

## **Relationships between Central and Local Government**

### **Municipal Acts**

Assessment of municipal resources, adopting of municipal acts and the co-operation between central and local level authorities during drafting, adopting and administrative review phase of municipal acts.

**September, 2009**

EXECUTIVE SUMMARY .....	3
1. INTRODUCTION .....	5
2. ADMINISTRATIVE SUPERVISION OF MUNICIPAL ACTIVITIES .....	6
2.1 General principles of administrative supervision according to internationally recognized standards as set out by the European Charter of Local Self-Government.....	6
2.1.1 European Charter of Local Self-Government .....	6
2.1.2 Administrative Review of Municipal Acts .....	7
2.1.3 Regular review of legality.....	8
2.1.4 Mandatory review of legality.....	9
2.1.5 Review of expediency.....	11
3. RELATIONSHIP BETWEEN CENTRAL AND LOCAL LEVEL.....	13
3.1. Co-operation between the central and local level during the review process.....	13
3.1.1. Support to municipalities during the legislation drafting process according to Article 83 of the applied <i>law on local self government</i> .....	13
3.1.2. Central level system of information and presence at municipal assembly sessions .....	13
3.1.3. Review of the legality of municipal acts.....	14
3.1.4. Review of expediency of municipal acts .....	16
3.1.5. Note on the revision of municipal statutes.....	16
3.2. Municipal Legal Offices .....	17
3.2.1. Structure.....	17
3.2.2. Competencies.....	18
3.2.3. Legal officers role in the process of drafting municipal legislation .....	18
3.2.4 Training needs.....	19
4. CONCLUSIONS.....	21
5. RECOMMENDATIONS.....	23

## **EXECUTIVE SUMMARY**

Relations between central and local level authorities affect the level of implementation of responsibilities entrusted to local government. Adoption and review of municipal legislation goes through different phases, with ideally continuous communication between the two levels. A well established co-operation system in this regard is crucial, in order to enable municipalities to fulfil their duties efficiently and lawfully. This can be achieved through the administrative review process, which can only be considered as successfully conducted when good co-operation between the central and local level exists.

This report presents an overview of the co-operation between central and local level authorities in Kosovo during the drafting process of municipal legal acts, as well as during the proceedings after they have been adopted and submitted to the Ministry of Local Government Administration (MLGA) for review. The assessment provided by this report is a result of structured interviews with municipal officials conducted by the OSCE Mission in Kosovo's, Department of Democratization, through its Local Governance Section.

Following the Introduction in Chapter 1, Chapter 2 outlines the main principles of the European Charter on Local Self-Government, with an emphasis on administrative review of municipal acts. Furthermore, this Chapter presents aims of the administrative supervision, as envisaged by the Charter and the applied legislation in Kosovo. Chapter 3 presents the factual situation on the ground, in particular with regard to communication between the central level and municipalities. The level of communication is assessed in two stages, firstly during the drafting process of municipal acts and secondly during the review process of those acts which were adopted by municipal authorities. This Chapter also includes a note on the revision of municipal statutes and an assessment on the structure and competencies of municipal legal offices. It concludes with a brief assessment of capacity building needs for municipal legal officers. Chapters 5 and 6 present the report's general conclusions with a list of recommendations.

Data used in this report has been collected by the OSCE's Municipal Governance Teams throughout Kosovo. Collected data shows that co-operation between the two levels of authority during the drafting process and later on, during the review of municipal acts exists, and to a certain extent, is fairly functional. The central level reviews acts submitted by municipalities, within set deadlines. This is especially valid for municipal statutes where, with few exceptions, the review process has run relatively smoothly. Support provided by the central level to municipalities during the drafting process is mostly conducted upon request; however this mainly applies to municipal statutes. In general, findings show that the local level is very well aware of the legal timelines set for action by the central level throughout the review process.

However, although communication between the central and municipal level exists, there is no standardized system of communication; in fact the way municipalities communicate with the central level can vary significantly. There is a general impression that municipalities are often not aware of relevant legal provisions which determine details on co-operation between the central and local level which if applied, could enable the establishment of a standardized system of communication. The OSCE considers that the establishment of a standardized system could increase the efficiency of communication throughout the review process, thus fulfilling its ultimate objective: check and secure lawfulness of municipal activities. This

would also strengthen the obligations of the central level to act within set deadlines, which are related to the formal submission of acts for review, and to the formal submission of requests for support.

## 1. INTRODUCTION

Municipalities in Kosovo enjoy strengthened autonomy as a consequence of the ongoing local governance reform process. This process leads to increased municipal activities in the areas of own, enhanced and delegated competencies. In the area of own competencies, municipalities have full and exclusive powers to exercise these and issue secondary legislation regulating them within the boundaries of their municipality and the standards set forth in primary legislation. Certain municipalities may be granted additional autonomy in defined areas, so-called enhanced competencies. Delegated competencies are original tasks of the central level that are carried out by the municipalities on behalf of central level.

One of the municipal activities is the adoption of municipal acts; which needs to be in compliance with applied legislation. The applied legislation in Kosovo foresees a system of administrative supervision of municipal activities. The core link between municipalities and line ministries, as supervisory authorities, is the Ministry of Local Government Administration (MLGA), through which the channeling of acts undergoing supervision should function.

The applied legislation foresees that this coordinating ministry has to report yearly on its activities concerning the supervision of the municipalities. This report includes a review of the ministry's activities regarding municipal acts. Until now and including the latest report issued in March 2009, these reviews are predominately a summary of statistics that do not present qualitative elements. In parallel, the OSCE Mission in Kosovo through its Municipal Governance Teams (MGTs), monitors the municipal act review process. Findings of MGTs indicated that there was a need for a comprehensive survey of the municipal legislation review process, that would lead to a qualitative assessment of the situation in all 30 assessed municipalities. This also aims at reaching conclusions that ultimately lead to tailor-made recommendations. These should enable the improvement of the existing system of review, and co-operation between central and local level authorities.

The Mission analyzed the review process in detail, through research carried out on the ground by its Municipal Governance Teams. Data was gathered through a comprehensive questionnaire, developed specifically for this assessment and used during interviews with municipal legal officers, mayors and other municipal officials. The inputs of Municipal Governance Teams, which have a substantial experience with monitoring and advisory activities to municipal officials, have also been invaluable for this assessment. All findings are compiled in the present report.

The acquired data enabled the assessment of the review process in place and established recommendations on how to improve it.<sup>1</sup> These recommendations should contribute to a better performance and functioning of municipalities which should act in accordance with good governance principles and for the benefit of all residents.

The report is oriented primarily towards municipal representatives, the Ministry of Local Government Administration and international organizations engaged in the local government reform processes. It is meant to serve as a tool, and needs indicator for further capacity building at the local level, with a particular focus on its legal component.

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<sup>1</sup> The assessment was conducted during the month of March 2009.

## **2. ADMINISTRATIVE SUPERVISION OF MUNICIPAL ACTIVITIES**

### **2.1 General principles of administrative supervision according to internationally recognized standards as set out by the European Charter of Local Self-Government<sup>2</sup>**

This chapter begins by introducing the European Charter of Local Self-Government (the Charter) which sets out key principles of local self-government accepted Europe-wide. Furthermore, it presents the main objectives of administrative supervision of municipal activities, exercised through the review of acts adopted at the local level, as set out by the Charter, and the applied legal framework on local government.

#### **2.1.1 European Charter of Local Self-Government**

The concept of local self government according to the Charter is outlined in Article 3 which states:

“Local self-government denotes 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 population.”

The Charter outlines the scope of local self-government and states that domestic system of local self-government shall be regulated by domestic legislation, if possible the constitution.<sup>3</sup> Local authorities are to be as free and independent as possible in the exercise of public responsibilities which can possibly be decentralized to the level which is closest to the people. These vested powers shall be as exclusive as possible, and not be limited or undermined by contradictory legislation. Local authorities should also be consulted in all matters that may affect their authority. However, in the exercise of their powers local authorities have to comply with relevant legislation.

The supervision of lawfulness of activities at the local level is regulated in Article 8 of the Charter. This article deals with supervision and is hence the centrepiece for this report. It regulates the administrative supervision of local authorities' activities. It provides that any review of local authorities' activities shall have a legal basis, and that any administrative supervision shall be restricted to ensuring compliance with domestic law and constitutional principles.<sup>4</sup> According to a widely acknowledged interpretation, this article defines the scope of review for municipalities' own and/or enhanced competencies. The Charter states that those tasks that are delegated to local authorities for execution by the central level, may be subject to supervision for its expediency. Therefore, acts in the area of delegated competencies, are subject to review of legality and expediency.<sup>5</sup>

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<sup>2</sup> The European Charter on Local Self-Government was adopted by the Committee of Ministers of the Council of Europe on 15 October 1985. Since then, the Charter has become a fundamental act, where the richest experience of democratic countries in the field of organisation of self-government is concentrated. The Charter is an international treaty ratified by forty-four out of 47 Council of Europe signatory states.

<sup>3</sup> Article 4, paragraph 1 through 6 of the Charter.

<sup>4</sup> Article 8.1 and 8.2 of the Charter.

<sup>5</sup> Ibid Article 8.2.

Furthermore, the Charter determines that any supervision by the central level authorities has to be carried out in proportion with the importance of the task that is being supervised; while municipalities shall have the right of recourse to a judicial remedy to protect their scope of autonomy.<sup>6</sup>

The basic law outlining central-local relationships in Kosovo is the applied law on local self-government, promulgated in June 2008. In its preamble this law refers to the Charter and states: “having in mind the principles of local self-government enshrined in the European Charter of Local Self-Government and its Protocols...” UNMIK Regulations 2000/45 and 2007/30 respectively, also refer to the Charter in their preambles.

### **2.1.2 Administrative Review of Municipal Acts**

The Administrative Review – is the right and ability of central level institutions to review the legality of the local authorities in the area of own and enhanced competencies and the legality and expediency of their activity in the area of delegated competencies.<sup>7</sup> The applied legislation on local self-government in Kosovo, has defined the conditions and the system of how central level authorities (line ministries) exercise their supervisory role in Articles 74 through 86 law on local self-government. In the overview of the principles under which this supervision is done (Article 75), restrictions set out in article 4 of the European Charter are partially repeated word by word and the meaning and requirements of the charter are fully incorporated. In certain parts, the applied legislation in Kosovo even goes beyond the requirements of the Charter. As an example, the “*law on local Self-Government*” refers to “administrative review” instead of “administrative supervision”, hence using wording that is highlighting the scope of autonomy municipalities in Kosovo enjoy. The review concerns municipal activities in the areas of own, enhanced and delegated competencies.

In addition, the applied “*law on local Self-Government*” foresees a non-mandatory mechanism of pre-review of draft municipal acts. Before adopting an act, municipalities can request preliminary consultation with the respective supervisory body. The draft act may be submitted to the “supervisory body” with a request as to what purpose and issue the advice is sought for. The supervisory body is obliged to respond within 30 days of receipt of the request in writing. The “*law on local Self-Government*” does not specify whether the request for preliminary consultation has to be sent through the MLGA or whether municipalities can communicate directly with the line ministry. These acts are comprised of either regulations adopted by the municipal assemblies or decisions, which can in their own turn, be taken by either the assemblies or the municipal executive.

Types of municipal acts as per the applied law in Kosovo are:

Acts of the municipal assembly (MA) include the Statute of the municipality, the rules of procedure, municipal regulations and any other act necessary or proper for efficient operation of the municipality (article 12 “*law on local Self-Government*”).

Acts of the mayor are instructions or decisions within his area of responsibility (article 13).

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<sup>6</sup> Ibid Article 8.3 and 11.

<sup>7</sup> Applied law on local self-government, Article 3, Definitions

According to article 11 of the applied “*law on local Self-Government*” the MA and mayor shall have the right to enact acts within their area of competence. All municipal acts adopted by municipalities are subject to administrative review.

Municipal regulations are generally abstract, since they determine basic rules for an indefinite number of cases, whereas decisions in most cases deal with one specific issue.

Municipal acts bind the municipality, set its general policy and have therefore to be clearly distinguished from administrative acts which regulate the relation between residents and municipal authorities.<sup>8</sup>

### **2.1.3 Regular review of legality**

All acts that are not subject to mandatory review<sup>9</sup> may be subject to administrative review. By the 10<sup>th</sup> of each month, mayors are responsible for submitting to the Ministry of Local Government Administration a detailed list of all adopted acts, which have been approved in the previous month<sup>10</sup>. The Ministry has to forward those acts from the list to the responsible line ministries in the areas to which the municipal acts refer to. These line Ministries may then issue an opinion on legal considerations on the legality of the acts within 30 days. If the MLGA or line Ministries consider that the decision or other act of municipality to be inconsistent with the applied law, it may request reexamination of such a decision or act<sup>11</sup>. The municipality should respond to any such a request for re-examination within 30 days after receipt of such a request<sup>12</sup>. If the municipality accepts the request for re-examination, it may suspend execution of the contested decision or act until further deliberation of the Municipal Assembly<sup>13</sup>. If the municipality fails to respond within the deadline or rejects the request or upholds the contested decision or act, the supervisory authority may challenge such an act in the competent District Court responsible for the territory of that municipality within 30 days following the failure of the municipality to respond<sup>14</sup>. The District Court may order, by interim measure, the suspension of the application of the contested decision or act or other temporary acts in accordance with the applied law<sup>15</sup>.

The procedure outlined above is summarized in the table below:

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<sup>8</sup> For example building permits.

<sup>9</sup> Applied law on local self-government, Article 81

<sup>10</sup> Ibid Article 80.1

<sup>11</sup> Ibid Article 82.1 The request should state the grounds of the alleged violation of applied law and should not suspend the execution of the municipal decision or other act at issue.

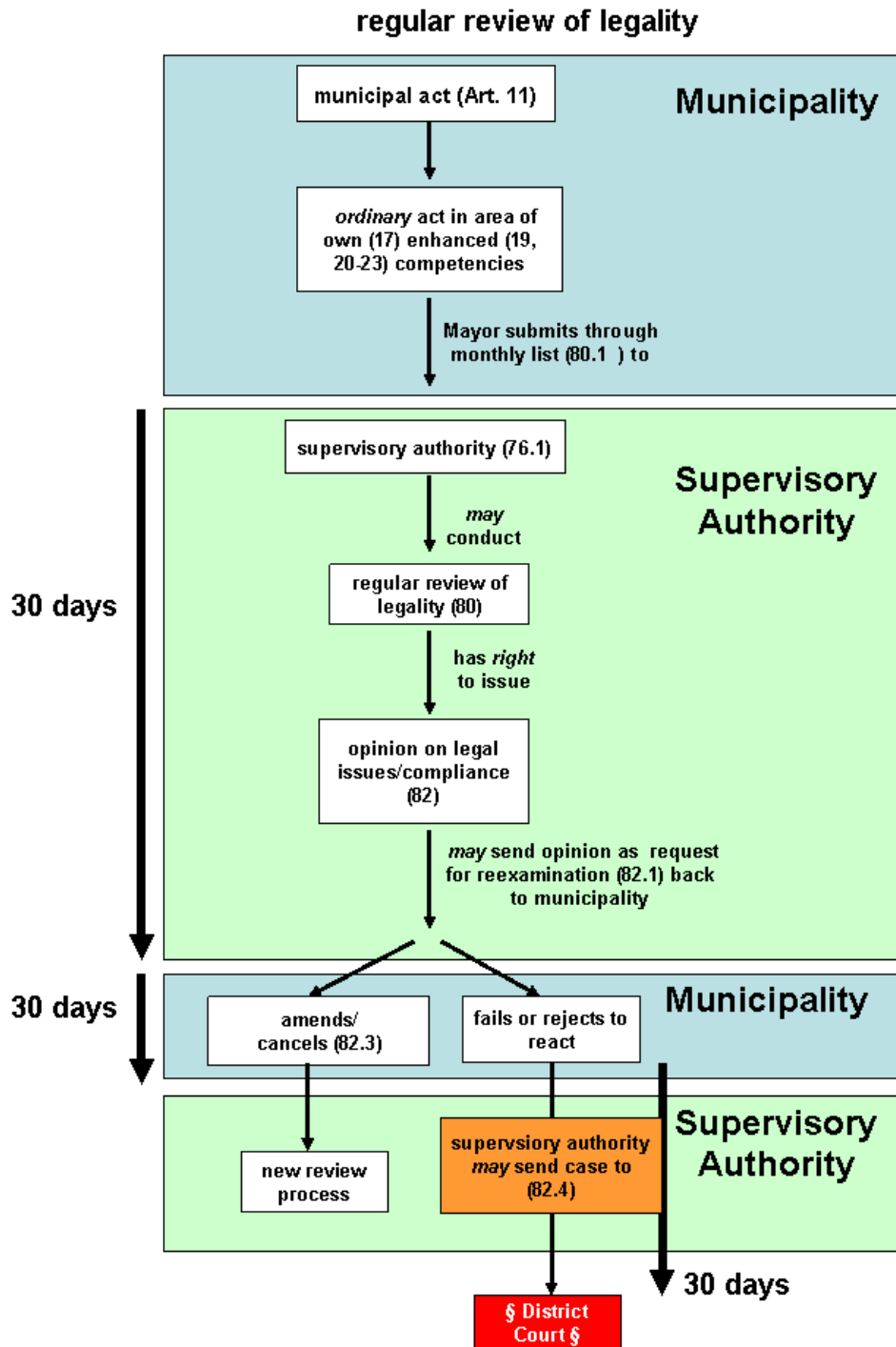
<sup>12</sup> Ibid Article 82.2

<sup>13</sup> Ibid Article 82.3

<sup>14</sup> Ibid Article 82.4

<sup>15</sup> Ibid Article 82.5



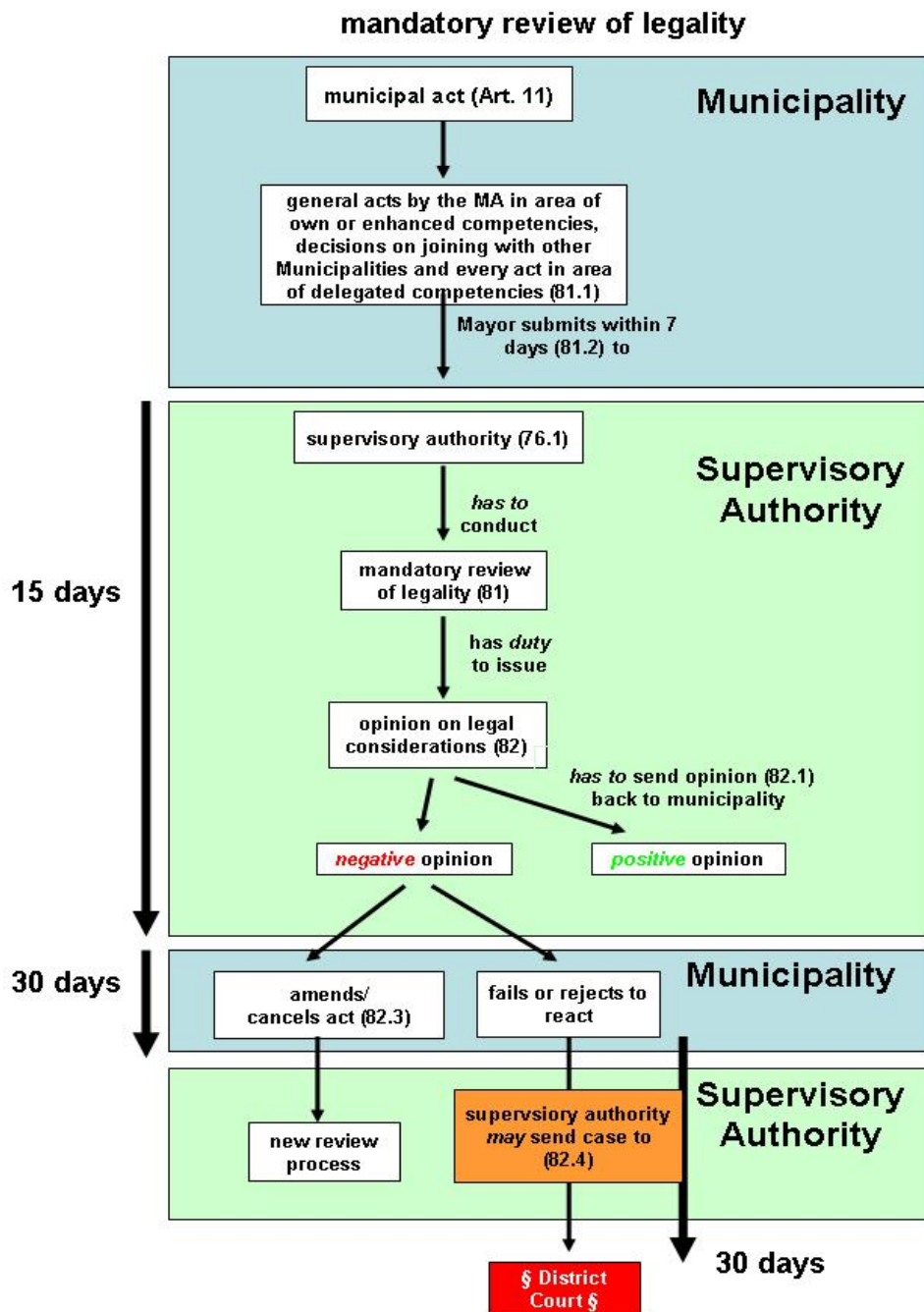


### 2.1.4 Mandatory review of legality

The mandatory review of legality is foreseen for all general acts adopted by municipal assemblies, decisions related to the joint activities of inter-municipal co-operation and/or

partnerships; in addition to all acts adopted within the framework of the implementation of delegated competencies.<sup>16</sup>

The procedure is summarized in the table below:



The mayor of the municipality adopting an act of this nature has the responsibility to hand in the act to the supervisory authority within seven days after it is issued. Within a further 15 days, the supervisory authority is obliged to give its opinion on the legality of the act. This opinion shall state, whether the supervisory authority considers the act to be in compliance

<sup>16</sup> All these acts are submitted to the MLGA, which channels them, if applicable, to other relevant line ministries, depending on topics. Those that fall under the competencies of the MLGA are reviewed by its legal office, which is composed of one director and eight lawyers.

with applied legislation. If it considers that the act is not compliant, the municipality can be requested to re-examine its act; such a request should be justified and should also state the reasons why the supervisory authority considers the act to be non compliant.

However, a request for re-examination does not suspend the execution of an act. The municipality should respond within 30 days to the request, and may abide by it or not. If the municipality upholds the contested act, either by not answering to the request for re-examination or stating to uphold it, the supervisory authority may challenge the act in the competent district court for the territory of the municipality. This should be done within a further 30 days after obtaining information on the municipality's unwillingness to change the act. The district court can issue an interim measure to suspend an act, if further execution would lead to irrevocable damages in case it is finally decided that the act is non-compliant with higher legislation by a court ruling.

### **2.1.5 Review of expediency**

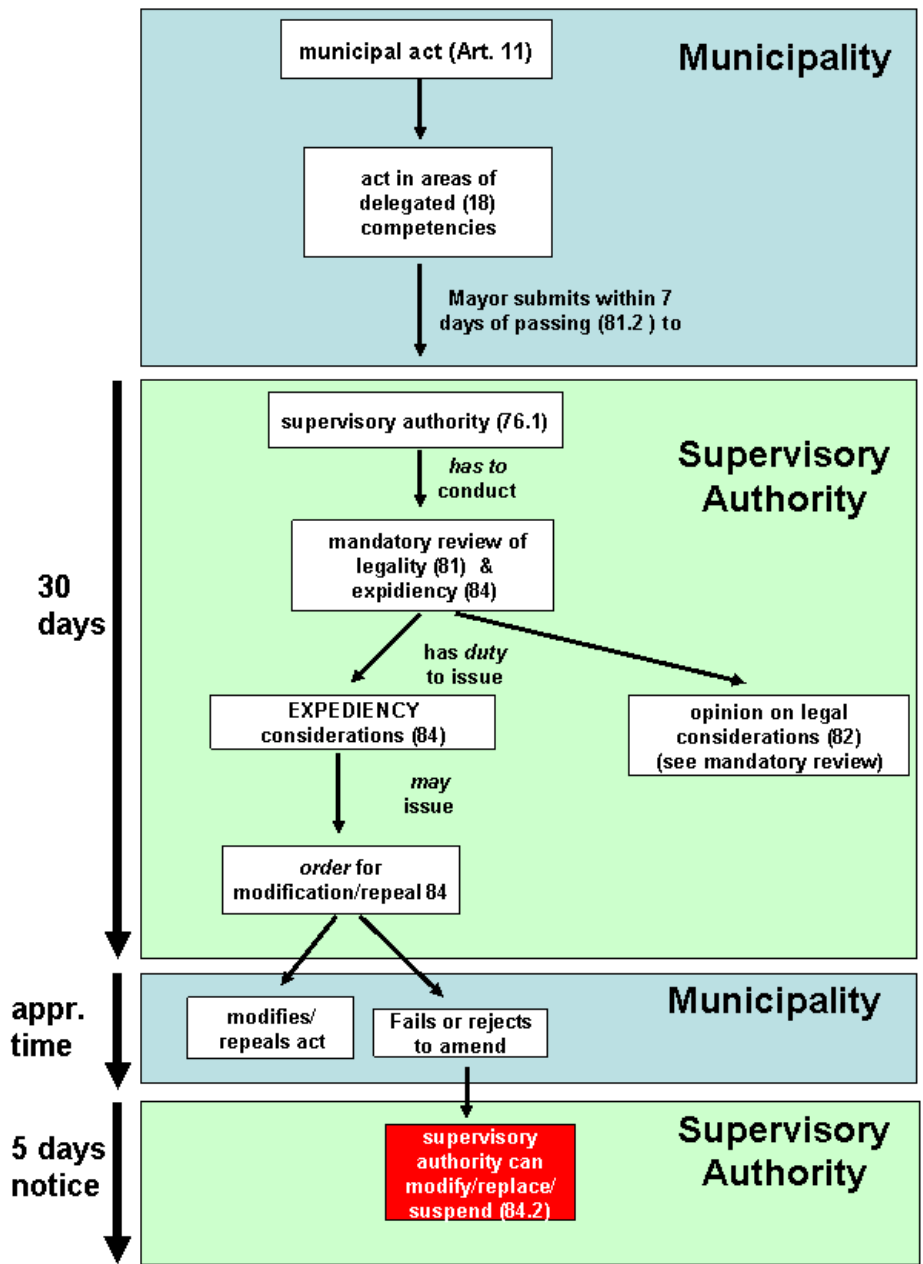
Review of Expediency – means the review conducted by the supervisory authority to ensure that delegated competencies have been executed in compliance with the rules, criteria and standards determined by the central level.<sup>17</sup> All acts adopted within the area of delegated competencies have to undergo a mandatory review for their legality. In addition, such acts are also subject to a review for their expediency. According to the latter, within 30 days of receipt of an act of this nature, the supervisory authority from which the delegated competence has derived, is entitled to request modifications to the author or to repeal the contested act based upon expediency considerations. If the municipality does not comply, the supervisory authority can modify, replace or suspend the act directly. The only obligation the central level has towards the local level is to inform the municipality about their action within five days of its decision.

The procedure is summarized in the table below:

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<sup>17</sup> Applied law on local self-government, Article 3, Definitions

### review of expediency



### **3. RELATIONSHIP BETWEEN CENTRAL AND LOCAL LEVEL**

#### **3.1. Co-operation between the central and local level during the review process**

This chapter assesses co-operation between municipalities and the central level, in different phases of the process of review of municipal acts. It evaluates the support provided to municipalities during the act drafting process, and the level of communication between the local and central level during the process of enactment of municipal legal acts. This chapter also analyzes whether there is an established system or practice of co-operation, between the local and central level throughout the review process. It evaluates separately the process of review of legality and the process of review of expediency of municipal acts. The chapter includes a note on review of municipal statutes, with an assessment of timing and actual review of legality of municipal statutes conducted by the central level. Finally, it ascertains the structure of municipal legal offices, their competencies, and needs assessment for training of municipal legal officers.

##### **3.1.1. Support to municipalities during the legislation drafting process according to Article 83 of the applied law on local self government**

Officials from the majority of municipalities have stated that they sometimes consult the central level during the drafting process of municipal acts. Nearly half of the 30 assessed municipalities stated that they regularly consult the central level and receive advice to requests for preliminary consultation. Often the response was related to the municipal statute that had to be drafted by each new municipal assembly resulting out of the November 2007 municipal elections. In the case of Prishtinë/Priština municipality, a response has been provided only for the area of delegated competencies.

In Ferizaj/Uroševac municipality a representative of the relevant ministry takes part in the process of drafting municipal regulations, this representative is assigned to the municipality by the Support to Local Government Project (SLGP).<sup>18</sup>

Support is mostly requested formally, i.e. by officially sending the draft-act to the relevant ministry for review. But informal ways, such as e-mail and phone calls have also been mentioned as methods for consultation with the central level. Meetings of the Association of Kosovo Municipalities (AKM) collegium of legal officers have been mentioned only by a few municipalities as one of the venues where consultation is requested. Only two municipalities have confirmed to have a standardized system of consultation with the central level.<sup>19</sup> Other municipalities make consultations on an *ad hoc* basis.

##### **3.1.2. Central level information system, and presence at municipal assembly sessions**

###### **Statistical Data**

Twenty-eight of the 30 assessed municipalities reported that central level observation activities in municipal assembly sessions is taking place more or less in regular basis.

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<sup>18</sup> A joint project of the MLGA and the European Union.

<sup>19</sup> In Prishtinë/Priština municipality the consultation is requested through AKM and the line ministry while in Obiliq/Obilić municipal officials always consult the MLGA legal office.

In two municipalities, officials confirmed the presence of central level representatives in only one or two municipal assembly sessions.<sup>20</sup>

Twenty-nine municipalities reported that they comply with relevant legal provisions concerning their obligation to inform the central level of upcoming municipal assembly sessions; however, no unified system of informing central level authorities could be identified. Municipalities inform the central level at their discretion via e-mails, phone calls, faxes, mail or physical delivery of the invitation to the relevant ministry.

Through the survey it was also noticed that no set office has the responsibility for sending information to the central level. Offices such as the municipal public information office, mail office, secretarial service, mayor's office, municipal archive and administration service were mentioned as being responsible for informing the Ministry of Local Government Administration.

### **Summary**

Most municipalities comply with the applied law which requires them to inform the Ministry of Local Government Administration on municipal assembly sessions. In the absence of a unified system, municipalities have established different ways of informing the central level, most appear to function fairly well.

The ministry could tackle the unregulated situation through an administrative instruction and establish a standardized, unified system for the information flow with the municipalities, not only with regard to the legal time frame but also with the way information is sent out. Municipalities should for example inform the central level of upcoming municipal assembly meetings in writing.

The assessment shows that central level participation in municipal assembly sessions in which municipal regulations are approved is not uniform throughout Kosovo. This could also be due to delayed or missing information on assembly sessions from municipalities to central level.

### **3.1.3. Review of the legality of municipal acts**

#### **Statistical Data**

Twenty out of 30 municipalities reported to always send the list of all acts approved to the central level within the set legal time frame. The remaining 10 municipalities stated to comply "generally" with the established legal time frame.

In the municipalities that regularly send a monthly list, the municipal bodies put in charge of sending the list varies and includes: the municipal assembly secretariat office, the director of general administration, the public relations officer, the municipal legal officer, the director of municipal administration, the municipal assembly secretary and the minute keeper. Four municipalities reported that the monthly list of approved acts is sent out by the mayor

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<sup>20</sup> Deçan/Deçane and Gjilan/Gnjilane municipality.

himself.<sup>21</sup> Prishtinë/Priština municipality reported to have sent only one municipal regulation for review to the central level.

### Summary

Although most municipalities comply with the seven-day legal deadline for sending municipal acts for review, in some municipalities this is done on a monthly basis and depending on their urgency. Moreover, in one municipality,<sup>22</sup> municipal acts are sent for mandatory review of legality only upon request by the central level.

First, the focus should be on establishing a clear system of co-operation between the local and the central level, especially on the issue of the municipal official responsible for sending monthly lists of approved acts, as foreseen by the applied legislation<sup>23</sup>. Secondly, a clear system of requesting support from the central level for the revision of municipal draft-acts should be established.<sup>24</sup>

Although 15 municipalities reported to have established a standardized system of co-operation with the central level with regard to the mandatory review process, they did not specify how this is implemented. Glogovc/Glogovac municipal officials mention “*a standard form with the list and copies of acts which are sent to the MLGA*” while in Junik municipality officials mention that “*hard copies of the acts are delivered in person to the same recipient*”.

Eleven municipalities have reported to have been asked by the central level to submit their acts for review. With the exception of one municipality, Gjakovë/Đakovica,<sup>25</sup> the others have been requested to submit their regulations and decisions for review, only once since their establishment. The vast majority of municipalities are aware of existing legal time frames to respond to central level requests for revision<sup>26</sup>. So far, there have been no court cases in which central level disputed the legality of municipal acts. This leads to an overall assessment that municipalities, in almost all cases, comply with the central level opinion/request, even when they don’t necessarily agree with the evaluation of the legality of an act.<sup>27</sup> Therefore, no municipalities reported cases of disagreement between the local and central level in this regard.

Co-operation between the local and central level throughout the review process is very important in order to ensure the lawfulness of municipal activities. The overall assessment shows the existence of a certain level of co-operation, which still needs to be improved. The lack of established systems/practices in the vast majority of municipalities, in terms of who

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<sup>21</sup> Junik, Novobërdë/Novo Brdo, Mamuşa/Mamushë/Mamuşa and Prizren . In Prizren lists are prepared by the municipal assembly chairperson and sent to the mayor for his review. After being cleared by the mayor the list is sent to the municipal archive and the MLGA before 10<sup>th</sup> of the following month.

<sup>22</sup> Deçan/Deçane municipality.

<sup>20</sup> The applied law on local self government Articles 80.1 & 81.2 determines that the mayor is responsible for sending the list of approved acts to the central level.

<sup>24</sup> Ibid Article 83, specifies that request for support is done formally: by sending the draft act and the specific request in writing to the central level by the local level.

<sup>25</sup> Reportedly, the municipality of Gjakovë/Đakovica has been asked to submit its acts for review on several occasions.

<sup>26</sup> Podujevë/Podujevo, Viti/Vitina and Ferizaj/Uroševac are the only municipalities not familiar with the legal timeframe for revision of acts.

<sup>27</sup> As in the case of Kaçanik/Kaçanik municipality where although municipal officials did not agree with the central level opinion on the legality of the decision on establishment of the local water and sewage company, the municipality has reviewed this decision accordingly.

communicates, when, and how (i.e. sends the acts for review to the central level) is one of the areas that needs attention. For instance, although the applied law clearly sets an obligation for the mayor to process the list of adopted acts to the competent ministry on a monthly basis, the assessment reveals that this legal requirement is not always met. Furthermore, with regard to the submission of municipal acts for revision, none of the assessed municipalities mentioned a systematic use of acknowledgments of receipt of submitted municipal acts, which, according to the applied law, should be issued by the supervisory body. Another issue that should be addressed, is the awareness of municipalities in relation to acts that should undergo mandatory review, since it is their legal obligation to submit all acts determined by the applied law to the supervisory body for review of their legality. In this regard, municipalities often mention the municipal statute and rules of procedure, as the only municipal documents which undergo mandatory review. Only a few have stated that this review applies to all acts from the area of delegated competencies, and to general acts from the area of own and enhanced competencies.

#### **3.1.4. Review of expediency of municipal acts**

Most municipalities have stated to exercise delegated competencies but very little activity has been noted in the drafting and adopting of municipal acts regulating this area of competence. Six municipalities<sup>28</sup> reported to have adopted related acts. These have all been submitted for review to the central level.

Only in one case a municipality<sup>29</sup> has been asked by the line ministry to review the adopted act for its expediency. Shtime/Štimlje reported to be in the drafting stage of 22 regulations related to delegated competencies.

According to the assessment therefore only a few municipalities have drafted legal acts in the area of delegated competences, despite the fact that by now all of them, exercise competences in this field.<sup>30</sup> This is partly due to the nature of the competences exercised by the municipalities on behalf of the line ministry, which are usually regulated by relatively clear instructions on how to exercise them. Hence, the low level of municipal legislative activities in the field of delegated competencies does not allow a comprehensive assessment of existing co-operation between the central and local level in the process of review of expediency.

#### **3.1.5. Note on the revision of municipal statutes**

Twenty-eight assessed municipalities confirmed that their municipal statutes have been reviewed by the central level. Two municipalities reported their statute to be pending.<sup>31</sup>

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<sup>28</sup> Novobërdë/Novo Brdo, Dragash/Dragaš, Prizren, Rahovec/Orahovac, Suharekë/Suva Reka and Prishtinë/Priština.

<sup>29</sup> Dragash/Dragaš municipality reported to have issued an act from the area of delegated competencies (Regulation on issuance of licenses for the exercise of business and professional activities) which was not sent to the central level for review.

<sup>30</sup> Delegated competencies exercised by the vast majority of municipalities comprise: cadastral records, business registration, voters registration, social assistance and forest protection.

<sup>31</sup> At the time of the survey, the Gjakovë/Đakovica municipal statute was still under revision, while in Podujevë/Podujevo the municipal statute is still pending approval by the MA.



The time line to assess the legality of municipal statutes mentioned by municipal officials varied from a minimum of 15 days to a maximum of three months.<sup>32</sup> Although in the majority of cases municipalities received a written note on the review result, 13 reported that no feedback has been provided. In this regard, one municipality mentioned an agreement made with the relevant line ministry, which determines that in case no feedback is provided within 30 days, the act (i.e. the municipal statute) can be considered to be compliant with the law.

With the exception of three cases<sup>33</sup> where municipalities have been asked to review their statutes on specific parts, all other municipal statutes have been certified without any comment. In all three above mentioned municipalities the statutes have been revised as requested by the responsible ministry.

Findings show that in general, the process of revision of municipal statutes by the central level ran relatively smoothly, with a few exceptions where there have been delays.<sup>34</sup> Nevertheless, the ways municipalities are informed about the outcome, and the timeline for revisions can be improved. The applied law, although explicit about the deadline within which the central level should revise municipal acts, does not specify what happens if this time period elapses.

Lack of such a provision in the primary law has often created confusion among municipalities and in some cases it has also caused unnecessary delays in the enforcement of municipal acts. Therefore, in order to avoid delays in the process of finalization of the review cycle, the establishment of a system of formal notification by the ministry upon finalization of review processes, would be very useful. Although not mandated by law, the formal notification would contribute to improve the efficiency of the review process. This is of particular importance for municipal statutes as core municipal acts, which enable municipalities to issue other acts necessary for the implementation of municipal activities.

## **3.2. Municipal Legal Offices**

This part of the paper evaluates how municipalities have organized their legal component, overall competencies of municipal legal officers and their role in the process of drafting municipal legislation. The chapter concludes with an assessments of current professional training needs for legal officers.

### **3.2.1. Structure**

#### **Statistical Data**

Eighteen municipalities reported to have established legal offices as separate units within their municipal structures,<sup>35</sup> mostly as legal directorates. Eleven municipalities<sup>36</sup> reported that

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<sup>32</sup> Another example of a revision delay comes from the municipality of Kline/Klina, which mentions that it took three months before it got the revision results from the central level for its municipal statute.

<sup>33</sup> Prizren, Junik and Deçan/Deçane municipality.

<sup>34</sup> Especially in the case of Gjakovë/Đakovica where revision of the municipal statute was still ongoing at the time of the assessment.

<sup>35</sup> Prizren, Decan/Decane, Ferizaj/Uroševac, Gjilan/Gnjilane, Dragash/Dragaš, Prishtinë/Priština, Mamuša/Mamushë/Mamuša, Suharekë/Suva Reka, Vushtrri/Vučitrn, Pejë/Peć, Kamenicë/Kamenica,

municipal legal affairs are covered by legal officers in an advisory role in the thematic directorates. Out of these, Shtime/Štimlje reported to have set up an advisory board of legal officers who are attached to the thematic directorates. In the municipalities of Kačanik/Kaçanik and Glogovac/Glogovac the position of municipal legal officer was still vacant at the time of the assessment.<sup>37</sup>

It is noted that established legal offices have no clear hierarchical structure, while staff numbers vary from one to four municipal legal officers. This shows that currently there is no unified structure of municipal legal offices and the number of legal officers differs from one municipality to another, with a few cases where municipalities have no legal officers at all. The establishment and organisation of municipal legal offices is not foreseen by the applied legal framework. Therefore, the municipalities have organised their own structure of legal offices in the way that suits them best.

### 3.2.2. Competencies

With a few exceptions, the vast majority of municipalities have established their legal offices or hired legal officers. It is reported that they are responsible for the legal drafting of municipal legislation, including the review of legislation for compliance with applicable laws. In addition to these core activities, legal offices/officers also provide legal advice to municipal assembly members, mayors, and municipal civil servants. They also represent the municipality's interests in court proceedings.

With the exception of the legal offices in Pejë/Peć, Glogovac/Glogovac, Gjakovë/Đakovica, Mamuşa/Mamushë/Mamuša, and Dragash/Dragaš municipalities, which seem to have no difficulties in exercising their duty, all other municipalities have mentioned obstacles due to shortages of staff. In ten municipalities, municipal officials have mentioned lack of training for municipal legal officers. Furthermore, issues such as lack of space and lack of office equipment have also been referred to as shortcomings.

### 3.2.3. Legal officers role in the process of drafting municipal legislation

Although the majority of municipal legal officers are involved in legal drafting, in certain cases, the extent to which they are engaged in this process varies. For example, in Lipjan/Lipljane the municipality's legal officers are involved in the process of legal drafting of municipal acts only when they are appointed to drafting panels.<sup>38</sup> As another example, in Rahovec/Orahovac municipality the legal office is not engaged in legal drafting since each directorate has its own legal officers. Furthermore, a few municipalities have reported that drafting legislation is not within their competencies.<sup>39</sup>

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Mitrovicë/Mitrovica, Gjakovë/Đakovica, Klinë/Klina, Shtërpçë/Šterpce, Obiliq/Obilić, Fushë Kosovë /Kosovo Polje and Viti/Vitina.

<sup>36</sup> Skenderaj/Srbica, Malishevë/Mališevo, Lipjan /Lipljane, Rahovec/Orahovac, Glogovac /Glogovac, Podujevë/Podujevo, Shtime/Štimlje, Hani i Elezit/General Janković, Kačanik Kačanik, Novobërdë/Novo Brdo, Junik and Istog/Istok.

<sup>37</sup> The Municipality of Glogovac/Glogovac has no legal officers employed while in Kačanik /Kačanik the municipal legal officer is on maternity leave and has not yet been replaced.

<sup>38</sup> In many occasions the directors of departments with departmental legal officer do this themselves without including the Legal Offices

<sup>39</sup> Fushë Kosovë/Kosovo Polje, Viti/Vitina and Shtërpçë/Štrpce.

The involvement of legal officers in the process of drafting of municipal legislation starts with their participation in drafting panels. Based upon the findings of this assessment, this process is more or less organised in the same manner in the vast majority of municipalities. In all cases, legal officers seem to be engaged in drafting of municipal legislation. What differs in the process of legal drafting in the assessed municipalities is who initiates the process. In most cases the initiators are directors of departments, and in other cases the mayor, municipal assembly, or legal offices/officers. After the initiative is taken and the drafting panel is established, the first draft is prepared and sent to the mayor and the municipal directors for discussion. In the next phase, the draft-act is put forward for public discussion, following which, it is reviewed by the policy and finance committee and eventually adopted by the municipal assembly.

In the majority of municipalities assessed in this report, municipal legal officers seem to be part of the process of municipal legal drafting. However, though a minority, there is a number of municipalities where the legal expertise of municipal legal officers is not used in the drafting process.

### **3.2.4 Training needs**

Based upon this assessment, legal officers in 16 municipalities have received professional training in the legal field. Training provided included topics such as: municipal legislation drafting, drafting of municipal statutes, legal drafting techniques, legal language and interpretation, drafting and revision of municipal acts, drafting methods, harmonization of municipal legislation with central legislation, rules and drafting procedures, administrative procedure and implementation of sub-legal acts. Legal officers in the remaining 14 municipalities have received no specific training.

Training for municipal legal officers have been organised mainly by the Kosovo Institute for Public Administration, the Ministry of Local Government Administration and the Legal Officers Collegium within the Association of Kosovo Municipalities. International organizations such as UNDP and the OSCE have also been mentioned by municipalities as organizers of training activities.

The majority of the assessed municipalities<sup>40</sup> emphasized the need for additional training on techniques of legal drafting of municipal acts. In addition, legal officers have mentioned a number of other general and more specific training topics that would enable them to exercise their duty more professionally. General topics include; training on newly adopted legislation, the transfer of competencies process, harmonization of laws, interpretation of laws, and law enforcement. Municipal legal officers also mentioned the following as useful topics for future training: the applied *law on publicly owned enterprises*<sup>41</sup>, administrative procedures, appeal procedures against municipal acts, implementation of applied primary and secondary laws, applied civil service law, and use of municipal property.

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<sup>40</sup> Legal officers in 19 municipalities have specifically stated legal drafting techniques as a priority in their training needs.

<sup>41</sup> Applied law on publicly own enterprises No. 03/L-087 entered into force on 13 June 2008.

The brief needs assessment conducted through this exercise, shows a broad range of training topics municipal legal officers would like to undertake. The assessment also identifies specific concerns which seem to be identical in many municipalities. For example, requests for more training on the establishment of publicly owned enterprises, municipal property and transfer of competencies, indicate that these are the fields where most municipalities need more guidance. In addition, the assessment shows that not all municipalities are included in training activities organized by the central level, since almost half of the assessed municipalities have stated not to have received any training in the legal field.

#### 4. CONCLUSIONS

The assessment shows that co-operation between local and central level throughout the review process of municipal acts exists, but should be consolidated. However, there is no established system or practice of communication, in fact the way municipal officials communicate with the central level throughout this process varies from one municipality to another.

In most cases the central level is providing support to municipalities during the legislation drafting process, when requested. This support is very often provided in the framework of draft municipal statutes, which are submitted to the competent ministry for comments before being adopted. The applied legal framework stipulates that municipalities should make a formal request by sending the draft act to the central level for comments. However, informal means such as telephone or email correspondence have also been mentioned as consultation means.

The monthly list of approved municipal acts is submitted regularly to the central level by half of the 30 municipalities assessed. Although the applied law on local self-government specifically mandates the mayor as the ultimately responsible municipal body to regularly submit the list of adopted acts to the competent ministry, the assessment shows that this obligation is carried out by various municipal officials in different municipalities. The remaining municipalities do not fulfill this legal obligation at all because they claim not to be aware of this provision of the applied law.

The process of informing municipalities about the outcome of the review of legality of municipal acts by the central level is functioning. A failure of central level to respond or comment within the legal timeframe should be treated by the municipalities as a sign of approval. If the central level then wants to issue a later submission, the question whether there can be a reinstatement remains open because this is not defined by the applied legislation.

As far as the revision process of other municipal acts is concerned, the assessment has shown that here too an established system of communication between the local and central level is missing. Municipal acts are sent out by various municipal officials and in various ways. In addition, the awareness of municipal officials about municipal acts that should undergo mandatory review is also an issue that requires corrective measures. The competent ministry should also have a pro active role in cases where it detects a trend where acts are not being submitted for review.

The review of municipal acts for their expediency has been reported only by a few municipalities. It seems that the vast majority of municipalities have not issued any sub-legal act in the course of implementation of delegated competencies. Nevertheless, in those municipalities where these acts have been reviewed by the central level, communication between the local and central level is satisfactory.

The legal component has very different structures in all municipalities. There is no clear unified structure and the number of hired legal officers varies from one municipality to another. The competencies of legal officers are not clearly defined, often leaving them out of the overall drafting process.

The assessment shows that municipal legal officers have expressed their interest for a broad range of training. Moreover, they have stressed the need for additional skill-oriented training, mainly with regard to legal drafting techniques. Although these municipal officials have been considered for training, it seems that either their requests have not been addressed by the competent authorities, or training provided has not been delivered on specific topics. In addition, some of municipalities claim to be excluded from training activities organised by various central level and institutions.

## 5. RECOMMENDATIONS

In order to enable municipalities to exercise their responsibilities more efficiently and to ensure that activities of the municipalities are compliant with the applied legal framework the OSCE recommends:

To the Ministry of Local Government Administration

1. Provide clarification on exactly what acts have to undergo mandatory review, possibly through an administrative instruction.
2. Establish a standardized system for communication with municipalities including entry/exit records for correspondence.
3. Increase and improve the Ministry's monitoring activity at municipal assembly meetings.
4. Ensure that the municipalities comply with the legal requirements for submitting municipal acts for review, and take necessary actions against the ones that do not.
5. Ensure timely information flow to municipalities on the outcome of reviews of municipal acts.
6. In case of disagreement on legal considerations, challenge the act in the District Court competent for the territory of the municipality.<sup>42</sup> This could provide a basic jurisprudence on these disputes.

To the municipalities

1. Make increased use of the possibility for preliminary consultation with the central level.
2. Mayors have to fully assume their role of having the ultimate responsibility for sending all acts and lists for review in a timely and structured fashion.
3. Inform central level authorities in a timely fashion on municipal assembly sessions, their venue, agenda, and associated background material.
4. Institutionalize the legal officers in a separate directorate as an independent body.
5. Send legal officers for training on a regular and mandatory basis.

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<sup>42</sup> Ibid Article 82.4