

LOCAL GOVERNMENT, DECENTRALIZATION AND THE PUBLIC ADMINISTRATION IN KOSOVO – CHALLENGES

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Abstract

Kosovo is one of the eight units of the former federation of Yugoslavia (SFRJ). After the end of the NATO campaign of air strikes, a technical agreement (Kumanovo agreement) was signed between SRJ and the NATO that opened the doors for UN Security Council to adopt the 1244 Resolution based on which Kosovo was put under the international civil administration. Since then, June 1999 and under the Resolution until its declaration of independence it was administered by the international administration, whereas it became as an independent state in 2008 when Kosovo Parliament approved the Declaration of Independence. The international civil administration could be classified in various phases. No matter of phases, efforts for establishing local government system and structures were permanently undertaken.

In this regard very quickly there were first local elections organized based on UNMIK regulations. Even though elections were evaluated to be the best organized in the region, they anyway were followed by difficulties colored nationally since Kosovo in one side in some way was divided and a border line was unofficially put on the river Ibar. Thus the local governments were not equally, based on the same rules and in the same way established. The Republic of Serbia had a strong influence in the North of Kosovo and in some Serb enclaves created after the withdrawal of Serbian forces from Kosovo. For a long period of time the implementation of the UNMIK Regulation for local governance and later on the Kosovo Law on Local Governance was a difficult task to be fulfilled. Similarly this happened to the creation of the public administration whereas it was unclear what was the decentralization in Kosovo when it was not clear what and from whom was transferred from the central to the local level.

The situation is changing but not in accordance with the objectives and strategies for Kosovo development. This because among the others difficulties colored nationally are still present in Kosovo. And there are still no clear solution on equal implementation of Kosovo laws in its entire territory. Paper will bring all problematic issues and it brings a discussion about the best possible way for proper implementation of laws from theoretical and practical viewpoint along with proposed recommendations.

Key words: local, government, administration, decentralization, Kosova

Introduction

During the period of existence of the SRYF (Socialist Republic of Yugoslavia Federation) the position of Kosovo changed as Yugoslavia changed. Kosova position in the time of Yugoslavia followed the developments in Yugoslavia even though its position in some periods of time was completely not in its favor. Since 1946 Constitution Kosova position changed from being part of federal system of Yugoslavia then going through losing the federal element for a while (Constitution of 1963) and again on getting the same position equal to other federal units-republics with the constitution of 1974.¹ According to the federal constitution of Socialist Federal Republic of Yugoslavia Kosova was one of the eight federal units of federation along with: Serbia, Slovenia, Croatia, Bosnia and Herzegovina, Macedonia, Monte Negro and Vojvodina.²

¹ See more at: Arsim Bajrami, Sistemi Kushtetues i Republikës së Kosovës, Artini, Prishtinë 2011

² See article 2 of the 1974 FSRY Constitution

The characteristics that Yugoslav Constitution of 1974 are in general those that they brought a general decentralization and a wide democracy compared to the systems of former communist block under the USSR umbrella.

Kosova according to this constitution was different of some federal units in a way based on the name it had, because federation was consisted of six republics and two provinces. Thus Kosova belonged to the list of provinces but the content of the power and the organization of the governing structures was almost with no differences between those of republics. This paper aims to discuss shortly the frameworks under which the local government has functioned in the past coming up to current days and drawing some conclusions about potential direction it will have to undertake. The paper will give as mentioned above the way the local government was organized based on the 1974 Constitution and it will continue to describe the way how the local government was created in Kosova during the period of international civil administration along with the way it is currently organized.

Kosova local government and the administration before NATO intervention

According to the Constitution of 1974 the lowest form of state organization were communes-municipalities. Indeed there were even some smaller territorial units called local communities (bashkesi locale) that exercised some delegated duties. Whereas a commune-municipality was known as socio-political community where people's and worker's powers were to be executed. This derives from the definition on how Kosova and the entire Yugoslav federation was organized. The power belongs to people and working people of that are holders of power together with nations and nationalities (narodi i narodnosti)³. Yugoslav system had a different system compared to the systems of centralized state that dominated over the communism in some other parts of the world. Within Yugoslavia there was organized a system (that was mostly developed for Eduard Kardel) called the delegation system according to which a system where competences were delegated in a very unique form. In Yugoslavia at that time one can find also some different types of property that was not found elsewhere. Here we find private property (not recognized in other communist countries) state property, public property and something also found only in Yugoslavia called social property. This property was called as the property that belonged to working people who were said to be owners of factories, etc. At the local level there highest power belonged to municipal councils which were not one cameral. Municipalities had also their local government that executed their power that derived from municipal statute, from Kosova Constitution and based on the principles of federal constitution.

In 1989/1990 the Yugoslav federation goes deeply with the dissolution of the system that indeed started earlier. Serbia with the measures of 1989-1990 took a heavy control over Kosova and it simple occupied the entire territories of Kosova. From 1990 until the NATO intervention Kosova Albanians organized the parallel system in Kosova, because the former system was ruined by Serbian measure. Thus the life of Albanians start to be organized in a special form that in fact established basics of repositioning of Kosova for its future. The dissolution of federal Yugoslavia took a direction of violence and war that did not exclude Kosova. As a culmination of war it was the NATO intervention which lasted 78 days of air strikes against Serbian/RFJ military targets that brought removal of military and police forces from Kosova.

Kosova during the previous decade had its government that functioned in exile whereas in the Rambouillet Conference⁴ the Kosova delegation in the conference agreed to form a Kosova government that would govern Kosova after the war is over and during the process until the free elections would organize.

International civil administration in Kosova

The UN Security Council Resolution 1244 adopted on June 10, 1999 gave the legal basis for establishing the international civil administration in Kosova. This administration came to Kosova immediately after the war known as UNMIK (UN mission in Kosova) which was built up based on four pillars. This was a huge administration established in Kosova and not experienced as such in any other place.

³ See preamble of Constitution of 1974 and the constitutions of all federal units where in general you see almost the same definitions. Notions nation (narod) and nationalities (narodnost) are perhaps something that derive from the soviet system where there were autonomous republics to whom the right to self determination was said not to belong.

⁴ See more the Ramboillet, at: http://sq.wikipedia.org/wiki/Lufta_e_Kosov%C3%ABs

On the other side the Kosovo government that was created during the Rambouillet Conference came in as playing a role of temporary Kosova Government. This government led by Hashim Thaqi (current Minister of Foreign Affairs) created also the structures of temporary local governments in all Kosova municipalities. This government as well as the local governments in all municipalities had to give up their work shortly because they were not recognized by the international administration.

UNMIK by establishing its structures in Kosova wanted to somehow have a local say in its structures, because it was estimated that it would be much easy to exercise the power with local people on board. UNMIK and its Head Special Representative of UN Secretary General had the only power in all forms: legislation, executive and judiciary. The legislation power was exercised by promulgating Regulations that in fact were similar to laws. Whereas in Kosova there were during this time three types of legislations, known as applicable laws and they were as follows: laws o Yugoslavia, Laws that were promulgated until March 23, 1989⁵ and the UNMIK regulations. This was a very complicated system which had to be used in Kosovo during a very complicated situation as well.

Organization of power under UNMIK

UNMIK drafted a document that played a role of constitution based on which the structures of Kosova had to be build. This was a document called Constitutional Framework of Kosova which as the judicial act was of constitutive character.

The local power for a short period of time was organized as per UNMIK directives whereas in the municipalities there were internationals as the main holders called administrators.

In 2000 there were organized the first local elections in Kosova based on which the main state structures were created. These structures were: municipal assembles with the mayor elected by the assemble and there were also local governments created. This form of power exercise went on for a determined period of time. It is important to underline that you could here and see the discussion all over regarding a need for decentralization without any idea of what was going to be decentralized from up to bottom. There was no central government in Kosova so it what really a matter of question – how to define decentralization where was no national power to be delivered to the lower state structures.

If we had to give something from UNMIK this is something different because the UNMIK power doesn't come from a legislation process. Its legitimacy theoretically is difficult to b explained. If this is to be understood as a power to be delivered to the low level then this is not to be called decentralization. However by going further with power exercise and by going further on developing Kosova it was a need for creating central structures of government. This was a need and this was a request of local people of Kosova. This was a duty for UNMIK and the other international structures. This was also a need and duty to be fulfilled in order of going on further with the final status of Kosova. Thus there were series of activities developed in this regard and what is important to the topic of this paper here we have now the Regulation for local governance⁶ base on which the local structures were to be organized based on the process of elections.

Finally the Kosovo Law on Local governance⁷ was adopted by the Kosovo Parliament which is now the basic law that together with the Kosova constitution give the principal legal infrastructure of the local government in Kosova. The Kosova Law at the highest possible level has accepted disposals of the European Convention of local self governance. This means that the resources of local government are Kosova Constitution and the Kosova Law on Local Government. Based on this law the power in the municipalities is organized based in the mentioned law and constitution whereas they are created as the result of elections held every four years.

⁵ This was the date when Kosovo loses its subjectivity within Yugoslavia, when Kosovo Parliament under the circumstances of occupation gave the agreement for constitutional changes in favor of Serbia. Until March 23, 1989 Kosova was an equal part of Yugoslav federation very equal to all other republics that consisted federation. The imposed changes in the Yugoslav and Kosova Constitution changed drastically the Kosova position in the federation.

⁶ Regulation 2000/45

⁷ Law on organizing the local governance in Kosova - 03/L-040/available at: http://www.kuvendikosoves.org/common/docs/ligjet/2008_03-L040_al.pdf was adopted on: 20.02.2008

The main organs of the municipal power are:

- Municipal Council and
- Major.

The number of municipal council is determined on the number of inhabitants. Thus the number of Prishtina municipality is the biggest on number. Thus it has 51 members and there is a determined scale based on which a member is added based on the number of inhabitants.

At the municipal level there are created councils for several fields that are to be organized based on specifics of the municipality. But there are two council obliged for every municipality: Council for finance and politics and council for communities.

The main resources of the municipality on financial resources there are two: the own resources and the Kosova grants.

The elections are held using the proportional system.

Conclusions

The structures of local governance in Kosova have passed through various legislation. The experience is quite different. It went through variety of legislations as laws from the former Yugoslavia, former Kosova and the international legislation in forms of UNMIK regulations, etc. This is a system that after the war was created to the very high extent was created with a big assistance form the international community. In some moments it is perception that some forms of the local power is imposed through various international engagement and documents. For example the case of divided city of Mitrovica.

The international standards have been accepted and included in the body of the legislation. The obligations form international forums and the international conventions are approved completely. Kosova has openly and solemnly has stated that the obligations from international bodies, structures and conventions will be always respected. The obligations form the Ahtisaari Plan were also without objections accepted.

The structures of local power even though there is a legacy behind are still in the phase of creation a tradition. They suffer still from the lack of experience. The capacities of the municipalities are not enough developed. The finance resources are obstacles to further development, because since most of the municipalities depend on Kosova Government Grants. The fact that they are dependent on the central power we could not talk a lot on the decentralization and participatory process. The election system does not represent clearly the will of citizens. The division of power sometimes is not clear due to the political system. It sometimes has happened that the major of a municipality is from a determined political party whereas the composition of the municipal assembly is totally different. So in many cases this is a very difficult situation for positive developments. The links between central and local government in many situations are conditional. It happens that the central government is won by a determined political party whereas in a determined municipality there is the complete other political party governing the municipality. This for normal developments in democracies should not be any difficult. But for democracies as this, difficulties appear time after time.

Problem of monitoring of the local governments has not found a concrete solution. There is no strong control over the local government, since the civil society organization at the local level have no support. The support goes more to the Prishtina civil society organizations. The local structures suffer also from the corruption that is spread quite a lot, even though at the local level resources are lower.

To this there could be add many other elements whereas a sentence would serve: this is a process under the development.

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