

# Information documents

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#### 1. INTRODUCTION

## **General introductory remarks**

This report concerns the conclusions of the work of the CoEDM and introduces the Recommendation for the reform of local self-government and local administration in Kosovo. It contains an overview of the Mission's activities and references to the background to the decentralisation project and to the terms of reference of the CoEDM, as well as an updated assessment of the political context. The report should be considered as a follow-up to the Interim Report (CM/Inf(2003)27), some parts of which, such as the sections on decentralisation in the transition countries, the current state of local self-government in Kosovo and the reform criteria, are very substantial and usefully complement the guidelines which the Mission followed in working out the recommendations for reform. The report will not deal with the detailed features of the reform project as specified in the Recommendation, but will sum up its main conceptual elements.

# Origin and terms of reference of the CoEDM

In a letter to Walter Schwimmer, Secretary General of the Council of Europe, dated 1 November 2002 (Appendix 1), Michael Steiner, Special Representative of the Secretary-General of the United Nations (SRSG), called on the Council of Europe to use its expertise to help Kosovo devise a proposal for the decentralisation of governmental institutions, in line with United Nations Security Council Resolution 1244, the Constitutional Framework and modern European practice.

The letter stated: "The fundamental aim of decentralisation is to strengthen democracy by bringing government closer to the people. This will improve the delivery of public services and provide equal benefits and services to all... There is a need to consider the competences of central and local authorities and redefine them where necessary. There is also a need to consider the establishment of administrative units below the municipal level."

According to an UNMIK press release of 2 November 2002 (UNMIK/PR/862), issued after a meeting between SRSG Michael Steiner and the leaders of Kosovo's Albanian and Serb political parties, the Kosovan political leaders "agreed that government should be brought closer to the people and communities they represent" (Appendix 2).

Following two fact-finding visits in December 2002 and January 2003 by the Council of Europe Secretariat and discussions with representatives of UNMIK and the Provisional Institutions of Self-Government (PISG), the Committee of Ministers agreed on 5 February 2003 that the mandate of the Council of Europe's mission in Kosovo would be to assist UNMIK and the PISG in designing a framework for local self-government reform in consultation with all the parties concerned.

The Council of Europe Decentralisation Mission (CoEDM) was established on 10 February 2003 for a period of nine months and placed under the authority of the Secretary General of the Council of Europe. Ambassador Carlo Civiletti from Italy was appointed Head of Mission, with György Bergou from the Secretariat of the Congress of Local and Regional Authorities of Europe as Deputy Head and Ivo Šanc from the Czech Republic as Project Adviser. At a later stage, Antonia Ingravallo from the Council of Europe and Adrian Moruzi, an expert from Romania, joined the Mission. In Strasbourg, DG I – Legal Affairs, and in particular its Directorate of Co-operation for Local and Regional Democracy, was given responsibility for looking after the mission's work.

Following his initial meeting with members of the CoEDM on 20 February 2003, SRSG Steiner, in a letter addressed to Secretary General Schwimmer, confirmed the mandate of the Mission as well as the conditions

of its work, including the provision of logistical support and encouragement to local protagonists to participate in the consultation process, with due regard for CoEDM's independence from UNMIK.

#### 2. CONSULTATIONS AND SURVEY OF THE TERRITORY

Shortly after setting up its offices, the Mission embarked on a broad range of consultations with all the parties concerned, including representatives of the international community, the major political parties in the Kosovan Assembly, representatives of the Kosovo government, NGOs, municipal and village representatives and representatives of minority communities.

During the first three months the Mission held meetings with the following key political and government representatives in Kosovo:

- Ibrahim Rugova, President, LDK
- Bajram Rexhepi, Prime Minister, PDK
- Nexhat Daci, Speaker of the Kosovan Assembly
- Hashim Thaci, Party Leader, PDK
- Ramush Haradinaj, Leader of the Alliance for the Future of Kosovo (AAK)
- Oliver Ivanovic, Member of the Kosovan Assembly Presidency (KP)
- Ethem Ceku, Minister of Environment and Spatial Planning
- Jakup Krasniqi, Minister of Public Services
- Hysen Bajrami, Director of Local Administration, Ministry of Public Services
- Hasan Isufi, Director of the Municipal Budget, Ministry of Finance and Economic Affairs
- Milorad Todorovic, Inter-Ministerial Co-ordinator for Returns in the PM's Office
- Lutfi Haziri, President of the Association of Kosovan Municipalities
- Dragisa Krstovic, Leader of the KP Parliamentary Group.

On the international front, the CoEDM worked in close co-operation with the different branches of UNMIK: meetings were held with SRSG Michael Steiner, Principal Deputy SRSG Charles Brayshaw, Deputy SRSG and Head of Civil Administration Francesco Bastagli, Head of Community Affairs Jay Carter, Head of the Office of Returns Peggy Hicks, Legal Adviser Alexander Borg-Olivier and the five Regional Representatives of Pillar II (Civil Administration). There were also regular meetings with the thirty Municipal Representatives or their deputies in the regional centres or in the municipalities. The Mission also met the KFOR Commander, General Mini.

In addition, the Mission established fruitful co-operation with OSCE and held talks with the Head of OMIK, Ambassador Pascal Fieschi, the Director of Democratization, Friedhelm Frischenschlager, and his staff, and representatives of the Political Department and the Municipal Assembly Support Team, led by Hartmut Pürner. It also met a number of Democratization Officers in the OSCE field offices and took part in various workshops on municipal responsibilities and decentralisation organised by the Democratization Department.

The CoEDM also held consultations with representatives of other international bodies, including UNDP, the EU Lessons Learnt and Analysis Unit, the European Agency for Reconstruction and the EU Monitoring Mission, and of bilateral governmental co-operation programmes, USAID and the UK (Centre for Management and Policy Studies).

The NGOs with which meetings were held included the Kosovar Institute for Policy Research and Development, the International Crisis Group, the Centre for Political and Social Research and the Friedrich Ebert Stiftung.

Talks were held with representatives of the Liaison Offices of the member countries of the EU , and of Canada, Russia and the United States.

The Mission carried out an intensive programme of field visits in the municipalities of Pristina, Gjilan/Gnjilane, Strpce/Shterpce, Mitrovice/Mitrovica, Leposavic/Leposaviq, Dragash/Dragas, Decan/Decani, Kamenice/Kamenica, Shtime/Stimlje, Prizren, Skenderaj/Srbica and Vushtrri/Vucitrn, meeting municipal presidents, vice-presidents and CEOs, as well as representatives of sub-municipal units (local communities

and villages). Discussions were held with representatives of the following villages and urban neighbourhoods: Pristina 11, 12/1, 12/2, Laplje Selo, Preoce (in the Gracanica area), Zhegra, Prelepnica, Firaja, Gotovusha, Tunell, Partizansko Brdo (in Mitrovica North), Krushevo, Lapushnik, Isniq, Carrabreg, Karagach (in Peja), Ransic, Gorazhdevac, Ajnovce, Veliko Ropotovo, Rogacica, Carallevo, Recane, Zhur, Runik and Samodrezha.

These meetings led to a deeper understanding of the current political context and the existing state of local government in Kosovo, its functioning, its weaknesses and its potential, as well as the situation in the submunicipal units. These units (called local communities – "bashkesia lokale" or "mesna zajednica"), though varying considerably and currently having few powers and responsibilities and unclear democratic status, could form the basis of a reform project designed to bring services and decision-making closer to the population.

On 27 June the CoEDM presented an Interim Report in Strasbourg on the results of its consultations and of field surveys, with a broad outline of a reform strategy.

In the next phase of its work, CoEDM met the new SRSG, Harry Holkeri, and continued its consultations with the relevant parties in Kosovo, with a view to elaborating detailed proposals on the various elements and the timing of the reform. The Mission held working meetings with the International Officers in the Ministries of Health, of Culture, Youth and Sport, of Public Services, of Education, of Spatial Planning, of Agriculture, Forestry and Rural Development and of Finance. Consultations were carried out with the Kosovo Statistical Agency, the Central Civil Registry and the Managing Director of the Kosovo Trust Agency (KTA). A meeting was held with Kosovan Ombudsperson Marek Antoni Nowicki on various aspects of the reform connected with democratisation, the rule of law and human rights, including the rights of minorities.

### 3 THE POLITICAL CONTEXT. OBJECTIONS TO THE REFORM

#### **Political context**

The political climate in Kosovo has been negatively affecting endeavours to rationalize the discussions on reforming local self-government. A sequence of events contributed to that: interference from the presidential election campaign in Serbia, periodical Serb withdrawal from the Kosovo Assembly, inclusion of Kosovo in the preamble of the Constitution of Serbia and Montenegro, consequent moves in the Kosovo Assembly for a proclamation of independence, turmoil after the arrest of suspected Kosovo-Albanian war criminals, announcement of and reaction to the establishment of a Commission to transfer competences from UNMIK to the PISG, statements advocating territorial partition of Kosovo, the divisive resolution of the Kosovo Assembly on war values, etc.

On the positive side, the EU Thessalonica Summit and the announcement of future talks between Pristina and Belgrade, despite the indeterminacy of the agenda, seemed to be conducive to a more constructive evolution of the political debate. The recommendation in an open letter by Kosovo political leaders on return of refugees and IDPs was well received.

On the other hand, the tensions following the imprisonment sentences of former members of KLA again gave rise to strong political reactions and to attacks against UNMIK judicial and police buildings. This tense climate results in increasing hostility towards UNMIK and the international community, with the effect of impeding constructive cooperation for the benefit of all the people of Kosovo. The situation was further aggravated in August by a new wave of ethnically motivated violence and a series of terrorist attacks, raising political tensions between the Serb and Albanian Communities and between Pristina and Belgrade.

The implementation of the agreed programme to transfer administrative control of northern Mitrovica to UNMIK is still facing political difficulties, including on the composition of a multiethnic Consultative Board.

Unfortunately the prospects of the electoral processes in Kosovo (Assembly election) and in Serbia (referendum on a new constitution and presidential and parliamentary elections) are not contributing to a pragmatic and constructive debate. A proposal in Belgrade to include in the new constitution the status of Kosovo as an autonomous province of Serbia and the adoption by the Serbian Parliament of a consequent declaration on the policy platform for Kosovo produced harsh reactions and cast new doubts on the future talks between Pristina and Belgrade. These talks however continue to be a primary target on the

international agenda and the object of increased efforts by the main international actors, namely the contact group countries and the EU.

## Objections to the reform. Divergences between ethnic communities

When the Council of Europe was invited to reshape the decentralisation process to focus on local self-government from a Kosovo-wide comprehensive approach, it seemed to meet with a considerable degree of agreement in the political leadership (see introduction and annex 2). Unfortunately in the course of the first round of consultations the Mission was faced with the existence of considerable political divergences on the concept and structure of the reform.

Democracy and institution-building in Kosovo, despite the gradual process of normalization, continues to be affected by the persistence of a deep-rooted ethnic divide. It is no surprise therefore that the major political difficulty that CoEDM has been facing concerns the conflicting views on decentralisation as an instrument of stabilizing the relations between ethnic communities on mutually accepted conditions and according to European standards. The dogma of "ownership" is still creating resistance, on the one hand to accepting decentralisation as a valid institution in multi-ethnic societies, and on the other to accepting a combination of local self-government and participation at other levels of an integrated society according to the principle of subsidiarity. The underlying divergences on the future of Kosovo are also interfering with political decisions on the reform.

One first objection that emanated from some sectors of the Kosovo leadership concerns the timing of the reform, the preferred sequence being that first the powers and competences of the central government should be consolidated, before undertaking a reform of local government and local administration. To this line of thought of Kosovo Albanian politicians who assign priority to the transfer of power from UNMIK, the Mission replied that there is no inconsistency between the transfer process and the present value of the reform, as one of the benchmarks or standards ("building functioning democratic institutions") laid down by UNMIK as the basic requirement for the future of Kosovo and recommended a bottom-up approach in addressing without delay the functioning of local democracy in line with European standards.

On a more substantive front, the insistence of the Albanian majority that decentralisation should in no way be conceived or implemented on ethnic lines has been continuously repeated to the Mission, both at the central and at the municipal levels. According to this approach, decentralisation should only concern citizens and not ethnic communities. The reason put forward for this preclusion is that ethnic decentralisation would result in legalizing parallel structures (Serbian control and direct administration of ethnic enclaves). To this line of reasoning, the Mission objected that decentralisation, far from legalizing parallel structures, would be the only way to obtain a progressive dismantling of them, by offering sufficient institutional protection of the rights and interests of sizeable minority communities. It would be the only way to remedy *de facto* monoethnic situations by reinstating multi-ethnicity in them, avert temptations of territorial division and stabilise inter-ethnic relations as has happened in the experience of several regions in Europe. The present de facto situations, if not integrated within an appropriate institutional reform, would otherwise continue to be permanent sources of internal tensions, of serious challenges to the rule of law and of strained relations with Belgrade. Anyhow, decentralisation and territorial divisions are opposing concepts. Local self-government in a Kosovo-wide reform calls for participation in wider levels of democratic institutions, according to the subsidiarity principle.

However, there is another more conceptual argument against ethnic decentralisation, asserted especially at the level of central provisional self-government institutions: it is that government policy and Kosovo institutions already ensure the protection of ethnic minorities. Accordingly, ethnic issues should not be approached by devolving local decision-making and administration, but by improving the overall legal, social, political and institutional set-up. The government — it is argued - is encouraging tolerance, interethnic dialogue and returns and has even included in the cabinet two Kosovo-Serb ministers. The law and democratic institutions provide for such positive discrimination of minorities as over-representation in the Kosovo Assembly and a guaranteed ethnic proportion in offices of public administration (as well as in the Kosovo Police Service). This line of reasoning is not entirely convincing and does not offer a reason to deny the relevance of decentralisation in addressing ethnic problems. Policy declarations, however well inspired, have to be confronted with everyday reality at all levels and this applies also to the degree of implementation of legal provisions. The claim that there is already a tolerant multiethnic society provided with legal and functional instruments of minority protection is far from satisfactory for the Serb community, which objects that these provisions are purely symbolic and do not offer sufficient guarantees against abuses of majority rule.

This explains, even if it does not justify, the selective participation of Kosovo Serbs in the municipal elections, the abandonment of functional local institutions like Community Committees and Mediation Committees by Serb representatives and the frequent withdrawal of Serb participation from the Kosovo Assembly.

The Serb community appears at this juncture to have a very weak and divided leadership, sticking to defensive and reactive positions, rather than promoting a strategic vision of its position and role in the future of Kosovo. This explains the difficulties of taking a position before last October's municipal elections, and the situation has only been deteriorating during the presidential election campaign in Serbia and following the assassination of Prime Minister Djindjic. The chain of events referred to above that has been negatively influencing the political climate in Kosovo eventually escalated into unilateral political messages, like the Statute of the Union of Serb Municipalities in northern Kosovo and the declaration of the Association of Serb Communities in the Promoravlje/Anamorava area, on radical platforms advocating partition and territorial division into ethnically defined entities, the Serbian part under the direct control of Serbia. These platforms refer explicitly to the model of Bosnia and Herzegovina, despite the obvious objections that such a solution would be geopolitically incompatible and unacceptable to the international community. They were motivated by claims of an accelerated slide of Kosovo towards independence, allegedly with the acquiescence of UNMIK, and had been fostered by some official statements emanating from Belgrade.

Nevertheless, in the discussions in Strasbourg on the Interim Report of the CoEDM, responsible Officials of the Ministry of Foreign Affairs of Serbia and Montenegro expressed positive interest in the proposed reform and encouraging signals came also from the Serbian Government (annex 3). Even the Declaration on Kosovo of the Serbian Parliament refers to the necessity to carry out the decentralisation "as defined by the Council of Europe", although this statement remains conditional on an answer to the open question of the future status of Kosovo.

Unfortunately, as was noted above, the impending electoral processes and the discussions on the new Serbian Constitution are not contributing to the clarity of the political debate. So far as Kosovo is concerned, official positions in Belgrade appear now more interested in including in the Constitution the status of Kosovo as an autonomous province of Serbia, possibly without discarding the option of territorial shifts, rather than in ensuring the recognition of collective rights of the Serb community in the institutional set-up of Kosovo.

The difficulty of coming to more clear and workable positions towards the reform in the Serb community is regrettable, considering that decentralisation had been put on the agenda, and with a sense of urgency in the case of northern Mitrovica, at the demand of the Serbian politicians before the municipal elections of October 2002.

We have to admit that the lack of a more constructive approach by the Serb community and its mistrust in Kosovo democratic institutions is not entirely due to intransigent prejudice, but also to objective difficulties, like the lack of security and of freedom of movement (which incidentally might be common to all sides of the ethnic divide, as is the case in Mitrovica) and the need for essential services that the Kosovo institutions currently cannot guarantee. Progress and normalisation in this respect would be a basic requirement for any practicable reform of local self-government. However this remark could also apply the other way round. If security and freedom of movement are conditions for the functioning of democratic institutions at local level, it is also true that a reform of local self-government according to European models would contribute to improving these conditions.

## 4. MAIN ELEMENTS OF THE REFORM PROPOSAL

## Reasons for and objectives of the reform

As was pointed out in the Interim Report, the main argument for decentralisation in Kosovo lies in the size of the existing municipalities. Most of them are too large, even when compared with countries with an integrated system. The municipality of Pristina has about 500,000 inhabitants and there are six other municipalities with a population of more than 100,000. The quality of administrative services is generally poor. They have to cater for too many people in unduly large territories, and a large part of their population lives a long way from the municipal centre. There is a lack not only of citizen participation, but also of public scrutiny, with the result that there are many opportunities for corruption and the misuse of power. This does

nothing to foster the citizens' trust and interest in local democracy. Moreover, there are sizeable ethnic communities that are, in practice, living separately, organising themselves in segregated enclaves and rejecting participation in the democratic institutions of the municipality.

For this reason, the reform has the following main objectives:

<u>Improvement of local democracy and representation</u>: The existing municipalities often tend to play a power politics role, which in some areas is only symbolic, and do not formulate concepts, plans or policies. The executive is generally too politicised, Directors are appointed on the basis of political affiliation. Smaller self-governing units are better placed to provide conditions that make for openness and public scrutiny.

<u>Improvement in the quality and efficiency of public services</u>: Administrative services are concentrated in municipal centres. The citizens therefore waste a great deal of time travelling and queuing for basic services such as civil registration and certification. Municipal centres are unable to cope with illegal construction and the usurpation of land: the situation as regards planning permission for buildings and urban development in general is catastrophic.

The devolution or delegation of administrative services is one of the key elements of the reform. The Ministries and municipalities should work out concrete means of decentralising services in accordance with specific conditions and needs and in keeping with the general criteria recommended in the reform proposal.

Normalisation of ethnic situations: The CoEDM has drawn up its proposal on demographic and territorial bases, without using ethnic criteria as a starting point. In many cases the reform will lead to new, ethnically mixed local municipal units, but it will also enable sizeable ethnic communities to manage a significant proportion of their own affairs, as they will have their own responsibilities and budgets. At the same time, with the new local municipal units being part of a comprehensive Kosovo-wide system of public administration, they will not endanger the territorial integrity of Kosovo.

Apart from structural reform, the Recommendation proposes improving minority protection by modifying the composition and the local functions of the Communities Committees. Such committees should also be established in the new mixed local municipal units. In the units where one minority community is significantly larger than the other minority communities, it should be allowed to form a majority in the Communities Committee, thereby preventing its being outvoted by the combined efforts of the representatives of the majority and the other minorities. Special rights for Communities within local assemblies should be established in future.

## Concept and main criteria of the reform

The Recommendation proposes a feasible and sustainable reform project and a realistic implementation process. The reform is designed to create a more balanced local self-government and administration set-up, by establishing democratic elected councils at sub-municipal level. Consequently, it envisages two tiers of local self-government, the current municipal level (to be named District Municipalities in future) and new units below that level (Local Municipalities). This set-up also offers a model for decentralisation and, where appropriate, for locating central public administration and District Municipality services in the Local Municipalities.

The project considers all the elements of the reform: territory and population, status, powers and responsibilities, costs and other financial aspects, human resources and implementation guidelines.

The Recommendation also points out some pertinent amendments needed to the law, not only in connection with the substance of the reform, but also with regard to some related issues that would require new legislation (eg administrative justice, independent auditing institutions, a system for settling conflicts of jurisdiction, municipal election systems, municipal property). The problem of public property is very relevant to the reform. If they lack the right to decide on the management of municipal property, self-governing units forfeit the most important tool for economic and urban planning and development.

The mandate of the CoEDM is to deliver a recommendation and does not provide for the elaboration of draft legislation. However, if requested, the Council of Europe will consider offering assistance with the drafting of the relevant legislation and providing other technical expertise in the implementation phases of the reform. In general, implementation of the reform will require the assistance of the international community both for the initial investment and for capacity-building and training. International contributions to local governance, some

of which are currently in progress, require some streamlining and co-ordination to avoid overlapping or the neglect of priorities.

The reform project has been conceived and developed independently of any hypothesis as regards "final status". This implies that the reform is applicable in the present provisional framework and will also be so with any other form of status for Kosovo in the future. For this reason, the reform project does not consider the local administration role of internationals.

The concept of the reform is in keeping with both the specific conditions in the Kosovo and the democratic criteria of the European Charter of Local Self-Government. It is intended to bring decision-making and management closer to the people, gradually improve the quality of local administration and the trust of the citizens in their representatives and public officials and increase the stability of Kosovo's democratic institutions, not least in respect of inter-ethnic relations. These are all elements of the benchmarks or standards of the road map for Kosovo. Improving local democracy and stabilising ethnic relations must be seen in the context of the reforms in progress in the whole region, and also as part of the Stabilisation and Association Process.

#### 5. CONCLUSIONS

This report summarises the main problems of local democracy in Kosovo and highlights the key issues and the criteria for and constituent elements of a comprehensive project for the reform of local self-government and public administration, as drawn up in detail by the CoEDM in accordance with its mandate. This project, in the form of a recommendation, will be officially handed over on behalf of the Secretary General of the Council of Europe to the Special Representative of the Secretary-General of the United Nations and to the Provisional Institutions of Self-Government of Kosovo. UNMIK and the PISG, pursuant to their respective competencies, will be responsible for implementing the reform. The Council of Europe, if so requested, could provide assistance with the drafting of the relevant legislation and offer other relevant expertise.

As the report shows, there is not only ample room but a real need for such a reform in Kosovo. Implementation of the reform will be no easy task, as it is necessary to deal with complex and heterogeneous local and de facto situations, which demand new, clear definitions of viable self-governing bodies that will bring decision-making and the management of local services closer to the people. Among the criteria that we have set is the requirement that "the reform should be politically acceptable to Kosovo's institutions and citizens". In the broad range of consultations and field visits, the CoEDM has encountered not only technical complexities but also serious and contentious political divergences. Taking into account the existing political constraints, the Mission has tried, as far as possible, to adjust its targets to local realities, while remaining consistent with the Council of Europe's principles. We are confident that this approach will be in the long-term interests of all the individuals and communities in Kosovo.

Unfortunately, a realistic assessment suggests that the conditions for a consensus-based reform are difficult to meet at present. In an effort to make its work compatible with often conflicting concepts and expectations, the Mission has focused on a comprehensive, Kosovo-wide approach to local self-government, avoiding solutions tailored exclusively to the ethnic communities, but aware that a comprehensive reform involving the sub-municipal level would inevitably address ethnic issues.

Acknowledging that reform of local self-government in Kosovo is not an option but a necessity for the functioning of democratic institutions also means that such a reform comes under the heading of the "standards" set by the international community. As one of the milestones on the road to democracy, it will bring government closer to the people and contribute to the stabilisation of ethnic relations. As experience of multi-ethnic areas in Europe shows, local self-government based on the principle of subsidiarity offers suitable protection for minority interests, while promoting ethnic communities' participation in the broader democratic institutional set-up.

Democracy and internal stability are not only vital for the future of Kosovo: they are fundamental components of the stability of the whole Western Balkan region. The reform of local self-government in Kosovo is therefore also consistent with the aims of the Stabilisation and Association Process launched by the European Union.

For all these reasons, but also in the light of the difficult political conditions that prevail at present, it is crucial that the recommendations of the CoEDM receive the full support of the international community. Given the importance attached to European integration in both Pristina and Belgrade, it is expected that the authorities concerned will not ignore a reform project capable of improving stability and democracy, proposed under the aegis of the Council of Europe and enjoying full international support.