

# **STUDY ON LOCAL SELF-GOVERNMENT IN KOSOVO\***

**01 December 2021**

## **Acknowledgements**

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\*All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

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## Introduction

This study was undertaken as part of the project “Promoting local democracy” implemented by the Congress of Local and Regional Authorities (the Congress) within the [framework of the Council of Europe co-operation with Kosovo\\*](#). The project aims to improve local self-government and the quality of local democracy by fostering multilevel dialogue and strengthening the capacities of local authorities on public ethics, open local government and political integrity principles. In this context, the Congress conducted a study to evaluate the degree that the local self-government framework conforms to European local democracy standards, including the principles enshrined in the European Charter of Local Self-Government (hereinafter ECLSG or the Charter).<sup>2</sup> This is the first study of this type conducted in Kosovo\* by the Congress.

The study is based on desk research and meetings with 15 stakeholders. Eight of them were municipal officials, mostly mayors, including from the capital city. Two mayors were from major towns and other interviewed stakeholders were from a representative sample of municipalities, including remote and sparsely populated areas. Two stakeholders represented Serb-majority municipalities, one of which a major urban hub, which is also entitled to ‘enhanced’ competences, a unique feature of the system of the local government (“enhanced” competences are explained in section 1.4). Other interviews included the Ministry of Finance, the Ministry of Local Government Administration (hereinafter MLGA), the Association of Kosovo Municipalities (hereinafter AKM), and several other relevant central institutions such as the Ombudsperson, the National Audit Office, the Constitutional Court, and the Assembly of the Republic of Kosovo. The interviews were conducted in the first half of July 2021.

The study is divided into three parts. Part I lays out the main features of the legal framework of local self-government, dealing especially with the legal provisions on competences, supervision, and local resources. Part II presents an assessment of the legal and factual situation of the local self-government based on desk research and on the findings from the meetings. The study concludes (Part III) with main conclusions and key recommendations as well as proposed adjustments to policies, legislation and institutions to ensure better conformity with the European local self-government standards.

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<sup>2</sup> European Charter of Local Self-Government, more information on the Charter is available on the Congress webpage: <https://www.coe.int/en/web/congress/european-charter-of-local-self-government>

## **Part I The legal framework of local self-government**

The following section describes the legal framework relevant to local self-government in Kosovo\*.

### **1.1. The constitutional and legislative foundation of local self-government**

The principle of local self-government is enshrined among the “basic principles” of the Constitution.

According to Article 12 of the Constitution, municipalities are the basic territorial unit of local self-government. The organisation of the municipalities and their powers are provided by law. Chapter X of the Constitution is devoted to “Local Government and Territorial Organisation”. This Chapter is rather synthetic, as it is made up by only two articles, Articles 123 and 124, which establish general principles. They do not provide a definition of local self-government. The closest to a definition can be found in Article 124, para 1, according to which “The basic unit of local government in the Republic of Kosovo is the municipality. Municipalities enjoy a high degree of local self-governance and encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodies”.

The legislation on local government is considered of “vital interest” according to Article 81 of the Constitution. The laws of vital interest “require for their adoption, amendment or repeal both the majority of the Assembly deputies present and voting and the majority of the Assembly deputies present and voting, holding seats reserved or guaranteed for representatives of Communities that are not in the majority”. Areas key to the interest of ethnic communities thus enjoy protection, granting communities de facto veto protection from majority rule.

Article 81, para 1, lists among those laws: “(1) Laws changing municipal boundaries, establishing or abolishing municipalities, defining the scope of powers of municipalities and their participation in inter-municipal and cross-border relations; [...] (4) Laws on local election”.

The Law on Local Self-government (hereinafter LLSG), Law n° 03/L-040, is the basic law that determines the competencies and the organisation of municipalities, which came into force in June 2008 as part of the package of statehood basic laws, or commonly known as “the Ahtisaari Package laws”. These laws were approved in an expedited manner during the 120 days transition period from the declaration of independence on 17 February 2008, until their entry into force on 15 June 2008.

In addition to the LLSG, the Law on Local Government Finance (Law n° 03/L-049, LLGF) and the Law on Administrative Municipal Boundaries (Law n° 03/L-041, LAMB) complete the main legislative acts which regulate local self-government in Kosovo\*.

### **1.2. The legal status of the European Charter of Local Self-Government**

The Constitution treats numerous international conventions and standard-setting documents as domestic applicable law. With regard to local government, it directly refers

to the Charter. Article 123 of the Constitution, which establishes the fundamental principles on local self-government, refers to the Charter in its paragraph 3, according to which “The activity of local self-government bodies is based on this Constitution and the laws of the Republic of Kosovo and respects the European Charter of Local Self-Government. The Republic of Kosovo shall observe and implement the European Charter on Local Self-Government to the same extent as that required of a signatory State”.

The LLSG is based on the Charter, which is mentioned in the preamble, together with the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages and the European Outline Convention on the Transfrontier Co-operation between Territorial Communities or Authorities (the “Madrid Convention”).

Several articles of the LLSG reproduce the provisions of the Charter. For example, Article 3 of the LLSG reproduces Article 3, para 1 of the Charter, referring to “the right and ability of local authorities as established by this law and within the limits thereof, to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population”.

As a consequence of the explicit reference to the Charter by the Constitution, the Charter can be used as a standard by the Constitutional Court to protect local autonomy against any infringements and invalid legislation and it will be considered as a standard with the purpose of this study.

### **1.3. Administrative territorial structure**

Municipalities are the basic units of local self-government. There are 38 municipalities, 28 of them dating back to the former Yugoslavia. After the declaration of independence, more municipalities were established, mostly in areas inhabited by the Serb community. Today, there are 10 municipalities with ethnic Serb majority and one municipality with Turkish majority.

Southern municipalities with Serb-majority integrated in the first years after independence. Northern ones have long operated with a lesser degree of control by the central government institutions, although in recent years they have begun to integrate and have taken part in the general elections.

In 2013, through an EU facilitated dialogue, an agreement (Brussels agreement) signed by the Prime Minister of Kosovo\* and the Prime Minister of Serbia included the general principles for the establishment of an Association/Community of Serb-majority municipalities<sup>3</sup>. The principles were reviewed in 2015 by the Constitutional Court of Kosovo, which found them not to be fully in line with the constitution and limited the

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<sup>3</sup> The Constitutional Court examined the constitutionality of the agreement in the judgement of 9 September 2013, KO 95/13, Applicants Visar Ymeri and 11 other deputies of the Assembly of the Republic of Kosovo, Constitutional review of the Law, No. 04/L-199, on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia and the Implementation Plan of this agreement.

scope of the powers to be granted to the Association of Serb-majority municipalities.<sup>4</sup> The issue remains controversial for the concerned parties.

#### **1.4. Competences of municipalities**

The current system of competences of municipalities is based on the LLSG Articles 15-23 (see also Article 124.3 of the Constitution). Overall, significant competences are devolved to municipalities, which represent the basic units of governance.

Own competencies provide municipalities with sufficient autonomy to manage several fields for which the law grants them full power. Delegated competencies are mainly services that municipalities perform on behalf of the central level, such as social assistance. Enhanced competencies are enjoyed by the main three municipalities with Serbian majority, such as managing the secondary health services, as an additional degree of decentralisation for culturally-specific matters.

The own competencies are listed in Article 17 LLSG:

- ⇒ Civil protection (local emergency response);
- ⇒ Culture;
- ⇒ Implementation of building regulations and building control standards;
- ⇒ Licensing of local services and facilities, including those related to entertainment, cultural and leisure activities, food, lodging, markets, street vendors, local public transportation and taxis;
- ⇒ Land use and development;
- ⇒ Local economic development;
- ⇒ Local emergency response;
- ⇒ Local environmental protection;
- ⇒ Naming of roads, streets and other public places;
- ⇒ Planning;
- ⇒ Provision and maintenance of public services, spaces and utilities, including water supply, sewers and drains, sewage treatment, waste management, local roads, local transport and local heating schemes;
- ⇒ Provision of family and other social welfare services, such as care for the vulnerable, foster care, child care, elderly care, including registration and licensing of these care centres, recruitment, payment of salaries and training of social welfare professionals;
- ⇒ Provision of public pre-primary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators;
- ⇒ Provision of public primary health care and public health;

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<sup>4</sup> Constitutional Court, Judgment of 23d of December 2015, K0130/15, Applicant the President of the Republic of Kosovo Concerning the assessment of the compatibility of the principles contained in the document entitled “Association/Community of Serb majority municipalities in Kosovo - general principles/main elements” with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of Kosovo.

- ⇒ Public housing;
- ⇒ Reintegration of repatriated persons;
- ⇒ Social welfare;
- ⇒ Tourism;
- ⇒ Transport;
- ⇒ Urban and rural planning; and
- ⇒ Any matter not explicitly excluded from their competence nor assigned to any other authority.

The delegated competencies are listed in Article 18 LLSG:

- ⇒ Registry (cadastral records; civil registries; voter registration; business registration and licensing);
- ⇒ Distribution of social assistance payments (excluding pensions); and
- ⇒ Forestry protection on the municipal territory;
- ⇒ Other competences, in accordance with the law.

As mentioned above, the LLSG (Article 19) recognises enhanced competences in education and secondary health care for Gračanica/Gračanicë, Štrpce/Shtërpçë and Mitrovica/Mitrovicë North (the latter also manages tertiary education).

### **1.5. Supervision on municipalities**

According to Article 124.7 of the Constitution, “The administrative review of acts of municipalities by the central authorities in the area of their own competencies shall be limited to ensuring compatibility with the Constitution of the Republic of Kosovo and the law”.

The LLSG establishes the rules on the administrative supervision on municipalities (Articles 74-86), carefully regulating the procedure for the review. Those rules are specified by regulations.<sup>5</sup>

According to Article 76, the ministry responsible for the local government is the supervisory authority unless the responsibility for the review is assigned by law to the responsible ministry or institution with respect to a specific field.

Article 79.1 of the LLSG establishes that “Review over the operation of municipalities in the area of own and enhanced competencies is limited to review of the legality”. According to Article 79.2, “The administrative review over the operation of municipalities in the area of delegated competences shall include review of the legality and expediency of actions”.

With regards to own competences, some acts are subject to mandatory review, such as general acts adopted by the municipal assemblies; decisions related to the joining and participating in activities of the cooperative partnerships; acts adopted within the framework of the implementation delegated competencies. According to Article 81.2, all

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<sup>5</sup> Regulation (GRK) no. 10/2019 on the administrative review of the municipal acts, amended and supplemented by regulation (GRK) no. 06/2021.



municipalities are obliged to submit to the supervisory body all aforementioned acts within 7 days from the day of issuance. Supervisory body is obliged to give its opinion on the legality of any registered act within 15 days from its receipt (Article 81.4).

The rest of the act is subject to an optional review (Article 80). The mayor forwards to the supervisory authority by the 10th of each month a list of all acts adopted by the mayor and the assembly in the previous month. The supervisory authority has the right to supervise any act, which had not been controlled under the procedure of mandatory review, within 30 days upon the receipt.

According to Article 82, if the supervisory authority considers a decision or other act of a municipality to be inconsistent with the Constitution and laws, it may request that the municipality re-examine such decision or act. The municipal body shall respond to request for re-examination within 30 days. If the municipal body fails to respond within the deadline or rejects the request or upholds the contested decision or act, the supervisory authority may challenge the act in question in the District Court competent for the territory of the municipality. For own competences, the burden of proof for any violations lies with the central authority.

For delegated competences, expediency control is provided (Article 84). The supervisory authority has the right to request, within 30 days of reception of a copy of the act, that the municipal body modify or repeal the contested act on the basis of expediency considerations. If the municipal body fails to act accordingly, the supervisory body may modify, replace the act or suspend the execution of the municipal decision.

## **1.6. Financial resources of municipalities**

The level of decentralisation is one of the highest in the region. Among others, local government is responsible for all pre-university education as well as primary health care. For these functions, local governments receive block grants that make up about half of their total budget. The table below illustrates the various sources of income for the local government:<sup>6</sup>

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<sup>6</sup>Asllani, Gani and Simon Grima. 2019. Property Tax and Local Finance of Kosovo - An Overview. International Journal of Economics and Business Administration, Volume VII, Issue 3, pp. 213-227.

Central Grant	Own-source revenues	
Inter-governmental transfers	Fees and charges	Property Tax
<ul style="list-style-type: none"> <li>- Grant for administration</li> <li>- Specific Grant for Health</li> <li>- Specific Grant for Education</li> <li>- Grants for enhanced competencies</li> <li>- Financing for CPC, QKHFZ and KHM (social cases)</li> <li>- Financing from Borrowing</li> </ul>	<ul style="list-style-type: none"> <li>- Business License Fee</li> <li>- Professional Business License Fee</li> <li>- Motor Vehicle Fee</li> <li>- Municipal Administrative Fees</li> <li>- Permit Fees for the Construction and Demolition of Buildings and Other Structures</li> <li>- Other Municipal Fees</li> <li>- Fees for Issuing Certificates and Official Documents</li> <li>- Charges, Rents, Fines and CoPayments and Other Own Source Revenue</li> <li>- Regulatory Charges for Infrastructure Development and Preservation</li> <li>- Traffic Fines</li> <li>- Fines for Offences against Municipal Regulations</li> <li>- Rental Income</li> <li>- Education and Health Co-Payments</li> <li>- Other Own Source Revenues</li> </ul>	<ul style="list-style-type: none"> <li>- House</li> <li>- Apartment</li> <li>- Commercial object</li> <li>- Industrial objects</li> <li>- Land and</li> <li>- Others specific properties categories</li> </ul>

The table below describes the overall local financing, including the breakdown between own source revenues as share of the total, and the expenditure structure.<sup>7</sup>

Nr.	Description	2019 Actual	2020 Actual	2021 Budget	2022 Estimate	2023 Estimate
<b>1</b>	<b>FINANCING RESOURCE</b>	<b>491,282,776</b>	<b>554,723,207</b>	<b>546,801,279</b>	<b>607,200,142</b>	<b>624,008,215</b>
1.1	Government Grants	405,405,498	439,855,843	461,419,506	516,648,137	527,498,102
1.2	Own Revenues	81,425,000	87,000,000	78,000,000	90,552,005	96,510,113
1.3	Investment clause		23,068,354	7,381,773		
1.4	Financing by Borrowing	4,452,278	4,799,010			
<b>2</b>	<b>EKPENDITURE STRUCTURE</b>	<b>491,282,776</b>	<b>554,723,207</b>	<b>548,190,823</b>	<b>607,200,142</b>	<b>624,008,215</b>
2.1	Current Expenditures	342,737,572	366,736,881	385,374,957	391,701,326	393,054,374
2.1.1	Wages and Salaries	265,769,919	272,128,520	277,954,369		
2.1.2	Goods and Services	58,530,444	70,993,868	79,683,225		
2.1.3	Utilities	9,688,901	11,233,147	11,850,850		
2.1.4	Subsidies	8,748,308	12,381,347	15,886,514		
2.2	Capital Outlays	148,545,203	187,986,326	140,449,827	188,666,487	198,415,677
2.3	Investment clause			7,381,773		
2.4	Reserve			14,984,266	26,832,327	32,538,164
3	BUDGET BALANCE			1,389,541		

According to Article 7 of the LLGF, the financial resources of a municipality consist of its (i) own source revenues, (ii) operating grants, (iii) grants for enhanced competencies, (iv) transfers for delegated competencies, (v) extraordinary grants, (vi) financial assistance from the Republic of Serbia, and (vii) proceeds from municipal borrowing.

Local authorities have their own revenues, which include various types of income generated by the activity of local authorities either of a fiscal or non-fiscal nature. Article 8 of the Law mentions a) municipal taxes, fees, user charges, other payments for public

<sup>7</sup>Official Gazette of the Republic of Kosovo. Law No. 07/L-041. On the Budget Appropriations for the Budget of the Republic of Kosovo for Year 2021. <https://mf.rks-gov.net/desk/inc/media/1F14DA73-6925-49B6-883E-014550C6E3C8.pdf>, pp. 21 and 209 for both respective tables.

services provided by the municipality, and regulatory charges and fines; b) rents on immovable property under the administration or ownership of the municipality; c) revenues from the sale of municipal assets; d) revenues from undertakings wholly or partly owned by the municipality; e) co-payments from consumers of education and health services provided by the municipality; f) revenues collected by any agency, department or organization of the municipality as a result of the provision of any good or service; g) interest on municipal deposits, if any; h) grants and/or donations from foreign governments or from foreign organisations, including governmental and non-governmental organisations and international and supranational institutions, and i) any other category of revenue that is designated by law as municipal own source revenue.

Article 22 establishes that “Own Source Revenues authorized by the present law shall not be comprehensive. Municipalities may levy and collect other revenue sources allowed within their responsibilities established by law or agreement with central authorities”.

There are three main type of government transfers: general grants, specific health care grants, and specific education grants.

Based on the Law on Local Government Finance, the size of the General Grant is defined by law as 10% of the total budgeted revenue of the central government. The formula for the allocation of the General Grant is established in Article 24 of the LLGF:

“24.3 To equalize for the low own-source revenue capacity of the smaller municipalities, from the total of the General Grant, each municipality shall receive a lump-sum amount. Small municipalities (defined as less than 140,000 inhabitants) receive additional funding (1 Euro per citizen) to compensate the fixed costs of administration.

The remainder of the General Grant is “allocated among municipalities in proportion to:

- (i) the size of their total population,
- (ii) the size of their minority population,
- (iii) whether a majority of their population is composed of national minorities;  
and
- (iv) the size of their physical area.”

The criteria for the calculation takes the following into consideration:

- population (89%);
- the size of their minority population (3%);
- municipalities with a majority of their population composed of national minorities (2%);
- and the size of their physical area (6%).

A special provision for small municipalities (with less than 22,000 inhabitants) was introduced (for a transitional period) by the Law no. 05/L-108, but it expired in 2019 and was not renewed.

There are also special grants for delegated tasks directed to cover delegated activities (Article 26 LLGF) and special grants for enhanced competences (Article 27 LLGF). For

the latter, the law defines that “the municipality shall be required to spend such a grant only on matters that are clearly and directly connected to the enhanced competencies”.

In 2009, a performance-based financial incentive scheme was approved, through the allocation of funds to municipalities as an incentive to improve local governance. At the end of 2017, the Ministry of Local Government Administration, in partnership with the Swiss Agency for Development and Cooperation (SDC), developed and agreed to co-finance a unique performance grant allocation scheme for municipalities. The Municipal Performance Grant (MPG) rules are regulated by Regulation 01/2020 on Municipal Performance Management System and the Municipal Performance Grant Scheme.<sup>8</sup>

Municipalities have access to debt markets to finance capital investments with authorisation of the municipal assembly and, ultimately, of the Ministry of Economy and Finance. Borrowing is nevertheless subjected to tight conditions and is only allowed on central capital markets with no exposure to foreign exchanges. The total annual debt services should not exceed 15% of municipal own revenues from the past fiscal year, the total amount of municipal outstanding debt should not exceed 50% of municipal own revenues from the past fiscal year and grace periods are not allowed.<sup>9</sup>

A detailed breakdown of municipal revenue is described in the table below:<sup>10</sup>

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<sup>8</sup> See the rules on Municipal Performance Grant: <https://mapl.rks-gov.net/en/performanca-komunale-en/rules-of-the-municipal-performance-grant/>

<sup>9</sup> For this part, see as source: <https://portal.cor.europa.eu/divisionpowers/Pages/Kosovo-Fiscal-Powers.aspx>.

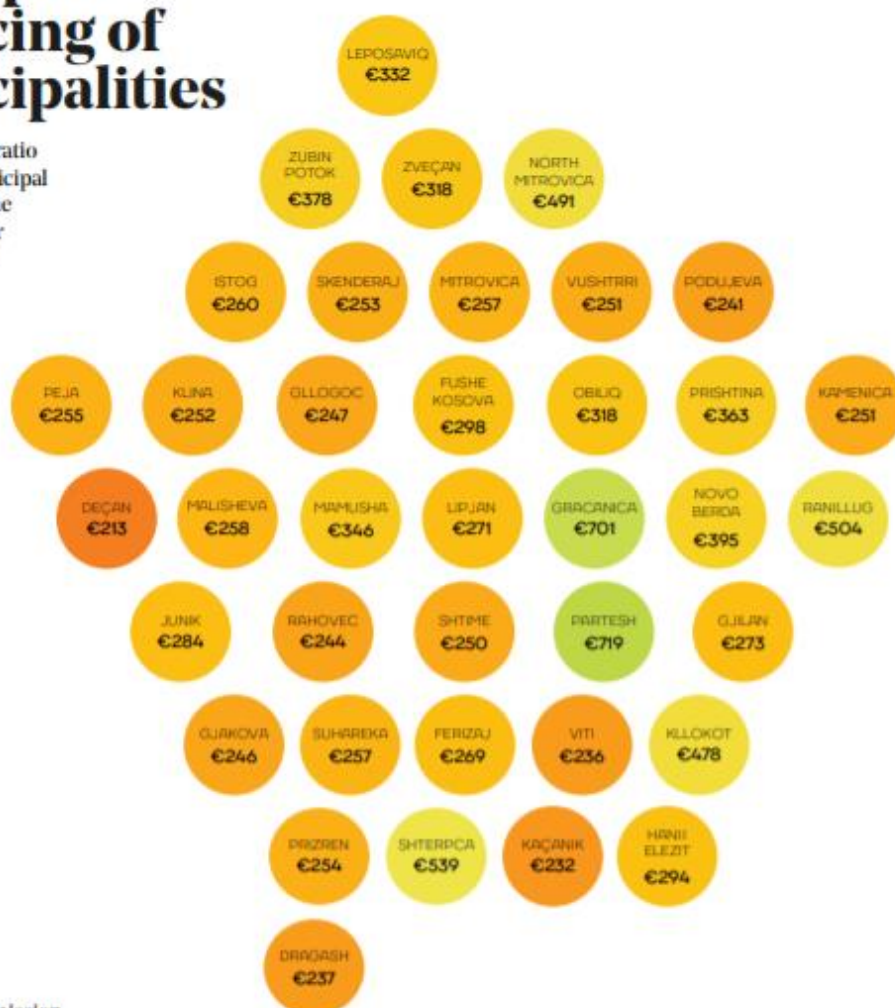
<sup>10</sup> Asllani, Gani and Simon Grima. 2019. Property Tax and Local Finance of Kosovo - An Overview. International Journal of Economics and Business Administration, Volume VII, Issue 3, pp. 213-227.

<b>Description</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Total National Revenue	1,345.00	1,472.00	1,596.50	1,681.60	1,816.90	1,923.30
Total Municipal Financing	388.6	416.01	338.32	440.02	482.41	515.17
1. Government Grants	319.52	339.17	139.91	356.74	392.4	419.09
General Grant (Base)	137.57	145.76	-	149.2	173.6	180.69
General Grant	127.8	-	-	145.2	168.92	175.79
Contingency to the correction formula	9.77	-	-	4	4.68	4.9
Specific health grant	39.9	42.08	42.08	44.11	48.5	53.4
Specific Education Grant	142.56	151.33	161.63	163.43	170.3	185
2. Grants for enhanced competencies	1.85	2.6	2.6	2.6	2.6	2.6
Secondary health care	-	-	-	2.6	2.6	2.6
3. Residential services	-	-	-	1.62	1.65	1.62
4.Financing for CEC, QKHEZ and KHM	0.24	0.24	0.24	0.06	0.06	0.06
5. Financing from Borrowing	-	-	-	-	3.7	4.8
Municipal Own Source Revenues	67.23	74.24	80	79	82	87
Fees and other charges	47.23	54.24	54.9	56.6	52	54
Property tax	20	20	25.1	22.4	33	30

The financing per capita is not uniform as the following graph presents.

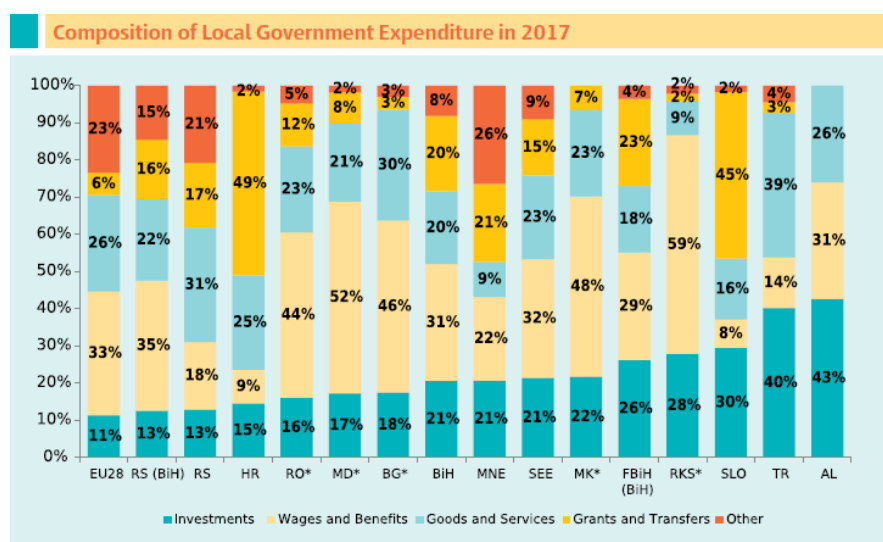
# Per capita financing of Municipalities

calculated as the ratio between the municipal population and the total financing for the municipality.

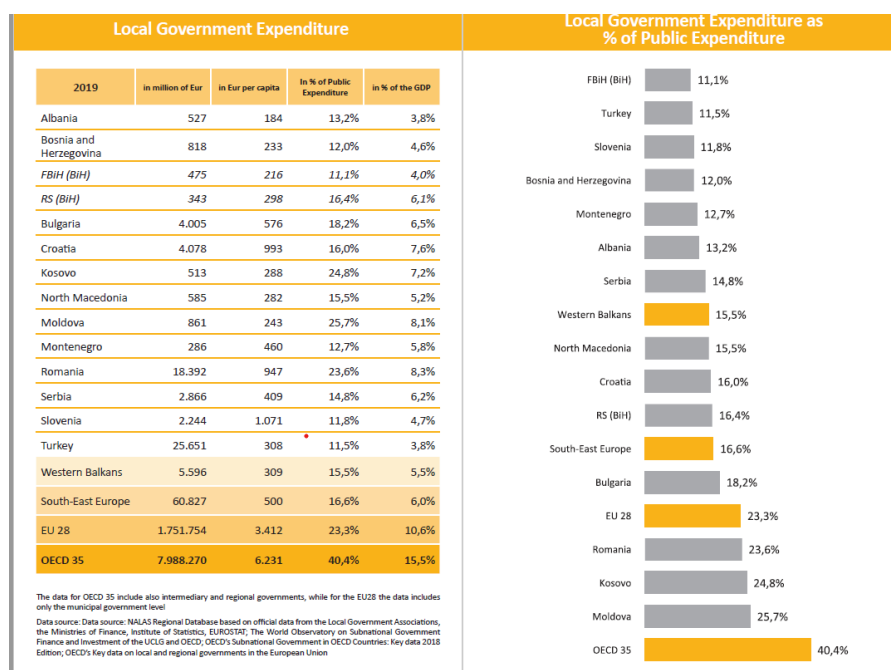


The Grants Commission,  
on 04 April 2017, approved

Where municipalities spend their resources is also important, as described by this table below, with comparisons to the rest of the region and the average of the EU.



As for expenditure, it is also interesting to consider some comparative data on the percentage of local government expenditure out of the total of the public sector expenditure.<sup>11</sup>



Both tables show a high level of decentralisation in Kosovo\*.

<sup>11</sup> Source: NALAS, Local Government Finance Indicators in South-East Europe. Statistical Brief, 2020.

## **Part II The implementation of the legal framework of local self-government**

The following section presents an assessment of the legal and factual situation of the local self-government, based on desk research and on the findings from the meetings.

### **2.1. The concept of local self-government**

The concept of local self-government, according to domestic and European standards, provides that municipalities regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population.

In order to assess the compliance with this principle, both legislative and factual aspects should be taken into consideration. As for the legislative perspective, the concept of local self-government accepted at domestic level fully corresponds to European standards. The domestic legislation reproduced Article 3.1 of the Charter.

The applicability of the Charter and the standards that it sets are taken as given by all interlocutors interviewed by the experts. However, according to the information provided by the Constitutional Court to the experts preparing this study, no judgments have been adopted referring to the Charter.

At constitutional level, notwithstanding the constitutional reference to the Charter, the density of the principles on local self-government is low.

In addition, the procedure to enact “vital laws”, as the Law on local self-government, determines a special rigidity of the “legislation of vital interest”. Therefore, new provisions are often introduced by sectorial laws, without formally amending the general legislation. Consequently, the legal frameworks is becoming more and more complicated and inconsistent, especially as regards municipal competences.

During UNMIK’s trusteeship in the immediate post-war period, municipalities were established first (first elections in 2000, one year after the end of hostilities), followed by the central government later (first general elections in 2001). Municipalities were initially run by UN administrators but were handed over to local mayors at the early stages of the international mandate. This dynamic to forge self-governance among minority areas led to the logic of creating a very decentralised system even before the declaration of independence. Even if some competences have been centralised in the meantime, Kosovo\* still enjoys the highest level of decentralisation in the Western Balkans and is arguably one of the most decentralised polities in Europe.

During the meetings with representatives of local authorities, several issues were raised, pointing out to imprecise division of competences, to issues related to the supervision by the central authorities and to the lack of adequate financial resources. Those problematic aspects can undermine the ability of municipalities – especially the smallest and financially weaker ones – to actually manage a “substantial share of public affairs under their own responsibility and in the interests of the local population”, which is the standard set both by the Constitution and by the ECLSG.

We present in detail those issues in the following paragraphs.



## **2.2. Judicial remedies to protect local self-government**

A pillar of local self-government is the establishment of an effective judicial remedy to ensure its respect. Two different legal remedies are relevant at domestic level with regards to the judicial protection of local self-government: “ordinary protection”, which is enforced by ordinary courts; and “constitutional protection” that is carried out by means of a special appeal before the Constitutional Court.

As for the ordinary protection, should the central government adopt a decision or an administrative regulation which could interfere with local self-government, the municipality affected by the measure may sue the central government in the ordinary courts, claiming that local autonomy has been violated. These courts may set aside the contested measure, if they find that there is a clear and evident violation of local autonomy.

During the meetings, the local government representatives pointed out that, as Kosovo\* is small, most municipal officials prefer to address problems through communication. Very few have resorted to legal recourses or to the Ombudsperson. This may be considered as partly cultural, partly a result of congested courts where cases take years to resolve, and partly a feature of new systems, where, as officials, do not want to engage in conflict and prefer to address disputes in a constructive climate which does not end up at a court. The lack of understanding and the hesitation to use legal means also indicates that that municipalities lack adequate legal expertise.

As for the constitutional protection, according to Article 113, para 4 of the Constitution, “A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act”.

The Law on the Constitutional Court (Law No. 03/L-121) introduced additional requirements. Article 40 refers to the “Accuracy of the Referral”, establishing that “In a referral made pursuant to Article 113, Paragraph 4 of the Constitution, a municipality shall submit, inter alia, relevant information in relation to the law or act of the government contested, which provision of the Constitution is allegedly infringed, and which municipality responsibilities or revenues are affected by such law or act”. Article 41 introduced a deadline, according to which “The referral should be submitted within one (1) year following the entry into force of the provision of the law or act of the government being contested by the municipality”.

During the meetings, the local authorities’ representatives pointed out that virtually all the cases brought to the Constitutional Court by municipalities were considered inadmissible. For example, the Municipality of Skënderaj/Srbica requested the evaluation of the constitutionality of the sectoral collective contract on health, because of its impact on the budget of the municipality (Case KO139/18). The Court considered that the collective contract is not an act that can be challenged according to Article 113.4 of the Constitution. Other cases of inadmissible referrals were KI 037/10, KI44/11, in which the

applicant was the Mayor of the Municipality of Hani i Elezit/Elez Han, concerning the case of the privatization of SharrCem, a local producer and supplier of cement.

Based on the case-law, it can be considered that most of the cases failed as they were not prepared well, due to weak legal capabilities of the municipalities to defend themselves in court or to adequately advise mayors on their rights. In addition, the deadline of one year after the law enters into force, established by the above-mentioned Article 40 of the Law on Constitutional Court, prevents the municipalities to challenge legislation which reveals its unconstitutionality after this date, once concretely enforced.

### **2.3. Organisation of municipalities**

As a key principle, the right of self-government must be exercised by democratically constituted authorities. The concept of local autonomy does not involve the mere transfer of powers and responsibilities from central to local authorities but also requires local government to express, directly or indirectly, the will of the local population.<sup>12</sup>

According to the domestic legislation, the local representative governing body is the municipal assembly, while the executive organ is the mayor. Both are directly elected by citizens, for a term of four years (see the Law on local elections, Law n°. 03/L-072). The size of municipal assembly varies, from 15 councillors for the smallest municipalities to 35-41 for major towns and 51 for the capital city. With around 1.8 million inhabitants, a figure of 1002 councillors seems a high burden on finances and on decision-making.

No special concerns have been submitted during the meetings on the democratic principle at local level. Before 2007, there were apolitical CEOs formally elected by the municipal assembly (Scandinavian model), but in fact, the CEOs usually were associated with one of the political parties, which contributed to wrangling at the assembly meetings, delayed decision-making and blurred accountability lines. Therefore, there is a general opinion that the direct election of mayors was a positive novelty as it has improved direct accountability to citizens. Mayors are generally powerful although this varies depending on the municipality. In some municipalities, the assembly does exercise some checks and balances and has occasionally stopped decisions of the mayor.

### **2.4. Conditions of office of local elected representatives**

A principle of local democracy is that citizens are free to serve as elected representatives and are not prevented from holding political office owing to financial or material considerations.

No special issues were raised during the meetings on the status of elected representatives. The procedure of the recall established by Article 72 LLSG is in accordance with the

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<sup>12</sup>Congress of Local and Regional Authorities, A contemporary commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government, CG-FORUM (2020)02-05prov, 12 February 2020, para 37.

opinion of the Venice Commission,<sup>13</sup> as the recall may affect only the mayor and a clear majority of the popular vote is required.

As for financial compensation, according to the LLSG, Article 39.7 “The Municipal Assembly shall, in accordance with the Statute of the Municipality and guidelines issued by the central government, compensate members of the Municipal Assembly”. Councillors are usually paid per meeting, often around €100 per session (usually one every month) and €25 per committee sessions. The remuneration is generally viewed as too low compared to the level of engagement or to the level of responsibility and not a great incentive. Councillors typically have another job, although the list of positions which are incompatible with this position is quite long and includes business managers.

Mayors receive a salary, the amount of which is decided by the municipality, within a ceiling established by administrative regulation.<sup>14</sup>

## **2.5. Distribution of competences between the central and local level**

### ***2.5.1 General competence and full discretion***

As European standard, local authorities must have the right to exercise their initiative on matters not explicitly excluded from their competence by law and they must have full discretion to exercise their initiative.

As described above, Article 17 of the LLSG establishes a list of municipal own competences, including, at the paragraph s), any matter which is not explicitly excluded from their competence nor assigned to any other authority. Therefore, municipalities enjoy a general competence clause, although very often they lack financial resources to take on those extra tasks.

As for the “full discretion”, during the meetings it was pointed out that there are two essential competences (water and waste) which belong to the local government but are difficult for municipalities to carry out. Given the situation with water and the proximity of municipalities to each other, the water and waste collection are carried out by regional companies (encompassing 3-6 municipalities) largely controlled by the central government, but where municipalities have a say. Whether it is because of the terrain, lack of water sources, or simply to reap the advantage of using the economies of scale, each year municipalities enter into agreement with the regional water companies (RWCs) to obtain water supply.

Some interlocutors believe that this system has worked well, while smaller municipalities report problems with sewage waters and regular water supply and complain about the low level of maintenance by the regional companies. Large municipalities consider they are able to carry out their own services, while smaller ones complain they do not have much of a say in the water regional companies which they see as dominated by larger

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<sup>13</sup> Venice Commission, CDL-AD(2019)011, Report, and Opinion No. 910/2017 on the recall of mayors and local elected representatives.

<sup>14</sup> See Ministry of Economy and Finance, Administrative Instruction n° 08/2008 for wages of political staff in municipalities.

municipalities. Depending on human resources and financial capabilities, large municipalities may establish public utility enterprises while small ones must merge forces with other small municipalities. Sparsely populated municipalities such as Kamenicë/Kamenica have to engage with other municipalities in order to offer affordable services.

The boards of the regional companies are appointed nationally as are the directors while municipalities are entitled to two members on the board. Municipalities do not take part in the budgeting or exercise any influence over their capital investments. While institutional means to influence and seek accountability are limited, municipalities find ways to cooperate and have most of their concerns addressed. To formalise the consultations, one mayor called for regular meetings to negotiate and address recurrent issues. A small municipality near the capital city, Lipjan/Lipljane, although represented by a member on the board of the regional company, nevertheless complained of being unable to address the problems of the citizens related to water supply.

Municipalities have proposed the majority of the board members of regional water companies to be drawn from municipalities.

Waste is a municipal competence which municipalities often carry out jointly with other municipalities, due to the lack of waste landfills. The enterprise for the management of waste is entirely in the property of municipalities whereas each municipality has a share of the company based on its size (measured in terms of number of people). Some municipalities have their own companies (more often than for water), while other municipalities contract this out. Most municipalities have run out of landfill capacity and some have to enter into agreement with landfill sites outside of their territory.

During the meetings, local interlocutors expressed the need for clearer procedures in this area and faster decision-making for introduction of novel ways of managing waste such as incineration or recycling. They also pointed out that municipalities can handle more competences with regard to public hygiene and through collaboration they could get more competences with regard to waste management especially if they engage in horizontal partnerships to reap economies of scale.

### ***2.5.2 Principle of subsidiarity***

One important principle on local self-government, which represents a European standard, is the principle of subsidiarity, according to which public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen.

Although the principle of subsidiarity is fully integrated throughout the domestic legislation (Article 15 LLSG), in practice, its implementation has faced problems. Interlocutors pointed out that it is often impeded either by the lack of clarity or understanding of the law, lack of finances, or frequent changes to sectoral legislation making it difficult to track the exact arrangement, or lack of secondary legislation detailing exact implementation. Sometimes the competences in some fields have been organised regionally by the central level, as it is the case for water or waste management.

To improve the principle of subsidiarity, several interlocutors have highlighted the need to introduce a new law on cities which would distinguish and separately regulate the major six cities (apart from the capital city) from rural municipalities with a different set of challenges and lower ability to raise own funds. The very small size of municipalities also limits the type of competences which can be granted to them.

### ***2.5.3 Full and exclusive powers***

The principle that powers given to local authorities shall normally be full and exclusive represents a European standard.

As stated above, municipalities have a wide range of competences with regard to education, health, environment, infrastructure; they also subsidize pupils and sports activities. COVID-19 did not seem to have heavily influenced municipal governance, although this issue was not specifically addressed during the meetings.

Several interlocutors expressed satisfaction with the law, but not so much with its implementation. In the view of some, the central authorities still consider municipalities as their “subservient institutions” which may also be a matter of inertia from the earlier times. Specifically with regard to education, at least one municipality considers that the Ministry of Education has infringed upon its rights. The municipality of Kamenicë/Kamenica faced dwindling numbers in rural schools and was challenged by the central level over its decision to close schools in small villages and offer transport to bigger schools instead.

Other conflicts of competence are related to privatisation, spatial planning or property. Due to long procedures at the central level, they have to face many problems with investors. Unaware of their powers and with insufficient capacity to defend their powers legally, municipalities seem to consider themselves subservient to the central level even if this is not the case in the legislation. This dynamic may also require sufficient time for all institutions to get used to the new norms, but time alone may not ensure that modern norms of subsidiarity will take root as struggle over competences is a permanent pulling and tugging which requires municipalities to stand up for themselves.

Procurement legislation is perceived as a major problem since it affects the municipalities’ ability to properly execute projects within the fiscal year. The legislation does not allow for multi-year budgeting and contracts. Investment funding is approved by central government on a yearly basis, and projects are often initiated in late spring, when it is already too late to initiate procurement and get major works completed, especially given the lengthy complaints procedures. The delay relates to the lack of disposable funds as institutions must wait until sufficient funds have been collected through taxes (customs or other) by the Treasury in order to commit funding for public works to begin. Such difficulties interfere with the budget year and planning, and funds from the central grants are often returned to the budget at the end of the fiscal year, while saddling municipalities with obligations towards vendors.

One example relates to the procurement of pharmaceutical supplies from the essential list which was delayed for months. The Municipality of Prishtinë/Priština purchased insulin although at the time of purchase they were not certain if they were prohibited from doing so. The purchase of insulin by the Central Procurement Agency has been blocked due to complaints. They decided not to wait for the central government and proceeded with emergency procedures to procure insulin by themselves.

There are also conflicting interpretations over competences of the Agency for Emergencies. The Agency is directed by the Ministry of Interior while it is managed by the municipalities on daily basis.

#### ***2.5.4 Delegated responsibilities***

As for delegated competences, the European standards indicate that local authorities should be allowed some discretion in adapting the exercise of delegated responsibilities to local conditions.

As stated above, central authorities may delegate competences in the matters listed in Article 18.1 of the LLSG and in other matters. Among the listed matters are cadastral records; civil registries; voter registration; business registration and licensing; distribution of social assistance payments (excluding pensions); and forestry protection on the municipal territory within the authority delegated by the central authority, including the granting of licenses for the falling of trees on the basis of rules adopted by the Government. Article 18.3 establishes that “Delegated competencies must in all cases be accompanied by the necessary funding in compliance with objectives, standards and requests determined by the Government of Kosovo” (mirroring the analogous provision of Article 124.3 of the Constitution).

During the meetings, some problems on delegated competences were presented, especially on forestry. Forests are under the management of the Forestry Agency but their protection has been delegated to municipalities. Some competences (i.e. environment, forest guards, firefighters) are split between the central and the local level.

Overall, unable to change the key legislation on local government, sectoral legislation has made significant changes to the distribution of competences. This has significantly altered the municipal share of competences, making it more difficult to follow and has put municipalities in battles over competences.

#### **2.6. Administrative supervision**

An important principle in the area of inter-governmental supervision of local authorities is that any form of such supervision must be provided for by the constitution or by statute. In addition, the supervision over local authorities can only aim at ensuring compliance with the law and constitutional principles. Expediency control can be used only in case of delegated tasks. The supervision shall be exercised in compliance with the principle of proportionality.

As stated above, the rules governing the supervision over municipalities and the powers of the central authorities concerned are determined by the law and specified by regulations, which recently introduced very detailed rules (Regulations n° 10/2019 and n° 6/2021).

As for the proportionality of the control, interviewed municipalities expressed concerns regarding the supervision by the MLGA and by line Ministries, citing timing of response as the main concern. Very often the reply is late and municipalities are missing deadlines, giving citizens the right to take the municipality to court. For decisions which related to own competences, which MLGA can only monitor for legality, the municipality can interpret silence positively but often this is also not clear to municipalities.

Sometimes a line ministry returns a negative answer months later and the person who has acquired a right (and then loses) takes the municipality to court and wins. Municipal stakeholders have expressed concerns on the proportionality of the control, considering that whenever the municipality and the Ministry disagree on the interpretations of the law, the central authorities believe they can overturn the municipal acts. As a consequence, several cases are brought to courts.

The burden of proof is rightfully on the central government and not on the municipality, although this is often not understood by municipal authorities who perceive oversight as more cumbersome than the legislation provides.

Although it could be a dose of misunderstanding of the legal framework at municipal level, related to the legal capacity in municipalities, the legal uncertainty on supervision appears to have a negative impact on administrative efficiency and puts the primacy of the local autonomy and subsidiarity in doubt.

## **2.7. Financial situation of municipalities**

### ***2.7.1 The right to collect and allocate their own financial resources***

An important principle of local self-government is that local authorities should have their own financial resources; and that they should be free to decide how to spend those resources.

As examined above, the Constitution contains a specific provision on local finances, establishing that “Municipalities have the right to decide, collect and spend municipal revenues and receive appropriate funding from the central government in accordance with the law” (Article 124.5). Besides these specific constitutional provisions, Law n° 03/1-049, on Local government finance, provides a comprehensive regulation of this matter.

As a rule, all decisions concerning the revenues and the distribution of resources are taken autonomously by the local authority, decided in the municipal budget and approved by the plenary session of the municipal assembly. Local authorities approve their own budgets without the need of prior approval by the regional or central agencies. However, for some budgetary operations local authorities require such approvals, for instance when the local entity envisages having recourse to borrowing (Article 30).

As for expenditure, it is also decided in an autonomous fashion (if within the overall guidelines), and it is only submitted to the ex post accountability control of the internal auditors and the Court of accounts.

### ***2.7.2 Sufficient and proportional resources***

Another basic principle requires that local authorities should have sufficient financial resources in proportion to the responsibilities assigned to them.

As it was presented above, resources of municipalities are a combination of their own resources and the transfer from the central government. The main transfers are the Operating Grants, which include (i) a General Grant, (ii) a Specific Grant for Education and (iii) a Specific Grant for Health.

The overall size of the General Grant is equal to 10% of the general government revenues, and it is allocated according to a formula provided by the law.

There are also special grants for delegated tasks and for enhanced competences. For the latter, the law defines that “the municipality shall be required to spend such a grant only on matters that are clearly and directly connected to the enhanced competencies”.

In the meetings, the main concerns expressed by municipal representatives was related to the fact that the municipal grants are too stringent and inflexible, especially the grant for education. The lack of funding was always cited as a major problem, all together with the lack of flexibility. Excessive control by the central level is also problematic, because they make the ultimate decision with regard to investments in infrastructure. Municipalities lack resources to address the needs of the residents, especially in terms of social services. Most of the grant is dedicated to salaries, leaving a small portion available for investments. With regard to the grants, municipalities do not have the leeway to decide in time on the basis of their needs. They cannot develop a strategic approach and their decisions are adopted on a day-by-day basis. The financial situation is even more complicated for small municipalities whose own revenues are very limited.

The formula for grant allocation has not changed from the outset when local government was established. Demographics and other factors have evolved and there are complaints that the formula allocation has not evolved accordingly. One major town pointed out that it has to spend €3.2 million a year for education-related expenses which the central level does not cover.

Some see the formula in use as unfair given inaccuracies emanating from the population registration, especially in minority areas which partly boycotted the census. For example, the Municipality of Mitrovica/Mitrovicë North claims it has 22,000 inhabitants while it is given a budget which was planned for 12,000. Novo Brdo/Novobërdë claims to have 10,000 inhabitants while the registration indicated it has 8,000.

The same applies to majority-Albanian towns. Some municipalities have large numbers of non-resident population, who are registered in another municipality but utilize the services of another. For example, municipality of Gjilan/Gnjilane complains that the



registration has indicated it has around 92,000 inhabitants, while in reality they claim to have around 120,000 inhabitants. Given the absence of reliable figures, local authorities may over-estimate the actual number of their inhabitants.

### ***2.7.3 Local taxes***

Another principle on local finances is that at least part of the financial resources of local authorities must derive from local taxes of which, within the limits of statute, they have the power to determine the rate.

As presented above, local authorities have their own resources, which represent an important part of their incomes. As for local taxes, the major source of income comes from the tax on immovable property located within its boundaries. The Law on Local Finances establishes other local taxes: business license fee; professional business license fee; motor vehicle fee; municipal administrative fees; permit fees for the construction and demolition of buildings and other structures. Municipalities may regulate and levy charges on other activities. All those fees may be established by municipal regulations.

The overall ability to raise funds depends partly on the economic structure and the business activity which forms the core of the tax base as well as on the willingness of the municipality to collect the income vigorously. Some municipalities have made use of various measures to improve the rate of collection, e.g. demonstrate that one has paid the property tax in order to obtain registration of their vehicle. A major obstacle is that most municipal leaders have opted for the lowest of the rates on property tax, seeking to improve their electability. Some interlocutors have characterised directly-elected mayors as having populist tendencies and political motivations to lower the taxes to the minimum and blame the central authorities for the lack of funding.

The AKM has drafted a model-regulation for taxation and municipalities use this as a blueprint. The Municipality of Gjakova/Djakovica has increased its own revenues by 40% to €4.1 million. The Municipality of Kamenicë/Kamenica pointed out that it had €124,000 for capital investments in 2014, while it has €1.5 million for the same purpose in 2021.

Some rural municipalities complain that the budget allocation is unfair as for them it is significantly costlier to provide services given the sparsely populated areas. Even if the formula takes this into account, the costs are much higher since the teacher/pupil ratio is many times higher than in urban areas. This could be an argument for a more flexible allocation of resources given the diverse needs.

### ***2.7.5 The equalization principle***

The question of the financial situation of municipalities that are financially disadvantaged due to being located in economically or geographically weak areas (transition, mountain or island regions), or simply because they are too small to obtain the amount of resources needed to perform their tasks has to also be addressed.

A proper equalization system does not exist, although the formula to calculate the amount of the General Grant to be assigned to each municipality is aimed at introducing some equalizing effects.

During the meetings, interlocutors expressed concerns for the lack of an equalization mechanism. Municipalities with a vast territory and sparse population must afford higher costs and which are not properly covered by the actual grants. This is also partly addressed as the formula does provide greater funding for municipalities with higher elevation (which we can surmise are less densely populated and which receive higher per capita budgets).

#### ***2.7.6 Unconditional grants***

The fact that, as far as possible, grants to local authorities shall not be earmarked for the financing of specific projects is an aspect of local financial autonomy.

Although most of the grants are unconditional (non-earmarked), grants for specific projects do exist. However, local authorities are completely free to exercise policy discretion within their own jurisdiction also when they use those specific grants.

Line ministries have the right to make capital investments in municipalities. With regard to infrastructure projects, there is no rule, and the central government has significant leeway how it allocates infrastructure projects. Some of them are allocated based on applications by municipalities, which some have described as begging for money from the central authority. During some mandates, the investments from the central governments significantly favoured municipalities based on election results. Some point to a trend that line ministries, depending on the political/ethnic criteria have made investments in specific municipalities. Many projects are co-financed but the central authorities do not decide until quite late which projects they will fund, also making procurement planning difficult to manage.

No issues have been raised on this topic during the meetings with local authorities, but there is an expectation that such infrastructure spending will be transformed into a fourth grant which will reduce the discretionary powers of the central government in how it allocates such funding.

#### ***2.7.7 Access to capital market***

Access to central capital markets is important for local authorities to finance investment projects necessary for the further development of the local area because in many cases the amount of their own “ordinary” resources is not sufficient to cover all the projects and plans decided on by local authorities to satisfy local needs.

According to the Law on Local Finances and the Law on Public Debts, municipalities have access to capital market to finance capital investments with authorisation of the municipal assembly and, ultimately, of the Ministry of Economy and Finance.<sup>15</sup> Borrowing is nevertheless subjected to tight conditions: borrowing is only allowed on

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<sup>15</sup>Law on Public Debts 03/L-175, Articles 30-35.

national capital markets with no exposure to foreign exchanges; total annual debt services should not exceed 15% of municipal own revenues from the past fiscal year; the total amount of municipal outstanding debt should not exceed 50% of municipal own revenues from the past fiscal year; and grace periods are not allowed.

While borrowing is theoretically possible, it is almost impossible in practice, as there are two major obstacles which according to the interlocutors are almost impossible to overcome. One is that the local financial market is under-developed and offers virtually no borrowing mechanisms. The second major obstacle is a very conservative approach of the Ministry of Finance which assesses that municipalities should not get indebted, fearing they may go bankrupt.

The Ministry of Finances reports that no municipality has approached with the idea to issue with T-bills or any other proposals. In their view, most municipalities have money left-over at the end of the year (which is largely due to problems with procurement and lack of multi-year contracting, as explained earlier), so it is difficult to make the argument that their resources are insufficient hence the need to resort to borrowing. While guaranteed by law, the Municipality of Prishtinë/Priština is the first one to ever seek a loan from EBRD. The Ministry of Finance looked at the request for months and still hesitates, its current stance is that municipalities should not get loans.

## **2.8. Human resources of municipalities**

The power to hire their own staff and set employee remuneration is a relevant factor highlighting the organisational and institutional autonomy of local governments.

The internal administrative structure of the municipalities is determined by the municipal assembly. The municipal assembly adopts, by a majority of 2/3, the statute, regulating the internal organization of the municipality (Article 3 and 12.3 of the LLSG).

The civil servants are based on career promotion with a uniform salary system nationwide. The main distinction is that there are two types of public officials, civil servants (administration, school director) and public employees (doctor, policeman, firefighter, teacher). Salaries are paid by the municipalities, drawn from the central grant.

Municipalities have adequate staff numbers, albeit not always of the right profiles. Public jobs are considered stable and attractive even if the salaries are not very high. One of the smallest municipalities has introduced a program through an NGO which enables to recruit 7-8 young interns annually, a scheme which the municipality effectively uses to recruit skilled new talent. The problems arise when recruiting the type of profiles who can earn much higher income in the private sector such as information technology officers, engineers, or architects.

The motivation to work for municipalities is sometimes insufficient given the difference in the coefficients, i.e. the adviser to the mayor of capital city is paid 2.5 times lower than an adviser to a minister. Busy cities with high workload may struggle to attract and keep high motivation given the high workload compared to the same salary levels in very small municipalities. Some municipalities reported challenges to ensure that contract managers,

inspectors and drivers work outside of regular working hours as they were also often unable to pay them over-time.

Most interlocutors pointed out the necessity to pass a new law on salaries. The 2019 law (Law n° 06/L –111) was declared unconstitutional by the Constitutional Court<sup>16</sup> and it has ceased to apply. Municipalities expressed the need of greater flexibility to recruit specific profiles, as IT, architecture, lawyers, environmental experts, whom they cannot afford to hire full-time but can only hire through short-term contracts.

Similar to legal expertise and other profiles listed above, one of the fields where municipal staff are of insufficient capacity is accounting.<sup>17</sup> The internal control system remains fragile at local level as is asset management. Municipalities experience difficulties in preparing concise financial statements, as well as in procurement procedures and contract implementation, as reported by the National Audit Office.

## **2.9. Inter-municipal cooperation**

The possibility of co-operation between local authorities and their right to associate, at both national and international level, represents a standard of local self-government.

The domestic legislation is aimed at enhancing the inter-municipal cooperation, both at domestic and across borders, in compliance with Article 124.4 of the Constitution.<sup>18</sup> The Law on local self-government establishes several provisions which are specified by the Law no.04/1 –010 on inter-municipal cooperation.

It is worth mentioning Article 28 of LLSG, according to which “Municipalities shall have the right to cooperate and form partnerships with other Republic of Kosovo municipalities within their areas of competence to carry out functions of mutual interest, based upon the principles of European Chart for Local Self-Government and in accordance with the law”.

Municipal Partnerships can be established (Article 29 of LLSG) to exercise municipal responsibilities in the areas of their own and enhanced competencies. The legislation is fully permitting with regard to cross-municipal cooperation. Municipalities are allowed to pool resources for any level of co-operation across municipal as well as beyond national boundaries. Such cooperation is limited to own competences and does not extend to deconcentrated and delegated competences.

While municipalities have full freedom to engage in cross-municipal cooperation, municipalities have made little use of this feature. There is generally good collaboration on infrastructure (roads, water) among neighbouring municipalities, but insufficient use on joint provision of services to reap benefits of economies of scale.

Most mayors have had little experience with cross-municipal collaboration but have begun to work in this direction. As some municipalities are very small, major towns have

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<sup>16</sup>Constitutional Court, Judgment of 9 July 2020.KO219/19Applicant: The Ombudsperson, Constitutional review of Law No. 06/L-111 on Salaries in Public Sector.

<sup>17</sup>See National Audit Office, Annual Audit Report for Year 2019, p. 59.

<sup>18</sup> According to which “Municipalities have the right of inter-municipal cooperation and cross-border cooperation in accordance with the law”.

carried out some services as support to the small/new municipalities. Sometimes, the more specialised needs of some municipalities are carried out by the major city in their midst (i.e. Gjiilan/Gnjilane) which carries out numerous functions on behalf of the recently created Serb-majority municipalities (procurement procedures, fire-fighting, regional utility services, treatment of waste-water, etc.). Serb-majority municipalities also rely on three municipalities which have enhanced competences with regard to education and health and serve as major hubs.

Serb-majority municipalities have generally co-operated well with their neighbouring municipalities although this has not always been the case. Gračanica/Gračanicë seems to have had difficulties in relation with Lipjan/Lipljan, but no problems with Prishtinë/Priština. Novo Brdo/Novobërdë and other small municipalities in the region of Gjiilan/Gnjilane have reported good co-operation with Albanian-majority municipalities.

## **2.10. The role and legal status of local government associations**

The right of a local authority to belong to a national association for the protection and promotion of their common interests is also a standard of local self-government.

The right of municipalities to associate is recognised by article 31 of LLSG. Article 32 establishes some specific transparency duties: “ 2. The incorporating acts and financial documents of such associations shall be made public. Participating municipalities shall make public the information about the activity of such associations and their budgetary contributions to the associations”. As for the functions of those associations, they “may offer to its members a number of services, including training, capacity building, technical assistance as well as research on municipal competencies and policy recommendation in accordance with law” (Article 32.3). Article 33 of LLSG establishes that associations of municipalities may co-operate with international associations of local authorities.

Established in 2001 after the first democratic municipal elections, the AKM plays an important role in the political landscape. Overall, the municipalities find the AKM plays an important role in influencing the central government as well as in coordinating numerous policies horizontally, using its working groups for training purposes and otherwise deliberating on issues of shared concern to undertake joint action.

The right to associate remains sensitive when linked to the creation of an Association/Community of Serb-majority municipalities.

## **2.11. Consultation mechanisms with municipalities and their associations**

Consultation of local authorities represents a key principle of local self-government. This process requires a formal and adequate institutional setting, to ensure that the right to consultation is guaranteed both in law and in fact.<sup>19</sup>

Within the domestic legal framework, there is no formal or mandatory format by which municipalities are consulted over public policies, although consultation takes place.

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<sup>19</sup> See Report CG35(2018)20final 8 November 2018, The consultation of local authorities by higher levels of government, para 11-12.

Municipalities are open to participate in public discussions facilitated by the government or the national legislature. Members of Parliament individually reach out to municipalities and engage in debates with citizens.

Meetings have indicated that mayors of all political backgrounds see AKM as an effective intermediary and advocate which enables significant influence over legislation and policymaking. The AKM has managed to serve as a consistent conduit of municipal power and has sought to overcome party differences and to serve as an advocate of municipal interests. While four Serb-majority municipalities in the northern part are not AKM members, those in the south are, although not as active as their Albanian-majority counterparts.

At the beginning of every year, the government and the Assembly share the legislative agenda with the AKM where they envision the changes, amendments, and the drafting of new legislation. The AKM consults its member municipalities and then the Board makes a decision in which working groups of the AKM are to participate on behalf of the local government. The AKM is active in parliamentary committees. In 2021, it planned to participate in 38 working groups (out of 190 legislative initiatives) as was assessed by the collegia and the mayors, virtually all for new and amended legislation. In the law for public enterprises, the government has authorized the AKM to draft the competences for municipalities. Until now, the AKM has not participated in committees for purposes other than new or amended legislation.

While it is not mandatory to involve the AKM, a practice has been created whereby the AKM chooses the legislative initiatives it wants to be a part of and then is invited to nominate its representatives in relevant working groups. A tradition has been formed that the AKM is consulted on legislation to ensure there are fewer problems during implementation later on.

The same practice is well-oiled with regard to legislation but has only begun to extend to government policy. The AKM does get involved in policy development but there is no trodden path how such consultation takes place and amounts to the usual advocacy and lobbying techniques. Given that mayors are powerful political figures, they jointly form a formidable advocacy front. The recent issue of the pandemic has empowered the mayors and the AKM as a necessary part of policy implementation.

The consultations take different shape depending on the issue. Regarding the budget, there is a Grants Commission composed by representatives of the central government and four mayors, whose names are drawn by lottery (Law on Local Finances, Article 32). The possibility to influence there is very limited as there is no discretion in the budget allocation since it is based on a detailed formula. Many mayors influence pieces of legislation also through the MPs coming from their midst or among the ranks of their parties.

Although municipalities are consulted with regards to legislation, and the cooperation with the MLGA can be considered effective (even if not always satisfactory), the collaboration with a range of line ministries is clearly lacking. Various ministries do not

consult the AKM for policy or even specific municipalities which may be affected by their decisions.

The central government authorities may undertake infrastructure projects without consulting or even informing the municipality in question. Even if public works cause damage to other infrastructure, the municipality may not be informed. Often, they may be informed at the latest stage of a project, during implementation, or they inform the municipality that a project is beginning without the possibility to influence it. For example, a school was built by the Ministry of Education without any level of consultation with the municipality. This relationship has produced numerous disputes and conflicts.

## **2.12. Status of the Capital City**

According to Article 13 of the Constitution, “1. The capital city of the Republic of Kosovo is Prishtinë/Priština. 2. The status and organization of the capital city is provided by law”. The LLSG foresees a separate law regulating the status of the capital city. Article 2.2 establishes that “The City of Prishtinë/Priština, as the capital city of Republic of Kosovo, shall be regulated by a separate Law on the City of Prishtinë/Priština. The LLSG shall apply to the City of Prishtinë/Priština except as may be provided for otherwise in the Law on the City of Prishtinë/Priština”.

After several attempts, these provisions have been implemented in 2018, when the “Law No. 06/L-012 on the Capital City of the Republic of Kosovo, Prishtinë/Priština” was passed.

According to this law, the capital city is entitled to additional competences in the field of public safety, health care and public services. It is also provided that, each fiscal year, the capital city receives an additional grant from the national budget in the amount not less than six percent (6%) of the general grant of municipalities, as defined in the Law on Local Finances.

The meetings indicated that notwithstanding this law, the capital city still lacks a real special status, in terms of competences, finances and human resources as many of the provisions of the law have not been implemented. The municipal police, the hospital for secondary health care, the right to organize public utility companies are not effective yet. The necessity of making Prishtinë/Priština “a real capital city with real competences” was pointed out in the framework of a special attention to the bigger cities, which require a differentiated autonomy. In addition to being capital city, Prishtinë/Priština is also by far (with estimated 217,000 inhabitants and a high daily influx) the largest city in Kosovo\*.

## **2.13. The citizens participation in local public life**

The domestic legal framework, beginning from Article 124.1 of the Constitution foresees several formal requirements for public participation, transparency and consultations at municipal level.

Since the introduction of directly elected mayors in 2017, municipal political dynamics and citizen participation have improved significantly. Directly elected mayors see an interest to engage directly with citizens and show willingness for public participation.

Legislation is modern and provides for mandatory consultations.<sup>20</sup> Municipal transparency is regulated by Administrative Instruction No. 03/2020 on Transparency in Municipalities, issued by the MLGA. All municipalities fully implement the mandatory required public consultations, general ones as well as those related to budgetary consultations.<sup>21</sup>

According to a MLGA report, in 2016 in only 45% of cases did municipal assemblies consult with the public when adopting municipal acts, whereas for the Mid-Term Budgetary Framework and the municipal budget, the public was consulted in 96% of cases.<sup>22</sup> On the other hand, according to a GAP Institute survey, only 52% of citizens are informed that municipalities have a duty to organise budget hearings on the municipal budget, while 81% of citizens have stated that in the last 12 months, they did not participate in any public gathering organized by the municipality.<sup>23</sup>

Despite the advanced legal framework and adequate incentives, most mayors reported difficulties in eliciting proper participation by the citizens. Challenges still abound as the number of citizens showing up is relatively low. Consultations are not usually designed to truly consult citizens over future courses of action or about real stakes. Ordinary citizens are interested in events which have an impact, and less so on reporting sessions that are usually organised for mayors to report on their successes.

Some mayors have managed to get higher participation in the public discussions but complain that these often become very politicised. Ordinary citizens show up in fewer numbers as most of those who attend are party fans, often members of the opposition, which seeks to use the consultation to create the impression in front of the media that people are very dissatisfied.

Another reason for the lack of enthusiasm over public participation is that municipalities have small budgets. There is a major discrepancy with the needs of municipalities, often leading to inevitable disappointment. It is budgetary discussions that citizens find most appealing as they want to engage over specific projects and priorities. Municipalities are yet to experiment with simpler ways of explaining complicated topics, such as the budgetary consultations which most mayors admit can only be understood by individuals who deal with finances and are too complicated for the average citizen.

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<sup>20</sup> Administrative Instructions n° 06/2018 on minimum standards on public consultation in municipalities.

<sup>21</sup> A Municipal Budget Transparency Index has been developed by the GAP Institute, which issues an annual report: [https://www.institutigap.org/documents/87959\\_indeksi\\_transparencas\\_2021FIN.pdf](https://www.institutigap.org/documents/87959_indeksi_transparencas_2021FIN.pdf). See also the index developed by the Kosovo Democratic Institute KDI, the Municipal Transparency Index: <https://kdi-kosova.org/en/publications/municipal-transparency-and-accountability-index-2019/>

<sup>22</sup> GAP Institute. December 2017. GAP Municipal Budget Transparency Index 2017. p. 7.

<sup>23</sup> GAP Institute. December 2017. GAP Municipal Budget Transparency Index 2017. p. 7.



One mayor considered that municipalities are generally small, where most people know each other, and sufficient interaction occurs on a daily basis making formal consultations redundant.

Some smaller municipalities, but also the capital city, have tried novel ways to reach out to people. Some consulted NGOs when they allocated grants for women. Municipality of Prishtinë/Priština tried neighbourhood consultations, which turned out to be time-consuming, therefore were dropped in later years.

Some municipalities have resorted to printing the budgetary framework in hard copies which were disseminated to neighbourhoods asking the heads of villages to prepare priorities for the village. The Municipality of Obiliq/Obilić prints all the documentation, including technical specifications for public works and infrastructure, hoping that village leaders also exercise a type of monitoring of implementation of infrastructure projects to supplant the work of municipal inspectors and improve the quality of public works. Often citizens serve as whistle-blowers, alerting the municipality that a particular project was not being implemented as provided by the contract.

Elaborate tools for participation exist but require further development and better application in practice to ensure meaningful participation. Incentives to improve participation are there and municipalities are experimenting with various new forms of outreach.

### **Part III Conclusions. How to improve local self-government**

The European standards on local self-government are generally respected in Kosovo\*. Municipalities enjoy a significant level of autonomy, and they perform important functions, with a relevant impact on the life of citizens. To mark faster improvement of local self-government performance and in compliance with best European practice, there are some issues that must be addressed.

#### *Constitutional and legislative framework of local self-government*

At constitutional level, notwithstanding the constitutional reference to the ECLSG, the density of the principles on local self-government is low. In addition, as the Law on local self-government is a vital law, very difficult to amend, new provisions are often introduced by sectorial laws, making the legal framework obscure and fragmented.

To clarify the legal framework, it is suggested to collect the legislation on local self-government (vital law, ordinary laws, governmental decrees) in a “code”, which can facilitate the task of all the actors involved. A manual which delineates all the local powers would also contribute to clarify the exact distribution of powers and could serve as a mapping for future reform efforts.

#### *Judicial remedies*

Few cases are brought to the Constitutional Court by municipalities and all of them were considered inadmissible. While the judicial remedies to protect local self-government required by the European standards seem to be partially respected, to ensure an effective judicial remedy to protect local self-government at constitutional level, the legal capabilities of the local government staff should be reinforced including the possibility of municipalities to resort to high-quality legal advisers.

In addition, the one-year deadline from the moment the law entered into force to submit the referral to the Constitutional Court prevents municipalities to have full and effective access to judicial remedies against unconstitutional legislation. The Law on the Constitutional Court (Article 41) should be amended to eliminate the deadline.

#### *Organisation of municipalities*

The democratic principle is in general respected at local level.

To strengthen the role and the efficiency of the local elected assemblies, it is suggested to improve the possibility for assemblies to exercise more effective oversight on mayors and to optimize the size of municipal assemblies.

#### *Conditions of office of local elected representatives*

To strengthen the status of local elected representatives, it is suggested reviewing the issue of their financial compensation, by establishing at central level a maximum and a minimum threshold, considering also, where appropriate, corresponding social welfare protection. Instead of a range of councils from 13-51, it should be considered reducing the

size to a range of 7-21. An increase in remuneration would not cause additional costs if the size of municipal assemblies is reduced.

#### *Distribution of competences between the central and the local level*

More than a decade after the entry into force of the LLSG, it seems necessary to review the decentralization process, which was never conducted. This review should examine especially the competences belonging to the local level and should be aimed at a rational distribution of tasks, accompanied by a revision of the relevant legislation, making it easier to follow with clearly assigned responsibilities to a particular level.

The possibility should also be considered of putting an end to the uniformity in municipal competences, by declaring some municipalities as cities, with more competences and the ability to discharge support for smaller rural municipalities.

#### *Administrative supervision*

A review of the lines of supervision should be conducted. An easy-to-understand manual could reduce uncertainty and explain the obligations and rights of municipalities vis-à-vis the central level. In the next years, as municipalities reach certain milestones, their oversight should be reduced until this task is eventually dropped altogether.

#### *Financial situation of municipalities and financial equalisation mechanisms*

The financial resources of municipalities are often insufficient. The calculation of grants, including the formula, should be revised, taking into account more indicators, especially the real cost of public services. One could consider the possibility of introducing a specific grant for social services. The discretionary powers of the central government to decide on most capital investments are excessive. A proper equalization mechanism has to be introduced to support poorer municipalities. Multi-year budgeting, procurement and contracting should be introduced to allow for improved long-term planning and completion of projects in stages. The review of the Law on Local Finances has to be carried out on the basis of an agreement between the central government and AKM.

#### *Human resources of municipalities*

Measures should be taken to improve the flexibility and the ability of municipalities to recruit high-quality staff. Remuneration, career prospects and training opportunities should be sufficient to allow municipalities to discharge their duties. Municipalities need greater flexibility to recruit specific profiles, as IT, architecture, lawyers, environmental experts, accountants also as permanent staff when needed. Municipalities should also heed advice to reduce the numbers of support staff to free up budget for much needed profiles.

#### *Consultation mechanisms with municipalities and their associations*

Legislation should be revised to provide clear and detailed regulation to formalise the consultation process, to make it predictable and result-oriented. The relevant legal framework should therefore clearly describe: a. the objectives of consultations; b. the

parties involved and their rights and obligations; c. the time frame, forms and procedures for consultations; and d. the expected outcomes of consultations. In addition, the government and municipalities need to find an effective mechanism to review and deliberate all matters at the strategic level as well as at policy development and implementation. A rule should be developed whereby ministries are obliged to consult/inform municipalities for specific projects. The process should also formalise consultations over policy as well as coordination with municipalities over implementation of projects in their territory.

#### *Status of capital city*

It is recommend assessing the implementation of the legislation on the capital city and eventually reconsidering the actual law, in order to enhance the special status of the capital city. A metropolitan level of governance in the future could encompass the urban parts of the capital city and its neighbouring municipalities.

#### *Citizens participation*

Municipalities should increase citizen participation in local democracy, by encouraging a more active role of the citizens. In that respect, effective communication and the ability to explain complicated topics in a simpler language is very important. This applies especially to the budgetary consultations which most mayors admit can only be understood by individuals who deal with finances and are too complicated for the average citizen

**Annex I: List of Meetings**

<b>Nr.</b>	<b>Date</b>	<b>Name</b>	<b>Institution</b>
1	05.07.2021	Sazan Ibrahim, Executive Director	Association of Kosovo Municipalities
2	09.07.2021	Qëndron Kastrati - Mayor	Kamenicë/Kamenica Municipality
3	09.07.2021	Ardian Gjini - Mayor	Gjakovë/Djakovica Municipality
4	13.07.2021	Xhafer Gashi - Mayor	Obiliq/Obilić Municipality
5	13.07.2021	Siniša Dimić - Dep. Mayor	Novo Brdo/Novobërdë Municipality
6	13.07.2021	Lutfi Haziri - Mayor	Gjilan/Gnjilane Municipality
7	14.07.2021	Shpend Ahmeti - Mayor	Prishtinë/Priština Municipality
8	14.07.2021	Shkëlqim Jakupi - Head of Department for EU integrations and policy coordination	Ministry of Local Government Administration
9	16.07.2021	Zoja Osmani - Director Legal Services	Assembly of the Republic of Kosovo
10	16.07.2021	Besnik Osmani - Auditor General	National Audit Office
11	16.07.2021	Dukagjin Abdyli - Legal Advisor	Constitutional Court
12	16.07.2021	Fauz Xhemajli - Dep. Mayor	Lipjan/Lipljane Municipality
13	19.07.2021	Naim Qelaj - Ombudsperson	Institution of Ombudsperson
14	19.07.2021	Adrijana Hodžić - Dep. Mayor	Mitrovica/Mitrovicë North Municipality
15	19.07.2021	Lum Mita - Head of Cabinet at GS	Ministry of Finance