

LEGAL VACUUMS AND COLLISIVE NORMS IN THE LEGISLATION OF LOCAL GOVERNMENT OF
REPUBLIC OF KOSOVOPhD student. Sadik Hoxhiu
sadik_haxhiu@hotmail.com**Abstract**

Since the establishment of first local governments' structures in 2000, legislation on this domain of power was characterized by a number of legal vacuums and collision of norms, such as lack of experience in building institutions of local government according to new political situations; UNMIK did not repeal legislation of communist era, Serbia's legislation of '90, and approval of legislation by UNMIK in form or regulations. This system comprised of four systems of legislation has produced legal vacuums and collusive norms, by resulting in a situation where functioning of local government structures was very difficult. UNMIK's Regulation 2007/30 in many aspects has sanctioned collusive norms, that didn't define precisely relationship of local government structures in horizontal line and their relationship with central government bodies- then PISG. Unfortunately, this legislative vacuum has followed the aftermath of Independence of Kosovo, respectively, the Law on Self Governance 2008/03-L040 that doesn't precise status of mayor of municipality as beholder of executive power and head of administration, that is exercising his function according to competencies and authorizations of CEO during 2000- 2007. As well, Law on Local Government Finances nr. 2008/03-L049 in some aspects is conflicting with Law on Management of Public Finances nr. 2003/2 with not précised well norms. These vacuums and collusive norms are impacting organizational structure of executive departments within municipalities, where there doesn't exist any unique model for structuring the local administration. By not repealing Regulation 2000/45 according to which the Municipality Assembly holds ten regular sessions during the year, it puts on the second plan decision-making power of councilors of Municipality Assembly. By concluding these deficiencies, in the legislation of local government, it is a time requirement amending these legal vacuums and harmonization of these collusive norms.

Introduction

European Charter of Local Self-Government stipulates general principles of organization and functioning of local autonomy, as well as its relations with the central government. According to it, the local self-government means the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs, under their own responsibility and in the interests of the local population¹. Under the Constitution of the Republic of Kosovo, the local self-government is exercised by representative bodies elected through general, equal, free, direct and secret ballot elections. 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-Government². Based upon the principles of the acts mentioned above, we notice that the organization and functioning of local self-government institutions in the Republic of Kosovo has some legal vacuums (gaps), and in some cases it is supported on normative collision (*remark: normative conflict or norms colliding*). We can notice such normative deficiencies at the manner of election of representative and executive bodies in municipalities, the election of Municipal Assembly President, Deputy President, and especially the election of the Director of the Directorate of Administration and Personnel. Sanctioning of these norms has been due to inconsistency of the Law on Local Self-Government with the European Charter of Local Self-Government, as well as disharmony of municipalities' statutes with laws and other legal acts regulating the local government area in the Republic of Kosovo.

1. Legal Vacuums and Normative Collision in Local Government Legislation for the Election of Mayor and Municipal Departments

Establishment of the first local self-government institutions after the first local elections of October 28th, 2000 was implemented by UNMIK Regulation No. 2000/45 on Municipal self-governance in Kosovo. Here begins the implementation of new legislation on local self-government, yet many deficiencies were found since the establishment of such bodies, on the one side emerged the legal vacuums without covering certain segments of the local self-government, and the implementation of legal norms in collision forms on the other hand³. Such organization of local self-government continued until the promulgation of the new Regulation on Self-Government of Municipalities in Kosovo, where the organization of local government had some changes as regards the manner of election and organization of the municipal executive and representative power. The new organization of local government in terms of formal and substantive sense was not worth even in the normative sense.

The new regulation did not overcome deficiencies neither at the collision level nor the normative vacuums. The regulation contains collision norms regarding the powers and responsibilities of the Mayor. Pursuant to Article 13. Paragraph 1 of the Regulation, the Mayor shall serve as Chairperson of the Municipal Assembly. In consultation with the Municipal Assembly, the Mayor shall appoint Directors to assist the Mayor in carrying out his/her duties⁴. The Mayor shall also serve as Chairperson of the Board of Directors, who shall assist the Mayor in carrying out his/her responsibilities⁵. Thus, regarding the norms sanctioning the Mayor Powers, it is noticed that the Mayor has duplicate (overload) competences governing both representative and executive power in the municipality.

3 See further, UNMIK Regulation No. 2000/45 on Local Self-Government in Kosovo

4 Regulation 2007/30 amending the Regulation No. 2000/45 on Municipal Self-Government in Kosovo

5 Ibidem, article 27, paragraph 3

1 European charter

2 Constitution of the Republic of Kosovo; article 123, paragraph 1,

The provisions on the Mayor Powers are contrary to power-sharing between representative and executive government in the local self-government bodies⁶.

This indicates that municipal departments are established under Regulation 2007/30, which include the Department of Administration and Personnel, the Department of Health and Social Welfare, the Department Education and Culture, the Department of Finance, Economy and Development, the Department of Urbanism, Cadastre and Environmental Protection, the Municipal Community Office and any other department deemed necessary and appropriate to carry out the functions and responsibilities of the municipality⁷. Each department shall have a Director appointed by the Mayor, who shall have responsibility for direction and management of the municipal department (directorate), except for the Department of Administration and Personnel which shall function under the direction and management of the Head of that Department, under the overall authority of the Municipal Assembly and the Mayor⁸. The Municipal Assembly shall appoint the head of the Department of Administration and Personnel appropriately (*mutatis mutandis*) in conformity with the procedure for selection and recruitment of senior civil servants set out in the applicable law. The Head of the Department of Administration and Personnel shall have the qualifications prescribed by the Statute and shall serve as the senior civil servant in the municipality⁹. Under the law provisions mentioned above, it seems that powers and authorizations are not clearly defined regarding the Department of Administration and Personnel functioning under the direction and management of the Head of Department.

On the one hand, the head of this department shall serve as the head of administration, on the other hand he shall exercise much broader functions than a department director, but he, in some municipalities, without legal authorization shall serve the function of the former Municipal Chief Executive, even though the authorizations and powers of municipal bodies are specified in a decisive manner under the Law on Local Self-Government, determining as follows:

1. Municipal Assembly is the supreme body of a municipality consisting of its elected members, and
2. The Mayor is the highest ranking executive body in a municipality elected through direct ballot¹⁰.

Accordingly, under the Law is specified the function of the Mayor, because he is not anymore the President of the Municipal Assembly, but still remains unclear the position of head of Administration and Personnel, who under this law is defined only as head of personnel, even though he still serves more extensive executive functions. This issue in the municipalities of the Republic of Kosovo is regulated in different forms. For example, Prishtina

Municipality has the Department of Administration and Head of Personnel separately¹¹.

In Viti, the Department of Administration and Personnel is led by the head of Administration and Personnel¹². In the Municipality of Peja, Director of the Department of Administration serves under the overall responsibility of the Municipal Assembly and Mayor¹³, because Municipal Administration has Head of Personnel separately¹⁴. Under the Law on Local Self-Government, the status of Head of Administration and Personnel is defined as follows: The municipal administration shall be organized into directorates. Each municipal directorate shall be managed by a director. Municipal directors shall be employed and dismissed by the Mayor. The municipal administration shall have a Head of Personnel. The Mayor shall announce the post, recruitment and dismissal of the Head of Personnel in accordance with the applicable law on civil service¹⁵. Under the law, the Municipality shall appoint the Head of Administration and Head of Personnel separately.

2. Legal vacuums and collision norms for election of municipal leadership –

President and Deputy President of the Municipal Assembly

Pursuant to the Law on Local Self-Government, the Municipal Assembly elects the President of the Municipal Assembly from among its members. President of the Municipal Assembly is elected for a same term as other assembly members. In municipalities where at least 10% of citizens belong to non-majority communities, a post of Deputy President (Chairperson) of the Municipal Assembly for communities shall be reserved for a representative of these communities. The post of Deputy President of the Municipal Assembly for communities shall be held by the non-majority community's candidate who received the most votes on the open list of candidates for election to the Municipal Assembly¹⁶. Hence, the Municipal Assemblies have their Deputy Presidents, but only from communities. The Law on Local Self-Government does not specify the status of Deputy President of the Municipality from the ranks of the majority, while some municipalities have sanctioned such a function in their statutes.

Based on the Statute of Pristine Municipality, the Municipal Assembly shall elect the President of the Municipal Assembly from among its members¹⁷. The Municipal Assembly has also Deputy President for Communities. The post of Deputy President of the Municipal Assembly for Communities shall belong to a representative of non-majority population, which has received the most votes on

6 See further, *European Charter of Local Self-Government*

7 Regulation 2007/30 amending the Regulation No. 2000/45 on Municipal Self-Government in Kosova, article

29, paragraph 1

8 *Ibidem*, article 29, paragraph 2

9 *Ibidem*, article 33, paragraph 1

10 Law on Local Self-Government No. 03/L-040 20 February 2008, article 3

11 Statute of Pristine Municipality; No. 110-391 on 25.2.2010 article 56 paragraph 2 and article 59 paragraph 3

12 Statute of Viti Municipality, on 15/10/2008; article 26, paragraph 2,

13 Statute of Peja; No: 09 – 8103, on 29.September 2008 article 81, paragraph 1,

14 *Ibidem*, article 99, paragraph 1

15 Law on Local Self-Government No. 03/L-040 20 February 2008, article 66, paragraph 1 and .2

16 Law on Local Self-Government No. 03/L-040 20 February 2008, article 54, paragraph 1 and .2

17 Statute of Pristine Municipality, article 36, paragraph 1

the open list of candidates for election to the Municipal Assembly¹⁸. Under the Statute of the Municipality of Peja, the Municipal Assembly shall elect the President of the Municipal Assembly from among its members¹⁹. The post of Deputy President of the Municipal Assembly for Communities shall be held by a representative of non-majority communities, who received the most votes in the open list of candidates for election to the Municipal Assembly²⁰. The election process of the President of the Municipal Assembly in the Municipality of Shtime was also made in accordance with the Law on Local Self-Government. The President of the Municipal Assembly shall convene and preside at meetings of the Municipal Assembly.

In case of absence by the President, the meeting is chaired by the senior member of the Municipal Assembly²¹. As the Municipality of Shtime has not enough percentage of residents from communities, its statute does not define the function of Deputy President of the Municipal Assembly. Under the statutes of these three municipalities, the election of presidents and deputy presidents of the Municipal Assemblies is done under the Law on Local Self-Government. However, in some municipalities the manner of election of the President and Deputy President is in contradiction with the Law on Local Self-Government. The Statute of Viti Municipality envisages totally different such an issue. President of the Assembly is elected by the Assembly from among its members with a mandate (term) as members of the Assembly²². Consequently its statute does not specify the head of the Municipal Assembly as President of the Municipal Assembly, but Chairperson of the Municipal Assembly. In case of absence of President of the Assembly, session is chaired by Deputy Chairperson of the Municipal Assembly. The statute of the municipality contains extensive legal vacuums as regards the status of municipal leadership. This statute provided no deputy mayor from among the majority, but he is elected, while the position of deputy president of communities is not defined what it had to be.

Unfortunately, such statutory solutions provide several other municipalities in the Republic of Kosova, for example: the statute of the Municipality of Klina shall specify as follows: The Municipal Assembly elects the President of the Municipal Assembly from among the Municipal Assembly members. In the absence of the President of the Municipal Assembly and Deputy President, if it exists, the issue of chairing the meetings of the Municipal Assembly is stipulated by the Rules of Procedure of the Municipal Assembly²³. Under the municipality statute norms, the Municipal Assembly shall elect or not the Deputy President of the Municipal Assembly.

3. Conclusion

Based on the deficiencies found at most of the statutes of the municipalities in the Republic of Kosova concerning the provisions regulating the status of representative, executive and administrative bodies at municipality level, we consider the Municipal Assemblies shall harmonize their statutes in conformity with the Law on Local Self-Government of the Republic Kosovo and other acts of organizing local self-government.

1. The Mayor authorities shall be specified in relation to the Head of Administration and Personnel listed the Mayor as the main head of Administration and the head of Personnel as his deputy.

2. Organizing method of the administration bodies shall be unified through an Organogram model, and shared powers between the Director of Administration as a political appointee, and the Head of Personnel who is recruited under legal acts applicable to civil servants.

3. Appointment of the President and Deputy President of the Municipal Assembly shall be unified, because in some Municipal Assemblies are called President and Deputy President, and in some others are called Chairman and Vice-Chairman of Municipal Assemblies.

4. The Statutes of the Municipal Assemblies should be harmonized to the Law on Local Self-Government therein elected representatives from the majority community as Deputy Presidents of Municipal Assemblies. Such initiative should come from representatives of the Municipal Assemblies in the statutes with legal vacuums and normative collisions, while the Ministry of Local Government Administration shall not certify the municipal statutes that are not in compliance with the Law on Local Self-Government and other legal acts regulating the area of local self-government institutions.

¹⁸ *Ibidem*, article 36, paragraph 3

¹⁹ *Statute of Peja Municipality*, article 61, paragraph 1

²⁰ *Ibidem*, article 61, paragraph 2

²¹ *Statute of the Municipality of Viti*; article 14, paragraph 1

²² *Ibidem*, article 19, paragraph 1

²³ *The Statute of Klina Municipality*; article 44, paragraph 1

Literature:

1. European Charter of Local Self-Government, The European Council, Strasburg 1991
2. Constitution of the Republic of Kosovo 15 June 2008
3. UNMIK Regulation No. 2000/45 on Local Self-Government in Kosovo
4. Regulation 2007/30 amending the Regulation, No. 2000/45 on Municipal Self-Government in Kosovo
5. Law on Local Self-Government, No.03/ L-040 on 20 February 2008
6. Statute of Prishtina Municipality, No.110-391 on 25 February 2010
7. Statute of Vitia Municipality, on 15/10/2008
8. Statute of Peja, No: 09 – 8103, on 29.September 2008
9. The Statute of Klina Municipality, on 10 September 2008
10. The Statute of Shtime Municipality, on 3 September 2008
11. The Statute of Gjilani Municipality, on 20 November 2008
12. Law on Administrative Municipal Boundaries 2008/03-L041
13. Law on Local Government Finance 2008/03-L049

OSCE Mission in Kosovo, relations between central and local authorities in Kosovo, legal aspects, administrative and fiscal; February 2008