the documentation from three existing municipalities: Pristina, Fushe Kosova and Lipjan. Pristina Municipality has already transferred all the documentation and authorities in this municipality are currently doing the last verification of this process.²⁵ Municipality of Fushe Kosova is in the same stage.²⁶ The Municipality of Lipjan, however, faced more problems in this transfer. The Municipal Assembly and the Mayor have attempted to challenge the transfer, as they did not agree with the new municipal boundaries. However, this issue does not fall under competences of the municipal authorities, as it's defined by law and is a main principle of the CSP. In addition, Lipjan authorities delayed the transfer of the civil registry data to municipality of Gracanica, as these data were only available in hard copies, which made the copying and the transferring process more difficult.²⁷ The transfer of these files is currently ongoing.

The Municipality of Klllokot/Vrbovac has emerged from the territory of the Municipality of Viti. So far, authorities in Viti, have only began transferring the files to the newly elected authorities of Klllokot/Vrbovac, who are still in the process of hiring staff and building capacities in order to receive this documentation.²⁸ The first files to be handed will be cadastral data and the civil registry. However, authorities foresee problems with the civil registry, as the old books were taken away by Serbia's administration upon their withdrawal from Kosovo in 1999, and many Serb families of this area did not take part in the UN-organised civil registry process in 2000.²⁹ Other technical difficulties, such as

²⁵ KIPRED interview with Muhamet Gashi, spokesperson of the Pristina Municipality, Pristina, July 2010.

²⁶ KIPRED interview with a representative of Municipality of Fushe Kosova, Pristina, June 2010

²⁷ KIPRED interview with Sefer Krasniqi, official of the Lipjan Municipality, Pristina, June 2010

²⁸ KIPRED interview with Daut Xhemajli, head of administration in Municipality of Viti, Pristina, June 2010

²⁹ Ibid

ones with the old cadastral system, may hinder the process of the transfer and delay it for a longer time.

The Municipality of Ranilug has already received most of the documentation from the mother-municipality of Kamenica. So far, authorities in Kamenica have transferred the civil registry, most of cadastral files and all the financial documentation, including municipality's own income, which was divided based on the population structure.³⁰ The only remaining documentations that will be transferred in the upcoming months are the marital records.³¹ This municipality has been the most efficient in preparing the documentation for transfer.

Following the complete transfer of the documentation and files, the MLGA and the MIA have to go through a process of verification, which will analyse whether the mother-municipalities have accomplished their tasks and will examine the quality of the transferred files. Despite the multiple delays, the MLGA considers that the process will be completed by the end of the year, and that the new municipalities will be full functional by then.³² Considering all the delays and uncertainty of both local and international actors regarding the decentralization process, the accomplishment in accordance with this timeline remains a significant success.

V. Governance in the new municipalities - opportunities and challenges

The newly created municipalities have been allocated a total budget of more than €3.2 million, which was proportionally divided based on the population that lives in these municipalities. Gracanica has an annual budget of €1,791,035, Kllokot/Vrbovac a budget of €719,602, while Ranilug's budget is €693,636.³³ Also, the Republic of Albania has pledged financial support of €400,000 to Gracanica and the European Commission Liaison Office in Pristina (ECLO) with other international donor organizations³⁴ have pledged financial and technical support to the new municipalities.

The new municipalities will have full competences to establish and functionalise mechanisms to increase their budget from their own income. In addition, the MLGA has a reserve fund of €2.4 million which will be used to assist the newly created municipalities when such assistance is needed.³⁵ So far, the donor community has also shown interest of investing particularly in these municipalities. The Government of Kosovo has allocated over €2 million for construction of two hospitals – one in Gracanica and one in Strpce.

The MPT in Partes, which was coordinated by the MLGA, has already drafted 30 investment projects that will be handed over to the newly elected authorities of this

³⁰ KIPRED interview with Enver Ajvazi, head of administration in the Municipality of Kamenica, Pristina, June 2010

³¹ Ibid

³² KIPRED interview with Sadri Ferati, minister of MLGA, Pristina, June 2010

³³ Kosovo Budget for 2010

³⁴ DFID, USAID, SDC, UNDP, and other development agencies and foundations.

³⁵ KIPRED interview with Sadri Ferati, minister of MLGA, Pristina, June 2010

municipality.³⁶ Other foreign development agencies have already stated that they will focus in these municipalities in the upcoming years.

Nevertheless, the number of staff in the new municipalities is very low, as it only calculates administrative personnel of the municipality. The budget line for “goods and services” in the new municipalities is very high, while the budget line for “wages and salaries” is very low. Municipal governments, according to the law, are in charge of executing wages and salaries for all the personnel in the public sphere, including teachers, doctors and nurses, as well as the whole public administration. This is not the case in the new municipalities, as public servants are also employed in the parallel system of Serbia and are part of the parallel institutions. It will be up to the municipal governments to see how to include these public servants in the Kosovo system. Municipal governments, however, must respect the budget grants in terms of expenditures dedicated for health and education, based on the grants given by the central government.

The main challenge for the municipal authorities will be how to deal with the parallel structures of Serbia that still operate in these areas, especially with security and intelligence services. Serbia committed €42 million for parallel structures in the state budget for 2010. The Belgrade government is not showing any signs that it will change its policy towards participation of Serbian community in political institutions of Kosovo. On the contrary, it is using international financial support to strengthen the parallel institutions in Kosovo. This policy will cause unavoidable clashes with policies and governance of the newly elected municipal authorities that will most likely create a political and social turmoil.

New municipal governments will face unavoidable clashes with parallel structures first of all in the field of education and health, which, according to Kosovo’s Law on Local Self-Government, are exclusive competences of municipalities.³⁷ It will be a major challenge, and in the short-term also impossible, for the new municipalities to put these institutions under their control, keeping in mind that they have been operating under Serbia’s government for more than a decade now. The challenge is higher in the education system, as schools operate under Serbia’s curricula, and in most cases reject any kind of assistance from Kosovo authorities, apart from financial assistance and salaries.

The Kosovo government, through the budget allocated to the ministries in central level, will invest more than €2 million in these three Serb majority municipalities, not counting the investments that are foreseen to come through municipal authorities. However, neither the Kosovo government, nor the international community, have any uniformed strategy on how to deal with the parallel structures. What remains worrying is that the growing belief in the Kosovo government that parallel structures in the new municipalities do not pose a constant threat, and that with Serbia’s policy for partition of Kosovo, Belgrade will gradually withdraw the financial support from these structures.

A very positive step in this context is the high turnout of local Serbs in Kosovo-organised election. This has shown that the Serb community is slowly shifting towards Prishtina, especially when the Belgrade government is focusing in the north and pushing for eventual partition of Kosovo. Election of legal authorities in the municipalities was the strongest opposition to the parallel structures.

³⁶ Ibid

³⁷ Law on Local Self-Government, Article 17

On 16 January 2010, the newly elected mayor of Strpce, Branislav Nikolic, expelled the parallel structures from the municipal premises. The parallel leadership of this municipality, elected in elections organised by Serbia, complied with this decision and did not create any problems. There were also no problems from the local Serb population. Nikolic won against the Democratic Party of Kosovo (PDK) candidate, and is considered the legitimate leader of the municipality by both the Albanians and the Serbs. Half of the Serb electorate in the municipality voted for him, which effectively delegitimized the parallel leadership.

Last, but not least, the leadership of Kosovo Serb municipalities will face pressure from their communities for rapid delivery of promises they made during the election campaign, aiming at quick improvement of their lives. The new mayors understand this, and they will be inclined to push for fast constitution of municipalities and implementation of municipal developmental and infrastructural projects.

VI. Conclusions and recommendations

The process of decentralization marks the biggest success in consolidation of co-existence between the Albanians and Serbs in an independent Kosovo. Decentralization is proving to be the most successful tool for preserving and developing the multi-ethnic character of the country. However, participation of the Serbs in Kosovo elections has been just the preliminary success. Kosovo authorities should proceed with completion of the decentralization, enhancing own, delegated and extended powers to the municipalities. New municipalities face challenges that need to be addressed in a short-term period, in order not to lose the political momentum and the support of the Serb communities in Kosovo.

In order to improve the current dynamics of the decentralization process, avoid potential diminishment of its importance and strengthen the newly elected municipal governments, KIPRED recommends that:

1. The Kosovo government should fasten the procedure on empowering the Serb municipalities with enhanced municipal competencies, based on the Law on Local-Self Government. These enhanced competences, especially the ones in area of education, culture, and participatory rights in selection of local police station commanders, will boost the trust that the Serb community is building in the Kosovo system and will diminish the role of the parallel structures of Serbia.
2. The Kosovo government should proceed with finalisation of the legislation for loans and debts, which will enable municipalities to draft mid-term and long-term plans and development strategies. The Kosovo Assembly should ratify and adopt this legislation as soon as possible.
3. The mother-municipalities should fasten the procedure of transferring files to the new municipalities. The MLGA and other national governmental institutions should assist in this process.
4. The new municipalities should proceed hiring the needed personnel as soon as possible. Priority should be given in hiring personnel that are needed to receive

the files and documentation from mother-municipalities, in order to make the municipal services functional.

5. The municipal governments should draft the secondary legislation that is needed for further decentralization of powers, respecting the principle of subsidiary.