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What are the real competences of local governments?





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Introduction

Local government competencies are regulated by the Constitution of Kosovo and the Law on Local Self-Government. Pursuant to the Constitution, municipalities are the basic units of local self-governance whose organization and competencies are regulated by law.¹ The Law on Local Self-Government² is the basic law that determines the competencies and the organization of municipalities. This law came into force in June 2008 and is part of the package of statehood's basic laws, or commonly known as "the Ahtisaari Package laws". These laws have been approved in an expedited manner during the 120 days transition period from the declaration of independence on February 17, 2008 until their entry into force on June 15, 2008.

The Law on Local Self-Government is part of the laws of essential interest. The adoption, amendment and abrogation of laws of essential interest requires the votes of double majority at the Assembly, namely the majority of votes of all MPs, as well as the majority of the votes of MPs representing the minorities.³ This rule is the reason why the Law on Local Self-Government has not changed since its approval nine years ago, despite the many shortages that have been identified in the law. Two years after the adoption of the Law on Local Self-Government, the government had initiated the procedures for amending and supplementing it, especially the points related to the management of municipal properties, cross-border cooperation, and procedures for the dismissal of the head of assembly, appointment of the director of administration and personnel, and so forth.⁴


Due to the inability to amend the Law on Self-Government, be it due to the lack of political consensus between the parties of the majority, or the fear of changes not being voted by the parties of minority communities, the legislation on Self-Government has been tried to be supplemented through the adoption of other laws or amendment of other sectorial laws.

¹ Constitution of the Republic of Kosovo, Article 12.

² Official Gazette of the Republic of Kosovo. Law No.03/L-040 on local self-government, adopted on February 20, 2008. Source: <http://bit.ly/1CulaKA> (last accessed on April 18, 2017).

³ Constitution of the Republic of Kosovo Article 81.

⁴ For more see the analysis of GAP Institution "Rule 61 - Ahtisaari Laws, consequences and lessons derived from the adoption of laws in expedited procedure. December 2010. Source: <http://bit.ly/1YvYncl> (last accessed on April 18, 2017).



In this report, GAP Institute has analyzed the municipal competencies as defined by the Law on Local Self-Government, by comparing it with other sectorial laws. The report analyzes in particular how many competencies municipalities have in the local economic development, municipal property management, waste management, water supply, local environment protection, responses in local emergency cases, and the like.

Methodology

GAP Institute has recommended to the Assembly Committee for Public Administration, Local Governance and Media to also include in its 2017 work plan the monitoring of the implementation of the Law on Local Self-Government, with special emphasis in the conflict of interest between Article 17 of the law and other applicable laws. The assembly committee has approved our recommendation and the committee's work plan foresees the monitoring of the Law on Local Self-Government.⁵ In this context, GAP has taken upon itself assisting the committee by analyzing the laws in conflict with the Law on Local Self-Government. The analysis which aims to provide the ground for the committee's work in monitoring the law has also taken into consideration the opinions of five Mayors, namely Mayor of Drenas, Hani i Elezit, Kaçanik, Viti and Obiliq.

Own competencies of municipalities

According to the Law on Local Self-Government municipalities have own competencies, delegated competencies and enhanced competencies. Own competencies imply that municipalities have sufficient power to manage several fields for which the law grants them full power. Delegated competencies are mainly services that municipalities perform for the central level, such as distribution of social assistance, whereas the enhanced competencies are the ones enjoyed by some municipalities with Serbian majority, such as managing the secondary health services.

⁵ Official notification of the Kosovo Assembly after the meeting of the Assembly Committee for Public Administration, Local Governance and Media on February 1, 2017. Source: <http://bit.ly/2oSSCHO> (last accessed on May 12, 2017).

Article 17 of the Law on Local Self-Government lists all own competencies of municipalities. According to this article municipalities have full and exclusive competencies in these fields:

- 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, including water supply, sewers and drains, sewage treatment, waste management, local roads, local transport and local heating schemes;
- Local emergency response;
- 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;
- Promotion and protection of human rights;
- Provision of public primary health care;
- 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 centers, recruitment, payment of salaries and training of social welfare professionals;
- Public housing;
- Public health;
- 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;
- Naming of roads, streets and other public places;
- Provision and maintenance of public parks and spaces;
- Tourism;

For the purpose of this brief analysis we focused on some of the main fields from Article 17 on own competencies and we have compared them with the real municipal competencies such as: local economic development, water supply, waste management, local emergencies, environment protection and primary health care.

Local economic development

One of the fields on which the municipalities disagree on having full competencies is the local economic development. The five Mayors we

interviewed, as well as others⁶ who have expressed their dissatisfaction throughout these years, complain that other applicable laws hinder the municipalities to undertake actions for the local economic development.

The municipalities encounter biggest difficulties in relation to the municipal property management, or more accurately the lack of property that could be offered to investors. Many municipalities have no municipal property at all, whereas public property is managed by the Privatization Agency of Kosovo (PAK). The law on allocation for use and exchange of immovable property of the municipality stipulates the procedures for the transfer of ownership from the PAK to the municipalities.⁷ But, municipalities complain that this process takes a long time and cannot respond to the requests of the potential investors.

On the other hand, even in cases when municipalities have full authority to allocate municipal land for use, it usually is given as property for the construction of collective residence buildings, but not for opportunities for sustainable local development.⁸

Another problem in relation to local economic development is the creation of local public enterprises (PE). Some municipalities in Kosovo implement certain services related to local economic development such as market management or public housing space management through PEs. Pursuant to Article 11.3 of the Law amending and supplementing the Law on PEs, municipalities are entitled to create local PEs in compliance with the criteria specified by government's legal acts.

⁶ Such dissatisfaction was expressed several times publicly by the Mayor of Gjakova Ms. Mimoza Kusari-Lila and Mayor of Mitrovica Mr. Agim Bahtiri. In an interview with "Zëri", Bahtiri spoke about the many problems in the field of local economic development. Source: <http://bit.ly/2swv5kU> (last accessed on May 15, 2017).

⁷ Article 9 of Law No.03/L-226 on allocation for use and exchange of immovable property of the municipality. Source: <http://bit.ly/2sejxO4> (last accessed on May 30, 2017).

⁸ Some municipalities, such as Gjilan, Klina and other Municipalities, through the law for public-private partnerships have allocated the municipal property for the construction of collective residence buildings in compensation for the use of one part of the building by the municipality, or even worse, as property that is carried over to the municipal political leaders. For more information pertaining to the abuse of public-private partnership projects by municipalities read GAP's report "Gjilani Municipal ID 2013" (Letërnjoftimi i Komunës së Gjilanit 2013) (Source: <http://bit.ly/2sGczXG>) and "Klina Municipal ID 2012" (Letërnjoftimi i Komunës së Klinës 2012) (Source: <http://bit.ly/2sGib40>).

However, Article 11.1 of this law specifies that a public enterprise may be created only if authorized in writing by the government.⁹

The municipalities' dependence on the government for creating local PEs has caused problems in the past both due to delayed responses from the central level as well as the rejection of municipal requests to create PEs. When the local PE "Prishtina Parking" was created, Prishtina Municipality had to wait over a year the approval from the Ministry of Economic Development.¹⁰ With the draft law on the capital of the Republic of Kosovo - Prishtina, the Municipality of Prishtina will be able to create local public enterprises only with the approval of the Municipal Assembly, without the approval of the Government of Kosovo. This right should be given to other major municipalities in Kosovo so that these municipalities would have their necessary independence to use PEs for the purpose of economic development.

Water supply

Pursuant to the law on local Self-Government water supply is a municipal competency. In practice, however, water supply is provided by the regional water companies, whose shareholder is the Ministry of Economic Development. There are seven regional water companies (RWC) that provide services to municipalities or various regions of Kosovo. Based on the ownership, six of the seven RWCs are owned by the Government of Kosovo, whereas only RWC Bifurkacioni is locally owned (by Ferizaj and Kaçanik Municipalities).

Since 2012 pursuant to Law No. 03/L-087 on public enterprises, municipalities are entitled to propose members for the boards of RWCs. The nomination and selection procedure for the RWCs' candidates for director of the board by the municipalities is defined with a sublegal act. Based on the administrative instruction on participation of municipalities in the boards of regional water companies, the Board of RWCs is comprised of six members and a chief executive. Initially, the municipalities nominate at least three candidates more than the number of positions reserved for the municipal directors. Then the recommending committee (central level) assesses whether the candidates meet the legal criteria stipulated by the Law on PE. Finally, the municipalities nominate three main candidates (including the candidate for minority communities) and three spare candidates for

⁹ Official Gazette of the Republic of Kosovo, Law no. 03/L-087 on Public Enterprises, Source: <http://bit.ly/1vs647w>

¹⁰ GAP Institute, Public Municipal Services and Public Enterprises, Source: <http://bit.ly/22PG54x>

board members through the Association of Municipalities. The names nominated by priority municipalities are ranked depending on the number of consumers. On the other hand, although municipalities are entitled to nominate the directors of the boards, the right to monitor and dismiss board members (including those nominated by the municipalities) of the RWC rests only with the government upon the recommendation of the Public Enterprises Monitoring Unit (PEMU).¹¹

According to the Mayor of Hani i Elezit, in relation to the water supply, the municipality is a mere observer and reporter of the situation without any competencies to impact the management. According to him, in 2010, Hani i Elezit Municipality with the help of donors constructed a drinking water processing factory, but due to the lack of management from the RWC "Bifurkacioni", this factory is out of use. Hani i Elezit Municipality had decided to create a water management local enterprise, but this decision was rebutted by the Ministry of Local Government Administration.

The Mayors of Vitia, Obiliq and Drenas have also said that they are not satisfied with the cooperation between their municipalities and the regional water companies.

Waste management

Waste management is also a competence of municipalities based on Article 17 of the Law on local self-government. But, in practice, waste management falls more under the competence of regional companies operating as share-holder associations rather than under the municipality. According to the law on public enterprises, there are 11 waste collection companies, five of which are 100% owned by the municipality (Gjakova, North Mitrovica, Zveçan, Leposaviq and Zubin Potok), while the rest are regional companies, where boards are comprised of two or more municipalities.¹² For example, the Regional Waste Company "Pastrimi" provides services in eight municipalities. Obiliq participates with 3% of shares and together with Fushë Kosova,

¹¹ For more information read GAP analysis "Municipal public services and public enterprises" published in June 2015. Source: <http://bit.ly/22PG54x> (last accessed on April 8, 2017).

¹² Official Gazette of the Republic of Kosovo. Law No.03/L-087 on Public Enterprises. Amended and Supplemented with Law No. 05/L-009 and Law No. 04/L-111. Source: <http://bit.ly/1vs647w>

they have one representative in the board.¹³ Small municipalities such as Obiliq with low shares and limited participation in the boards of regional companies complain that bigger municipalities over vote them and the waste collection is more efficient in the bigger cities than in the smaller ones.

For this reason, Municipality of Kamenica in August 2011 created a local enterprise for waste collection with the justification that the Regional Waste Company "Eco-Higjiena" was discriminating The Municipality of Kamenica.¹⁴ The Municipalities of Hani i Elezit and Graçanica applied at the Ministry for Economic Development for the creation of local waste collection enterprises.¹⁵

The Municipality of Hani i Elezit had to wait for almost ten years to get approval of their request to create a waste management company from the Ministry of Economic Development. This company started operating in January 2017.

On the other hand, The Municipality of Obiliq despite being satisfied with the waste management by the regional company, has a problem for which they have no competencies to intervene in but exists within the municipality, and that is the waste collection site in village Mirash. The waste collection site constitutes a serious health threat for the inhabitants, but it is managed by the Ministry of Environment and Spatial Planning.

Local emergencies management

The law on local Self-Government stipulates that municipalities have responsibilities and competencies to act in cases of local emergencies. The law on firefighting obliges the Ministry of Internal Affairs and the

¹³ Official Gazette of the Republic of Kosovo. Administrative instruction No.03/2009 on the representation of municipalities at the board of directors of local public enterprises. Source: <http://bit.ly/2o03AKT>

¹⁴ In June 2014, the company created by Kamenica Municipality was transferred under the complete management of the Regional Waste Company "Eco-Higjiena". More information can be found in GAP analysis "Municipal public services and public enterprises" published in June 2015. Source: <http://bit.ly/22PG54x>

¹⁵ Procedures for the creation of new local public enterprises are stipulated by Regulation no.02/2013 on the criteria for the creation of local public enterprises. Source: <http://bit.ly/2nGfIVo>

Emergency Management Agency to create firefighting centers and the municipalities are obliged to create only volunteer units.¹⁶

According to a report published by GAP Institute in 2016, municipalities are unclear on who manages the firefighting units.¹⁷ Municipalities continue to pay for the maintenance of vehicles, fuel, purchase of equipment, and maintenance of facilities. This occurs despite the fact that the management competence of firefighter units has been transferred to the Emergency Management Agency (EMA) under the Ministry of Internal Affairs (MIA). In some municipalities, such as Hani i Elezit and Mitrovica, firefighters are paid by municipalities, while in some other municipalities they are removed from the local payroll and are transferred to the list of employees of the EMA.

The municipalities interviewed for this report were in favor of transferring the competencies for the management of the firefighting services to the central level, for the purpose of creating a unique system, setting of standards, ranking, and so on.

Environment protection


Environment protection is another field left under the competency of municipalities. But, in practice, the greatest competencies in this field belong to the Ministry of Environment and Spatial Planning. The Law on air protection and the Law on environment protection give competencies to the central level to intervene in the protection of environment, whereas municipalities are obliged to approve plans for the protection of water, protection from noise, protection of plants, among others.

According to an earlier research of the GAP Institute, in spite of municipalities not having sufficient competencies in environment protection, most of them have not met the obligations per the laws in this field.¹⁸ According to the aforementioned report over 60% of the municipalities have no environment inspectors, over 70% of municipalities have no water protection plans, and over 70% of municipalities have no air protection plans.

¹⁶ Article 4 of Law No. 04/L-049 on Firefighting and Rescue. Source: <http://bit.ly/1WOcQjY> (last accessed on June 5, 2017).

¹⁷ GAP Institute. Challenges of municipalities in the implementation of laws. May 2016. Source: <http://bit.ly/2nZF4hp> (last accessed on May 30, 2017).

¹⁸ GAP Institute. Challenges of municipalities in the implementation of laws. May 2016. Source: <http://bit.ly/2nZF4hp> (last accessed on May 30, 2017).



However, some municipalities, especially those located in the special protection zones or in the zones with high level air polluters have no competencies to solve environment problems within their municipal territories. The municipalities of Hani i Elezit, Obiliq and Drenas are part of these zones. All three of these municipalities are dissatisfied with their competencies regarding environment protection and the readiness of MESP to assist the municipalities in overcoming problems in this field.

The Municipality of Prishtina, as one of the biggest municipalities in Kosovo, also asserts that it has no competencies to intervene in solving air pollution problems, which during the winter months is very high due to the vicinity of the thermal power plant, old vehicles and coal burning for heating by family economies.

Primary healthcare

Primary healthcare is managed by the municipalities through family medicine centers. Hiring of staff and distribution of managing duties are municipal competencies, whereas determining the level of salaries is a central level competency. The successful management of primary healthcare also depends on the successful supply of medicines. But, the supply of medicines that are part of the essential list is a competency of the Ministry of Health.

All the municipalities interviewed during this research expressed their dissatisfaction with the supply with essential list medicines. Lack of medicine supply, according to the Mayors, has a negative impact in all primary healthcare services.

Conclusions and recommendations

From the data presented in this analysis, it can be concluded that municipalities in Kosovo do not exercise independent competencies and they continue to be dependent on the central level institutions. This interdependency in most cases makes the municipalities look as central level serving mechanisms.

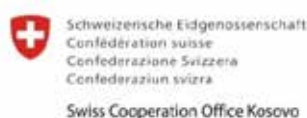
Out of 19 own competencies provided by the Law on local Self-Government, none of them is executed exclusively by the municipalities. Most of these competencies can be exercised after procedures or approvals the municipalities must obtain from the central level. Moreover, a part of these competencies may be exercised directly by the central level.

Based on this, GAP Institute recommends:

- Amending the Law on the Local Self-Government, which would give more competencies to municipalities by strengthening further the own competencies listed under Article 17 of the applicable law. Additionally, a series of sectorial laws¹⁹ have to be amended in order to avoid conflict among laws.
- The amendments in the Law on Local Self-Government in addition to own, delegated and enhanced competencies must also provide asymmetrical competencies between municipalities, as to avoid treating major municipalities such as Prishtina the same way as smaller municipalities such as Mamusha. Moreover, the asymmetrical division of competencies between municipalities should be done in compliance with the performance of municipalities and it should be an ongoing process of ceding and limiting the competencies depending on the local administration performance.
- The municipalities should have more competencies in managing public enterprises, especially the public services, such as water and waste companies, as two basic municipal services. This should be done by adopting a new law on public enterprises, which among other shall provide faster proceedings and approval of municipal requests to create local public enterprises.
- The Government of Kosovo, Kosovo Property Agency, Kosovo Forest Agency, Privatization Agency of Kosovo and municipalities should create a committee to assess on how to transfer some currently public owned properties into municipal properties to facilitate the implementation of municipal competencies in relation to the local economic development and property management.

¹⁹ As may be the case with the Law on Public Enterprises, the Law on allocation for use and exchange of Immovable Property, Law on Inspectorate and Inspective Supervision, Law on Fire-Fighting and Rescue, etc.

GAP Institute is a Think Tank established in October 2007 in Kosovo. The main goal of GAP is to attract professionals in order to create an environment of professional development and research, which is encountered in similar institutions in western countries. This also provides the opportunity for the people of Kosovo to research, develop and implement projects with the aim of advancing the Kosovar society. The priority of this Institute is to mobilize professionals in addressing the economic, political and social challenges of the country. The main goals of GAP are to fill the gaps between the Government and the citizens, and also fill the gaps between problems and solutions.



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