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„Politics of Ethnic Accommodation: Decentralization, Local Governance, and Minorities in Kosovo“

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Above all, my gratitude goes to God, most Gracious, most Compassionate!

List of Abbreviations

AAK – Aleanca për Ardhmërinë e Kosovës
ASMM – Association of Serb Majority Municipalities
CEO – Central Executive Officer
CoE – Council of Europe
CPY – Communist Party of Yugoslavia
ECHR – European Convention on Human Rights
ECRML – European Charter for Regional or Minority Languages
EU – European Union
FCNM – Framework Convention for the Protection of National Minorities
GIG – Gradjanska Iniciativa Gore
IDP – Internally Displaced Persons
KFOR – Kosovo Force
KLA – Kosovo Liberation Army
LCO – Local Community Office
LDK – Lidhja Demokratike e Kosovës
MA – Municipal Administrator
MAB – Municipal Administrative Board
MC – Municipal Council
MLGA – Ministry of Local Government Administration
MOCR – Municipal Office for Communities and Return
NATO – North Atlantic Treaty Organization
NGO – Non-Government Organisaiton
OECD – Organisation for Economic Co-operation and Development
OSCE – Organization for Security and Co-operation in Europe
PDK – Partia Demokratike e Kosovës
RAE – Roma, Ashkali, Egyptian
SRSG – Special Representative of the Secretary General
TSG – Territorial Self-Government
UDBA – Uprava Državne Bezbednosti
UN – United Nations
UNDP – United Nations Development Programme
UNHCR – United Nations High Commissioner for Human Rights
UNMIK – United Nations Interim Administration Mission in Kosovo
UNSC – United Nations Security Council
UNSCR – United Nations Security Council Resolution
USAID – United States Agency for International Development

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Abstract

Decentralization as a mechanism of conflict management has the capacity to both, increase and decrease the chances of conflict between different ethnic groups within states. Through decentralization, either ethnic groups can be accommodated within the governance system of the state, or their stance against the host state can be strengthened with the use of decentralized authority. This research study elaborates on decentralization as an ethnic accommodation strategy applied to the case of Kosovo. First, it explores how administrative, fiscal, and political dimensions of decentralization have affected the process of ethnic minorities´ accommodation. It provides analysis and answers on how the decentralization process has reduced the chances of conflict. Second, it critically examines the impact of the agreement for the establishment of the Association of Serb Majority Municipalities on decentralization and the overall governance system of Kosovo.

This research was conducted using qualitative methods. Data was gathered from a wide range of relevant books, articles, documents, and in-depth interviews conducted throughout Kosovo. Data was analyzed using constant comparison analysis method, and it was interpreted using the inductive reasoning process. Taken together, the results of this research suggest that Kosovo has formally established the necessary basis for a successful decentralization. These results, however, also show that reducing the gap between the formal decentralization and its effective application on the ground remains the main challenge, which, if not properly addressed, risks the whole process in the long-term. Furthermore, the results indicate that the establishment of the Association of Serb Majority Municipalities, in its current form, will change the overall governance system of Kosovo. This change has the capacity to damage the decentralization process. In conclusion, this research demonstrates the usefulness and risks of decentralization as a minority accommodating strategy. It enriches the theory and practice of decentralization, and more importantly, it presents a useful framework that can be used by designers and implementers of decentralization, not only in Kosovo but also in other conflict and post-conflict areas around the world.

CHAPTER I - INTRODUCTION

I.1. Background

Decentralization has been introduced in Kosovo as the core part of the final strategy that would put an end to a long lasting conflict between two different nations over the same territory. Since its introduction more than a decade ago, its implementation remains a work in progress. The decentralization process has been based on two main principles, namely self-rule and shared-rule, for ethnic groups who are in a minority position within Kosovo. The application of the self-rule principle has been conducted through the creation of local government units that offer minorities the possibility to autonomously manage different affairs of their concern. Alternatively, the application of the shared-rule principle has been implemented through the establishment of various representation and participation mechanisms for ethnic groups which constitute a local minority. This strategy, it is argued, offers minority communities internal self-determination, and therefore, it has the capacity to reduce the chances of conflict.

The decentralization process has, however, been characterized by serious problems and difficulties. Serbs, as the largest minority group, have opposed the process in the Serb dominated northern part of the country, while significantly accepting it in the southern part. The Serb dominated north remained under the control of Serbia, and it gradually degraded into a lawless territory. While having achieved important results in the south, decentralization remained only on paper in the north. Under these circumstances, the government of Kosovo has been `pushed` to (re-)negotiate a new agreement. This agreement would on the one side integrate the northern part into the Kosovo governance system, and on the other side, it would offer additional rights for the Serb community. The agreement foresaw the establishment of an Association of Serb Majority Municipalities. This brought a new dimension to the decentralization process in Kosovo.

In recent years, there has been an increasing interest in decentralization as a strategy for ethnic accommodation. The main research question, around which considerable scientific work has been developed, is based on the following question posed by Faguet: “By devolving power and resources to lower levels of government, could decentralization relieve political

tensions and reduce the risk of violence or secession?"[1] A straight answer to this question cannot be found in the literature. To date, there has been little agreement on whether decentralization decreases or increases the chances of conflict. Some authors argue that if ethnic groups are given substantial powers to manage their own affairs, requests for secession may decrease. Alternatively, other authors argue that with additional decentralized authority, ethnic groups have better possibilities to strengthen their stance against the host state, or to launch a successful secessionist movement, thereby increasing the chances of conflict. Indeed, the same process can decrease or increase the chances of conflict. There is, however, agreement in the literature, that giving an answer to this complex question requires an adequate exploration of the manifold factors connected to decentralization, and this can best be done by applying it to a specific case.

The aim of this study is to explore these manifold factors connected to decentralization, by applying them to the case of Kosovo, and explaining its tendencies. *First,* this study highlights that administrative, fiscal, and political dimensions of decentralization have improved the possibilities of minority communities to properly realize their rights for self-rule and shared-rule. Even though these possibilities have improved, this study provides evidence that there is a frequent discrepancy between the legal situation, and the realities on the ground. Decreasing this gap, in the long-term, has the capacity to strengthen the conflict reduction effect of decentralization. *Second,* this study examines the agreement for the establishment of the Association of Serb Majority Municipalities. It argues that the agreement, in its current form, changes the institutional nature of the state, and thereby, it increases the chances of conflict. In sum, the importance of this study lies in the fact that it offers a small part required for resolving the wider decentralization puzzle.

I.2. Significance of the Research

The findings of this study should make an important contribution to the field of decentralization. This study enhances the knowledge and conception on the process of decentralization and its effects on the protection and integration of minorities within states. It demonstrates the usefulness and risks of decentralization as a strategy for ethnic and/or minority accommodation. It also offers some important insights into Kosovo's local governance system. More importantly, it offers a broad analysis on additional mechanisms for the protection and promotion of minority rights, including their impact on the state. Indeed,

[1] Jean-Paul Faguet, "Decentralization and Governance,"(London: EOPP/2011/27, 2011), 13-14

this study provides an important opportunity to advance the understanding of the ethnic accommodation and conflict reduction potential of decentralization.

In addition, this research is novel as similar projects on the same case study have not yet been developed. As such, this study may resolve theoretical questions and help create new research paths for similar case studies. This research also has the capacity to influence central and local government policy making, and it has the potential to produce knowledge for useful practical application in the future. It can be expected that this study will not only serve as an academic work, for the community of scholars. It has significant practical applications to the way of thinking and problem solving, which can be used by various policy actors, in different areas and levels of governance. At the same time, it should be acknowledged that this study is not all encompassing. This study does not look at every possible factor which might influence decentralization and its effects, in the case of Kosovo.

I.3. Research Questions

Question I: Is it possible to accommodate ethnic minorities by decisively improving their political, economic, and social possibilities through measures of decentralization?

Question II: How does decentralization, through the establishment of a new governmental entity for the accommodation of minorities, impact institutional effectiveness, its architecture, and the overall functionality of the state?

I.4. Research Hypotheses

Hypothesis I: According to the existing literature, decentralizing more powers to minorities could lead to effective accommodation and integration of minorities into the governance system of the state and it could reduce the chances of conflict. Diffusing more powers and resources to local government institutions in Kosovo may strengthen political stabilization and reduce the risk of secession. In this context, decentralization can be considered as a mechanism for conflict management, minority protection, and effective governance.

Hypothesis II: According to the literature on decentralization and conflict, the establishment of governmental entities based on asymmetric decentralization/autonomy can considerably affect institutional effectiveness and functionality of weak states, while not necessarily discouraging secessionism. If the government of Kosovo will apply additional decentralization beyond the initial process, by establishing the Association of Serb Majority Municipalities in its currently agreed form, then the Kosovo governance system will probably

transform from a symmetric decentralized system to an asymmetric decentralized system of governance. This may lead to institutional dysfunctionality, it may increase the chances of conflict, and finally it may lead to the failure of decentralization as a strategy of conflict management and ethnic accommodation.

I.5. Research Design/Methodology

This research was conducted using qualitative research method including document analysis and in-depth interviews. Although there might be scope for a certain degree of quantifying some of the data, an overall non-quantifying method is used for data analysis and interpretation. This study is based on an inductive reasoning process.

Data analysis was conducted through the method of Constant Comparison Analysis. The figure below tends to illustrate the process.

Figure 1: Research Process, adapted from Bob Hancké (source: Bob Hancké, "The Challenge of Research Design", in Theory and Methods in Political Science, Third Edition, (Eds.) David Marsh and Gerry Stoker, (Palgrave Macmillan, Basingstoke, Hampshire, 2010), p.236-239

I.5.1. Data collection

An extensive approach was utilized to collect data in such a way that integrated primary and secondary sources. This data was mainly collected from general literature, documents, reports, and in-depth interviews.

a) Data collected from textual and discourse analysis - document analysis

Data was collected from various primary and secondary sources, including three types of books and articles. First, books and articles on Kosovo were consulted. Second, books and articles on the topics of decentralization, local governance, and minority protection were used. Third, books and articles about the experiences of other nations during times of conflict and post-conflict were used. In addition, data was gathered from reports compiled by the central government, ministries, NGO´s, international organizations, and other governmental agencies. Finally, data was also gathered from public documents, including the constitution of Kosovo, laws and bylaws, administrative regulations, and bilateral agreements between Kosovo and Serbia. As these documents: "often enshrine a distinctively documentary version of social

reality",[2] they have mainly served to, as Vromen notes: "make meaning from them by using them to "tell the story" or recreate a historical sequencing of events."[3]

b) In-depth interviews

Conducting interviews gives researchers the possibility to dive deeper into their subject of interest. This can be mainly achieved by analyzing the experience and the understandings of the interviewed participants. Interviewees share their knowledge with the researcher, who can use that knowledge to gather insights and systematically present their findings to the research community.[4] As such, conducting in-depth interviews can be considered as a prerequisite for advanced research on specific case studies. Therefore, to adequately support the argumentations used in this study, twenty-five in-depth interviews were conducted during September 2016 and May 2017 across Kosovo. Interviews were conducted in nine out of ten Serb majority municipalities, in the Turk majority municipality of Mamushe, and in the multi-ethnic municipalities of Rahovec, Prizren, and Dragash. One interview was conducted in the Serbian parallel municipality of Prishtina. Interviews were also conducted at the central level, namely, in the Ministry of Local Government Administration, Ministry of Finance, and Ministry for Communities and Return. Finally, interviews were also conducted with one local expert on multi-level governance and with one international officer working for the OSCE.

I.5.2. Data analysis

Data was analyzed using the Constant Comparison Analysis Method as developed by Barney G. Glaser. In his work, Glaser argues that this method is based on a four stage process: "(1) comparing incidents applicable to each category, (2) integrating categories and their properties, (3) delimiting the theory, and (4) writing the theory." He further remarks: "Although this method is a continuous growth process – each stage after a time transforms itself into the next – previous stages remain in operation throughout the analysis and provide continuous development to the following stage until the analysis is terminated."[5] In other words, the analysis process for this study involved the organization of information into

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[2] Paul Atkinson and Amanda Coffey, "Analysing Documentary Realities," in *Qualitative Research, Theory, Method and Practice*, ed. David Silverman (London, Thousand Oaks, New Delhi: SAGE Publications, 1997), 47-48

[3] Ariadne Vromen, "Debating Methods: Rediscovering Qualitative Approaches," in *Theory and Methods in Political Science, Third Edition*, eds. David Marsh and Gerry Stoker (Basingstoke, Hampshire: Palgrave Macmilan, 2010), 261-262

[4] Jody Miller and Barry Glassner, "The ′Inside′ and the ′Outside′, Finding Realities in Interviews," in *Qualitative Research, Theory, Method and Practice*, ed. David Silverman (London, Thousand Oaks, New Delhi: SAGE Publications, 1997), 100

[5] Barney G. Glaser, "The Constant Comparative Method of Qualitative Analysis," *Social Problems* Vol. 12, No 4, 1965, 439

smaller parts, codification of information, constant comparison of new data with the existing codes, and a systematization of the new data within the codes. After the codification was accomplished, codes were clustered and divided into similar themes or parts of the research, thereby creating the basis for interpretation.

I.5.3. Data interpretation

Data was interpreted using the Inductive Reasoning Process. This process included an approach where research findings were used to indicate certain patterns, tendencies, or suggestions of the conclusions. Therefore, conclusions made in this study are not absolute. They simply use strong inductive arguments to support the claims.

I.6. Structure of the Study

This study is composed of eight themed chapters. **Chapter two** begins with laying out the theoretical dimensions of the study, and looks at different accommodation mechanisms, with a specific focus on decentralization. **Chapter three** offers a historical perspective of inter-ethnic relations between the Albanian and the Serb population in Kosovo. It tends to explain the roots of the current conflict. **Chapter four** reviews the policy of international administration on establishing the local governance system. It superficially explores elements of administrative, fiscal, and political decentralization, as applied during the UN mission. **Chapter five** considers the Ahtisaari package, as the basis of the current Kosovo system of governance. It also considers different options which were (and some still tend to be) on the discussion table. **Chapter six** presents the findings of this research, focusing on the three key dimensions of decentralization. It examines the results of the interviews conducted during the study. In the section on administrative decentralization, it tends to explain the system and its effects on minority communities. In the section on fiscal decentralization, it tends to explain the fiscal and financial implications for municipalities, including policies of resource distribution. In the section on political decentralization, it tends to explain the democratic dimension of minority representation and participation. **Chapter seven** offers a broad analysis of the establishment of the Association of Serb Majority Municipalities, and it reviews its possible impact on the overall state. **Chapter eight**, as the final chapter, offers some conclusions and recommendations for further practical and academic research.

CHAPTER II - THEORETICAL BACKGROUND

The past thirty years have increasingly seen rapid advances in the field of decentralization. Within the political debate, decentralization has taken two main directions. First, it has been established as a conflict management mechanism. In other words, decentralization has evolved into a practical tool for the accommodation of various differences within states, with the aim to decrease chances of internal conflict. Second, decentralization has evolved as a concept and tool for establishing good governance. In the literature, it has been argued that decentralization creates accountability, transparency, and increases participation and governance effectiveness. As such, it has the potential to create good governance that can decrease the chances of conflict.

To date, studies investigating decentralization have resulted in unclear conclusions. Some studies have shown the beneficial effects of decentralization in post-conflict situations, while other studies have shown that decentralization can also exacerbate conflict. In addition, several studies have tried to explain the connection between decentralization and conflict by using an extensive amount of statistical data. The results of these studies, however, only showed the complex nature of decentralization and its dual effect on conflict management. Therefore, there has been no reliable evidence to suggest that decentralization actually decreases the chances of conflict. However, as argued in this chapter, many authors continue to recognize the positive potential of decentralization as a tool for conflict management. Furthermore, there is almost a general consensus between different authors, that decentralization and its effects can best be analyzed if connected to a specific case study, or a specific conflict environment. Therefore, the aim of this study is to analyze the impact of decentralization as a tool for minority accommodation, and thus conflict management in Kosovo.

In general, decentralization is more regarded as a process of power devolution than as a conflict management tool. As a result, for the purpose of this study, all the main elements connected directly or indirectly to decentralization and to its conflict management approach will be presented and analyzed in the following sections. In the context of Kosovo, decentralization has been regarded as a conflict management strategy. In this narrower context, Bieber points out that decentralization as a strategy has included three main elements,

namely, decentralization of central government competencies, establishment of municipalities based on minority settlements, and provisions for minority participation at the local level.[6]

Let us now take a closer look at these three elements. The first element is based on empowering municipalities or smaller units of governments rather than larger units of government. The second element is based on the principle of self-rule for minorities. The third element is based on the principle of shared-rule for minorities at the local level. The necessity to grant self-rule and shared-rule rights to minorities is further discussed in the following section on group and minority rights. The concept of self-rule and its manifold application, including the empowerment of smaller units of government, is discussed in the section on autonomy, territorial accommodation for minorities, and in the section on federalism and on other forms of territorial accommodations. The concept of shared-rule is analyzed in the section on power sharing and/or consociational systems of governance. A narrow concept of decentralization is discussed at the end of the chapter. Overall, the discussion of the following theoretical parts remains imperative because many elements of different theories are intertwined. These theoretical elements emerge and are constantly treated throughout the whole study.

II.1. Group and Minority Rights

Before laying out the core theoretical dimensions of this research, it is important to understand the correlation between decentralization, group and minority rights, and conflict management. This part will thus argue why it is meaningful to grant specific rights for minorities. With regards to this understanding, minority rights refer to: "specific set of rights that can only be enjoyed by members of a particular minority individually, if they so wish." Minority rights can be considered as: "additional rights above and beyond individual human rights, instituted to address specific concerns that members of minorities may have individually and collectively. (…) these rights are aimed at creating conditions under which members of minorities, individually and collectively, can express, develop and preserve their distinct identity."[7] In a broader sense, the application of minority rights aims to preserve stability and therefore, it represents an important element in securing sustainable peace within and between states.

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[6] Florian Bieber, "The Balkans: The Promotion of Power Sharing by Outsiders," in *Power Sharing in Deeply Divided Places,* eds. Joanne McEvoy and Brendan O´Leary (Philadelphia: University of Pennsylvania Press, 2013), 320

[7] Stefan Wolff, Ana-Maria Anghelea, Ivana Djuric, and Pieter van Houten, "Minority Rights in the Western Balkans" (Brussels: European Parliament, 2008), 5

Let us return to the definition of a minority. Although differences of opinion still exist on how to define a minority group, there appears to be acceptance among social scientists of the definition presented by Francesco Capotorti. He uses the term minority to refer to: "A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members-being nationals of the State-possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language."[8] Even though this definition is often supplemented by various authors, the substance of Capotorti´s definition remains intact within international and European legal mechanisms.

Ethnic, religious, or linguistic minorities are frequently exposed to pressures from the dominant majority group within a state. These pressures may be pushed through ´integrative initiatives` which aim to merge (actually assimilate) the minority groups with the dominant culture. Minorities can counter majority pressures by further developing and strengthening their distinct ethnic, religious, or linguistic characteristics.[9] Those who fail to keep their distinct characteristics end up merging into the majority culture. Kymlicka suggests that minorities facing such situations have three main options. They can either join the majority culture, pursue a policy of establishing distinct institutions, or accept discrimination.[10]

These possible cleavages within states have brought the need of the international community to establish legal and practical mechanisms for the protection of minorities. As such, minority protection mechanisms have gradually evolved from being treated as sovereign states' internal affairs to international mechanisms. One of the most prominent document "The Framework Convention for the Protection of National Minorities" presented by the Council of Europe (CoE), for example, requires states to protect "the rights and freedoms of persons belonging to (…) minorities."[11] Furthermore, the United Nations (UN) and the Organization for Security and Co-operation in Europe (OSCE) have also developed documents for the protection of minorities. These documents include the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; European Charter for Regional and

[8] Francesco Capotorti, "Study on the Rights of Persons Belonging to Ethnic, Religious, and Linguistic Minorities," (New York: E/CN.4/Sub.2/384//Rev.1, UN, 1979), 96

[9] Georg Brunner and Herbert Küpper, "European Options of Autonomy: A Typology of Autonomy Models of Minority Self-Governance," in *Minority Governance in Europe*, ed. Kinga Gál (Budapest: Local Government and Public Service Reform Initiative, 2002), 18

[10] Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (Oxford: New York University Press, 2001), 27-28

[11] "The Framework Convention for the Protection of National Minorities" (Strasbourg: Council of Europe, 1995), Section I, Article I

Minority Languages; and the Copenhagen Document. This minority rights legal framework and their mechanisms are created to protect different populations in a minority position, and to counter majority's assimilationist policies.

Most international instruments for the protection of national minorities have a legally non-binding, instructive character. States remain to hold the ultimate authority to determine, if at all, which policies will be enforced within its territory for the protection and promotion of minority rights. The above mentioned organizations lack any effective sanction mechanisms.[12] McGarry and O´Leary maintain that: "The legal and normative documents released by various European institutions in the 1990s suffer from other palpable weaknesses. Unlike the ECHR, their protections are either not binding on states (the OSCE "Recommendations") or not justiciable (the FCNM and the ECRML)."[13] Even though these mechanisms have weaknesses, most signatory states implement the main recommendations that emerge from these mechanisms. Kosovo, for instance, has unilaterally declared the applicability of all international instruments for the protection and promotion of minorities, and it has, enshrined these obligations within the constitution.

The key idea behind the protection and promotion of minority individual and group rights is equality. As Anaya observes: "The effective realization of equality requires in many instances differential treatment of ethnic groups in ways not necessary for, or even relevant to, other types of groups."[14] The existence of differentiated minority group rights, Anaya further argues: "is based on recognition of the typically vulnerable position that a numerical minority or otherwise non-dominant group is likely to be in with regard to the enjoyment of its culture when there is some significant difference between its cultural attributes and those of the larger or dominant population."[15] Kymlicka also argues in favor of group rights. He maintains that minorities are automatically disadvantaged in different spheres of the public life. Majority decisions, for example, may directly affect their interests and thus put them in an unfavorable situation. Majorities, on the other side, are not exposed to this risk. On this, Kymlicka further

[12] Tristan James Mabry, "Forked Tongues: The Language Politics of Divided Nations," in *Divided Nations and European Integration*, eds. Tristan James Mabry et al. (Philadelphia: University of Pennsylvania Press, 2013), 80-81, 83

[13] John McGarry and Brandan O´Leary, "Conclusion: The Exaggerated Impact of European Integration on the Politics of Divided Nations," in *Divided Nations and European Integration*, eds. Tristan James Mabry et al. (Philadelphia: University of Pennsylvania Press, 2013), 358

[14] S. James Anaya, "On Justifying Special Ethnic Rights: Comments on Pogge," in *Ethnicity and Group Rights*, eds. Ian Shapiro and Will Kymlicka (New York, London: New York University Press, 1997), 222-223

[15] Ibid., 224

notes: “This is a significant inequality which, if not addressed, becomes a serious injustice”.[16] Minority rights as such, enable minority groups to have the same opportunities as the majority. Kymlicka concludes that without minority group rights: “members of many minority cultures face the loss of their culture, a loss which we cannot reasonably ask people to accept.”[17] Given these points, minority individual and group rights are essential for minorities. These group rights need to be addressed institutionally.

The idea of minority protection and their participation in state institutions has unfolded the need, as previously mentioned, to address such questions institutionally. Accordingly, Gál describes three institutional approaches within the national and international legal systems for minority participation. The first approach is known as the human rights approach, and it is based on international law. Within this approach, legal protection and promotion of minority rights is extracted from the general protection of individual human rights. These rights include mainly the principle of non-discrimination, and for instance, guarantees , language rights, free ethnic and religious declaration, education and political representation for minorities.[18] The second approach is based on the right to self-determination, or as it was later restructured and adopted into an additional principle of internal self-determination. This principle involves on the one hand, the recognition of the state´s sovereignty and minorities commitment to peaceful means. On the other hand, it involves state´s recognition of minorities and their specific rights. It also involves the necessity to accommodate the needs of minorities through the application of specific legal provisions, for example, autonomy or decentralization. “Limited or internal self-determination can take various forms in the state structure, depending on a host of variables, needs, desires and restrictions”, notes Gál.[19] The third and final approach is based on the principle of subsidiarity. This is a simple principle by which different issues are dealt with, as much as possible, at the lowest levels of government, a municipality or region. Only issues that cannot be dealt with at the lower levels of government are brought to the attention of the central government institutions. The main aim of this principle is to strengthen local actors and institutions. It differs from state to state, as it depends on the decentralization level allowed by the central authorities.[20] In addition to Gál´s

[16] Will Kymlicka, *Multicultural Citizenship, A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), 109
[17] Ibid.
[18] Kinga Gál, “Minority Governance on the Threshold of the Twenty-First Century,” in *Minority Governance in Europe*, ed. Kinga Gál (Budapest: Local Government and Public Service Reform Initiative, 2002), 2
[19] Ibid., 2
[20] Ibid., 3

three institutional approaches, Levy has classified eight forms of rights and accommodation mechanisms that can be claimed by minorities.

According to Levy, the first form of rights allows minorities to be excluded from the application of certain laws. This only applies, for example, if the laws are in contradiction with religious beliefs of the minority group. The second right includes the claim of minorities to enjoy institutional support in implementing different activities for the promotion of their culture. One such claim is the use of their own language. The third right allows minority groups to claim self-government. This claim allows minorities to enjoy a territorially distinct institution, that is self-governed by the minority, and is autonomous from other groups within the larger entity. The fourth right allows minorities to enjoy the right to impose certain regulations for non-members, especially on issues such as immigration into its territory. The fifth right as described by Levy, is the right of minorities to apply their traditional law, while the sixth right allows minorities to apply certain rules only to their own members. The seventh right is the claim to establish mechanisms for the participation of minorities in central government institutions. The last right is described as the claim of minorities to be recognized as a distinct group. This claim may involve formal issues such as state symbols and school curriculums. [21]

In summary, this review shows that granting special rights to minorities is essential for achieving some form of equality. Special minority rights may come in different forms, mainly reflecting conciliatory points between majority and minority communities within a state. Although the application of special rights for minorities brings some form of equality, it should be noted that, it also separates minorities from majorities. Different territorial and non-territorial minority protective arrangements do not, as Kymlicka maintains: "promote horizontal connectedness amongst citizens." [22] He further notes that the problem is that minorities: "see themselves as belonging to a separate political community, and as having only a secondary, and often ambivalent, bond to the larger state." [23] According to Schneckener, this method, reducing the possibilities of conflict by forms of separation, is part of the self-rule principle. This principle is based on the assumption that limited contact between majority and minority communities reduces the chances of conflict. Alternatively, there is also the principle of shared-rule that is based on the idea of the need to establish a

[21] Jacob T. Levy, "Classifying Cultural Rights," in *Ethnicity and Group Rights,* eds. Ian Shapiro and Will Kymlicka (New York, London: New York University Press, 1997), 24-49
[22] Kymlicka, *Politics in the Vernacular,* 313
[23] Ibid.

partnership between minority and majority groups. According to its advocates, this mutual partnership, in combination with mechanisms of shared governance reduces the possibilities of conflict. [24] In the next section, an account of power sharing or consociation will be discussed and the forms of self-rule will be reviewed afterwards.

II.2. Power Sharing / Consociational Systems

In their 1993 work, McGarry and O´Leary presented two types of classifications of methods for conflict regulation. According to this classification, the first type covered four mechanisms for *eliminating* differences, while the second type covered four mechanisms for *managing* differences. They termed it "Macro -political forms of ethnic conflict regulation". The first type of classification presents methods for eliminating differences, which according to the authors are: a) genocide, b) forced mass-population transfers, c) partition and/or secession (self-determination), and d) integration and/or assimilation. The second type, methods for managing differences includes: a) hegemonic control, b) arbitration, c) cantonisation and/or federalization, and d) consociationalism or power-sharing. [25] For the purpose of this study, the method of internal territorial regulation is especially interesting, as well as the method of power sharing.

Power sharing or consociational arrangements are closely connected to both, the concept of self-rule and the concept of shared-rule for minorities. Decentralization represents an important part of consociational systems of governance which are based on power sharing arrangements. Bieber argues that decentralization as a conflict management strategy, especially in the form used in Kosovo, presents a further `evolution of power-sharing systems`.[26] According to O´Leary, power sharing or consociation has been broadly defined as: "Any set of arrangements that prevent one agent, or organized collective agency, from being the "winner who holds all critical power," whether temporarily or permanently."[27] Power sharing has gradually become one of the most viable mechanisms for managing conflict within multinational states. It frequently provides an answer or resolution for internal

[24] Ulrich Schneckener, "Minority Governance between Self-Rule and Shared-Rule," in *Minority Governance in Europe,* ed. Kinga Gál (Budapest: Local Government and Public Service Reform Initiative, 2002), 351
[25] John McGarry and Brendan O´Leary, "Introduction: The macro-political regulation of ethnic conflict," in *The Politics of Ethnic Conflict Regulation,* Eds. John McGarry and Brendan O´Leary (London, New York: Routledge, 1993), 4
[26] Ibid.
[27] Brendan O´Leary, "Power Sharing in Deeply Divided Places: An Advocate´s Introduction," in *Power Sharing in Deeply Divided Places,* eds. Joanne McEvoy and Brendan O´Leary (Philadelphia: University of Pennsylvania Press, 2013), 3

secessionist movements.[28] Power sharing is based on the idea that it is necessary to recognize distinct groups within states, as opposed to assimilation, and to secure their participation in the decision-making process. One of the leading authors on power sharing, Arend Lijphart argues that some forms of separation within multinational states are necessary to avoid conflict. Lijphart remarks: "good social fences may make good political neighbors". According to this argument every group should be entitled to enjoy some degree of autonomy.[29] Taken together, elements of O´Leary´s definition and Lijphart´s claim for group autonomy indicate that on the one hand, power sharing enables groups to decide for themselves, and on the other hand, it enables groups to take part in a larger shared decision-making mechanism, usually in the form of a central government.

Autonomy and power sharing, as argued above, have been mentioned by Lijphart as the main elements of a power sharing democracy.[30] Apart from these two elements, power sharing arrangements may also include veto rights for minority groups and proportional representation for all groups within the state. Proportional representation can, not only be applied to the main central government institutions, but also to other public sectors including education, civil service, and armed and police forces.[31] Different combinations of these elements, taken individually or collectively, frequently come as a package for resolving conflicts.[32] Most authors would agree that the combination of these elements should always take into account the distinct situation on the ground, and be adapted to it.

Alternatively, Lijphart believes and argues that there is a: "one size power sharing model that offers the best fit for most divided societies regardless of their individual circumstances and characteristics."[33] Lijphart´s model is based on a nine-point roadmap that guarantees effective power sharing in divided societies. According to Lijphart, constitution writers working in cases with different antagonisms between groups should take into account all of these nine points, and of course, should adapt it to the unique situation within the polity. For example, in the case of Kosovo, this would mean to take into account the historical grievances between

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[28] Ibid., 8
[29] Arend Lijphart, "Cultural Diversity and Theories of Political Integration," *Canadian Journal of Political Science, Revue canadienne de science politique*, Vol.4, No. 1 (1971): 11
[30] Arend Lijphart, "Constitutional Design for Divided Societies," *Journal of Democracy*, Vol. 15, No. 2, John Hopkins University Press (2004): 99
[31] John McGarry and Brandan O´Leary, "Introduction", in *Divided Nations and European Integration,* eds. Tristan James Mabry et al., (Philadelphia: University of Pennsylvania Press, 2013), 10
[32] Brendan O`Leary, "Debating Consociational Politics: Normative and Explanatory Arguments," in *From Power Sharing to Democracy: Post-conflict Institutions in Ethnically Divided Societies,* Ed. Sid Noel (Montreal: McGill-Queen´s University Press, 2005), 19
[33] Lijphart, "Constitutional Design for Divided Societies," 99

Serbs and Albanians, the powerful and destructive role of Serbia, the dispersed nature of minorities across Kosovo, the limited state power and its fragility, limited financial possibilities, and lack of democratic experience. In his nine-points, Lijphart included the need: 1) to adapt a proportional representation electoral system; 2) to give preference to a simple and applicable PR system; 3) to choose parliamentary systems over presidential or semi-presidential systems; 4) to guarantee representation within the executive of various groups; 5) to establish constitutional mechanisms which would guarantee cabinet stability; 6) to have a ceremonial head of state elected through a parliamentary process; 7) to apply federalism and decentralization for territorially concentrated groups; 8) to apply non-territorial autonomy where groups are territorially dispersed; and 9) to enable representation of different groups within the state administration, judiciary, police, and military.[34] These nine points present a broad compilation of the main elements of power sharing.

It should be noted, however, that the main weakness in Lijphart´s arguments is that power sharing can hardly be applied as a straight forward remedy. Conflict situations are frequently complex, and they may require multifaceted measures. These situations have been named by O´Leary as "complex consociation", which can be: "distinguished by the existence of policies, institutions, and constitutional arrangements that address an antagonistic self-determination dispute, incorporate peace processes, involve elements of at least one other major domestic conflict-regulating strategy, and, lastly, enlist external or international powers in the making, implementation, and maintenance of the settlement."[35] Therefore, a successful conflict management strategy often involves internal stakeholders and internal constitutional arrangements, as well as external international stakeholders with mechanisms for peace process monitoring. Overall, power sharing should be distinguished between the corporate and the liberal form. The corporate form of power sharing specifically/explicitly determines which groups are entitled to power sharing. Alternatively, the liberal form is based on an election process where groups who are entitled to share power are determined through elections.[36]

Keeping note of the definition of power sharing, the following paragraphs will deal with the positive and negative effects of this conflict regulating mechanism. Proponents of power sharing argue that this system allows for more justice and fairness, and thus it may become a

[34] Ibid., 99-106
[35] O`Leary, "Debating Consociational Politics," 35
[36] Allison McCulloch, "Consociational settlements in deeply divided societies: the liberal-corporate distinction," *Democratization,* Vol. 21, Nr. 3 (2014): 503

solid and reliable model for all groups within a state.[37] Furthermore, they argue that this model enables groups to develop independently, even if they are in a minority position. This model also encourages groups to establish a common state identification. O´Leary summarizes the arguments of the proponents of power sharing in the following words: "it works; (…) it is a realistic response to likely or sustained conflict; and that it can lead to a more stable, better-performing, and more inclusive form of democracy."[38] Alternatively, critics of power sharing models would argue in favor of other forms of conflict regulation.

One of the major critics of power sharing, Donald Horowitz, identifies three major neglected problems in his analysis of consociational or power sharing systems. To begin, the first problem is described as the adoption problem, in which Horowitz raises some concerns about the ability to adapt consociational measures under different circumstances in divided societies. For instance, Horowitz argues that majorities have other desires than minorities. Majorities do not favor consociational arrangements, while minorities clearly favor such arrangements. Consequently, consotiationalism may be adapted only in moments of majority's weakness. Reinforcement of the majority brings challenge to the arrangement. Both sides may also try to hide their real political intentions during the negotiation process, and both sides may consider or be skeptical of the dangers of the new arrangement. Furthermore, agreement brokers may be wrong about which institutional design suits their community best and there may always exist, on both sides, a temptation towards other open opportunities.[39] The second problem is described as the possibility of arrangement deterioration. As a consociational arrangement, coalitions of majority and minority parties at the central level may become an obstacle for the majority rule after some time. As Horowitz puts it: "For them, the good (ruling in a coalition) can be the enemy of the best (ruling alone)", and when such central government institutions deteriorate, Horowitz concludes: "Minority disaffection can rise to dangerous heights."[40] Finally, according to Horowitz, the third problem of consociationalism is described as one that may lead to institutional ineffectiveness, and when such ineffectiveness occurs, changes to consociational arrangements become almost impossible.[41]

[37] Ibid., 18
[38] Brendan O´Leary, "Power Sharing: An Advocate´s Conclusion," in *Power Sharing in Deeply Divided Places*, eds. Joanne McEvoy and Brendan O´Leary (Philadelphia: University of Pennsylvania Press, 2013), 411-412
[39] Donald L. Horowitz, "Ethnic Power Sharing: Three Big Problems," *Journal of Democracy*, Vol. 25, No. 2, Baltimore (2014): 2-3
[40] Ibid., 3-4
[41] Ibid., 4-8

Proponents of power sharing arrangements also acknowledge that power sharing has several side effects. For example, Lijphart maintains that power sharing arrangements have high financial costs. Furthermore, these arrangements may result in government incompetence, indecisiveness and institutional blockade.[42] Lijphart also highlights the need to understand power sharing arrangements as tools for conflict reduction and not conflict eradication.[43] Another proponent of power sharing, O´Leary maintains that alternatives to this strategy are poor. For instance, he criticizes Luttwak for his argumentation in favor of an armed conflict to the end. He also criticizes partition as an alternative, as supported by Kaufmann, and power sharing which is not based on cultural groups, as supported by Roeder and Rothchild. According to O´Leary, proponents of power sharing: "consider these arguments unconvincing and argue that the alternatives have usually been much worse."[44] It is likely that this debate between proponents and opponents of power sharing will continue, not only on issues mentioned above, but also on new fronts of the debate.

In summary, power sharing as a conflict management strategy is based on four main points, namely group autonomy, power sharing/group participation, proportional representation, and veto rights. The evidence suggests that this form of conflict management is not able to act as a direct remedy for conflicts. Even though it has several side effects, it remains one of the most applicable solutions for multiethnic societies, that can be implemented in different forms. In their review of power sharing, O´Flynn and Russell suggest that: "there is an indeterminate number of ways in which democratic power sharing can be realized." According to authors, these arrangements may include: "provisions for coalition government, guaranteed representation, legislative vetoes, territorial devolution and federalism, functional autonomy, and even trans-national structures agreed by treaty between sovereign states."[45] Alternatively, it should be noted that one of the primary intentions of power sharing is to prevent dissolution of states.[46] Even though this intention might be clear, the possibility of dissolution will remain, especially in cases where complicated power sharing arrangements are implemented.[47] This theory can be best concluded with an interesting assumption of O´Leary, who argues that: "power sharing may become the policy of those powerful enough to resist

[42] Lijphart, "Cultural Diversity and Theories of Political Integration," 14
[43] Ibid.
[44] O´Leary, "Power Sharing: An Advocate´s Conclusion," 411-412
[45] Ian O´Flynn and David Russell, "Introduction: New Challenges for Power Sharing," in *Power Sharing: New Challenges For Divided Societies*, eds. Ian O´Flynn and David Russell (Pluto Press, 2005), 1
[46] O´Leary, "Power Sharing in Deeply Divided Places," 31
[47] O´Flynn and Russell, "Introduction: New Challenges for Power Sharing," 3

assimilation but not strong or united enough to achieve secession."[48] Turning now to autonomy, the next part will thoroughly discuss autonomy forms and their application.

II.3. Autonomy

Another relevant form for conflict management is autonomy. Autonomy is regarded as one of the solutions for reducing conflict possibilities by granting specific rights to minorities. Wolff and Weller define autonomy as the power of ethnic or territorial communities to make independent policies while remaining bound to the overall regulations of the state.[49] The main points of Wolff and Weller can also be summarized in the definition used by Csurgai, who defines autonomy as: "the provision of all necessary means (legal, political, institutional, economic and cultural) for the preservation and development of minority identity with respect to the territorial integrity of the state in which they live."[50] According to this definition, the majority community within a state wants to secure the territorial integrity of the state, while minority communities want to secure their cultural continuation. In order for both to coexist, the majority community needs to accept the different needs of minority communities and grant special rights to them. When the opposite happens, combined with exclusion, minority requests for autonomy become stronger.[51]

Hazleton argues that: "a degree of mutual interdependence" between communities should be accepted.[52] If there is lack of mutual interdependence and mutual understanding, minorities have a tendency to raise their possibilities, either within a decentralized system of governance or through the establishment of an independent state or unification with the kin-state.[53] Autonomy rights, as Kymlicka argues, are regarded by minorities as `inherent` rights, and thus they are irrevocable without their compliance.[54] According to Chapman and Roeder, one of the major problems which may arise from these `irrevocability` includes the possibility that

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[48] O´Leary, "Power Sharing in Deeply Divided Places," 51
[49] Stefan Wolff and Marc Weller, "Self-determination and Autonomy: A conceptual introduction," in *Autonomy, Self-governance and conflict resolution: Inovative Approaches to Institutional Design in Divided Societies*, eds. Marc Weller and Stefan Wolff (London and New York: Routledge, 2005), 13
[50] Gyula Csurgai, "Geopolitical Aspects of the Minority Question in Central and South Eastern Europe," in *Minority Governance in Europe*, ed. Kinga Gál (Budapest: Local Government and Public Service Reform Initiative, 2002), 66
[51] Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*, (Philadelphia: Revised Edition, University of Pennsylvania Press, 1996), 474
[52] William A. Hazleton, "Ending violent ethnic conflicts: Separation or sharing as options for negotiation," *Nationalism and Ethnic Politics*, Vol.4, No.3 (1998): 104
[53] Wolff and Weller, "Self-determination and Autonomy," 7
[54] Kymlicka, *Multicultural Citizenship*, 30

minorities as well as majorities could drag most issues into the ethnic conflict contest, or into the state versus autonomy contest.[55]

Another serious problem is that minority groups may come under the influence of kin-states who can finance and offer other forms of resources to the minority. Minorities, influenced by kin-states, may implement kin-states political agendas, especially when the minority is concentrated in a compact area located at the kin state´s border.[56] Because of these problems, granting autonomy to minority dominated areas is regarded as a risky strategy, whereas governments continue to consider this as a first step towards secession.[57] Furthermore, applying autonomy to regions dominated by minorities is not always a solution, especially when minorities are scattered throughout the state territory. A similar situation can be observed in this case study. In this situation, non-territorial autonomy may be the best solution.[58] In the case of Kosovo, there is a tendency to apply different governance mechanisms/arrangements, including territorial and non-territorial forms for minority accommodation. This phenomenon has been observed by McGarry and O´Leary who argue that: "International agreements between states can entrench the territorial autonomy of certain ethnic communities, even though the ´host state´ does not generally organize itself along either cantonist or federalist principles."[59]

In his analysis of shared-rule and self-rule for minority governance, Schneckener also summarizes several problems which may arise during an implementation of an autonomy arrangement. To begin, Schneckener acknowledges that there is almost always a problem with a proper interpretation of the arrangements. Governments generally tend to restrict minority rights, while minorities tend to expand their rights. Furthermore, governments often lack political will to implement more minority rights, or to further transfer authority to minority ruled institutions. Even though a territorial or cultural autonomy may exist, these institutions remain under the authority of the central government and their status may also become subject to change. Financial resources also remain an object of dispute between the different levels of government. In addition, conflict over competences between the central and lower levels of

[55] Thomas Chapman and Philip G Roeder, „Partition as a Solution to Wars of Nationalism: The Importance of Institutions," *American Political Science Review*, Vol. 101, No. 4 (2007): 680
[56] Joseph Siegle and Patrick O´Mahony, "Assessing the Merits of Decentralization as a Conflict Mitigation Strategy," (Paper prepared for USAID´s ODG as a supporting study to the revision of the Decentralization and Democratic Local Governance Programming Handbook, published by Pennsylvania State University), 8
[57] Wolff and Weller, "Self-determination and Autonomy," 1
[58] Marc Weller and Stefan Wolff, "Recent trends in Autonomy and State Construction," in *Autonomy, Self-governance and conflict resolution: Innovative Approaches to Institutional Design in Divided Societies*, eds. Marc Weller and Stefan Wolff (London, New York: Routledge, 2005), 265
[59] McGarry and O´Leary, "Introduction: The macro-political regulation of ethnic conflict," 32

government, over issues that have not been defined accurately presents a major problem. Finally, Schneckener emphasizes the problem of `internal` minorities that arises by creating new autonomous territories, including that there will always exist a minority.[60]

Alternatively, it is acknowledged that the above mentioned problems with regards to autonomy arrangements can be bypassed via the implementation of certain criteria for good minority governance. In this regard, Schneckener gives particular importance to the involvement of all conflict parties, and to the timing of the negotiation. He notes that specific effectiveness is required in solving implementation difficulties. This is because most agreements result in vague documents, as `ambiguity is the mother of compromise`. In addition, a possibility to later reform an agreed package should remain open, ideally in a process of elite cooperation. All the criteria mentioned here, should result in a win-win situation, where compromise prevails over conflict.[61]

To sum up, autonomy can prove to be a high achievement for minorities. Brunner and Küpper even argue that minority autonomy: "is the maximum legal position minorities may achieve in a state."[62] Minority autonomy can be implemented in various ways and forms. It should, however, reflect and adapt to the specific situation within the state. On this issue, Gál points out that autonomy should be regarded as: "a practical solution to a practical problem."[63] Alternatively, Wolff argues that autonomy can be implemented in two different forms including governance arrangements and territorial arrangements.[64] The first form can be found in personal and cultural autonomy arrangements, which are interchangeably used, while the second can be seen in territorial autonomy arrangements. All three forms of autonomy arrangements are described below.

Personal autonomy

Brunner and Küpper define personal autonomy as: "a form of self-government granted to a group, with organs or organizational structures that exercise the various rights and powers of the autonomy."[65] Personal autonomy can be granted to individuals from a particular group as

[60] Ulrich Schneckener (2002) Minority Governance between Self-Rule and Shared-Rule, in *Minority Governance in Europe*, (Ed.) Kinga Gál, Local Government and Public Service Reform Initiative, Budapest, p.364-365
[61] Schneckener, "Minority Governance between Self-Rule and Shared-Rule," 367-369
[62] Brunner and Küpper, "European Options of Autonomy," 19
[63] Gál, "Minority Governance on the Threshold of the Twenty-First Century," 4
[64] Stefan Wolff, "Conflict Management in Divided Societies: The Many Uses of Territorial Self-Governance," *International Journal on Minority and Group Rights* 20, Martinus Nijhoff Publishers (2013): 31
[65] Brunner and Küpper, "European Options of Autonomy," 26

well as to a group as a whole.[66] This form of autonomy is not connected to territory but to members of a community and their institutions.[67] Communities can exercise their personal autonomy through associations, or through other forms of institutional organizations.[68] These organizations can manage different affairs from the cultural, religious, linguistic or other spheres of interest for the community.[69] Some examples of personal autonomy include churches,[70] and the rights granted for non-Muslims in the Ottoman Empire.[71] Indeed, as Weller argues, the core idea of personal autonomy is freedom of individual choice.[72]

Cultural autonomy

Cultural autonomy regulates different matters of interest for minority communities. This form of autonomy can be applied to individuals, groups, or to a territory. It grants minorities the right to manage their own cultural affairs, and to undertake different measures for the protection of their distinct cultural characteristics.[73] Weller points out that cultural autonomy: "seeks to foster the preservation and further development of that collective identity."[74] Furthermore, minorities can establish different institutions in order to exercise cultural autonomy rights. According to Weller, these institutions mostly deal with issues of: "education, language, and culture".[75] Alternatively, Ghai maintains that cultural autonomy is mostly applied in cases where minorities do not live in a compact territorial area.[76] Moreover, cultural autonomy rights are often granted to minorities in order to counter secessionist movements.[77] This form of conflict management has been accepted and promoted by various states and international organizations mainly because, as Smith puts it: "gives cultural

[66] Ibid., 25
[67] Ibid., 26
[68] Fee Rauert, *Das Kosovo, Eine völkerrechtliche Studie*, (Wien: Braumüller, 1999), 61-62
[69] Brunner and Küpper, "European Options of Autonomy," 31
[70] Ibid., 26
[71] Marc Weller, "Introduction," in *Asymmetric Autonomy and the Settlement of Ethnic Conflict,* eds. Marc Weller and Katherine Nobbs (Philadelphia and Oxford: University of Pennsylvania Press, 2010), 3
[72] Ibid., 2
[73] Rauert, *Das Kosovo, Eine völkerrechtliche Studie*, 62
[74] Weller, "Introduction," 3
[75] Ibid.
[76] Yash Pal Ghai, "Constitutional Asymmetries: Communal Representation, Federalism, and Cultural Autonomy", in *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy,* ed. Andrew Reynolds (Oxford and New York: Oxford University Press, 2002), 163
[77] Ephraim Nimni, "Nationalism, Ethnicity, and Self-Determination: A Paradigm Shift," in *After the Nation? Critical Reflections on Nationalism and Postnationalism,* eds. Keith Breen and Shane O´Neill (New York: Palgrave Macmillan, 2010), 33

recognition to national minorities without undermining the civic cohesion of multiethnic countries."[78]

Territorial autonomy

The third autonomy form is based on a territorial concept. It can be considered as a form of internal self-determination.[79] Here, autonomy is granted to a body that governs a certain territory within a state. Territorial autonomy can be implemented in different and combined forms. The most known forms of this type of autonomy are federal units within a federal system, regional units within a regionally organized system, local government units within a unitary system, and other forms of territorial administration.[80] Brunner and Küpper argue that units of territorial administration, which are inhabited by minority population, can only be considered as autonomous if asymmetric decentralization of power is applied towards these territorial units.[81] A more detailed account of territorial autonomy arrangements, as forms of minority accommodation, is presented in the following section.

II.4. Territorial Accommodation for Minorities

A significant analysis and discussion of territorial accommodation for minorities was presented in various studies by Wolff. In one of the studies, Wolff defines territorial self-government (TSG), as: "the legally entrenched power of territorially delimited entities within the internationally recognized boundaries of existing states to exercise public policy functions independently of other sources of authority in this state, but subject to its overall legal order. Conceptually, this definition of TSG applies its meaning as a tool of statecraft to the specific context of conflict management in divided societies and encompasses five distinct governance arrangements – confederation, federation, autonomy, devolution and decentralization."[82]

In an interesting analysis on federalism, Erk and Anderson attempted to answer one of the main questions on territorial accommodation, does this form of conflict management actually ameliorate ethnic divisions? The expected answer to this question was: "It is, at once, a

[78] David J. Smith, "Non-Territorial Cultural Autonomy in Contemporary Europe: Reflections on the Revival of an Idea," in *After the Nation? Critical Reflections on Nationalism and Postnationalism,* eds. Keith Breen and Shane O´Neill (New York: Palgrave Macmillan, 2010), 84

[79] Balázs Vizi, "Minority Groups and Autonomy from an International Political Perspective," in *Minority Governance in Europe*, ed. Kinga Gál (Budapest: Local Government and Public Service Reform Initiative, 2002), 51

[80] Brunner and Küpper, "European Options of Autonomy," 21

[81] Ibid.

[82] Wolff, "Conflict Management in Divided Societies," 32

problem and a solution."[83] This answer best reflects the complexity of applying territorial accommodations for minorities. Even though this issue might be complex, it should be noted that, it enables minority groups to use protection mechanisms against possible enemies of the community.[84] Furthermore, O´Leary, just as Lijphart, uses the phrase "good fences make good neighbors", in order to argue for the application of `politics of accommodation`. He remarks that the main goal in managing conflicts should be based on: "leaving each group to their own affairs".[85] It is argued that territorial accommodations make this possible.

Territorial accommodations for minorities arise from two main forms of territorial organization within states, federations and union states. In both cases, at least where this is practically possible, internal boundaries are drawn according to the concentration of minorities. Where this is not possible, multiethnic units may be created, or minorities may be internally divided between two or more territorial units. These territorial units may also create different forms of cooperation with their kin-state, or within similar units from other states.[86] In short, territorial forms of accommodation for minorities present an intermediate solution between self-determination claims of minorities, and the concept of territorial integrity of states.[87]

In one of his studies on territorial accommodations, Wolff identifies three neglected theoretical aspects of this conflict management mechanism. First, he highlights that devolution and decentralization are also feasible forms of territorial accommodation for minorities. These two forms may offer similar rights and protection mechanisms for minorities as federalism and autonomy. [88] One example of the applicability of devolution/decentralization as a form of territorial accommodation can be observed in the case of Macedonia, where local government units are granted broad competencies in minority issues. Classical forms of autonomy or federalism were in this case intentionally bypassed.[89] Furthermore, Wolff argues that territorial solutions for conflicts have been implemented in both, cases of a passive conflict, and cases where an armed conflict has taken place. Thus, according to Wolff, both forms should be taken into account when analyzing territorial

[83] Jan Erk and Lawrence Anderson, "The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions?" *Regional & Federal* Studies, Vol.19, No.2 (2009): 199
[84] Stefan Wolff, "Managing Ethnic Conflict: The Merits and Perils of Territorial Accommodation," *Political Studies Review*, Vol. 9 (2011): 30
[85] O`Leary, "Debating Consociational Politics," 11
[86] Wolff, "Managing Ethnic Conflict," 32
[87] Csurgai, "Geopolitical Aspects of the Minority Question," 65-66
[88] Stefan Wolff, "Post-Conflict State Building: the debate on institutional choice," *Third World Quarterly*, Vol. 32, No. 10 (2011): 1795
[89] Weller, "Introduction," 6

accommodation as a conflict management mechanism. Finally, he concludes that territorial accommodation, as a form of conflict management, should not be understood as a panacea. Nevertheless, this mechanism presents a viable option: "when combined with other institutions", territorial solutions: "can make an important contribution to building states, maintaining peace and keeping international borders intact."[90]

Oppositely, critics claim that territorial accommodation actually exacerbates conflict. They argue that giving more institutional competences and financial means to minority groups strengthens their efforts for separation.[91] In addition, critics maintain that territorial accommodation is not a sustainable conflict resolution and management mechanism. However, they acknowledge that this mechanism might bring momentary, but still limited successes.[92] Wolff, countering some of the critics, reminded them that conflicts come mostly as a result of annulment of territorial self-governance units for minorities, and not as a result of their formation.[93] Another possibility for meeting minority demands is to apply asymmetry.

Asymmetry can primarily be applied in cases where a different approach towards the minority territorial unit, or several units, is required. In this case, some specific powers are only delegated to the minority territorial unit. Alternatively, majority territorial units usually enjoy fewer rights than minority territorial units. Weller argues that asymmetry presents an acceptable variant for states and their majorities, as it principally does not require: "to change the overall constitutional makeup of the state."[94] Such flexibility to design minority accommodation in accordance with the constitution and the territorial organization of the state is one of the main characteristics of asymmetry. In addition to this, asymmetry enables states to pursue different accommodative policies towards different minority territorial units.[95] Asymmetry also enables minorities to enjoy a specific position as a territorial unit within the state, and thus, to further develop their distinct identity.[96] As noted by Wolff, this practice can result in undesirable effects. For example, units with fewer competencies, invoking the

[90] Wolff, "Post-Conflict State Building," 1796
[91] Ibid., 1794
[92] Ibid., 1794-1795
[93] Ibid., 1794
[94] Weller, "Introduction," 1
[95] Stefan Wolff, "Cases of Asymmetrical Territorial Autonomy," in *Asymmetric Autonomy and the Settlement of Ethnic Conflict*, eds. Marc Weller and Katherine Nobbs (Philadelphia: Oxford: University of Pennsylvania Press, 2010), 24
[96] John McGarry and Brandon O´Leary, "Consociation and Self-Determination Disputes: The Evidence from Northern Ireland and Other Recent Cases," in *After the Nation? Critical Reflections on Nationalism and Postnationalism, e*ds. Keith Breen and Shane O´Neill (New York: Palgrave Macmillan, 2010), 44-45

equality principle, may demand delegation of more competencies.[97] In the same way, application of asymmetry may involve governance inefficiency. Ghai points out that: "it may lead (asymmetry, authors comment) to complex arrangements and systems, producing a lack of cohesion and problems of governability." Thus, asymmetry can have an immediate positive effect, with its difficulties resurfacing only during implementation.[98] Meanwhile, these possible negative effects may lead to new grievances.

These examples show that territorial accommodation, symmetric or asymmetric, may have both positive and negative effects. Most authors would agree that territorial accommodation is more effective in the short-term, while remaining a challenge for long-term peace efforts. Furthermore, it can be argued, that every conflict situation represents a distinct example. A formula of success for every territorial accommodation case is still missing in the literature. Therefore, it is imperative to further analyze two distinct approaches of territorial minority accommodation. In the next part, federalization will be briefly analyzed. As the core of this study, decentralization will be considered more broadly.

II.5. Federalism and other Forms of Territorial Accommodation

Federalism presents one of the possible forms of territorial accommodation for minorities, but above all, it presents a form of territorial organization of states. States may apply federalism to grant autonomy to minorities through territorial units. These territorial units present institutional mechanisms for minorities for the management of their own affairs. Alternatively, states may also apply federalism only as a governing practice for administrative efficacy. For instance, Canada and Bosnia and Herzegovina are typical examples of minority and/or ethnic accommodation federalism, while Austria and Germany are typical examples of administrative federalism. As such, the definition of federalism, provided by Kymlicka seems acceptable. He describes federalism as: "to refer to a political system which includes a constitutionally entrenched division of powers between a central government and two or more subunits (provinces/lander/states/cantons), defined on a territorial basis, such that each level of government has sovereign authority over certain issues."[99]

Other states, which are not based on federalism or other forms of extended territorial division, are known as unitary states. These states, as argued by O´Leary, retain the main political power in the center. In these states, the central government retains the rights to change its

[97] Wolff, "Cases of Asymmetrical Territorial Autonomy," 24-25
[98] Ghai, "Constitutional Asymmetries," 159-160
[99] Kymlicka, *Politics in the Vernacular,* 94

territorial organization, to decide whether to decentralize, or whether to adopt forms of asymmetry. Recognition of distinct cultural groups within unitary states may make them opt for decentralization and asymmetry, and to apply these practices as a minority accommodation strategy.[100] Thus, in both systems, unitary and federal, minorities can be accommodated either through territorial solutions or through forms of decentralization. Alternatively, a combination of federal and asymmetric elements is reflected in a federacy. A federacy, as defined by O`Leary represents: "an autonomous political region in an otherwise unitary or union state that has specifically federal institutional relationships with the political center of its host state, embedded in an internationally binding treaty, a constitution, or an organic law, which cannot be unilaterally altered by either the political center or the political officials of the federacy."[101]

Returning now to minority accommodation federalism, or to multinational federalism, it should be noted that within these states the existence of multiple nations is accepted, and a distinct identity development of each nation is made possible through federal arrangements. In his analysis of multinational federalism in a democratic context, Kymlicka describes this types of state as: "a model of the state as a federation of regionally concentrated peoples or nations, in which boundaries have been drawn, and powers distributed, in such a way as to ensure that each national group is able to maintain itself as a distinct and self-governing societal culture."[102] Kymlicka further argues that these states are: "most stable if they are seen as a federation of peoples, each with their own historic territories, language rights, and powers of self-government."[103] Thus, it can be argued that multinational federalism presents a form of territorial autonomy for distinct cultural groups.

Multinational federalism and its application is often criticized by various authors. For instance, in one of his studies, Roeder emphasizes several deficiencies of federal systems with a multinational character. He addresses the issue of long-term stability. He doubts that federal arrangements to accommodate minorities can secure a long-term stable state. He also argues that the main problems will remain and eventually emerge later. Demands for more power by minorities may increase. In addition, these systems fail to properly address other important issues not related to the overall institutional organization. One such problematic issue may arise by the over-empowerment of federal units. Lastly, Roeder argues that these systems:

[100] O´Leary, "Power Sharing: An Advocate´s Conclusion," 404
[101] Ibid., 403
[102] Kymlicka, *Politics in the Vernacular,* 269
[103] Ibid., 313

"trap politics between two perils—centralization and dissolution." He further maintains that: "Once ethnofederalism or autonomy is institutionalized, typically the only reforms on the bargaining table entail steering directly toward one peril in order to avoid the other."[104]

Apart from the above described deficiencies of multinational federal systems, the main criticism is based on the assumption that granting territorial autonomy for minorities boosts secessionist movements. According to Kymlicka, this assumption is based on the fact that even if federal states treat minorities fairly, by respecting and promoting their rights, the risk of secession will remain.[105] In fact, this risk will not only remain, but also be boosted by the strengthening of the minority federal unit, and the development of its distinctive identity.[106] Roeder also embraces this assumption. He further emphasizes that, regardless of its institutional constellation, minorities may not agree that they even belong to the state in the first place.[107] Under these circumstances, according to Roeder, compiling and implementing a: "knife-edge equilibrium of the properly designed and balanced constitution", remains problematic and difficult.[108] Achieving such a constitutional balance, even though unlikely, would increase the chances of a minority accommodation system to become sustainable. To sum up, there can be no doubt that secession will remain as a permanent threat for federal multinational states, and for other minority accommodative systems of governance.

McGarry and O´Leary have thoroughly described which elements are crucial for the success of multinational federal systems. These elements can also be described as fundamental for achieving the `necessary equilibrium` previously mentioned by Roeder. Thus, McGarry and O´Leary list the following elements as important for multinational federal systems: "It is important that they be democratic and respect the rule of law. It helps if they are prosperous. It helps if they came together voluntarily. If federations develop from a unitary state, our arguments suggest that early and generous responses to expressed demands for minority self-government will work better than delayed and grudging responses. The demographic composition of the federation matters: a federation that has a dominant ethno-national community is likely to be more stable than one that does not."[109] In later studies they added

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[104] Philip G. Roeder, "Ethnofederalism and the Mismanagement of Conflicting Nationalisms," *Regional & Federal Studies,* Vol. 19, No. 2 (2009): 208
[105] Kymlicka, *Politics in the Vernacular,* 115
[106] Ibid., 113
[107] Roeder, "Ethnofederalism and the Mismanagement of Conflicting Nationalisms," 208-209
[108] Ibid., 209
[109] John McGarry and Brendan O´Leary, "Federation as a Method of Ethnic Conflict Regulation," in *From Power Sharing to Democracy: Post-conflict Institutions in Ethnically Divided Societies,* ed. Sid Noel (Montreal: McGill-Queen´s University Press, 2005), 287

another element: "The number and size of the federation's units will affect its stability: it is better to have more than two units, and it is far better to divide administratively the dominant nationality than the smaller nationalities." In both studies referenced here, they conclude that: "federalism is usually not enough: consociational practices, particularly at the level of the federal government, are very important to the success of pluri-national federalism, especially if there is no Staatsvolk."[110]

II.6. Decentralization as a Minority Accommodation Strategy

Let us recapitulate all the main points of the above described mechanisms through the explanation of decentralization. In the previous section of the theoretical debate it has been shown why and where it is necessary to introduce and grant special group rights to minorities, mainly in the form of cultural, personal and/or territorial autonomy. It has also been shown that combining elements of power-sharing and elements of territorial accommodation, may present a practical conflict management mechanism. Similar combinations of these elements can be found in the Ahtisaari Plan, and now in the constitution of Kosovo. These combinations follow a simple logic. The main aim is to reduce the chances of conflict through the application of group rights, power-sharing on the central and local levels, and territorial self-administration for minorities by establishing municipalities based on the ethnic composition of settlements. According to Nimni, it is assumed that in such cases: "conflicts are defused, become manageable, or simply disappear."[111] Now, the theoretical elaboration of decentralization in the following part is mostly relevant and serves as the basis for the main chapter of this study, namely chapter VI.

Decentralization as a minority accommodation strategy is popular in ethnically diverse states. In this regard, these states try to accommodate minorities by granting them self-governance rights within the state system. Their main aim is to eliminate secessionist movements through effective decentralization,[112] because it is assumed that decentralization reduces gains of the people who may use violence as an instrument for reaching their goals.[113] Opting for decentralization, however, puts states in front of a decisive question. Findings from literature show that decentralization can both, manage a conflict, and exacerbate it. This is largely

[110] John McGarry and Brendan O´Leary, "Must Pluri-national Federations Fail?" *Ethnopolitics*, Vol. 8, No. 1, Routledge (2009): 21
[111] Nimni, "Nationalism, Ethnicity, and Self-Determination," 22-33
[112] USAID/Office of Democracy and Governance, *Democratic Decentralization Programming Handbook* (Washington D.C.: 2009), 22
[113] Rafael Grasa and Arnau Camps, "Conflict Prevention and Decentralized Governance," in Paper presented at the Barcelona Forum on Decentralized Governance and Conflict Prevention (*MPRA Paper* No. 18877, 2009), 42

dependent on the circumstances on the ground. From a long-standing perspective, strong states can overcome temporal secessionist threat through decentralization. However, if they refuse to decentralize more powers for minorities, the secessionist option remains active. Alternatively, if the state is weak but responds positively to minority requests, it risks peaceful dissolution. Furthermore, if it is weak and refuses to meet minority demands, then the state risks to slide into a violent option of dissolution.[114]

Although the risk is evident, decentralization can be considered as a conflict reduction mechanism, specifically effective in post conflict situations.[115] Jackson and Scott believe that decentralization prevents social exclusion of minorities by giving them motivation for involvement with the state through peaceful means.[116] Accordingly, decentralization allows for more participation and representation possibilities for minorities.[117] In their study, Bjorvatn and Cappelen explain that with decentralization local policies can be adjusted to local tastes.[118] Similarly, Siegle and O´Mahony note that decentralization can: "accommodate the varied priorities of diverse populations within a single state."[119] Apart from practical arguments in favor of decentralization, Kymlicka maintains that refusal to meet minority demands only: "promote alienation and secessionist movements."[120] He further argues that: "It is the refusal to grant autonomy to national minorities, or even worse, the decision to retract an already-existing autonomy, which leads to instability, not the recognizing of their minority rights."[121] Now, as Brancati points out, there are various reasons why decentralization diminishes conflict. Here, she gives an example by arguing that: "The most commonly suggested, and in this sense, perhaps the most important, way in which decentralization is supposed to reduce ethnic conflict and secession is by giving territorially concentrated minority groups control over their own political, social, and economic

[114] Ian S. Lustick, Dan Miodownik, and Roy J. Eidelson, "Secessionism in Multicultural States: Does Sharing Power Prevent or Encourage it?" *American Political Science Review*, Vol.98, No.2 (2004): 210-211
[115] John-Mary Kauzya, "Decentralization: Prospects for Peace, Democracy and Development," in *DPADM Discussion paper*, (UNDESA, 2005), 11
[116] Paul Jackson and Zoe Scott, "Local Government in Post-Conflict Environments," in *Workshop on Local Government in Post-Conflict Situations: Challenges for Improving Local Decision Making and Service Delivery Capacities* (Oslo: UNDP, 2007), 5
[117] Siegle and O´Mahony, "Assessing the Merits of Decentralization," 5
[118] Kjetil Bjorvatn and Alexander W. Cappelen "Decentralization and the Fate of Minorities," (Discussion Paper 22/02, 2002), 16
[119] Siegle and O´Mahony, "Assessing the Merits of Decentralization," 5
[120] Kymlicka, *Multicultural Citizenship*, 185-186, for similar argumentation see also Nicholas Sambanis, "Globalization, decentralization and secession, A review of the literature and some conjectures," in *Globalization and Self-Determination, Is the nation-state under siege?*, eds. David R. Cameron, Gustav Ranis, and Annalisa Zinn (New York: Routledge, 2006), 205
[121] Kymlicka, *Politics in the Vernacular,* 37

affairs."[122] Moreover, she also correctly remarks that: "even when decentralization extends real powers to territorially concentrated groups, it has failed to reduce ethnic conflict and secessionism in many countries."[123]

To summarize, decentralization can either increase or decrease the possibility of conflict.[124] In their work on secessionism in multicultural states, Lustick et al. present the results of a metastudy conducted by Hechter and Okamoto. They conclude that: "causal relationships between institutionalized empowerment of potentially secessionist minorities and the rise of secessionism are complex, nonlinear, and highly sensitive to context."[125] In another study, Okamoto recognizes that: "decentralization may provide cultural minorities with greater resources to engage in collective action . . . at the same time it may erode the demand for sovereignty."[126] Brancati, even though acknowledging that decentralization may decrease the possibilities of conflict,[127] summarizes five main assumptions from the existing literature on why decentralization may fail as a conflict mitigating strategy. First, decentralization does not address issues of national unity and thus the overall commitment to it remains questionable. Second, decentralization strengthens the identity of minority groups. Third, through decentralization minority groups can constantly raise their demands for more competences and ultimately aim for independence. Fourth, decentralization enables local majorities to disfavor local minorities. Finally, decentralization strengthens institutional capacities of minorities, and enables them to use these capacities in favor of independence.[128] As such, these examples show that decentralization can have different effects in different cases. In the next section, a definition of decentralization is presented, including details about its dimensions and categories.

II.6.1. Decentralization – Definition, Understanding, and Effects

The definition of decentralization varies in the literature. Definitions are often based either on the concept of decentralization as a conflict management tool, or on the concept of decentralization as a tool for achieving good governance, thereby, reducing the potential for conflict. Over the past years, experts from the United Nations Development Programme

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[122] Dawn Brancati, *Peace by Design, Managing Intrastate Conflict through Decentralization*, (New York: Oxford University Press, 2009), 8
[123] Ibid., 9
[124] Siegle and O´Mahony, "Assessing the Merits of Decentralization," 7
[125] Citation taken from Lustick, Miodownik, and Eidelson, "Secessionism in Multicultural States," 211
[126] Ibid.
[127] Brancati, *Peace by Design*, 54
[128] Ibid., 9-11

(UNDP) and United States Agency for International Development (USAID) have conducted various studies on decentralization. They have also created the basis for understanding its dimensions and categories. UNDP, for example, in almost all their studies uses the following definition of decentralization: "Decentralization, or decentralizing governance, refers to the restructuring or reorganization of authority so that there is a system of co-responsibility between institutions of governance at the central, regional and local levels according to the principle of subsidiarity, thus increasing the overall quality and effectiveness of the system of governance, while increasing the authority and capacities of sub-national levels".[129] Similarly, USAID gives the following definition: "Decentralization is the transfer of power and resources from national governments to subnational governments or to the subnational administrative units of national governments. Decentralization is often regarded as a top-down process driven by a unitary or federal state in which the central government grants functions, authorities, and resources to subnational levels".[130] Therefore, decentralization in theory is usually described as the process of transferring powers from the central government to lower levels of government (provinces, districts, regions, towns, municipalities, and villages).[131]

Matei and Popa believe that in a modern society making decisions only from the center is simply not satisfactory. Thus, a special adaptation to local needs is essential.[132] This adaptation can best be implemented through decentralization, by providing good governance and development within a state, and by involving public, private and civic institutions in the process.[133] In addition, Neven argues that decentralization is a very complex multifaceted concept, with different types, characteristics, policy implications, and conditions for success.[134] An emphasis should also be made on the design of decentralization. If designed properly it can improve governance, while if designed inadequately, it can of course, produce

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[129] United Nations Development Programme, *Decentralization: A Sampling of Definitions*, (Working paper prepared in connection with the Joint UNDP-Government of Germany evaluation of the UNDP role in decentralization and local governance, 1999), 2

[130] USAID, *Democratic Decentralization Programming Handbook*, 9

[131] Dunja Brede and Dr. Uwe Kievelitz, "Decentralization and Conflicts: A Guideline" (Eschborn: Deutsche Gesellschaft für Technische Zusammenarbeit, 2006), 2, see also Elizabeth Linda Yuliani, "Decentralization, deconcentration and devolution : what do they mean?" in Interlaken Workshop on Decentralization (Interlaken: 2004), 1

[132] Ani Matei and Florin Popa, "Impact of Decentralization on the Corruption Phenomenon," (Munich: MPRA Paper No. 18958, 2009), 2

[133] Edward Mugabi, "Uganda´s Decentralization Policy, Legal Framework, Local Government Structure and Service Delivery," Paper prepared for the First Conference of Regional Assemblies of Africa and Europe organized by the Regional Assembly of Tuscany under the patronage of the Italian Presidency and the UN DESA (2004), 1

[134] Ine Neven, "Background paper on "Decentralization,"" Draft written as a Contribution to Cost-Action E19 (Wageningen: National Forest Programmes in the European Context, 2003), 1

negative effects. Thus, according to Neven, decentralization can be considered as: "neither good nor bad".[135]

Alternatively, Kiwanuka reminds us that decentralization presents a complement and not an alternative to centralization. A political system is composed of both, central as well as other levels of government.[136] For this reason, decentralization should not be considered as a process of dismantling the central government, but rather as a process of establishing a fruitful cooperation between different levels of government.[137] Thus, in order to achieve competent governance, an appropriate balance of centralization and decentralization remains crucial. For example, central government institutions generally preserve a supervisory role over the local government institutions.[138] In other words, the main goal is to find a balance between the requests of the local government institutions and the willingness of the central government to actually cede more powers, while remaining dedicated to national unity. In short, decentralization should not be regarded as a power struggle between the central and local governments.[139]

In relation to conflict management, Cheema and Rondinelli claim that decentralization could also be regarded as a way of granting equal, or even more rights to different underrepresented groups, without actually destabilizing the state.[140] Likewise, Faguet comes to a similar conclusion. He argues that by giving more powers to minority groups, decentralization increases political stability within a state.[141] Even though decentralization can promote stability, it can also be implicated, as argued previously, in the outbreak of conflicts.[142] Furthermore, decentralization can pose a direct threat to the very existence of a state, specifically of fragile and weak states with a history of conflict.[143] Despite this risk of conflict, diversity management through decentralization can be regarded as a suitable instrument.[144]

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[135] Ibid., 7
[136] Michael Kiwanuka, "Decentralization and Good Governance in Africa: Institutional Challenges to Uganda's Local Governments," *The Journal of African & Asian Local Government Studies*, Vol. 1, No. 3, (2012): 49-50
[137] Grasa and Camps, "Conflict Prevention and Decentralized Governance," 21
[138] Neven, "Background paper on "Decentralization"," 6
[139] Kauzya, "Decentralization: Prospects for Peace, Democracy and Development," 4
[140] Shabbir G. Cheema and Denis A. Rondinelli, "From Government Decentralization to Decentralized Governance," in *Decentralizing Governance-Emerging Concepts and Practices*, eds. Denis A. Rondinelli and Shabbir G. Cheema (Brooking Institution Press and Ash Institute for Democratic Governance and Innovation, 2007), 7
[141] Faguet, "Decentralization and Governance," 2
[142] Rachael Diprose, "Decentralization, Horizontal Inequalities and Conflict Management in Indonesia," *Ethnopolitics*: *Formerly Global Review of Ethnopolitics*, Vol. 8, No. 1 (2009): 108, see also Jackson and Scott, "Local Government in Post-Conflict Environments," 21
[143] USAID, *Democratic Decentralization Programming Handbook*, 21
[144] Diprose, "Decentralization, Horizontal Inequalities," 108

Vaillancourt and Grin properly conclude that even though the above mentioned positive effects are reasonable, building theoretical and empirical data to prove the same remains problematic.[145]

Let us now summarize some of the positive and negative effects that may be caused by decentralization. On the one hand, decentralization can improve the possibilities of effective political participation, employment, and access to services, thereby increasing government responsiveness.[146] The increased government responsiveness can improve accountability and legitimacy of the government, and thereby it can reduce possible existing tensions between groups.[147] Furthermore, decentralization can play a significant role in reducing corruption.[148] This assumption, nevertheless, remains vague. In addition, decentralization can protect local minorities, and prevent arbitrary behavior of the central government. It can also result in better public affairs management and thus it can prevent system overloads.[149] Finally, it can be assumed that decentralization promotes local democracy,[150] it grants individual economic choice, and it gives political opportunities to actors who do not have any influence in national politics.[151]

On the other hand, decentralization can also result in negative outcomes. For instance, decentralization can create a favorable environment for local elite capture, thereby decreasing accountability.[152] It may even increase corruption.[153] Devolving power to local levels of government can also have an impact on governance effectivity. It can, namely, result in duplicating functions, loss of economies of scale, lack of local capacities to govern, and it can increase inequalities between different local governments.[154] Furthermore, within the internal conflict cycle, through decentralization, local actors can increase their means for implementing hidden agendas, while the central government can use decentralization as a

[145]François Vaillancourt and François Grin, "Minority Self-Governance in Economic Perspective," in *Minority Governance in Europe*, ed. Kinga Gál (Local Government and Public Service Reform Initiative, 2002), 83
[146] UNDP Decentralized Governance Programme, *Strengthening Capacity for People-Centered Development* (Bureau for Development Policy, 1997), 1
[147] OECD The DAC Guidelines, *Helping Prevent Violent Conflict*, OECD Publications (2001), 116
[148] Matei and Popa, "Impact of Decentralization on the Corruption Phenomenon," 3
[149] Zsolt Nyiri, "Decentralization and good governance: Ten years of Hungarian experience," *World Bank Institute Working Paper* (2002), p.4
[150] Jackson and Scott, "Local Government in Post-Conflict Environments," 21
[151] USAID, "Democratic Decentralization Programming Handbook," 1
[152] Siegle and O´Mahony, "Assessing the Merits of Decentralization," 8
[153] Matei and Popa, "Impact of Decentralization on the Corruption Phenomenon," 3-4
[154] Dejana Popic & Mahesh Patel, "Decentralization: Equity and Sectoral Policy Implications for UNICEF, in East-Asia and the Pacific, Draft Working Paper (Bangkok: UNICEF EAPRO, 2011), 5

strategy for enhancing control over the local level.[155] More importantly, decentralization can intensify separatist movements,[156] and it can hamper the process of national unification.[157] Lastly, the central government can grant special privileges to minority groups, which can secure stability, albeit only by: "pushing democracy towards aristocracy".[158] In other words, decentralization can enhance local despotism by marginalizing local minorities in comparison with local majorities.[159] This argument has often been used by critics of the decentralization process implemented in Kosovo.

Analyzing the ongoing debate on whether decentralization has positive or negative effects, Kraft and Furlong conclude that: "The question at the heart of the controversy is which level of government is best suited to address different kinds of public policies. That question has no automatic answer, however, and each person´s position is likely to be influenced by his or her beliefs about the role of government in society, particularly the national government."[160]

II.6.2 Dimensions of Decentralization

II.6.2.1. Administrative or institutional decentralization

Administrative decentralization is based on general functional assignments between different institutions at different levels of government.[161] It refers to the administrative authorities, organizations, and mechanisms, which contribute to the management of the decentralization process. It encompasses different methods for the connection of the central government agencies with local governments, or other non-governmental organizations.[162] Similarly, using the same elements, Cheema and Rondinelli summarize the definition of administrative decentralization as: "it includes deconcentration of central government structures and bureaucracies, delegation of central government authority and responsibility to semiautonomous agents of the state, and decentralized cooperation of government agencies…" [163] Whereas, USAID uses the following definition: "Administrative decentralization refers to the institutional architecture—structure, systems, and procedures—

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[155] UNDP, *Research Paper: Governance Interventions in Post-War Situations: Lessons Learned*, in *Governance in Post Conflict Situations,* United Nations Development Programme (UNDP & Chr. Michelsen Institute, Bergen Seminar Series, 2004*)*, 7
[156] OECD The DAC Guidelines, "Helping Prevent Violent Conflict," 116
[157] Jackson and Scott, "Local Government in Post-Conflict Environments," 22
[158] Faguet, "Decentralization and Governance," 16
[159] Brede and Kievelitz, "Decentralization and Conflicts: A Guidline," 3
[160] Michael E. Kraft and Scott R. Furlong, *Public policy: politics, analysis, and alternatives*, (Washington DC: 2nd ed., CQ Press, 2007), 41
[161] Popic & Patel, "Decentralization: Equity and Sectoral Policy," 9
[162] Kiwanuka, "Decentralization and Good Governance in Africa," 50
[163] Cheema and Rondinelli, "From Government Decentralization to Decentralized Governance," 6-7

that supports the implementation and management of those responsibilities under the formal control of subnational actors."[164] In such internal institutional constellations, it is assumed that local governments should enjoy some form of autonomy in decision-making.[165]

In his study, Parker sets four main conditions for a successful institutional decentralization. He argues that in these systems a legal framework should exist that defines formal institutions and how they interact, while he also recognizes the importance of an active civil society. Furthermore, it is important that decentralized institutions possess the necessary capacity to implement policies and to take the necessary responsibilities. Most importantly, a proper system of accountability should exist, that would allow for sanctions.[166] Thus, administrative or institutional decentralization presents a formal cluster of institutions and actors involved generally in the governance system of the state, and specifically in the decentralization process.

II.6.2.2. Fiscal decentralization

As described above, the decentralization process assigns new duties and responsibilities to local government institutions. In order to implement this new duties and responsibilities local governments need financial resources and without such resources, effective implementation of assignments would remain impossible.[167] As a result, powers to generate revenues and collect taxes remain with local authorities.[168] However, this is not always self-evident. Governments often fail to diffuse fiscal authority together with the new duties and responsibilities, placing local governments under pressure, and thereby risking even the normal functioning of the local authorities.[169] When this is not the case, Parker argues that there are three main financial sources for local governments, namely, own locally generated resources, transfers from other levels of government and resources from possible borrowings.[170] It follows that fiscal decentralization comprises of instruments for the dispersion and spending of public revenues, with the main aim to secure the fiscal autonomy of local governments.[171] It should also be noted that in practice, it is not easy to implement a successful fiscal decentralization strategy.

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[164] USAID, *Democratic Decentralization Programming Handbook*, 14-15
[165] Grasa and Camps, "Conflict Prevention and Decentralized Governance," 22
[166] Andrew N. Parker, "Decentralization: The Way Forward for Rural Development?" *Policy Research Working Paper 1475* (Washington D.C.: The World Bank, 1995), 33-35
[167] Brede and Kievelitz, "Decentralization and Conflicts: A Guidline," 4
[168] Yuliani, "Decentralization, deconcentration and devolution," 2
[169] Arun Agrawal and Jesse C. Ribot "Recentralizing while decentralizing, How national governments re-appropriate forest resources," in *Globalization and Self-Determination, Is the nation-state under siege?*, eds. David R. Cameron, Gustav Ranis, and Annalisa Zinn (New York: Routledge, 2006), 320
[170] Parker, "Decentralization: The Way Forward for Rural Development?" 28
[171] Cheema and Rondinelli, "From Government Decentralization to Decentralized Governance," 7

Inappropriate fiscal decentralization could only deepen existing economical differences between regions within a state.[172] Thus, fiscal decentralization remains one of the main pillars behind a successful decentralization.

According to UNDP, a successful fiscal decentralization should be based on a transparent financial management system. This type of system should include: a) transparency of allocation, b) foreseeable financial resources accessible to local governments, and c) independence in the way of spending these means.[173] Alternatively, fiscal independence of local governments enables the implementation of a locally designated policy and investment plan. This is automatically connected to the issue of accountability. As a result, voters are informed what the local government is actually doing, and how they are raising and spending their money.[174] Allocation of fiscal resources is also part of the conflict cycle. Central governments may either opt to stimulate the integration of rebel groups or regions through significant fiscal allocations,[175] or the central government may refuse to cede any fiscal resources, with the pretext of preserving national unity.[176] The government of Kosovo, for instance, has mainly been using the first method as an incentive towards the Serb dominated northern Kosovo.

II.6.2.3. Political or democratic decentralization

Similar to other forms of decentralization, political decentralization means the transfer of political authority to the local level.[177] Political decentralization focuses on the advancement of public participation,[178] generally in the process of decision-making, and specifically in the process of formulation and implementation of public policy.[179] This participation implies more responsibilities for the locally elected leaders towards the local electorate, thereby raising the quality of local decision-making.[180] Rafael and Grasa point out that: "The objective is that lower levels of government become accountable to the public."[181] Neven argues that in a democratic perspective "decentralization means the distribution of powers

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[172] Popic & Patel, "Decentralization: Equity and Sectoral Policy," 9
[173] UNDP, *Decentralization: A Sampling of Definitions*, 9
[174] USAID, *Democratic Decentralization Programming Handbook*, 13
[175] Geoffrey Garrett and Jonathan Rodden "Globalization and fiscal decentralization," in *Globalization and Self-Determination, Is the nation-state under siege?*, eds. David R. Cameron, Gustav Ranis, and Annalisa Zinn (New York: Routledge, 2006), 284
[176] Agrawal and Ribot, "Recentralizing while decentralizing," 320
[177] USAID, *Democratic Decentralization Programming Handbook*, 10, see also Yuliani, "Decentralization, deconcentration and devolution," 2
[178] Parker, "Decentralization: The Way Forward for Rural Development?" 25
[179] Neven, "Background paper on "Decentralization"," 2
[180] Popic & Patel, "Decentralization: Equity and Sectoral Policy," 9
[181] Grasa and Camps, "Conflict Prevention and Decentralized Governance," 21

between elected authorities",[182] while Kauzya believes that political decentralization promotes democracy.[183]

There are several areas which are considered to be part of the political decentralization process. According to Cheema and Rondinelli, increasing public participation combined with changes in the government structure, are some of the most important elements of political decentralization. The existence of multi-level governance, freedom of association, and the participation of civil society in the political life, are also counted as important parts of the political decentralization process.[184] It should also be noted that, political decentralization acknowledges that the center retains different powers over the local government. This creates a twofold accountability line, namely, local government-citizens and local government-central government.[185] In short, political or democratic decentralization involves the organization of elections at the local level. Alternatively, the election of democratically elected local leaders establishes mechanisms of vertical and horizontal accountability, and through this, it enables citizen´s participation in the political process.

II.6.2.4. Service delivery decentralization / Market decentralization

This dimension of decentralization can be understood as the process of shifting service deliveries previously provided by the government to businesses, community groups, cooperatives, private voluntary association or NGOs.[186] Cheema and Rondinelli maintain that market liberalization, deregulation, privatization of state enterprises, and public-private partnerships are all part of the economic decentralization process.[187] The most common areas in which the government may implement the strategy of decentralized service delivery are water management, wastewater management, building and maintenance of public premises, individual benefits, security, and protection of health and environment.[188] By implementing these types of strategies, the government can improve the participation and involvement of non-governmental actors in the governing cycle.[189] This strategy can also cause certain `side effects´. It can negatively affect accountability and the efficiency of service delivery in general. This can mainly happen because this strategy may involve the application of new fees,

[182] Neven, "Background paper on "Decentralization"," 2
[183] Kauzya, "Decentralization: Prospects for Peace, Democracy and Development," 5-6
[184] Cheema and Rondinelli, "From Government Decentralization to Decentralized Governance," 7
[185] USAID, *Democratic Decentralization Programming Handbook*, 11
[186] Neven, "Background paper on "Decentralization"," 4
[187] Cheema and Rondinelli, "From Government Decentralization to Decentralized Governance," 7
[188] UNDP, *Decentralization: A Sampling of Definitions*, 10
[189] Popic & Patel, "Decentralization: Equity and Sectoral Policy," 5

new budgets for service deliveries, new levels and types of provisions, and it may also consider gender or ethnic sensitivity.[190]

In the context of politics of ethnic or minority accommodation, the administrative, fiscal, and political dimensions of decentralization serve as a valuable way to understand the impact of these different dimensions of decentralization on minorities. For instance, the administrative or institutional dimension of decentralization makes it possible to elaborate the impact of territorial organization on minorities, institutional practices in implementing minority rights, minorities' ability to influence the decision-making process, inter-institutional cooperation, and to understand the extent of autonomy of the units of local government. The fiscal dimension of decentralization makes it possible to analyze how financial capacities of local governments, central governments transfers, and possible borrowings of municipalities can positively or negatively affect the work of local governments, and thus positively or negatively affect the success of decentralization as a tool of conflict management. Finally, the political or democratic dimension of decentralization makes it possible to analyze the extent of minorities' political representation and political participation at the local level. Overall, the analysis of all of the three main dimensions of decentralization represents a cornerstone in any research on politics of ethnic accommodation, where decentralization has been used as a conflict mitigating strategy. In the next section, an account of decentralization categories is presented.

II.6.3. Categories of Decentralization

II.6.3.1. Deconcentration

Deconcentration is the most limited form of decentralization.[191] It is often described as the "incomplete strategy for decentralization."[192] Neven explains that deconcentration is the reorganization and rearrangement of the central government authority within its own area of action, which does not involve institutions of local self-government.[193] Central governments apply deconcentration mainly to improve its policy implementation capacities. Related to this topic, Dafflon and Madiès present an interesting citation from a professor, who wrote that: "deconcentration is the same hammer hitting you on the head, but with a shorter handle."[194]

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[190] Ibid.
[191] UNDP, *Decentralization: A Sampling of Definitions*, 7
[192] Parker, "Decentralization: The Way Forward for Rural Development?" 20
[193] Neven, "Background paper on "Decentralization"," 3
[194] Bernard Dafflon and Thierry Madiès, "Decentralization: A Few Principles from the Theory of Fiscal Federalism," *Agence Française de Développement, Notes and Documents* No. 42, Paris: 2011), 8

The central government, for instance, may just appoint an agent, who would implement central government priorities and who would use their resources.[195]

In general, with the implementation of deconcentration there is no involvement of other levels of government, besides the central government.[196] Deconcentration involves only the delegation of authority for specific "…decision making, financial and management functions by administrative means…"[197] USAID argues that several services should remain in the control of the central government. For example, these services may involve the management of highways, water resources, or other resources of national interest. Deconcentration should also be regarded as a strategy to reach different remote areas of a country. This can be relevant for fragile states, where an opposition to the central government authority is present.[198]

II.6.3.2. Delegation

UNDP presents the following definition of delegation: "Delegation refers to the transfer of government decision-making and administrative authority and/or responsibility for carefully spelled out tasks to institutions and organizations that are either under government indirect control or semi-independent."[199] Organizations that absorb delegated powers can range from single-purpose governments and administrative units, parastatals, private firms or NGOs. Similar to deconcentration, the government's intention is to move services closer to citizens, but through a wide range of organizations, which could also represent a transitional phase to possible devolution.[200] Yet, these organizations remain accountable to the central government. They can also be established by the central government only for specific purposes. In short, delegation represents a broad form of decentralization.[201]

II.6.3.3. Devolution

Devolution is the transfer of responsibilities from the central government to lower levels of government. In this category of decentralization, the local government is free to choose its

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[195] Grasa and Camps, "Conflict Prevention and Decentralized Governance," 23
[196] Yuliani, "Decentralization, deconcentration and devolution," 3
[197] UNDP, *Decentralization: A Sampling of Definitions*,7
[198] USAID, *Democratic Decentralization Programming Handbook*, 9
[199] UNDP, "Decentralization: A Sampling of Definitions," 7, see also UNDP, *Strengthening Capacity for People-Centred Development*, 7
[200] USAID, *Democratic Decentralization Programming Handbook*, 9-10, see also Yuliani, "Decentralization, deconcentration and devolution," 3
[201] Neven, "Background paper on "Decentralization"," 3

own policy planning and to adapt its implementation.[202] Local governments, on the other side, must have a clearly defined administrative area within which they perform their duties. In order to fulfill their responsibilities, they receive a wide range of resources.[203] Devolution is regarded as the most advanced form of decentralization. It may include elements of both, deconcentration and delegation.[204] Yuliani, stipulates that devolution can also occur in the case of transferring powers not only to local governments but also to privately owned companies or organizations of civil society.[205] Neven presents the following description of devolution: "Devolution usually transfers responsibilities for services to municipalities that elect their own mayors and councils, raise their own revenues, and have independent authority to make investment decisions."[206]

According to UNDP, devolution has several characteristics. First, in a devolutionary system local governments should be set apart from the central government and should be autonomous or independent. Second, they should possess a recognized geographical area. Third, they should be able to secure necessary resources. Fourth, citizens should have influence over local governments and perceive them as service delivery institutions. Finally, central and local governments should be interconnected, and act on the basis of functional coordination.[207] As previously argued, even though local government institutions act independently, they remain bound to national laws, national priorities, and national standards. Devolution is also affiliated with political decentralization, which means that elections should take place on a regular basis within the local government electoral area.[208]

II.6.3.4. Divestment/Privatisation

There exists a debate among different authors about the question whether privatization is actually a form of decentralization or not. Analyzing this subject, Yuliani states that Ribot believes that privatization is not a form of decentralization, while Ferguson and Chandrasekharan actually accept privatization as a form of devolution.[209] Similarly, UNDP argues that privatization is a divestment form, rather than decentralization. Divestment, as described by UNDP is the process: "when public functions are transferred from government

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[202] Grasa and Camps, "Conflict Prevention and Decentralized Governance," 23
[203] Dafflon and Madiès, "Decentralization: A Few Principles," 8
[204] Parker, "Decentralization: The Way Forward for Rural Development?" 22
[205] Yuliani, "Decentralization, deconcentration and devolution," 3
[206] Neven, "Background paper on "Decentralization"," 3
[207] UNDP, *Decentralization: A Sampling of Definitions*, 5, see also UNDP, *Strengthening Capacity for People-Centered Development*, 6-7
[208] USAID, *Democratic Decentralization Programming Handbook*, 10
[209] Yuliani, "Decentralization, deconcentration and devolution," 4

to voluntary, private, or non-governmental institutions." Privatization allows for the delegation of authority to private organizations in order to produce goods or supply different services.[210]

As mentioned in the introduction, this research focuses on the republic of Kosovo as a case study. It applies the conceptual framework analyzed in this chapter, connects it to the specific case of Kosovo, and presents concrete conclusions. In other words, the *general-to-specific-to-general approach* has been applied here by using the general state of the art method that involves applications to this case study, and refocusing again on the general literature to go through an interpretation process. Therefore, for the purposes of this study, devolution is taken into account as the main category of decentralization. Forms of deconcentration, delegation, divestment, and privatization are often formally mentioned, however, they are not a focus of this study. The administrative/institutional, political, and fiscal dimensions of decentralization are the main focus of this study. This study takes into consideration both understandings of decentralization as a strategy for good governance, and as a strategy for conflict management and ethnic accommodation. Other territorial and non-territorial strategies of accommodation described in the first part of this chapter, are analyzed in connection with the Brussels Agreement for the establishment of the Association of the Serb Majority Municipalities. Before discussing the main findings, a historical background of the interethnic relations in Kosovo is provided in the next chapter.

[210] UNDP, *Strengthening Capacity for People-Centered Development*, 7-8

CHAPTER III - INTERETHNIC RELATIONS IN KOSOVO – A HISTORICAL BACKGROUND

History plays an important role in understanding present-day politics in Kosovo. It has shaped today's interethnic relations between different ethnic groups. As pointed out by Heisler: "The contentious nature of history reflects politics *par excellence*."[211] This argument fits very well to the case of Kosovo for a simple reason: "It produces a relation between that which occurred in the past and the present state of affairs." [212] Today, Serbs and Albanians, collide on almost every issue from the past. History provides information from two different perspectives. As a result, this short historical background mainly focuses on studies conducted by international authors, who are well-known for their work on Balkan history, and their expertise on the history of Kosovo, Albania, and Serbia. In this chapter, the discussion will be on the main issues that have characterized the antagonism between the two nations from the Battle of Kosovo to current affairs.

Today, the Kosovo conflict is perceived as a political-territorial conflict with social and economic elements. The ethnic-national dimension was intentionally misused and placed in the foreground as the actual cause of the conflict.[213] On the one hand, it is a conflict between states (nations) for a territory and political control. On the other hand, it is a conflict caused by "historically conflicting national identities, human development needs, misunderstandings among the general populace, and a culture of failing to accept responsibility for social problems."[214] At its core, it is a conflict between two widely known principles, the self-determination right of nations and the "historical right". At the beginning of the modern Serbian state, Serbian historiography contradictorily used both principles in order to legitimize their territorial claims. First, the argument was that all areas inhabited by Serbs should be united in one state based on the self-determination right. Second, the incorporation

[211] Martin O. Heisler, "Introduction: The Political Curreny of the Past: History, Memory, and Identity," in *Annals of the American Academy of Political and Social Science*, Vol. 617, The Politics of History in Comparative Perspective (Sage Publications, 2008), 22
[212] Theresa Robinson, "A Collective Reckoning with the Past," *Dialogue Vol. 3, No. 1 Polsis e-Journal*, (Brisbane: University of Queensland, 2005), 187
[213] Arben Hajrullahu, *Langfristiger Frieden am Westbalkan durch EU-Integration: Der EU-Integrationsprozess als Chance für die Überwindung des serbisch-kosovarischen Konfliktes* (Baden-Baden: Nomos, 2007), 31, see also Rafael Biermann, *Lehjahre im Kosovo, Das Scheitern der internationalen Krisenprävention vor Kriegsausbruch*, (Paderborn, München, Wien, Zürich: Verlag Ferdinand Schöningh, 2006), 572
[214] Julie A. Mertus, *Kosovo: How Myths and Truths Started a War* (Berkeley, Los Angeles, London: University of California Press, 1999), 231-232

of territories with no Serb majority in the Serbian state should be completed through the "historical right". The reconciliation of these two differing principles was based on different arguments created by Serbian historiography.[215] For instance, the claim of a "historical right" over Kosovo was based on a "Serbian historically justified trauma" as Hajrullahu calls it.[216] Obviously, even if a "historical right" from one or the other side may be justified, this would be in direct opposition with the modern concept of a nation and modern constitutions, as power derives from the people and not from any other time period in the past.[217] It is, however, important to consider the basis of this claimed "historical right".

III.1. Emergence of a Myth - The 1389 Battle of Kosovo

Schmitt describes the reason of the battle of Kosovo as being a revenge campaign by the Ottomans, due to a previously lost battle against the Bosnian King Tvrtko I. In order to reach Bosnian territory, the Ottomans had to cross through Kosovo, which automatically involved the Serbian nobles who controlled the territory. As a result, King Tvrtko I, the Serbian nobles and at least one Albanian noble created an alliance in order to face the Ottomans.[218] The one day battle took place near Fushë Kosovë/Kosovo Polje on 28 June 1389. The Ottoman army accounted for approximately 30,000 men, while the Coalition accounted for around 20,000 men.[219] During the battle, the Ottoman army carried out a surprise attack. This created disorder and confusion amongst the Coalition, whose troops dispersed on that same afternoon. The surviving Coalition troops left the field, thus leaving it in the hands of the Ottomans.[220] The battle left both leaders dead, Murat and Lazar. Since the Ottoman heir system involved a battle between the sons of the Sultan, under the command of Bayezid, the Ottoman army soon withdrew as well. This outcome of the battle created wide uncertainty among the power centers of the time. Malcolm perfectly summarizes the battle of Kosovo in the following words:

> "The fighting was intense, and there were heavy losses on both sides. Both Lazar and Murat were killed. At the end of the battle the Turks were left in possession of the field. Murat was succeeded by his son Bayezid, who was commanding some of the

[215] Holm Sundhaussen, *Geschichte Serbiens: 19.-21. Jahrhundert* (Wien, Köln, Weimar: Böhlau Verlag, 2007), 120-121
[216] Hajrullahu, *Langfristiger Frieden am Westbalkan durch EU-Integration*, 38
[217] Ibid.
[218] Oliver Jens Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft* (Wien, Köln, Weimar: Böhlau Verlag, 2008), 59-60
[219] Wolfgang Petritsch, Karl Kaser, Robert Pischler, *Kosovo Kosova; Mythen, Daten, Fakten* (Klagenfurt, Wien (u.a): Wieser Verlag, 1999), 31
[220] Miranda Vickers, *Between Serb and Albanian: A History of Kosovo* (London: Hurst and Company, 1998), 13

> Turkish forces at the battle; he then took what remained of his army back to the ottoman heartlands to secure his succession. Lazar was succeeded by his young son Stefan Lazarevic, who, acting under the guidance of his mother, the widowed Queen Milica, later agreed to become a Turkish vassal. Everything else about the battle of Kosovo is uncertain: who took part, how large the armies were, what the order of battle was, what the key turning-points in the fighting may have been, how and when Lazar and Murat met their deaths, and whether, in the end, it should be characterized as a victory or a draw."[221]

Interestingly, in October 1389, the Senate of Florence even sent a congratulation letter to the Bosnian King Tvrtko I for the Battle of Kosovo, stating that the victory has been "fated from the heaven".[222] After the battle, the Ottomans halted their conquest expedition in the Balkans for the next several years. However, this was not as a result of this battle. It was because the Empire was under threat from the Mongols in Anatolia.[223] In most aspects, the battle of Kosovo was a normal battle compared to many others fought at the time. However, it should be noted that the Battle of Kosovo was exceptional because both army leaders lost their lives.[224] The aftermath of the Battle, which is often misinterpreted in popular believes, can be summarized in three main points:

a) It was not this Battle that brought the disintegration of the Serbian empire, the empire already collapsed soon after the death of Tsar Dušan in 1355.[225]
b) It was only in 1459 that the remaining Serbian statehood had definitely vanished, and not immediately after the battle in 1389.[226]
c) It is widely believed by many authors, that there are other battles that brought wider historical consequences. For instance, the battle at the river Marica in 1371,[227] or the second Battle of Kosovo in 1448, which sealed the Ottoman hegemony over Balkan.[228]

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[221] Noel Malcolm, *Kosovo: A Short History* (New York: New York University Press, 1998), 61
[222] Sundhaussen, *Geschichte Serbiens*, 34-35
[223] Christine Von Kohl, Wolfgang Libal, *Kosovo: gordischer Knoten des Balkan* (Wien Zürich: Europaverlag, 1992), 16
[224] Petritsch, Kaser, Pischler, *Kosovo Kosova; Mythen, Daten, Fakten*, 33
[225] Thomas A. Emmert, "The Battle of Kosovo: Early Reports of Victory and Defeat," in *Kosovo*: *Legacy of a Medieval Battle*, eds. Wayne S. Wucinich and Thomas A. Emmert (Minneapolis: University of Minnesota Press, 1991), 19
[226] Malcolm, *Kosovo: A Short History*, 58
[227] Ibid.
[228] Sundhaussen, *Geschichte Serbiens*, 35

Sundhaussen sums up the significance of the Battle of Kosovo in the following words: "The Kosovo battle was significant; its importance lies in the importance itself. Everything else is not only irrelevant, but also controversial."[229] The significance of the battle is not only overestimated, but also many other historical facts were often not mentioned intentionally in Serbian historiography. For example, Stefan Lazarević fought alongside the Ottomans against the Mongols in 1402, Djuradj Branković helped the Ottomans to conquer Constantinople in 1453, and the Serbian King also played a controversial role in the second battle of Kosovo in 1448.[230]

Nevertheless, for the next centuries, the Battle of Kosovo remained as an undisputable guiding star for the Serbian nation. As Mihailovich points out: "It is a simple matter of fact that, whenever Serbs are faced with events of great historical importance, they invariably turn to the one source of strength and inspiration – the Kosovo mystique".[231] It was not the historical evidence about the battle that remained in the general Serbian national consciousness. Above all, it was the myth and legends created and orally transmitted afterwards.[232] The story turned into a `totem` or a `talisman` of Serbian identity, as Malcolm formulates it. He further remarks: "To call this ideologically charged story "the myth of Kosovo" is not to suggest that everything in it is false, but rather to indicate the talismatic way in which it operates".[233] On the other hand, Bakić-Hayden claims that: "In Serbian self-definition of cultural, religious and national identity, Kosovo is not a negligible thing, a mere "myth" like any story-telling: it is a narrative that continues to interact with reality in an unique way."[234]

In order to understand this, it is important to see the content of the myth. First, the myth represents a heavenly figure of Tsar Lazar, who chooses the ´kingdom of heaven` before the earthly kingdom. His cult was then created and developed by the orthodox clergy, who defined him as a martyr, ´The second Christ`, or the `Good shepherd` of the Christian faith.[235] Second, the myth gives a central role to Kosovo as the cradle of the Serbian nation or perhaps as the ´Serbian Jerusalem`. Third, the lost battle represents "death and destruction, God´s

[229] Ibid., 114 (authors translation)
[230] Erich Rathfelder, *Kosovo. Geschichte eines Konflikts* (Berlin: Suhrkamp, 2010), 44-45
[231] Vasa D. Mihailovich, "The Tradition of Kosovo in Serbian Literature," in *Kosovo: Legacy of a Medieval Battle*, eds. Wayne S. Wucinich and Thomas A. Emmert (Minneapolis: University of Minnesota Press, 1991), 141
[232] Von Kohl and Libal, *Kosovo: gordischer Knoten des Balkan*, 18
[233] Malcolm, *Kosovo: A Short History*, 58
[234] Milica Bakić-Hayden, "National Memory as Narrative Memory: The case of Kosovo," in *Balkan Identities: Nation and Memory*, ed. Maria Todorova (New York: New York University Press, 2004), 40
[235] Sundhaussen, *Geschichte Serbiens*, 98

punishment, sufferings of the people on the one side and (…) hope for revenge and resurrection of the earthly kingdom (…) on the other side" [236] Sundhaussen explains that the myth of Kosovo is based on the interpretation and aestheticism of "what didn't actually happen".[237] This has been explained previously in the aftermath of the battle. However, it is obvious that the role of the Kosovo myth has perfectly served the Serbian national movement during the 19th and 20th Century, whose main aim was: "to confirm the birth of modern Serbian statehood, to justify its inception, to legitimize its existence, and to promote its development."[238]

III.2. Kosovo under the Ottoman Rule

III.2.1. Migration of the population

Before the arrival of the Ottomans in the Balkans, and the final submission of the Christian population under the new empire, Serbian cultural center gradually moved southwards, into Rascia, Kosovo and Macedonia. This process was characteristic for the time, not only for the Serbs but also for other populations, who tended to move their center into new, more fertile lands. The arrival of the Ottomans stopped the influx of the Slav population into present day Kosovo. Under these new circumstances, the migration process of the Slav population started to change directions, and was now directed towards northern lands. Vickers gives the year 1481 as the period when a large Slav population emigrated from Kosovo towards Hungary and Transylvania.[239] However, this process was not bound to a particular year or a certain period, but it can be imagined that this was an ongoing process.

The year 1690 played a particular role in the migration process of the Slav population towards Hungary and Vojvodina. The new migration wave was caused by military actions of the Habsburg Empire, who successfully penetrated deep into Balkan Ottoman territory. The Habsburgs reached deep into Macedonia, and a large number of the Christian population joined their expedition. Alternatively, the Muslim population was left unprotected and their villages and mosques were burnt down. Shortly after these Habsburg military successes, the Ottomans managed to reverse the same process. After a military reorganization they defeated the Habsburgs.[240] This also signified a turning point in the history of Kosovo. Fearing

[236] Ibid., 108
[237] Ibid., 112-114
[238] Dimitrije Djordjević, "The Tradition of Kosovo in the Formation of Modern Serbian Statehood in the Nineteenth Century," in *Kosovo*: *Legacy of a Medieval Battle*, eds. Wayne S. Wucinich and Thomas A. Emmert (Minneapolis: University of Minnesota Press, 1991), 310
[239] Vickers, *Between Serb and Albanian: A History of Kosovo*, 17
[240] Petritsch, Kaser, Pischler, *Kosovo Kosova; Mythen, Daten, Fakten*, 57-58

reprisals from the Ottomans, a large part of the Christian population also left with the retreating Habsburg army. The picture of Patriarch Arsenije III with the emigrating mass of the Serbs entered into the Serbian historiography as `The great Serbian Migration`. The number of the Serbs who migrated varies, however, it can be estimated that the number lies between 30,000 and 40,000 people.[241] The new migrants were granted special rights from the Austrian Emperor Leopold I, and they were settled mainly into Vojvodina. A certain number of Christians who left with the Serbs were Albanians, mainly from the Kelmendi clan. They settled primarily in Hrtkovci and Nikinci.[242]

The emigration of a large segment of the population created a vulnerable situation in Kosovo. Large parcels of fertile land remained unused, so that Albanian families resettled the area abandoning neighboring mountain regions. The re-immigration process lasted from the end of the 17th century until the first part of the 19th century.[243] Nevertheless, this was obviously not a one way process as other population groups moved as well. Malcolm describes this process by stating: "There was flux and emigration, settlement and resettlement, in all sectors of the population. Just as Catholic Albanian highlanders moved into Kosovo from the Malësi, so Orthodox Slav ones from the mountains of Montenegro moved into the sandžak of Novi Pazar; from there, many also spread into northern Kosovo."[244] Malcolm also depicts the ethnic composition of Kosovo in the 17th century. According to his conclusions, Muslim population of these towns was mainly Albanian. The rural population was dominated by Albanian speakers in the west of the country and by Slavic speakers in the east.[245] Overall, `The Great Serbian Migration` and the repopulation of Kosovo by Albanians entered the Serbian national myth during the process of nation-building. This migration was considered in such a negative way that it significantly antagonized the relations between the two nations.[246]

III.2.2. National revivals and the gradual end of the Ottoman power

The gradual decline of power during the 19th century, on the national and international stage already started to bother the Ottoman rulers and activated national movements. In order to regain strength and change the status quo, the empire decided to conduct an administration reform. As a result, the new administration law came into force in 1865. The main aim of this law was to create a compact Muslim group within the Vilayets of Monastir, Janina, Shkodër

[241] Ibid.
[242] Vickers, *Between Serb and Albanian: A History of Kosovo*, 27-28
[243] Petritsch, Kaser, Pischler, *Kosovo Kosova; Mythen, Daten, Fakten*, 57-58
[244] Malcolm, *Kosovo: A Short History*, 178
[245] Ibid., 137
[246] Sundhaussen, *Geschichte Serbiens*, 51

and Kosovo. These Vilayets were mostly inhabited by Albanians. Under the new administration law, each of the Vilayets received a governor and a garrison. Vickers argues: *"*As the Albanians occupied such a strategic position in the Balkans, the Porte wished to avoid creating a definite demarcation to the still vague geographical notion of "Albania"."[247] This demonstrates that the administration reform has failed to improve the weakened position of the Ottoman Empire. The Russo-Ottoman war took soon after, in the years 1877-78, placing the empire in a difficult position. Using Ottoman weakness and with the growing support from Russia, Serbia and Montenegro invaded Kosovo. This event marked the first direct conflict between Serbs and Montenegrins, and Albanians.[248] As a result of the invasion, the whole Albanian population who lived between the regions of Nish and the modern border of Kosovo were systematically displaced into Kosovo.

The treaty of San Stefano ended the hostilities by granting full independence to Serbia as well as a new extended border. Similarly, Montenegro received the predominantly Albanian-inhabited regions of Pejë, Ulqin, Hoti, Plava, Guci, and Podgorica.[249] This newly created situation was later accompanied by a political process, conducted by the great powers of the time. Therefore, the Congress of Berlin was organized. At the Congress, all the Balkan nations were in some form represented except the Albanians. Furthermore, an existence of the Albanian nation has been generally denied, mainly because Albanians failed to find any protective power. The Ottoman Empire on its `retreat` failed to protect the Albanian interests, particularly by surrendering Albanian inhabited territory to the neighboring Christian states.[250]

With the results of the Berlin Congress, Albanians found themselves in an unfavorable position. Being in this vulnerable state, Albanians started organizing their efforts on a political and military level. On the political level, Albanians aimed to remain within the empire, however they demanded for a broad autonomy. This autonomy would include among other things, a unification of the four Albanian inhabited Vilayets, the creation of a functional assembly, official introduction of the Albanian language in schools and administration, and the creation of an Albanian militia that would operate within the new Vilayet. On the military level, the leading Albanian national figures organized a general meeting on 10 June 1878, in Prizren. At this meeting, an Albanian League was created, known as the `League of Prizren`. The League's intention was to protect Albanian territories ceded by the Congress, while

[247] Vickers, *Between Serb and Albanian: A History of Kosovo*, 37-38
[248] Ibid., 42
[249] Ibid., 43
[250] Peter Bartl, *Albanien: vom Mittelalter bis zur Gegenwart* (Regensburg: Pustet, 1995), 94

politically embracing previously formulated demands. Clearly, the League was unable to secure any international support,[251] and their military success was only brief, with no longstanding results.

On a wider level, the Ottomans opposed and never granted autonomy to Albanians, even though, the military campaign of the league was in the best interests of the empire, however not officially.[252] The League of Prizren was viewed as a new player in the general assumptions of the self-determination rights for the Balkan people. This clearly endangered the plans of the neighboring states, especially of Serbia. They were putting their efforts on the self-determination right for the same territory, Kosovo. As a result, a new rivalry was created.[253] The League of Prizren was indeed defeated; however, peace was never restored in the Albanian inhabited areas. Thus, the years between 1880 and 1912/13 were mainly characterized by repeated uprisings.[254] It is worth mentioning that in the year 1899, a second `League of Prizren` was called in Pejë, with the same requests as the first League, however it too lacked any significant outcomes.

III.3. Annexation of Kosovo and the First World War

III.3.1. Legitimization attempts for the annexation of Kosovo

Prior to the ultimate annexation of Kosovo, Serbian intellectual circles tried to legitimize the annexation through different interpretations. As mentioned at the beginning of this chapter, the one used in the case of Kosovo was that of a "historical right". In order to support such a claim, several studies were conducted to prove that Kosovo has a Serbian character and that the Albanian Muslim population of Kosovo is barbaric. Thus, similarly to other colonial argumentations, Serbs had a civilization mission that was to be conducted in Kosovo.[255] As a result, on the cultural level Albanians were presented as nomads and robbers with different religious beliefs and no written language, guided by a barbarian customary law.[256]

Serbian expansionist plans were based on the work of Ilija Garašanin, reflected in his `Načertanije` project, also known as the `Greater Serbia` project. This project foresaw the opportunities of maximizing the state territory of Serbia and securing an access to Adria.[257]

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[251] Petritsch, Kaser, Pischler, *Kosovo Kosova; Mythen, Daten, Fakten*, 73-74
[252] Bartl, *Albanien: vom Mittelalter bis zur Gegenwart*, 99-101
[253] Sundhaussen, *Geschichte Serbiens,* 138
[254] Von Kohl and Libal, *Kosovo: gordischer Knoten des Balkan*, 31
[255] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 165
[256] Ibid., 167
[257] Petritsch, Kaser, Pischler, *Kosovo Kosova; Mythen, Daten, Fakten*, 67

Garašanin, in his work, connects the glorious Serbian history of the 13th and 14th centuries with the then current situation and argues that there is a `sacred historical right` of the Serbs to regain what was lost of the old Serbian Empire. Moreover, according to him, an overall strengthening of the Serbian Empire had stopped due to the arrival of the Turks. This led to a culmination in the takeover of the Eastern Roman Empire. The time was to restart the interrupted process, which would, according to him be widely accepted by south Slavs.[258] It is important to note that for the most part of his work, his ideas about state and nation are confusing. He fails to clearly define the Serbian nation and often uses confusing terminology. Thus, it might be argued that he was following a tempting expansionist policy based on the territories of Tsar Dušan´s Empire, totally ignoring religious divisions of south Slavs.[259] Over the next decades, Serbian foreign policy was greatly influenced by his project.

III.3.2. The First Balkan War and the Serbian annexation of Kosovo

The year 1912 marks the first serious conflict between Albanians and Serbs on a large and unprecedented scale. After the declaration of war in October 1912, Montenegro, Serbia, Bulgaria, and Greece launched a combined military operation against the European part of the Ottoman Empire. The Montenegrin and Serbian fronts were directed mainly against the Albanian inhabited parts of the empire. Similarly, Greece directed its actions, among others, towards Epirus, that had a considerable Albanian population. Unprepared Ottoman forces lost almost all the battles fought during the war.

In Kosovo and Macedonia, the First Balkan War was mainly characterized by the fights between Serbs and Albanians. The war consisted of Serb massacres against the non-Serb population, efforts towards ethnic cleansings, and forced conversions to orthodoxy. The consul general of Austro-Hungary in Skopje reported on the massacres of women and men, and burning of houses in the region of Luma, Prizren, as described by Serbian army officers. Edith Durham, a traveler, was also irritated by the massacres of women and children and the agonies of the Albanian captives through the acts of the Serb and Montenegrin soldiers.[260] Leon Trotsky and Dimitrije Tucović publicly denounced the horrors of the Serbian army against the Albanian population. The Enquete Commission documented the situation in Albanian areas and reported the following: “Houses and whole villages reduced to ashes, unarmed and innocent populations massacred en masse, incredible acts of violence, pillage

[258] Sundhaussen, *Geschichte Serbiens,* 116
[259] Ibid., 117
[260] Ibid., 216-217

and brutality of every kind — such were the means which were employed and are still being employed by the Serbo-Montenegrin soldiery, with a view to the entire transformation of the ethnic character of regions inhabited exclusively by Albanians."[261] Leo Freundlich even published a book, "Albania's Golgotha" with a summary of the events of 1912/13. [262]

A brief overview of Serb proceedings during the war can be best understood in the words of a Serbian army officer described to Leon Trotsky:

> "The horrors actually began as soon as we crossed into Kosovo. Entire Albanian villages had been turned into pillars of fire, dwellings, possessions accumulated by fathers and grandfathers were going to flames, the picture was repeated the whole way to Skopje. There the Serbs broke into Turkish and Albanian houses and performed the same task in every case: plundering and killing. For two days before my arrival in Skopje the inhabitants had woken up to the sight of heaps of Albanian corpses with severed heads. Among the mass of soldiers you see Serb peasants who have come from every part of Serbia on the pretext of looking for their sons and brothers. They cross the plain of Kosovo and start plundering, from the area around Vranje the population has crossed over en masse into the Albanian villages to pick up whatever may catch the eye. Peasant women carry away even the doors and windows of Albanian houses."[263]

The brutality of the Balkan Wars brought the attention of the international community and their uproar. During the first Balkan War approximately 20,000 Albanians were killed, and afterwards 60,000 were forced to leave.[264]

In the Serbian public it was proclaimed that the territories of Kosovo, Sandžak, and Macedonia were finally liberated. Nevertheless, Sundhaussen correctly noticed that this war had nothing to do with liberation in the self-determination sense. The majority of the `liberated` population, for instance, was not even Serb. Kosovo had a 75% Albanian population.[265] By increasing its territory from 48,000 to 87,000 km^2 and its population from

[261] Report of the International Commission to Inquire into the Causes and Conduct of the Balkan War, International Commission to Inquire into the Causes and Conduct of the Balkan Wars (Washington D.C.: Carnegie Endowment for International Peace, Division of Intercourse and Education, 1914), An online version of the report can be found on: https://archive.org/details/reportofinternat00inteuoft/page/n3 (accessed on 16.01.2016)
[262] Sundhaussen, *Geschichte Serbiens,* 219
[263] Citation from Vickers, *Between Serb and Albanian: A History of Kosovo*, 77
[264] Sundhaussen, *Geschichte Serbiens,* 217
[265] Ibid., 216-217

3,0 to 4,3-4,4 million people,[266] Serbia achieved to implement some parts of the Greater Serbia project. On the other side, Kosovo was placed under a tough administration, where the relatively liberal Serbian constitution was not applied.[267] The new administration proclaimed that the rights of Albanians will be protected, however, the reality was different. The corrupted and incompetent administration definitely failed to `civilize` the Albanians as it had once announced.[268] Albanians were simply classified as second class citizens and treated as some remains of the Ottoman Empire.[269]

During the vague war situation, Albanians managed to declare an independent state on 28 November 1912. The newly declared Albanian state was later recognized during the London Conference. This Conference mostly recognized the new and enlarged militarily achieved frontiers of Serbia, Montenegro, and Greece. As a result, the Albanian state was about to include less than half of the original Albanian population.[270] After the events of the first Balkan War, the Serb-Albanian relations never recuperated again.

III.3.3. The First World War

The tide turned quickly in the opposite direction for the Serbs. In July 1914 after the assassination in Sarajevo of the throne successor Archduke Franz Ferdinand of Austria, Austria-Hungary declared war on Serbia, thereby triggering a world war between two large alliances. After several harsh battles with the Serbian army, Central Powers reached Kosovo in November 1915. This was directly seen by the local Albanian population as an opportunity to take revenge against the perpetrators of the 1912/13 war. The violence was now directed against the Serbs.

Between 1915 and 1918, Kosovo was divided into two different worlds. Austria-Hungary administered the northern part of the country while Bulgaria administered the southern part. In the northern part, Austria-Hungary installed an Albanian administration, claiming that this was actually not an occupation but it was rather a presence in a neutral country.[271] It can be imagined that Albanians welcomed the Austro-Hungarian troops, even offering approximately 1,000 men to fight on the Russian front.[272] During this period more than 300[273] Albanian

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[266] Ibid., 215
[267] Von Kohl and Libal, *Kosovo: gordischer Knoten des Balkan*, 34
[268] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 182-183
[269] Rathfelder, *Kosovo. Geschichte eines Konflikts*, 63
[270] Vickers, *Between Serb and Albanian: A History of Kosovo*, 84
[271] Petritsch, Kaser, Pischler, *Kosovo Kosova; Mythen, Daten, Fakten*, 98
[272] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 185
[273] Vickers, *Between Serb and Albanian: A History of Kosovo*, 92

language schools were reopened, Albanians were employed in the administration, and infrastructure was widely rebuild. On the other side, in the Bulgarian occupied territories not much has changed in contrast to the previous Serbian administration. This period entered the consciousness of the local population as the Bulgarian period, where an oppressive administration with elements of compulsory labor was installed, where the population was even languishing in famine.[274]

Soon after the Central Powers were losing on the front, Bulgarians and later Austria-Hungary retreated from Kosovo. Local Albanian population became again the main target of the advancing Serbian army. Towns of Gusinje, Plava and Gjakova were largely affected by atrocities and destruction. For example, 138 houses in the area of Pejë were destroyed, and women and children were massacred. Furthermore, 700 were killed in Rožaje, 800 in the Gjakovë region, fifteen villages in the Rogovë gorge were destroyed by canon fire. Plav and Gusinje were totally destroyed, and the Albanian population left.[275] According to an Albanian petition sent to the League of Nations, 12,371 people were killed, and 22,000 imprisoned by the Serbs in the period after the war.[276] It should be noted that even though victorious, Serbia was demographically and military devastated from the war.

III.4. Kosovo under Yugoslavia

III.4.1. The Slovene-Croat-Serb (SCS) Kingdom

Finding themselves again under a Serbian administration, parts of the Albanian population started military to oppose the Serbian rule. Under the political leadership of Hasan Prishtina and Bajram Curri, Albanians created the Kachak[277] guerilla movement. The headquarters of the movement were installed in the city of Shkodra under the Kosovo Committee name. Militarily, the Kachak movement had some 2,000 fighters, and 100,000 other adherents.[278] They conducted guerilla style attacks against the Serbian army and the Serbian administration establishments. The Serbian unarmed population and Serbian Churches were specifically defined as not being a target of the movement. The final political aim of the movement was autonomy, by putting an end to the arbitrary authority instated by the Serbian administration,

[274] Ibid.
[275] Ibid., 93
[276] Ibid., 98
[277] Kachak means rebel
[278] Vickers, *Between Serb and Albanian: A History of Kosovo*, 100

reopening of Albanian language schools, and recognition of Albanian as an official language.[279]

Oppositely, Serb reaction was twofold. First, the Kachaks were simply considered as bandits. In fact, with their rebellion, the Serbian administration seized once again the opportunity to further oppress Albanians. The flow of events was simple; Kachaks were carrying out repeated actions against Serb targets, while the Serbian army was conducting massive retaliatory actions against the Kachaks, including the civilian population. The severity of the actions can best be portrayed using the following numbers from the year 1919: 6,040 Albanians were killed, 3,873 houses were destroyed,[280] and 30-40,000[281] were forced to flee towards Albania. Kachaks were not only hunted by Serbian authorities, but they were also opposed inside Albania by the regime of Ahmet Zogu, who was under the direct influence of the Serbs. Inside the Albanian territory, Zogu successfully eliminated the main leaders of the Kachak movement. Using different methods, the Serbs, neutralized the Kachak movement in 1924. This marked the end of the military confrontation between Albanians and Serbs.

III.4.2. Colonization

It is believed that after WWI, the foremost priority of the Serbian administration was to change the ethnic makeup of Kosovo in favor of the Slavs. Therefore, as the main instrument to achieve this goal, a broad Serbian colonization and population displacement program was launched in Kosovo. The colonization process can be divided in two different stages. The first spans from 1918 to 1928, and the second from 1929 to 1941. Apart from the unsystematic departure of the population, a systematic one was implemented during the 1930s.

The first colonization efforts were already made in 1914, with generous conditions making it possible for several central figures of the Serbian state to buy large parcels of land in Kosovo.[282] Then, through the land reform after 1918, large parcels of mainly Albanian noble families, forests, non-arable lands, private and idle lands, were re-distributed.[283] Altogether, new colonists received some 100,000 hectare of land out of a total 200,000 re-distributed hectares. Slav colonists were offered 7.2 hectares (ha) of land, while the local population received only 4.1 ha of land. This offer came with various conditions for colonists. For example, they had ownership rights and the right to sell the property after 10 years, transport

[279] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 193
[280] Petritsch, Kaser, Pischler, *Kosovo Kosova; Mythen, Daten, Fakten*, 105-106
[281] Bartl, *Albanien: vom Mittelalter bis zur Gegenwart*, 194
[282] Petritsch, Kaser, Pischler, *Kosovo Kosova; Mythen, Daten, Fakten*, 108-109
[283] Ibid.

for almost everything was provided, and cheap loans were offered.[284] Approximately 330 villages and settlements with 12,689 houses, 46 schools and 2 Churches[285] were built on the main roads and other strategically important locations. In total, between 60,000[286] and 70,000[287] Colonists settled in Kosovo during both periods.

At the same time, a large number of the Albanian population left Yugoslavia between the two world wars. Many of them left under the pressure of authorities, while others left using the agreement between Yugoslavia and Turkey. The Yugoslavia-Turkey Agreement of 1938 foresaw the departure of 40,000 complex and wide Muslim families from Yugoslavia to Turkey between 1939 and 1944. Yugoslav Government made a commitment to pay 500 Turkish Pounds for every departed family. This massive population displacement was halted only due to the outbreak of WWII.[288] Analyzing this period and the number of displaced Albanians, Vickers gives the following conclusion: "It is not possible to determine the exact number of Albanians expelled from Yugoslavia until all the possible sources of data, particularly Turkish ones, can be examined. Nevertheless, data from the administrations of the Kingdom of Yugoslavia and the state of Albania, namely diplomatic records and other sources such as the record of political and religious bodies and the press, and demographic analyses, show that the total number of emigrants from Yugoslavia was between 200,000 and 300,000."[289]

It may be argued that in the short-term, the colonization program and the population displacement had succeeded in shifting the numbers in favor of the Slav population. These processes increased the proportion of the Slav population from 24% in 1919, to 38% in 1928.[290] However, due to a lack of proper medical services, bad infrastructure, lack of agricultural mechanisms, ineffective and corrupted administration, sporadic attacks, and moreover cultural differences even between the Serbs, entire families began moving back to their old homeland in the 1930's.[291] In the long-term, colonization and population

[284] Ibid., 109-110
[285] Vickers, *Between Serb and Albanian: A History of Kosovo*, 105
[286] Von Kohl and Libal, *Kosovo: gordischer Knoten des Balkan*, 44
[287] Petritsch, Kaser, Pischler, *Kosovo Kosova; Mythen, Daten, Fakten*, 109-110
[288] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 203
[289] Vickers, *Between Serb and Albanian: A History of Kosovo*, 119
[290] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 199
[291] Petritsch, Kaser, Pischler, *Kosovo Kosova; Mythen, Daten, Fakten*, 109-110

displacement in Kosovo was counterproductive and the overall efforts for Serbianization failed, not only in Kosovo but also in other parts of Yugoslavia.[292]

Besides the colonization and population displacement, during this period Albanian language was banned in schools, and from publications.[293] Integration of Albanians in the new state was simply not desired.[294] Furthermore, Yugoslavia never implemented the convention for the protection of minorities, while the League of Nations constantly failed to do anything in this matter.[295] In accordance with the plans of placing Albanians in a minority position, Kosovo was later territorially split into three Banovinas, namely, the Banovina of Vardar, Zeta, and Morava. This situation remained until 1941.[296]

III.4.3. The Memorandum of Vasa Čubrilović

In 1937, Vasa Čubrilović published a memorandum advocating the expulsion of Albanians from Yugoslavia. His memorandum became famous among the Serbian nationalists. Through his memorandum he was calling the Yugoslav government to implement different measures in the Albanian inhabited areas, which would today be understood as `ethnic cleansing`. He was arguing that this was necessary in order to reinforce the connection between Serbia, Macedonia, and Montenegro, that are disconnected through the Albanian inhabited territories. Yugoslavia should use brutal measures for the realization of this program, argued Čubrilović.[297]

In his work, he mainly criticized the Yugoslav colonization program, by calling for more concrete measures which would among others include: winning over the Muslim clergy by threats, money or mistreatment; stimulation of emigration through Turkish advertisers; use of repressive police force; financial pressures; dismissal of Albanians from public service works and repeal of working permits; demolition of Albanian cemeteries and of traditional walls surrounding Albanian houses; application of veterinary measures to harm the cattle; polygamy ban and enforcement of compulsory education for girls.[298] Albanian language was to be totally prohibited and Albanians should be expelled from schools.[299] In addition, he foresaw the armament of the Slav colonists, organization of četnik bands, and incitement of various

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[292] Sundhaussen, *Geschichte Serbiens*, 286
[293] Von Kohl and Libal, *Kosovo: gordischer Knoten des Balkan*, 42
[294] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 189
[295] Petritsch, Kaser, Pischler, *Kosovo Kosova; Mythen, Daten, Fakten*, 102-103
[296] Vickers, *Between Serb and Albanian: A History of Kosovo*, 104
[297] Sundhaussen, *Geschichte Serbiens*, 298-299
[298] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 208
[299] Rathfelder, *Kosovo. Geschichte eines Konflikts*, 64-65

provocations in order to create conflicts and riots which would be brutally suppressed by the četnik bands, and more importantly, result in entire villages being wiped out. This process would mainly be directed against the more educated and wealthier part of the population.[300]

Schmitt argues that Čubrilović´s plans did not just remain on paper: "numerous elements of his plan were implemented with different intensity, namely, shortly before WWII and then between 1945-1966 and between 1989-1999."[301] His plans became popular again in the 1980s and their renewed publications could be also regarded as a call to the Serbian authorities to use Čubrilović´s `special measures` when dealing with Albanians in Kosovo. It was argued that only with the application of such brutal measures, an Albanian `genocide` against the Serb population could be stopped in Kosovo. These and similar ideas were widespread during the late 1980´s.

To summarize, before the beginning of WWII, Kosovo was administered by a sort of colonial authority. Its Albanian population was placed under political siege, and lacked economical or cultural progress.[302] While enduring state repression, Albanians retreated to their traditional large families. It might be argued that Serbia was only interested in the territory as such, and not in its majority population. For all the above-mentioned reasons, Yugoslavia first failed in Kosovo.[303] It would not take long until the spiral of violence would again move in the opposite direction.

III.4.4. The Second World War

The invasion of Albania by Italy in 1939, and thereafter the invasion of Kosovo by central powers marked the constitution of a new situation on the national and international stage. Kosovo was soon split between the central powers. The largest part of Kosovo, Albanian inhabited areas in western Macedonia and Montenegro were formally united with the Kingdom of Albania, while remaining under Italian control. Bulgaria took the small town of Kaçanik, and Germany placed under its military administration the important Trepça mines along with its surrounding towns of Mitrovica, Vuçitërn and Podujevë.[304] In the Italian part of Kosovo, most residents were declared as Albanian citizens. Albanian schools were reopened, Albanians were incorporated in the local administration, and Albanian gendarmerie was created. Furthermore, the use of the traditional customary law `Kanun`, and the Islamic Law

[300] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 208
[301] Ibid., 209 (authors translation)
[302] Von Kohl and Libal, *Kosovo: gordischer Knoten des Balkan*, 45
[303] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 210
[304] Ibid., 212

was permitted. Once again as in WWI, Albanians regarded the occupation as an actual liberation.[305]

In the Italian occupied areas, a Greater Albania was created: "an Albania that could only be dreamed of once by the Albanian patriots" writes Bartl. Albania expanded from 28,748 km^2 to 42,469 km^2, nevertheless, retaining only limited statehood.[306] It should be noted that, fearing a reincorporation into Yugoslavia during the Italian and thereafter during the German occupations, Albanians living in parts of Yugoslavia were more willing to collaborate with the occupiers.[307] This collaboration resulted in the expulsion of the Slav colonists who settled between WWI and WWII. As many as 20,000 Colonists were forced to leave, their houses were destroyed and many of them were killed. This process was directed against the colonists, while interestingly the relations between Albanians and old inhabited Serbs were rarely marked by conflicts.[308]

Meanwhile, the Yugoslav Communists under the leadership of Tito started designing the future of Yugoslavia. At that point, regarding Kosovo, there were two main aims: to involve the Albanians in the common antifascist fight and to prepare the way for a possible incorporation of Albania into Yugoslavia, or possibly in a Balkan communist federation.[309] Albanians were not represented in the meeting of Jajce, which was the main meeting that designed the future state. Albanians, on the other side, regarded the Communist Party of Yugoslavia (CPY) as a foreign political organization. Vickers notes: "All the CPY could offer them was an undefined place in a federal Yugoslavia in which all peoples would be free and equal."[310] The Partisan struggle in Kosovo remained symbolic.

Kosovo Communists, on the other side, organized a Conference from 31.12.1943 to 02.01.1944 in Bujan, Albania. At the conference, a resolution was adopted, which foresaw the self-determination right of the Albanian people. It was argued that the Albanian people were always willing to join Albania, therefore, Albanians should preliminarily join the fight with other Yugoslav nations for an overall liberation. Tito and the CPY on the other hand, declared the resolution for null and void.[311] Shortly after the German retreat from Kosovo, an open conflict erupted between Partisans and Albanians. Partisans started an overall campaign to

[305] Petritsch, Kaser, Pischler, *Kosovo Kosova; Myten, Daten, Fakten*, 129-130
[306] Bartl, *Albanien: vom Mittelalter bis zur Gegenwart*, 228-229
[307] Ibid., 231
[308] Petritsch, Kaser, Pischler, *Kosovo Kosova; Myten, Daten, Fakten*, 133
[309] Vickers, *Between Serb and Albanian: A History of Kosovo*, 135
[310] Ibid., 123
[311] Von Kohl and Libal, *Kosovo: gordischer Knoten des Balkan*, 50-51

eliminate the collaborators, hence committing massacres against the Albanian civil population. According to Albanian sources between 36,000 and 48,000 Albanians died between 1944 and 1946;[312] however, the exact number of the dead on both sides was never discovered. One of the most terrible massacres took place in Tivar, Montenegro, where 1,670 Albanians were suffocated at once.[313]

III.5. From Discrimination to Autonomy and Backwards

III.5.1. Reestablishment of the Yugoslav state and the Ranković era

Many debates took place in the Communists circles whether Kosovo should join Montenegro, Macedonia, or Serbia. The idea that Kosovo should join Serbia clearly prevailed. However, it is interesting to quote the words of Tito´s closest adviser Edvard Kardelj while supporting the idea of Kosovo being part of Serbia: "The best solution would be if Kosovo were to be united with Albania, but because neither foreign nor domestic factors favor this, it must remain a compact province within the framework of Serbia."[314] Accordingly, the new Constitution of Yugoslavia was adopted in 1946. Kosovo was declared an Autonomous Region under the direct authority of Serbia. Vojvodina, on the other side, gained a higher status and became an Autonomous Province with an independent legislature and a supreme court. Formally, the constitution granted the protection of national minorities' rights. These rights were never applied for the Albanian population.[315]

The period between 1945 and 1966 is known among the Albanian population as the "Ranković era". A wide Serbian repression against the Albanian population marks this period. As Malcolm notes: "The first two decades of communist rule in Kosovo were particularly harsh, and the dominance of Serbs and Montenegrins in the Party and State security apparatus meant that the Albanians there still had very much a second-class position. The resentments created by this initial imbalance of power set up an oscillating dynamic of reaction and counter-reaction – Albanian reaction to the Slavs after 1966, and Slav counter-reaction in the 1980s – which made Kosovo´s internal politics all the more bitter and intractable."[316] Ranković ruled Kosovo mainly through the security apparatus, through the secret service, UDBA.[317] UDBA conducted police raids on a regular basis and opened about 50,000 criminal

[312] Vickers, *Between Serb and Albanian: A History of Kosovo*, 148
[313] Ibid., 142-143
[314] Malcolm, *Kosovo: A Short History*, 315
[315] Vickers, *Between Serb and Albanian: A History of Kosovo*, 146
[316] Malcolm, *Kosovo: A Short History*, 314
[317] Uprava Državne Bezbednosti – meaning State Security Service/Administration

files. During this period the Albanian flag was banned, and Serbo-Croat became the only state language.[318] Furthermore, Yugoslavia reopened negotiations and reached a new agreement with Turkey on the issue of population displacement. As a result of this renewed agreement and the state repression, some 240,000 ´Turks` emigrated towards Turkey within 20 years.[319] Schmitt estimates that 100,000 Albanians left Yugoslavia during this period.[320] On the other side, Colonists that were forced to leave Kosovo during WWII were mainly not allowed to return to Kosovo, and were instead directed towards Vojvodina.

Gradually things started to move more positively for the Albanian population in Kosovo. First changes emerged in 1963 where Kosovo was declared an Autonomous Province. In practice, this did not bring any significant change, on the contrary, it reinforced the dependence of the province on Serbia.[321] However, in 1966 Ranković was removed of his position, and in 1968 constitutional amendments were announced. According to the Amendments VII and XVIII, autonomous provinces of Vojvodina and Kosovo became constitutional elements of the federation, lacking only some attributes of the republics.[322] What is more important, an independent University of Prishtina was created and Albanian was recognized as an official language.[323] Thus, a new phase in the Serb-Albanian relations was appearing. On the Albanian side, the two decades of repression increased the ethno-national identity sense,[324] and after the 1968 constitutional change, a kind of euphoria characterized the Albanian population. Serbs, on the other side, observed these changes critically.[325]

III.5.2. The 1974 Constitution

The 1974 Yugoslav constitution removed Kosovo and Vojvodina from the Serbian orbit. Both provinces were granted full autonomy, including a veto right. From now on, interferences from Serbia had to pass the province´s parliaments.[326] What is more important, provinces acquired an almost republican status, having their own constitution and above all becoming equal units on the federal level.[327] Furthermore, provinces were granted direct and equal

[318] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 228-229
[319] Petritsch, Kaser, Pischler, *Kosovo Kosova; Myten, Daten, Fakten*, 138
[320] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 228-229
[321] Petritsch, Kaser, Pischler, *Kosovo Kosova; Myten, Daten, Fakten*, 137
[322] Sundhaussen, *Geschichte Serbiens*, 366
[323] Vickers, *Between Serb and Albanian: A History of Kosovo*, 170; On the University issue, a saying was circulating among the Serbian population, namelly, "uzimate im pušku a daje te im top" you are taking their rifles while giving them artillery
[324] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 228-229
[325] Ibid., 232-233
[326] Vickers, *Between Serb and Albanian: A History of Kosovo*, 178
[327] Petritsch, Kaser, Pischler, *Kosovo Kosova; Myten, Daten, Fakten*, 139-140

representation in state, party, federal parliament, and in the federal and constitutional court.[328] A national bank, a supreme court, and an independent administration were installed in the provinces. [329] The constitution characterized the provinces, as Vickers summed it: ""autonomous, socialist, self-managed, democratic, socio-political communities" in which "the nations and nationalities realize their sovereign rights.""[330]

The fact that the constitution defined Albanians only as a nationality (narodnost) and not as a nation was regarded as discriminatory by Albanians. They perceived such politics as a continuation of being regarded as second class citizens. In comparison, it should be noted that this constitution marks the first time since 1912 that Albanians were granted participation rights.[331] What they really wanted, however, was a republic as such. This, on the other hand, failed for two main reasons. First, because some feared that more independence for both provinces could thereafter move Kosovo towards Albania, and second, Serbian interests needed to be taken into account.[332]

On the other hand, Serbs in Kosovo had difficulty in accepting that Albanians were gradually taking their positions. For example, during the 1950´s Slavs represented 70% at the executive level, 50% in the industry and as party members, even though they represented only 31% of the population.[333] A possible change in these numbers was critically regarded by Serbs and Montenegrins. This was mainly because of the existence of widespread racism against Albanians among the Slav population. Slav superiority feelings started in the 19th century, while during the 1970´s and 1980´s they merely resurfaced. As a result, it was difficult for the Slavs to see more and more `inferior` Albanians represented in politics and economy.[334]

The constitution could not heal all the wounds. In economy, for example, comparing to other republics Kosovo was becoming poorer and poorer. Kosovo´s *per capita* social product compared to that of Slovenia was as follows in 1952 - 1:4,1, 1965 - 1:4,6, 1981 - 1:5,4, and 1984 - 1:6,1.[335] In 1983, Kosovo enterprises were mainly running on foreign money, secured through international credits. The overall debts were higher than the national average, summing in total 183 Million dollars. On the national investment level, *per capita*, in the first

[328] Vickers, *Between Serb and Albanian: A History of Kosovo*, 178
[329] Ibid., 179
[330] Ibid., 178
[331] Sundhaussen, *Geschichte Serbiens*, 367-368
[332] Petritsch, Kaser, Pischler, *Kosovo Kosova; Myten, Daten, Fakten*, 139-140
[333] Sundhaussen, *Geschichte Serbiens*, 367-368
[334] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 247
[335] Von Kohl and Libal, *Kosovo: gordischer Knoten des Balkan*, 70-71

40 years of Yugoslavia, the investments in Kosovo amounted to 60% compared to the national average.[336] Furthermore, the investments that reached Kosovo were mainly directed in the wrong direction, namely in the heavy industry. This type of investments created only a limited number of jobs, thus one may assume that Kosovo was economically used by other republics.[337] A foreign observer, for instance, described Kosovo as: *"*a colonial dependency ruled, neglected and exploited by Serbs*"*.[338] The gap between the poorest and the richest parts of Yugoslavia was steadily growing, both in investments and the number of unemployed people.

On the employment level, Kosovo was far behind the national average, but Slavs were also obviously privileged in employment. For example, a statistic from the year 1979 shows that only 107/1000 persons were employed in Kosovo. The national average was 253/1000, and that of Slovenia 427/1000.[339] The number of employed Albanians was much lower during the Ranković era, only during the 70´s and 80´s the proportion of employed Albanians increased.[340] To summarize, firstly, the investments in Kosovo were oriented in the wrong direction, which resulted in a massive unemployment. Secondly, in comparison with the majority population, Slavs were disproportionately more employed, and third, the high birth rate among the Albanians brought an unbearable situation in Kosovo, not only in economy but also in social relations between Albanians and Slavs. This situation peaked with the 1981 student revolt.

III.5.3. 1981 Deterioration of the Serb-Albanian relations

The spring of 1981 marks the re-deterioration of the Serb-Albanian relations in Kosovo. Poor conditions at the University of Prishtina, especially at the food canteen triggered the start of Kosovo's wide demonstrations. At the beginning, the student demonstrations were spontaneous with request to improving conditions at the University. However, the demonstrations soon evolved into a nationwide expression of dissatisfaction with the overall situation of the Albanian population in Yugoslavia. Nationalistic paroles and the name of Albanian dictator Enver Hoxha were widely praised. What began as a student revolt ended with political requests for a Republic of Kosovo. The authorities responded with excessive force and demonstrators were soon dispersed, while a several months long state of emergency

[336] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 254
[337] Hajrullahu, *Langfristiger Frieden am Westbalkan durch EU-Integration*, 66
[338] Vickers, *Between Serb and Albanian: A History of Kosovo*, 161
[339] Ibid., 187
[340] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 258

was declared.[341] Officially, it was reported that the demonstrations resulted in 11 victims, while Albanians reported that almost 1,000 were killed.[342]

The government in Belgrade declared the demonstrations as Albania´s orchestrated counterrevolution. It was claimed that the main political goal of Albanians was to unite Kosovo with Albania. Expressing his opinion on this issue, on the unification of Kosovo with Albania, Bartl interestingly argues that it was actually not in the interest of Enver Hoxha to unite Kosovo with Albania. Bartl points out that Hoxha feared that a possible unification may cause dis-balance between the Ghegs and the Tosks, thereby threatening the position of his governmental clan. Hoxha´s internationally isolated Albania did definitely not need any liberal ideas that the Kosovars may have brought.[343] Later conducted studies, which are mainly based on the declaration of those involved in the demonstrations, show that Marxist-Leninist groups that praised Enver Hoxha, were actually implicated, yet the extent remains unknown.

In Serbia, the 1981 demonstrations triggered a wide process of demonization of the Albanian population. Namely, in 1982, a group of Serbian priests launched an appeal towards the state institutions and the high ranks of the church calling for the protection of the spiritual and biological existence of the Serbian nation in Kosovo and Metohija. The appeal was accompanied by an ever growing number of different `aggressive-nationalistic` publications.[344] The exodus of the Serb population from Kosovo was presented as a national tragedy, even as genocide.[345] Furthermore, it was claimed that Albanians were systematically raping Serb women, even though statistical data shows that Kosovo had 50% fewer cases of rape than Serbia proper, while only 9.6% of this cases were interethnic in nature.[346] The systematic propaganda culminated with the publication of the memorandum of the Serbian academy of sciences and arts in 1986.

The publication of parts of the memorandum echoed in all parts of Yugoslavia. Overall, the memorandum claimed that Albanians were waging an open war against the Serb population in Kosovo. Albanians were using systematic arson, murder, rape of Serb women and the desecration of religious sites as their means. “The physical, political, legal, and cultural

[341] Petritsch, Kaser, Pischler, *Kosovo Kosova; Myten, Daten, Fakten*, 155
[342] Vickers, *Between Serb and Albanian: A History of Kosovo*, 198
[343] Bartl, *Albanien: vom Mittelalter bis zur Gegenwart*, 259
[344] Biermann, *Lehjahre im Kosovo*, 170
[345] Von Kohl and Libal, *Kosovo: gordischer Knoten des Balkan*, 93
[346] Ibid., 99

genocide of the Serb population in Kosovo and Metohija is a worse defeat than any experienced in the liberation wars waged by Serbia from the first Serbian uprising in 1804 to the uprising of 1941".[347] Analyzing the memorandum, Sundhaussen argues that the authors of the memorandum failed to correctly present the reality in Kosovo. Nothing was mentioned about the consecutive failure of the Serbian policy in Kosovo. Not even a word about the systematic discrimination of Albanians since 1913, the colonization program, assimilation attempts, population displacements, and the rigid policy of repression during the Ranković era, concludes Sundhaussen.[348]

During the second half of the 1980´s the Serbian historiography was undergoing a process of reinterpretation and revisionism. Traitors were transformed into heroes, war criminals into martyrs, the forgotten history was brought back into the memory and started to replace the existing one.[349] Under these circumstances, Serbian nationalism found a suitable ground among the losers of the economic crisis, Kosovo exiles, Kosovo-Serbs, Serbian intelligence, the orthodox church, security apparatus, disillusioned Tito-followers, and among the party and state administration members.[350] Sells argues that: "by being tied (...) of the Kosovo mythology and presented by the church, state, and media as facts" all of the above mentioned propaganda: "became impervious to factual refutation." "The myths became too powerful not to be believed."[351] However, it should be noted that it is true that Serbs were leaving Kosovo during this period. The main factors, however, that caused the Serbian emigration were among others, the difficult economic and social situation,[352] loss of their privileged position, and the anti-Serbian atmosphere among the Albanian population.[353]

This period of the Kosovo history opened a new chapter in the Serb-Albanian relations where the rise of Slobodan Milošević marked its peak. The above described events and the creation of a new deteriorated situation: "Led to a fundamental realignment of politics in Serbia and the growth of dangerous, defensive, populist, and officially sanctioned nationalism", claims Mertus.[354] From this opaque situation, Milošević arose as the perfect man to guide the Serbian nation through this crossroad. His career received the necessary boost in the small town of

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[347] Sundhaussen, *Geschichte Serbiens,* 395
[348] Ibid., 397-398
[349] Ibid., 21
[350] Biermann, *Lehjahre im Kosovo,* 174
[351] Michael A. Sells, "Vuk´s Knife: Kosovo, the Serbian Golgotha, and the Radicalization of Serbian Society," in *Kosovo: Contending Voices on Balkan Interventions,* ed. William Joseph Buckley (Grand Rapids and Cambridge: Wm. B. Eedermans Publishing Co., 2000), 138
[352] Petritsch, Kaser, Pischler, *Kosovo Kosova; Myten, Daten, Fakten*, 153
[353] Sundhaussen, *Geschichte Serbiens*: *19.-21. Jahrhundert*, 399
[354] Mertus, *Kosovo: How Myths and Truths Started a War*, 7

Fushë Kosovë. There, Milošević spoke to a mass of protesting Serbs, expressing his famous statement `No one should beat you`, which catapulted him later on the top of Serbian politics. This very moment was captured by camera, and this, according to Biermann marks the moment of Milošević ´s `Mutation`.[355] `Mutation`, because it is widely held that at this moment Milošević "saw the future – his future",[356] consequently conversing from a communist to a nationalist. He simply misused Kosovo-Serbs for his own interests, to obtain power.[357] In order to form his nationalistic and racist propaganda, he used a combination of myths, victimization, and aggressiveness.[358]

Interestingly, only two months after the events of Fushë Kosovë, Milošević publicly denounced the memorandum, calling it as `nothing but the darkest nationalism`.[359] However, a year later, using nationalistic tones he spoke in front of a large mass of his supporters, declaring that it was: "no time for sorrow but a time for struggle."[360] Furthermore, in 1989, during the 600th commemoration of the Battle of Kosovo, he gave the following nationalistic message to all the Yugoslav nations: "We are being again engaged in battles and are facing battles. They are not armed battles, although such things cannot be excluded yet." Analyzing his conversion, Judah points out: "Milosevic has proved past master at telling people what they want to hear and, in this way, enlisting their support."[361]

III.6. A Decade of Repressive Policy

III.6.1. Abolition of autonomy

Kosovo's Albanians have enjoyed wide political and cultural autonomy from 1974 to the rise of Milošević, and as Vickers notes, this autonomy is the most progressive achievement in their entire history.[362] During 1987, Milošević first managed to `clear` the Kosovo party committee, then police and justice were put under direct federal control, and finally, Azem Vllasi and Kaqusha Jashari, as the leaders of Kosovo Albanians, were replaced by Milošević ´s puppets.[363] The situation culminated when, under the siege and enormous pressure by security forces, on 23 March 1989 the Parliament of Kosovo approved the constitutional

[355] Biermann, *Lehjahre im Kosovo,* 178
[356] Tim Judah, "A Brief History of Serbia," in *Kosovo: Contending Voices on Balkan Interventions,* ed. William Joseph Buckley (Grand Rapids and Cambridge: Wm. B. Eedermans Publishing Co., 2000), 95
[357] Ibid.
[358] Sundhaussen, *Geschichte Serbiens,* 407
[359] Tim Judah, *Kosovo: War and Revenge* (New Haven and London: Yale University Press, 2000), 50
[360] Ibid., 33
[361] Ibid., 50
[362] Vickers, *Between Serb and Albanian: A History of Kosovo*, 217
[363] Petritsch, Kaser, Pischler, *Kosovo Kosova; Myten, Daten, Fakten*, 175

changes that wiped out the autonomy of Kosovo. At this point of time, Milošević was on his career peak, while the Serbs widely celebrated the `reunification` and the success of Milošević.[364]

Reacting to the violent changes, the Trepca miners started a march from Mitrovica to Prishtina, which was soon accompanied by wider masses of the Albanian population. The events evolved into large popular protests and the masses demanded for restoration of the 1974 constitution.[365] Protests were ineffective and Serbs responded by replacing Albanian workers within the public sector with Serb and Montenegrin ones. On the legal level, Serbia passed the "Program for Attainment of Peace, Freedom, Equality and Prosperity of the SAP of Kosovo" and an accompanying ninety-four-point "Operational Plan". The government of Kosovo, economy, health services, education, judicial and administrative functions, were all put under direct Serbian control.[366] Serbia reverted its constitutional principles to the 1963 federal constitution, while the 1968/71/74 constitutional provisions were nullified.[367] Schmitt claims that by applying such extreme measures Serbia was actually waging a cultural war against a part of its citizens.[368] Alternatively, Albanians were lacking any means to initiate an armed struggle, putted they placed their bids into a passive Gandhian style resistance, about which Judah remarks: "It was an extraordinary experiment and it failed."[369]

III.6.2. The passive resistance

Albanian reactions to the abolition of autonomy were expressed in form of mass protests and political actions. First, the Albanian members of the Kosovo parliament on 2 July 1990 declared Kosovo as a Republic within the Yugoslav Federation. Further, on 7 September 1990, they approved a new constitution, and finally, in 1991, after a referendum, Kosovo declared independence, even from Yugoslavia. On the other side, Serbian authorities declared these steps as invalid and legally not binding. They took over what has remained of the government and declared a permanent state of emergency.[370]

A significant political change in Kosovo started on 23rd December 1989, with the emergence of the Democratic League of Kosovo (Lidhja Demokratike e Kosoves – LDK). LDK emerged as a new democratic alternative, not only as a political party, but more as a general Albanian

[364] Rathfelder, *Kosovo. Geschichte eines Konflikts*, 84-85
[365] Petritsch, Kaser, Pischler, *Kosovo Kosova; Myten, Daten, Fakten*, 175
[366] Mertus, *Kosovo: How Myths and Truths Started a War*, 199-200
[367] Vickers, *Between Serb and Albanian: A History of Kosovo*, 235
[368] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 314
[369] Judah, *Kosovo: War and Revenge*, 59
[370] Petritsch, Kaser, Pischler, *Kosovo Kosova; Myten, Daten, Fakten*, 181-182

movement. Dr. Ibrahim Rugova, a writer, was elected head of the LDK, and soon after as the President of the Republic of Kosovo. LDK became the dominant force after having won every election convincingly within the political scene. After the autonomy abolition, Albanians started boycotting Serbian institutions, thereby creating their own alternative institutions with a parliament, government, educational and health system. These institutions were financed by the 3% fund, means collected within the Albanian diaspora. These institutions became known as the `Shadow State`, and officially a passive resistance against the Serbian regime was declared.

In education, elementary, secondary, and university level were organized. In 1998, for example, educational parallel institutions were visited by 266,413 primary school pupils, 58,700 secondary school pupils and 16,000 university students.[371] In the health sector, many Albanian doctors remained within public institutions, while others went over to the parallel health sector. An important role was also played by the NGO Mother Theresa which provided the population with free medical treatment and medications. Until 1998, Mother Theresa has managed to create 91 clinics.[372] Albanians also started organizing themselves economically. They founded a large number of private small family businesses, intensified the work within the agricultural sector, and the labor migration was having a positive impact on the struggle for economic survival. So, for example, the number of small businesses increased from 1,733 in 1987 to more than 18,000 in 1995. Nevertheless, lacking any perspectives within Kosovo, some 400,000 Albanians left the country during these years.[373]

With the beginning of wars in Croatia and Bosnia, ideas of an armed resistance started to circulate. Neglecting every pressure, Rugova remained stable in his argumentation for a peaceful resistance, stating the following: "we would have no chance of successfully resisting the army. In fact the Serbs only wait for a pretext to attack the Albanian population and wipe it out. We believe it is better to do nothing and stay alive than to be massacred."[374] During this period, his policy was based on three main principles, as summed by Malcolm: "to prevent violent revolt; to "internationalize" the problem, which means seeking various forms of international political involvement (ranging from diplomatic mediation to the setting up of a UN Trusteeship over Kosovo); and to deny systematically the legitimacy of Serbian rule, by

[371] Judah, *Kosovo: War and Revenge*, 71
[372] Robert Pischler, „Parallelgesellschaftliche Strukturen im Kosovo (1989-1999)," in *Kosovo, Wegweiser zur Geschichte*, eds. Bernhard Chiari and Agilolf Keßelring, (Paderborn, München, Wien, Zürich: Verlag Ferdinand Schöningh, 2006), 156
[373] Ibid., 159
[374] Judah, *Kosovo: War and Revenge*, 61

boycotting elections and census and creating at least the outlines of the state apparatus of a Kosovo "Republic.""[375]

It might be argued that Rugova´s strategy was obviously not a long-term one to terminate the Serbian occupation of Kosovo. It was simply `Realpolitik`, argues Biermann.[376] He further states that Rugova pushed the problems for another time, waiting for a better future. He was using a policy of almost no initiative, thus failing to somehow internationalize the Kosovo problem.[377] Judah, on the other hand, correctly noticed that: "Instead of trying to mount a violent insurrection to realize this independence, the party began to simulate it in the hope that, by force of demographic and other pressures, Kosovo would, one day, simply drop into Albanian hands like a ripe fruit."[378] Finally, the overall dissatisfaction emerged as the issue of Kosovo failed to land on the Dayton peace talks table. Albanian illusions of internationalizing the conflict vanished, and an armed resistance became inevitable.

Rugova´s policy was gradually starting to be publicly criticized by various political factors within Kosovo. He was accused of being `undemocratic` and too passive. He was not even using peaceful forms of protest.[379] The Kosovar political scene constantly urged him to do something, while he simply remained in a `form of political paralysis`, as Judah calls it. He further points out that: *"*He drove around Prishtina in his presidential audi and simply did nothing."[380] Surroi, a well-known politician of the time, recalls this period as being a period of `collective illusion` amongst the Albanian population.[381] The population was not accepting the Serbian rule, and on its place they were willing to accept an illusionist reality.[382] People simply believed that Kosovo is independent and that it has its own institutions, waiting only for international recognition. This situation of `collective illusion`, continues Surroi, was not accepted by a small clandestine group, who took the arms determined to realize this independence through other means.[383]

On the eve of the war, Kosovo was under a repressive regime, in a quasi-apartheid situation. The Serbian army, police, paramilitary groups, and even armed Serb civilians were systematically harassing the Albanian population. Human rights abuses were reported on a

[375] Malcolm, *Kosovo: A Short History*, 348
[376] Biermann, *Lehjahre im Kosovo*, 207
[377] Ibid., 221
[378] Judah, *Kosovo: War and Revenge*, 66
[379] Biermann, *Lehjahre im Kosovo*, 519
[380] Judah, *Kosovo: War and Revenge*,138
[381] Veton Surroi, *Ambasadori i Melkizedekut*, (Prishtinë: Botimet Koha, 2015), 14
[382] Ibid., 15
[383] Ibid., 25

daily basis and Rugova´s peaceful policy failed. In order to successfully internationalize the issues in Kosovo, it was widely believed that it was necessary to show bloodshed through TV screens in the west. Von Kohl argues that bloodshed in Kosovo was not lacking, it was only the pictures were absent from the media.[384] She goes further, by asking the vital question "After almost ten years of an unnoticed passive resistance, which other choices besides violence had remained to the Kosovo-Albanians?"[385] Kosovo slowly slid into another period of interethnic violence.

III.7. War as a ´Normal´ Outcome

It is now widely known that the Albanian armed resistance already started in the beginning of the 1990´s with a very limited extent. Judah maintains that during this period the small created guerilla group: "had no discernible impact whatsoever", they only became targets for the Serbian security apparatus to: "catch, kill and put on trial relatively small groups, whom it could accuse of terrorism."[386] This small group of armed men became later known as the Kosovo Liberation Army (KLA).[387] KLA counted about 150 active armed men up to 1997.[388] It was a slowly growing organization, however, this situation was about to change as a consequences of two main events.

First, the collapse of the Albanian state in 1997 created a favorable situation for the KLA. This collapse created the opportunity for the KLA to smuggle larger amounts of arms and ammunitions into Kosovo, and to freely use the Albanian territory for different military trainings and preparations for a larger insurrection. The second event was the massacre of the Jashari family during March 1998. This event caused a mass compassion amongst the Albanian population, triggering ever larger masses to join the ranks of the KLA. On the political side, Rugova and his affiliates failed to redesign their peaceful resistance in favor of the armed uprising. LDK was not only ignoring the changing situation, but Rugova was also publicly declaring that the KLA may actually be a `Serbian strategy`.

Pettifer and Vickers describe with the following words the evolution of the Kosovo war:

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[384] Christine Von Kohl, „Hätte der Kosovo-Krieg verhindert werden können? Skizzen verschiedener Antworten," in *Kosovo und die Folgen, Völkerrecht und Friedenspolitik im Zeichen des Kosovo-Konfliktes*, eds. Franz Leidenmühler und Reiner Steinweg (im Auftrag der Friedensinitiative der Stadt Linz/Donau, Meinhardt, 2000), 79

[385] Ibid., 82 (authors translation)

[386] Judah, *Kosovo: War and Revenge*, 113

[387] In Albanian: Ushtria Çlirimtare e Kosoves (UÇK)

[388] Judah, *Kosovo: War and Revenge*, 118

> *"*The Kosova conflict developed in the "phoney war" stage as a classic Balkan conflict, with parallel discourses in play, that of the "official" understanding of events, where an army represented a sovereign state that was under threat from a terror campaign run by Marxist militants, and the actual war, where local rural communities were trying to free themselves from a terrible and genocidal regime. However, as in all wars, it took time for the local and international media to develop a better popular understanding of what was actually happening."[389]

It can be imagined that the KLA was not militarily able to defeat Serbian units. For this reason, the KLA was following a `pinhole strategy`, as Biermann calls it, namely, to provoke and retreat. The ultimate goal of the KLA, continues Biermann, was to breach the political will of Belgrade. It was more a psychological than a physical war. KLA was using it simply as a `communication strategy`.[390] It didn't take long for the Serbian forces to massively intervene in a bid to ultimately eliminate the KLA. In their summer offensive of 1998, Serbian forces successfully penetrated the territory held by the KLA, thus pushing KLA soldiers to withdraw in other parts of the country. Judah concluded about this military operation that: "The offensive turned out to be a complete disaster for the Serbs." Pictures of burning villages and fleeing refugees reached the world media screens. This new created situation: "was to have an extraordinary impact in galvanizing Western opinion in favor of doing "something"."[391]

`Something` was indeed moving. During autumn a cease-fire was agreed and OSCE deployed a verification mission. Apart from spontaneous fire exchanges it was a relatively quiet period. The whole situation was about to change on 16th of January 1999. In the small village of Reçak, a group of Albanian civilians were found massacred and thrown into a ditch. William Walker, the head of the OSCE mission in Kosovo was soon at the scene. After analyzing the situation he characterized the scene as a massacre and a crime against humanity. Walker was accompanied by a large group of media representatives. Pictures of the massacre reached large masses all around the world, thereby bringing back the horrible scenes of the war in

[389] James Pettifer and Miranda Vickers, *The Albanian Question: Reshaping the Balkans*, (London, New York: I.B. Tauris, 2007), 110
[390] Biermann, *Lehjahre im Kosovo*, 541
[391] Judah, *Kosovo: War and Revenge*, 171

Bosnia.[392] This was simply unacceptable, the more so because the Serbs were involved, both in Bosnia and now in Kosovo.

The Reçak massacre triggered the international community to act. It came the final turn on diplomacy. Two international conferences were organized in Ramboillet, France. The first being from 6 February to 23 February while the second from 15 March to 18 March 1999. The first conference was characterized by indirect Serb-Albanian negotiations under an international mediation with no concrete results. The second one was considered to be a legitimizing process for the planed NATO bombardment of Yugoslavia.[393] Kissinger would later claim that: "Rambouillet was not a negotiation – as is often claimed – but an ultimatum."[394]

During the Rambouillet negotiations the main requests of both sides were ignored. On the one side, Albanians were not granted the right of a referendum,[395] while the Serbs, on the other side, were urged to accept a document that would allow a free movement of NATO within the whole of Yugoslavia. Under international pressure, Albanians signed the draft-agreement but Serbs refused to sign. As a consequence, NATO started an air campaign against Yugoslavia which lasted from 24 March to 9 June 1999. According to Pettifer and Vickers, this was only possible after a united Anglo-American effort to overcome the "Serbo-centric world views of the "Old Europe" component of the organization."[396]

Serb forces started a wide campaign of ethnic cleansing, accompanied with killing, burning, raping, and expelling of the Albanian civilian population. Milošević was trying to win time. He was hoping that either NATO would split, that the conflict would spread into Macedonia and Bosnia, or that the Russians would help in one or another way. Nevertheless, Milošević had to give up his efforts. All of his predictions have failed.[397] The air campaign and KLA actions brought the Yugoslav army to an agreement which resulted in a total withdrawal of all the Yugoslav security forces from Kosovo. On 10 June 1999 the United Nations Security Council adopted the resolution 1244, thus creating the conditions of an international civilian and military presence in Kosovo. "The fate of the Albanian nation would be decided far away

[392] Pettifer and Vickers, *The Albanian Question: Reshaping the Balkans*, 188
[393] Ibid., 202
[394] Henry A. Kissinger, "Kosovo and the Vicissitudes of American Foreign Policy," in *Kosovo: Contending Voices on Balkan Interventions,* ed. William Joseph Buckley (Grand Rapids and Cambridge: Wm. B. Eedermans Publishing Co., 2000), 297
[395] Elizabeth Allen Dauphinee, "Rambouillet: A Critical (Re)Assessment," in *Understanding the War in Kosovo*, eds. Florian Bieber and Židas Daskalovski (London: Frank Cass Publishers, 2003), 108
[396] Pettifer and Vickers, *The Albanian Question: Reshaping the Balkans*, 174
[397] Judah, *Kosovo: War and Revenge*, 279

from the Albanian lands, as had so often happened in the past"[398] concluded Pettifer and Vickers.

During the war in Kosovo, including the first phase of the international administration, between the years 1998 and 2000, some 13,548 persons disappeared or were killed.[399] The victims were as follows: 10,820 Albanians, 2,199 Serbs, 76 Montenegrins, 276 Roma, Ashkali, and Egyptians (RAE), 95 Bosniaks, 10 Turks, 14 Gorani, and 58 from other ethnic backgrounds.[400] Even with the arrival of the international forces, the violence against those accused of collaboration continued.[401] As a result of this violence, approximately 65,000 Serbs left Kosovo.[402] Montenegrins and many Roma families left as well. These statistics best demonstrate the level of war destruction, even more, it shows that the war affected all communities in Kosovo. Finally, it also shows that the inter-ethnic relations in Kosovo were damaged almost irreparably.

[398] Pettifer and Vickers, *The Albanian Question: Reshaping the Balkans*, 200
[399] http://www.kosovomemorybook.org/?page_id=48&lang=de, Data gathered and published by the Humanitarian Law Center, accessed online on 01.03.2017
[400] Ibid.
[401] Judah, *Kosovo: War and Revenge*, 290
[402] Bieber points out that in comparison to the UNHCR and Serbian records, the number presented by the study of the European Stability Initiative comes closer to the real number, see Florian Bieber, "The Serbs of Kosovo," in *Civic and Uncivic Values in Kosovo : History, Politics, and Value Transformation*, eds. Sabrina P. Ramet, Albert Simkus, and Ola Listhaug (Budapest: Central European University Press, 2014), 186

CHAPTER IV: INTERNATIONAL ADMINISTRATION - UNMIK

The Military Technical Agreement made between Yugoslavia and NATO at Kumanovo marked the end of the war in Kosovo. In addition, this agreement also marked the beginning of the ultimate withdrawal of Serbian authorities from Kosovo. It was not just the withdrawal of military, paramilitary, and police presence, but also of the general state administration and large parts of the civilian population. This newly created situation opened the way for the establishment of the International Administration in Kosovo, widely known as United Nations Interim Administration Mission in Kosovo - UNMIK.

The civil and military aspects of the new mission were cemented on 10 June 1999, as part of the United Nations Security Council Resolution 1244. On the military level this resolution, has established an international military presence in Kosovo, and named as the Kosovo Force - KFOR, led by NATO troops. In a detailed and synchronized process, as envisaged in the resolution, NATO troops entered Kosovo from Albania and Macedonia. Consequently, Kosovo has been militarily divided into 5 main security zones, each controlled by a major NATO Country. The western region was controlled by Italy, the southern region by Germany, the eastern region by the United States, the northeastern region by Great Britain, while the problematic northern region with a large Serb population was controlled by France.

Alternatively, the establishment of the civil mission, was been assigned to the Secretary General of the United Nations.[403] The goal of the mission, as prescribed in paragraph 10 of the resolution was: "to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo".[404] The mission attained authority to firstly, establish substantial autonomy and self-government while performing basic civilian administrative functions. Furthermore, the mission was authorized to create democratic institutions and to start a gradual process of transferring the powers. An emphasis was also made on the economic and

[403] UNSCR 1244, 10 June 1999, para. 10
[404] Ibid.

infrastructural rehabilitation, humanitarian aid, protection and promotion of human rights, returning of refugees and the establishment of a local police force. Finally, on the political level, the resolution laid down the basis for future proceedings for the determination of the future status of Kosovo. The process of establishment was determined on the basis of the Rambouillet Agreement.[405]

Special Representative of the Secretary General (SRSG) who will also act as the head of the mission was assigned with all the authority vested in UNMIK, as described in the first issued regulation: "All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General."[406] In other words, the SRSG had the power to appoint or to remove any person from a public function,[407] thus receiving a key role as the guardian of the UNSCR1244.

UNMIK was involved in one of the most complex missions since the creation of the United Nations. On an organizational level, it established four different pillars, which were administered by four different organizations. The first pillar was initially administered by the United Nations High Commissioner for Refugees (UNHCR) dealing accordingly with humanitarian return. Adapting to the new situation, the same pillar was renamed in mid-June 2000 as the Rule of Law pillar. The second pillar was administered by the United Nations which managed the civil administration. The third pillar was administered by the Organization for Security and Cooperation in Europe (OSCE) which managed the process of democratization and institution building. Finally, the fourth pillar was administered by European Union, which managed the reconstruction process and economic development. All of the four pillars were led by the SRSG, whereas each pillar's head was also automatically exercising the function of a deputy SRSG.

With the introduction of the regulation 1999/24, UNMIK has determined two sources of law to be applicable on the territory of Kosovo. The first applicable laws, with a priority position over the second one were: "The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder", while the second ones were all the laws in force in Kosovo on 22 March 1989. In the same way, this regulation

[405] Ibid., para. 11
[406] UNMIK/REG/1999/1 on the Authority of the Interim Administration in Kosovo, 25 July 1999, see sec. 1.1
[407] Ibid., see sec. 1.2

determined the automatic application of internationally recognized human rights standards.[408] Laws promulgated by the Assembly of Kosovo were also later added to the legal system.

One of the main goals of UNMIK, as envisaged in the UNSCR 1244, was the establishment of self-governing institutions. A gradual decentralization process, empowerment of local actors and self-governing institutions was to take place. The initial idea, reasonably, was to integrate current institutions, such as the provisional government and the presidential office, into a new governing system. Furthermore, these new governing bodies were to include representatives of the minority population, especially representatives of the Serb community. As a result, on the central level, a Joint Interim Administrative Structure (JIAS) was created "to share provisional administrative management with UNMIK",[409] while at the same time the Kosovo Transitional Council (KTC) received the role of a consultative body.[410] In addition, different administrative departments have been established, playing essentially a similar role to ministries.[411] Above all, the creation of a Local Administration Department[412] marked one of the first steps towards the building of a new local governance system in Kosovo. This system established the Municipality as the local government unit.

IV.1. The Formation of the Local Governance System

Kosovo during Yugoslavia, as all the other Republics, was divided into municipalities. These municipalities were the main institutions of local governance.[413] In 1981 Kosovo had 22 Municipalities. The organization of these municipalities was based on an administrative concept. According to the 1981 census 8 municipalities had an Albanian majority of more than 90%. Only one municipality, Leposavić, had a Serb majority. The municipality of Dragash was almost equally inhabited by Albanians (53%) and Muslims (45%). The 12 remaining municipalities had a multi-ethnic character. In these municipalities Albanians formed the majority, while other minority communities formed a significant part of the population.[414] Between 1981 and 1999 eight more municipalities were established, of which four had a Serb majority while the other four had an Albanian majority. UNMIK did not

[408] UNMIK/REG/1999/24 On the Law Applicable in Kosovo, 12 December 1999, see sec. 1.1 and 1.3
[409] UNMIK/REG/2000/1 on the Kosovo Joint Interim Administrative Structure, 14 January 2000, see sec. 1(a)
[410] Ibid., see sec. 2
[411] Ibid., see Annex of the Regulation
[412] UNMIK/REG/2000/9 on the Establishment of the Administrative Department of Local Administration, http://www.unmikonline.org/regulations/unmikgazette/02english/E2000regs/RE2000_09.htm accessed online on 29.10.2016
[413] Helmut Krammer, Vedran Džihić, *Die Kosovo-Bilanz, Scheitert die internationale Gemeinschaft?* (Wien: 2. Auflage, LIT Verlag, 2006), 76
[414] Savezni zavod za statistiku, *Nacionalni Sastav Stanovništva SFR Jugoslavije, Knjiga I, Podaci po Naseljima i Opštinama* (Štampa: IŠP „Savremena administracija", Beograd, 1991)

change this fact, and while determining the number, names and municipal boundaries, UNMIK adopted the already existent situation, thereby dividing Kosovo into 30 municipalities. All municipalities have been specifically named and listed in Albanian and Serbian under the Regulation 2000/43. Municipal boundaries have been defined based on their component cadastral zones, accordingly described within the same Regulation.[415] The following have been named as the thirty municipalities of Kosovo:

No.	Albanian	Serbian	No.	Albanian	Serbian	No.	Albanian	Serbian
1	Deçan	Dečani	11	Mitrovicë	Mitrovica	21	Skenderaj	Srbica
2	Gjakovë	Đakovica	12	Leposaviq	Leposavić	22	Shtime	Štimlje
3	Gllogovc	Glogovac	13	Lipjan	Lipljan	23	Shtërpcë	Štrpce
4	Gjilan	Gnjilane	14	Novobërdë	Novo Brdo	24	Suharekë	Suva Reka
5	Dragash	Dragaš	15	Obiliq	Obilić	25	Ferizaj	Uroševac
6	Istog	Istok	16	Rahovec	Orahovac	26	Viti	Vitina
7	Kaçanik	Kačanik	17	Pejë	Peć	27	Vushtrri	Vučitrn
8	Klinë	Klina	18	Podujevë	Podujevo	28	Zubin Potok	Zubin Potok
9	Fushë Kosovë	Kosovo Polje	19	Prishtinë	Priština	29	Zveçan	Zvečan
10	Kamenicë	Kamenica	20	Prizren	Prizren	30	Malishevë	Mališevo

Figure 2:Names of Kosovo Municipalities (Source: UNMIK Regulation 2000/43)

With the first local government reform introduced in 2005, five new municipal units in the form of a pilot project were established[416] and these new units later became municipalities. This reform was managed in accordance with the decentralization principles, and as such, it brought the local government nearer to the people. In addition, one of the main ideas was to further integrate minorities into the local governance system. Through this process, three new municipalities with a minority population were created: the first one, Mamushe, with a Turkish majority, while the second and third ones, Gračanica and Parteš, with a Serb majority population. To balance this reform, UNMIK established also two more Albanian majority municipalities, Junik and Hani i Elezit.

Considering the situation at the local municipality level, the ultimate authority similar to the central level, was vested in a Municipal Administrator (MA). MA was also the head of the Municipal Administrative Board (MAB), which was the main administering body within the municipality. Members of the MAB were to be appointed by the MA, and they could, for example serve, as Presidents, Vice-Presidents or Heads of Departments. Alternatively, citizens of the municipality were represented in a consultative body, the Municipal Council

[415] UNMIK/REG/2000/43 on the Number, Names and Boundaries of the Municipalities, 27 July 2000
[416] Administrative Direction No. 2005/11 on Pilot Projects Implementing UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo, 25 July 2005

(MC). Members of the Council were also appointed by the MA.[417] The new regional administration concept was also introduced.

UNMIK established five regional offices who´s final purpose was to facilitate the administration and communication between different institutions within Kosovo. These regional offices were represented by Regional Administrators, and their goal was to facilitate the coordination between UNMIK Head Quarters in Prishtina and the municipalities.[418] The improvement of administration through a regional concept, and the facilitation of communication between the central, regional and local institutions remained only desirable. The implementation of this strategy has only been successful initially, during the establishment process of local institutions. After the completion of this process, regional offices became obstacles for communication between central and local governments. UNMIK continually failed to change this situation.[419]

The above described municipal administrations, as an interim measure, remained in force until the first local elections were held, and after which the municipalities have approved their own statutes and rules of procedure.[420] The section bellow describes institutions which replaced the interim administration measures on the local level.

IV.1.1. Regulation 2000/45 on Self Government of Municipalities in Kosovo

UNMIK introduced the Regulation 2000/45 as the legal basis for local governance during preparation for the first election at the local level which were held by the end of 2000 in Kosovo. This Regulation created: "provisional institutions for democratic and autonomous self-government at the municipal level",[421] stipulating local governance institutions, and determining their rights and obligations. These institutions have been accorded the right to: "exercise all powers not expressly reserved to the Central Authority."[422] These powers among others included: Local economic development, urban and rural planning and building, different licensing, environment protection, infrastructure and service delivery, education,

[417] UNMIK/REG/2000/1 on the Kosovo Joint Interim Administrative Structure, see sec. 8
[418] Dina Rossbacher, *Friedenssicherung – am Beispiel der Interimverwaltung der Vereinten Nationen im Kosovo (UNMIK), Die Zivilverwaltung als neue Form der Friedenssicherung* (Hamburg: Schriften zur internationalen Politik Band 7, Verlag Dr. Kovač, 2004), 191
[419] Ibid., 192-193
[420] UNMIK/REG/2000/45 on Self-Government of Municipalities in Kosovo, 11 August 2000, see sec. 46
[421] Ibid.
[422] Ibid., see sec. 2

primary health and social care, public health, renaming of public places, and different activities within the tourism, cultural, sports, and youth sector.[423]

Furthermore, municipalities were granted the right to further decentralize their powers to lower units such as villages, settlements and urban quarters, also known as sub-municipal units. Those powers could have been implemented only in cooperation with the municipality or the central authority.[424] These sub-units were similar to the old `bashkësia lokale` or `mesna zajednica`.[425] Apart from the establishment of local sub-offices of the municipal administration, interestingly, this was, and still remains, one of the most neglected part of the local governance system. Co-operations and policy implementation processes between the municipal and lower levels of government are actually not being used as an asset to improve local governance. This process has been politically misused by local elites, in order to install political affiliates on the lower levels, who on the other side, served them in different ways during elections and afterwards. Political changes on the municipal level triggered political changes on the level of the sub-municipal units. This situation created political conflict, inconsistency, and mismanagement. A more transparent and comprehensive process, could have turned this situation, from a weak spot into a more democratic, decentralized, and better managed system of local governance. In other words, these units should have been granted full autonomy in choosing their representatives. In short, a broad inclusion of lower units of governance into municipal affairs is not only necessary, but it is also crucial for the decentralization process and the application of the subsidiarity principle.

The following is a brief description of the main institutions on the local level. These main institutions were: The Municipal Assembly, President and Deputy Presidents, and the Chief Executive Officer and the Board of Directors.

a) The Municipal Assembly – has been named as the principal organ of local government. It represented the citizens of the municipality, who were granted the right to directly elect the assembly. The numbers of the members of the municipal assembly have been set in accordance with the population numbers of each municipality. Prishtina, for instance, as the capital city had 51 members of the municipal assembly, eight municipalities had 41 members, twelve municipalities had 31 members, four had 21 members, while the smallest municipalities, five of them, had only 17 directly elected representatives in the municipal

[423] Ibid., see sec. 3
[424] Ibid., see sec. 5
[425] Krammer and Džihić, *Die Kosovo-Bilanz*, 77

assembly.[426] In the chart below, it can be seen that Kosovo´s municipal map was dominated with 40% by medium size municipalities.

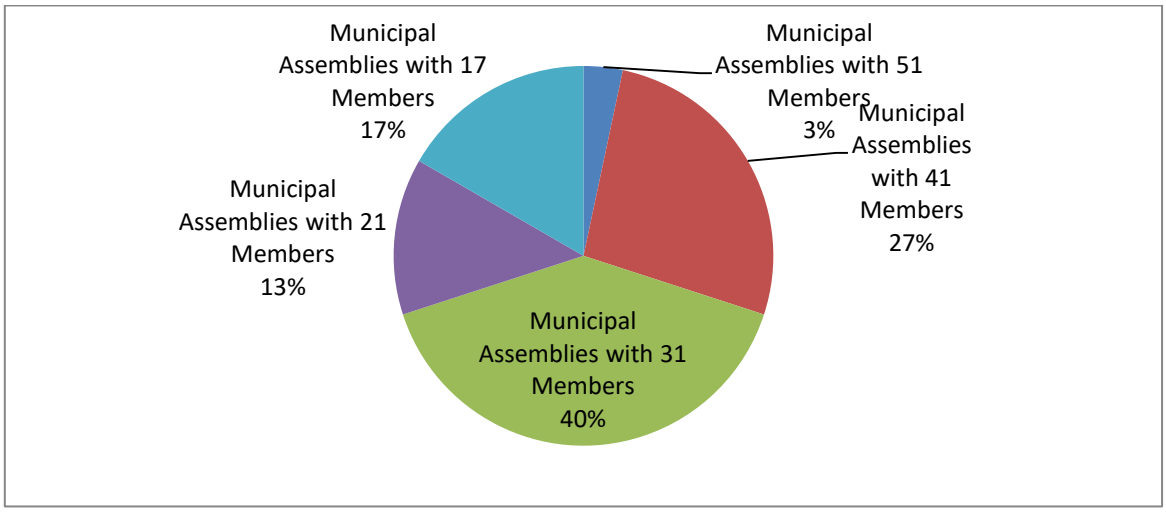

Figure 3: Municipalities according to their municipal assembly members (Source: Regulation 2000/45)

The municipal assembly within its competence, elected the president of the municipality, appointed the chief executive officer and the board of directors, issued regulations and budget approvals.[427] The president of the municipality was also the chairman of the municipal assembly.[428] With regard to sub-organs of the municipal assembly, at least three committees functioned within the assembly: the Policy and Finance Committee, the Communities Committee and the Mediation Committee. In the same way, functionalization of other relevant committees by the assembly was allowed.[429]

b) The President and Deputy Presidents – The President and the Deputy Presidents of the Municipality were elected by the municipal assembly, from members of the assembly. A Community Deputy President was also appointed by the municipal assembly, however, only in municipalities where minority communities constituted a part of the population.[430] The president played an executive role, even though only as a supervisor.

c) Chief Executive Officer and the Board of Directors – The Chief Executive Officer has been proposed by the president and appointed by the municipal assembly. The CEO played the central role within the executive branch of the municipality. CEO acted mainly as a municipal assembly secretary, the chairman of the board of directors and as the chief of staff

[426] UNMIK/REG/2000/45 on Self-Government of Municipalities in Kosovo, 11 August 2000, see sec. 10
[427] Ibid., see sec. 11
[428] Ibid., see sec. 13
[429] Ibid., see sec. 21
[430] Ibid., see sec. 24 and 25

of the municipality.[431] As for the board of directors, it was represented by managers of different municipal departments. Managers, or better known as directors, were also appointed by the municipal assembly.[432]

Analyzing the positions and functions of local government bodies described above, it may be argued that UNMIK created a system that resembled a parliamentary democracy. For instance, in a parliamentary democracy, citizens elect the parliament, which elects the president and the government. Similarly, on the municipal level, the citizens elected the local legislative body, the municipal assembly. The municipal assembly elected the president of the municipality, who was accorded a more passive, ceremonial role. The municipal assembly also appoints the local government - the board of directors, as described above. The local government is headed by the central executive officer (CEO), similar to a prime minister on a state level, and by the board of directors. Directors manage certain departments within a municipality, similar to ministers on the central level. As the local government obtains its democratic legitimacy and has to report to the municipal assembly, the later constituted the main political body on the municipal level.

With reference to the SRSG, it remained the ultimate authority on both levels of government. Specifically on the local level, the SRSG could nullify any decisions taken by local institutions. The SRSG has been accorded the right to co-opt new members within the municipal assembly, dismiss members of the civil service or members of the municipal assembly, and the SRSG could, above all, dismiss the municipal assembly as a whole.[433] In the same way, the municipal administrator retained several rights. For example, MA could interfere in the municipal decision-making process and suspend municipal decisions. What is more important, the MA was the last local authority to approve the budget or any amendment of the budget.[434]

In 2007 UNMIK introduced certain changes to the Regulation 2000/45. First, a new position, a minority vice chair-person of the municipal assembly was foreseen to be appointed in municipalities with a minority population.[435] The next major change was the abolishment of

[431] Ibid., see sec. 30
[432] Ibid., see sec. 31
[433] Ibid., see sec. 47
[434] Ibid., see sec. 48
[435] UNMIK/REG/2007/30 amending UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo, 16 October 2007, see sec. 13

the positions of the Chief Executive Officer and of the Municipal Administrator.[436] With the abolishment of the municipal administrator, UNMIK´s role within municipalities was reduced to `monitor, mentor and advise the municipalities`.[437] SRSG´s role, on the other side, did not change. Finally, the main change in the local government system was the direct election by the citizens of the municipal president, who was now referred to as the municipal mayor.[438] The mayor, according to the new rules and regulations, appoints municipal directors with a formal blessing of the municipal assembly.[439]

These changes created a new balance within municipalities. The municipal assembly was to share its primate with the directly elected mayor. This new system, in many municipalities introduced the concept of cohabitation. For this reason, in many municipalities the cooperation between the mayor and the municipal assembly actually grew. However, this was not the case in all municipalities. In many of them, a situation of conflict between the two institutions characterized the local political life and this is still the case today.

IV.1.2. Difficulties during the process of local government formation

UNMIK was facing different problems on the central and on the local level during the initial phase. The nature of the problems varied between the Albanian and Serb dominated municipalities. In the three Serb dominated municipalities and within Serb enclaves, old Serbian administrative structures remained untouched. UNMIK had to fight its way through these structures, in order to create its own local institutions, and this was not an easy task. These Serbian institutions, which remained intact within Kosovo, were widely known as the parallel institutions. The issue of the parallel structures which directly dictated minorities' political behavior is more widely analyzed in the main part of the study, while now the focus point will remain on the main problems which hampered the institution building process within the Albanian majority municipalities.

In almost all Albanian majority municipalities, local government structures were created immediately after the entrance of the KFOR troops. These structures involved self-proclaimed municipality mayors or appointees by the provisional government who duly installed other

[436] UNMIK already changed the names of the Municipality Administrators and Regional Administrators in 2003. They became UNMIK Regional Representatives and UNMIK Municipal Representatives. See, Regulation No. 2003/11, Amending UNMIK Regulation No. 1999/14 on the Appointment of Regional and Municipal Administrators, 17 April 2003
[437] UNMIK/REG/2007/30 amending UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo, see sec. 47
[438] Ibid., see sec. 24
[439] Ibid., see sec. 27

staff members to manage the different administrative departments within municipalities. Mayors and their staff represented exclusively the KLA wing. All other political fractions were excluded from this process, while an inclusion of minorities was not even imaginable during this stage. The self-proclaimed local administrative structures exercised `their duties` using the entire existing municipality infrastructure. They even managed to create financial resources by using different instruments, including unconventional proceedings. During that time, according to Ansola, local mayors enjoyed: "some level of support of the population who, at varying degrees, respected, accepted or feared them." The same structures even managed to deliver some services, including social services, issuing of official documents, and renting of public premises. However, the exercise of such activities was in contradiction with the UNSCR1244, which exclusively reserved this right to the international administration.[440]

On 12 July 1999, in a report of the secretary-general on UNMIK, the above-mentioned situation was described as one of the main difficulties which UNMIK was facing in order to control `politically motivated incidents`. One of the mentioned incidents and the main worries of the international administration was the: "attempts by certain Kosovo Albanian groups to take over local government offices, hospitals and media facilities."[441] Even though UNMIK in coordination with KFOR tried to prevent such attempts, they found themselves in front of a fait accompli. Mühlmann in his study points out that UNMIK was dealing with this situation, by either ignoring or by incorporating the self-proclaimed local government structures within the new created system. UNMIK was seeking to find a "modus vivendi or numerous modi vivendi", concludes Mühlmann. [442]

It took approximately four months for the international administration to create basic conditions for the reconsolidation of the local government structures.[443] Not only did UNMIK have to deal with the self-proclaimed structures of local government but also with other noteworthy problems such as lack of financial means, weak infrastructure, lack of communication systems, unqualified staff, and the undefined competences between the

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[440] Jose-Luis Herrero Ansola, "The United Nations in Kosovo: Finding the Path through the Maze," in *International Organizations in Kosovo: Finding the Path through the Maze* (Vienna: Favorita Papers 04/2001, Diplomatic Academy Vienna, 2001), 15; see also Rossbacher, *Friedenssicherung,* 176, an extensive description of the topic is also available in ICG, *Waiting for UNMIK: Local Administration in Kosovo* (Prishtinë: ICG Balkans Report 79, 1999

[441] Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/1999/779, 12 July 1999, para. 24

[442] Thomas Mühlmann, "Internationale Verwaltung am Beispiel des Kosovo" (PhD Thesis, University of Vienna, 2002), 62

[443] Krammer and Džihić, *Die Kosovo-Bilanz,* 76

central and local governments. With regards to the last mentioned problem, for example, municipalities tried to extend their competencies beyond what was granted to them within the Regulation 2000/45.[444] This situation complicated the transferring of power from UNMIK´s Municipal Administrators to local representatives. The international staff and local representatives were simply not well prepared for the gradual `redefinition of their relationship`. [445] Furthermore, different interpretations of UNMIK regulations created a difficult situation for the cooperation between the central and local authorities.[446]

Another widely debated issue which has significantly hampered the creation of sustainable local government institutions was the large number of unqualified local and international employees. In this case, the core problem arose within the Regulation 2000/1 which determined that the `new` local government structures should actually be built on the `existing`, `old` municipal structures.[447] This was one of the main strategic mistakes made within the process of building local government institutions. Perhaps the most serious disadvantage of this method of creating the local government institutions based on the existing municipal structures, was the involvement of persons with very different backgrounds. For instance, the number of employees from the communist era with a limited knowledge of modern administration, parachuted and unqualified employees installed by local KLA commandeers and later also by the LDK. Local municipal employees lacked even basic knowledge about the functions of the municipality. Obviously, quality was not the main requirement for employment and the same remains today. A much more systematic approach would involve the building of the new local government institutions based on hiring completely new staff of qualified persons, through a well administered process. However much, it should be acknowledged that fast and least hurting decisions were required at the time. UNMIK was just trying to avoid any rivalry with local actors.

UNMIK was seriously struggling in the first months of the mission. It took the mission several months to build local teams of international staff. These delays created favorable conditions for local actors to create the above described self-proclaimed local structures.[448] In addition, the different cultural origin of the deployed international staff created difficulties in the communication and cooperation within the international administration in general, and

[444] Rossbacher, *Friedenssicherung*, 240
[445] Ibid., 239
[446] Krammer and Džihić, *Die Kosovo-Bilanz*, 79
[447] UNMIK/REG/2000/1 on the Kosovo Joint Interim Administrative Structure, see sec. 8
[448] Mühlmann, "Internationale Verwaltung am Beispiel des Kosovo," 61

specifically on the local level.[449] This situation existed not only within UNMIK, but also in the cooperation between different international government and non-government organizations. The cooperation between these institutions was characterized by uncertainty about the delimitation of respective responsibilities.[450] Another problem was that as a result of economic inequalities between different municipalities,[451] UNMIK had to apply different approaches towards municipalities. One general systematic approach for all municipalities was not possible. Overall, UNMIK managed in the initial phase to create local administrative structures only in the 27 Albanian majority municipalities. For the three Serb majority municipalities, UNMIK postponed the process until the end of 2000.[452]

IV.1.3. Minority protection and integration mechanisms on the central and local level

The nature of Kosovo was that it was inhabited by different ethnic groups which represented a multiethnic territory. According to the legal provisions, all ethnic groups living in Kosovo were named as communities which share same ethnic, religious or linguistic background,[453] and the word minority was avoided. However, it was acknowledged that communities which were in a minority position should enjoy special rights. Thus, the 2001 Constitutional Framework guaranteed the applicability, among others, of The Council of Europe's Framework Convention for the Protection of National Minorities and The European Charter for Regional or Minority Languages.[454]

The Constitutional Framework, further guaranteed communities in a minority position the free usage of their language in education, media, administrative and judiciary matters. Freedom of association, cultural and religious activities and financial gatherings for specific projects within the minority community were also granted.[455] 20 seats in a 120 seat assembly were, moreover, reserved for minority communities. Ten seats were reserved for the Serb community, four seats for the Roma, Ashkali and Egyptian communities, three for the Bosniak community, two for the Turkish community and one for the Gorani community.[456] A Committee on Rights and Interests of Communities was established. One Serb and one other

[449] David Maleninsky, "Post Conflict Kosovo, Eine Analyse über die Zusammenarbeit der Internationalen Organisationen beim Wiederaufbau des Kosovo" (Diplomarbeit, University of Vienna, 2005), 135
[450] Ibid., 125
[451] Krammer and Džihić, *Die Kosovo-Bilanz*, 80
[452] Rossbacher, *Friedenssicherung*, 199
[453] UNMIK/REG/2001/9 Constitutional Framework for Provisional Self-Government in Kosovo, 15 May 2001, see chapter 4
[454] Ibid., see chapter 3
[455] Ibid., see chapter 4
[456] Ibid., see chapter 9

minority community representative were granted a seat in the assembly's presidency.[457] Similarly, at least two representatives of minority communities, one Serb and one from other minority communities occupied ministerial posts within the Government of Kosovo.[458] Based on this rule, UNMIK established a system of shared-governance on the central level.

On the local level, the Regulation 2000/45 foresaw the establishment of several mechanisms for the protection and integration of minority communities. The first mechanism was to create the position of a minority deputy president and later with the Regulation 2007/30 the position of a minority vice-chairman of the municipal assembly. These positions were reserved for a minority member in all municipalities "where one or more communities live that are not in the majority".[459] The second mechanism was the creation of a Community Committee and a Mediation Committee within municipal assemblies. The third and final mechanism was the establishment of Community Offices within municipalities.

The community committee was composed of the municipal assembly members and members of each minority communities residing within the municipality. This committee was charged with the duty to observe and to promote the rights of minority communities, and report any possible discrimination against persons in a minority position and to engage for more equality for the same group of people. On the one hand, any possible issues which may have involved persons in a minority position were reported to the mediation committee, while on the other hand, the committee had the task to impartially analyze the issue and effectively report it to the municipal assembly. In addition, it was possible for the mediation committee to send an issue to central authorities.[460]

Certainly, a formal establishment of different local government mechanisms for the protection and integration of minorities was not enough. The 2004 combined UNMIK, OSCE and PISG report shows, on the example of the functioning of the Community Committees (CC) that it was far from being properly applicable even four years after the adoption of UNMIK Regulation 2000/45. According to this report, in March 2004, 27 out of 30 community committees have been formally established. However, almost all of the community committees have either failed to appoint all the members of the committee or they rarely meet. Even in municipalities where regular meetings of the community committee were held, a

[457] Ibid., sec. 1
[458] Ibid., sec. 3
[459] UNMIK/REG/2000/45 on Self-Government of Municipalities in Kosovo, see sec. 25
[460] Ibid., see sec. 23

meaningful debate was lacking. The report summed up three main problems with the normal functioning of the local community committees. The appointment of the community committee members was lacking an adequate procedure, there was a serious lack of information about the actual role of the members of the community committee, and there was a very poor engagement by community committee members.[461]

Another very important body for the protection and integration of minorities on the local level was the establishment of a community office, the Local Community Office (LCO). Even though it was introduced as a temporary measure, these offices still exist today. Similar to the position of a minority deputy president, local community offices were created in areas where a substantial minority population was present. These included almost all Kosovo municipalities. The head of the office was represented amongst the board of directors who regularly reported to the community committee. Sub-offices have also been created in villages or town quarters with a minority population.[462] Even though the LCO´s used the local municipality infrastructure they reported directly to the central authority instead of UNMIK´s local municipal administrator.[463] The establishment of the community office and the community sub-offices played a central role in offering the basic public services directly to minority communities. This was especially necessary in a time when the security situation was not stable, and when minorities could not enjoy the right of free movement. These offices basically completed most of the competences assigned to municipalities. They were, however, initially limited to work only within, and for, the respective minority communities.

Albanian and Serbian languages were declared as official languages on both the national level and the local level. Moreover, where a substantial number of other minorities was present, municipalities were obliged to communicate also in their language. These bi- and multilingualism rules included all documents and public signs within a municipality.[464] For example, in the Prizren municipality, Turkish, alongside Albanian and Serbian, was introduced as an official language.

The establishment of special mechanisms for the protection and integration of minority communities on the local level played a pivotal role for minority communities in the post conflict phase. The Serb community, for instance, repeatedly refused to cooperate with the

[461] OSCE, UNMIK, and PISG, *Assessment of Municipal Communities Committees* (Published by OSCE, 2004, accessible online http://www.osce.org/kosovo/25968?download=true
[462] UNMIK/REG/2000/45 on Self-Government of Municipalities in Kosovo, see sec. 23
[463] Rossbacher, *Friedenssicherung*, 266-267
[464] UNMIK/REG/2000/45 on Self-Government of Municipalities in Kosovo, see sec. 9

new authorities, not only on the central but also on the local level. Other communities were divided between Albanian and Serb interests. It was specifically the creation of the above described mechanisms that gradually involved different minority communities in the political, social, and economical engagement within the local governance system. Their involvement within different municipalities was characterized by different timing and different progress, always dependent on the level of war destruction within the municipality. This process, as shall be argued later, still lasts. Reka in his book suggests that the actual problem was that Serbs, in this initial period, were following a policy of: "establishment of some form of a collective enclavisation of an ethnic exterritorialization" with the aim of a: "possible unification with Serbia", in contrast to the individual human and minority rights which the international administration actually granted them.[465]

IV.2. Local Elections and Minorities

The first step towards a political decentralization and the building of local democratic institutions started with the organization of local elections. The international administration in Kosovo has organized four local elections between the year 1999 and 2008. Local elections were held in October 2000, 2002, 2004, and during November 2007. All of the elections were organized by the Central Election Commission,[466] which was under the direct supervision of the Organization for Security and Cooperation in Europe (OSCE). The OSCE managed the third UNMIK pillar. The organization of elections in a post-conflict situation is never an easy task. This was also the case in Kosovo. A general voter´s registry was not available, and people have lost their personal documents during the war. As a prerequisite, it was important to create the necessary conditions for the participation in the elections not only for the people living in Kosovo, but also for all those persons who left Kosovo because of the war. Therefore, in March 2000, UNMIK decided to establish the Central Civil Registry[467] to tackle the problem.

In order to take part in the first local elections, voters had to be registered in the Central Civil Registry, specifically for the election itself. Persons were allowed to "vote for either the municipality of his or her residence on 1 January 1998 or for the municipality of current

[465] Dr. Blerim Reka, *UNMIK as an International Governance in Post-war Kosova: NATO´s Intervention, UN Administration and Kosovar Aspirations* (Shkup, Prishtinë, Tiranë: Logos-A, 2003), 164
[466] For the establishment of the Central Election Commission see the UNMIK/REG/2000/21 On the Establishment of the Central Election Commission, 18 April 2000, see sec. 7
[467] UNMIK/REG/2000/13 on the Central Civil Registry, 17 March 2000

residence".[468] Thus, persons who left Kosovo or who were internally displaced (IDP) were allowed to vote for the municipality they left because of the war, or for the municipality where they were currently living. With the approval of this regulation, UNMIK created the necessary formal conditions for the participation of minorities in the first local elections. Whereas, regarding the electoral system UNMIK opted for a system of proportional representation for the municipal assemblies,[469] with initially a two year term of office.[470] The main aim of this system was to secure a wider political representation, and above all, its goal was to engage minorities in the local political structure. There were no reserved seats for minorities on the local level. Parties running for local assembly seats were mono-ethnic parties or mono-ethnic local initiatives aiming the votes of only one certain community.[471]

a) The first local elections – 28 October 2000

In the first local elections under the international administration, 913,179 voters were registered as eligible to vote, out of which 79%[472] used their right to vote. The Serb community boycotted the elections, either because they did not want to legitimize any process in Kosovo, or because they feared an Albanian majority on the local level.[473] The Turkish community also boycotted this first election and other minority communities voted partially, depending on their relations with the Albanian or Serbian community. Minorities affiliated with Serbs, for example in the northern part of Mitrovica, boycotted the process. The general turnout was high, but this was probably as a result of the Serb boycott and their unwillingness to pre-register for the votes. A considerable number of Albanians also failed to register on time for the election.

In total, 869 out of 920 municipal assembly members were elected. As a result of the boycott 51 members of the three northern municipalities, Leposavić, Zubin Potok and Zvečan were

[468] UNMIK/REG/2000/21 On the Establishment of the Central Election Commission, see sec. 7
[469] UNMIK/REG/2000/39 on the Municipal Elections in Kosovo, 8 July 2000, see sec. 4
[470] Ibid., see sec. 2
[471] For more about minorities and the party system in the Western Balkans and in Kosovo see Florian Bieber, "National minorities in the party systems," in *Party Politics in the Western Balkans*, eds. Věra Stojarová and Peter Emerson (New York: Routledge, Oxon, 2010), 59-72; and Věra Stojarová, "The Party system of Kosovo," in *Party Politics in the Western Balkans*, eds. Věra Stojarová and Peter Emerson (New York: Routledge, Oxon, 2010), 151-166
[472] Final Results of the 2000 Local Elections as Recommended by the CEC and certified by the SRSG, http://www.kqz-ks.org/Uploads/Documents/Rezultatet%20Perfundimtare_uzskgluzbu.pdf accessed online on 02.12.2016
[473] Instituti Kosovar për Kërkime dhe Zhvillime të Politikave, "Trendet e Votimit 2000 – 2004," Seria e kërkimeve politike, Punimi #6, (Prishtinë, 2006), 10

later co-opted.[474] On the national level, contrary to the opinion of many in Kosovo, Lidhja Demokratike e Kosovës (LDK) convincingly won the first elections, gathering 58% of the popular vote. Other two `war wing´ political parties Partia Demokratike e Kosovës (PDK) and Aleanca për Ardhmërinë e Kosovës (AAK), won 27.3% or 7.7%, respectively.[475] The results indicated that the population was not satisfied with the self-proclaimed local government structures, which were dominated by the ex-KLA `war wing` groupings, and with methods they applied.

With regard to minority parties in different parts of Kosovo they managed to secure altogether 11 seats in local assemblies. Bosniak parties secured 6 seats, RAE parties secured 2 seats, and Gorani parties secured 3 seats.[476] There were also cases where minority communities mobilized only in certain municipalities where they constituted a reasonable number of the population. Gradjanska Iniciativa Gore (GIG), for example, took part in the elections only in the Dragash, Prizren, and Mitrovica municipalities, gaining thus 12% of the votes in Dragash, or 3 seats in the local assembly.[477] To sum up, minority community parties were not properly prepared for the first local elections and there was a general doubt within the minority communities towards the elections. As a result, they managed to secure only 1.2% of total available seats or 6.1% with the co-opted municipal assembly members. A satisfactory minority representation on the municipality level at the first local elections was not achieved. This was not only as the direct elections result but also because several appointed members, mainly Serbs, refused to take their positions.

After the certification of the elections, all elected members were sworn in 27 municipalities. Briefly after this, UNMIK also co-opted the members of the three northern municipalities.[478] By co-opting members of the local assemblies, UNMIK tried to find a form between the election results and a proper minority representation.[479] Not everyone was satisfied with the method applied to appoint minority members, which resulted in overrepresentation of certain minorities.[480] Most importantly, the legitimacy of the elections, as a result of minority

[474] Final Results of the 2000 Local Elections as Recommended by the CEC and certified by the SRSG
[475] Ibid.
[476] Ibid.
[477] Instituti Kosovar për Kërkime dhe Zhvillime të Politikave, "Trendet e Votimit 2000 – 2004," 18
[478] Mühlmann, "Internationale Verwaltung am Beispiel des Kosovo," 101, see also Krammer and Džihić, *Die Kosovo-Bilanz*, 62
[479] Mühlmann, "Internationale Verwaltung am Beispiel des Kosovo," 97
[480] Andrew Taylor "This election was never going to be perfect. The Kosovo Municipal elections of October 2000 as post-conflict elections," *Civil Wars,*Vol. 5, No. 3 (2002): 110

representatives' appointments, was not questioned.[481] Nevertheless, the new elected and appointed bodies replaced the interim local government structures initially installed by UNMIK. Even though the elections created local legitimated elites and structures through a democratic process, UNMIK´s municipal administrator remained the key personality within the local administration. Reka, analyzing this situation, argues that this was a phase of an asymmetric co-governance between local and international actors on the local level.[482]

Overall, the first local elections organized in Kosovo did not serve only the purpose of creating local government institutions. These elections, as Taylor argues: "were a classic example of post-conflict elections "testing the water", trying out infrastructure and organization".[483] The main focus of the international community was actually on the central level elections, and this local election served as the perfect prearrangement to test the overall situation. The first local elections in Kosovo have been rated as successful. During the process there were only some `technical problems´, argues Taylor, other problems were: "not serious enough to discredit the electoral process and outcome".[484] Taylor concludes his wide study on this election with the following assertion: "the overwhelming balance of the evidence suggests (…) that if not perfect, these were free and fair elections."[485]

b) The second local elections – 26 October 2002

Following the first local elections, UNMIK organized also the first parliamentary elections in 2001. Unlike the first local elections, Serbs took part in the parliamentary elections of 2001. The Serbs' first participation in the electoral process in the post conflict phase was a positive sign for a proper democratic development in Kosovo. As a direct result of the minority participation in the second local elections, the number of the elected minorities within local assemblies arose from 11 in 2000 to 117 in 2002.[486]

In the 2002 local elections the number of the eligible voters reached 1,320,481, while the turnout decreased to 54%.[487] Serbs, represented mainly by their unified political coalition "povratak", meaning return, managed to win 94 seats in the local municipal assemblies around Kosovo. "Povratak", the name of the coalition represented also the party program,

[481] Rossbacher, *Friedenssicherung*, 235
[482] Reka, *UNMIK as an International Governance in Post-war Kosova*, 219-220
[483] Taylor, "This election was never going to be perfect." 100
[484] Ibid., 110
[485] Ibid., 111
[486] Final Results of the 2002 Local Elections, http://www.kqz-ks.org/Uploads/Documents/Rezultatet%20perfundimtare_aprllkvdeq.pdf accessed online on 19.01.2017
[487] Ibid.

which gathered within its lines a variety of political fractions with direct links to political parties in Serbia. [488]

Other minority parties also managed to increase the number of their representatives within local assemblies. Hence, the Bosniak parties won 9 seats, Turk parties won 5 seats, RAE parties won 7 seats, and Gorani citizens' initiative managed to win 2 seats. The Croatian minority in the municipality of Lipjan, in Janjevo, also tried to win a seat in the local assembly, however they managed to secure only 71 votes, which was not sufficient for a seat. [489] In total, minority community parties managed to win approximately 15% of the general vote.[490] It is in particular interesting to mention that in five municipalities, non-Serb minority representatives played a crucial role in establishing a governing majority.[491]

c) The third local elections – 23 October 2004

The year 2004 marked the biggest step backwards in the democratic developments and in the reconciliation process in post-conflict Kosovo. The violent events of March 2004 played a crucial role in the outcome of the 2004 local elections. These events showed the difficult side of a post-conflict international administration and demonstrated, in the eyes of many critics, that the goal of creating a multiethnic Kosovo is more utopic than realistic. Turning to the events itself, after the drowning of two Albanian children in Mitrovica, some 50,000 protesters went to the streets on 17 and 18 March. These Kosovo wide protests escalated rapidly into attacks against UNMIK institutions, and minorities, mainly Serbs, and their property.[492] As a result of the violent events, 19 civilians lost their lives, more than 1100 persons were wounded, 17 churches and monasteries, and more than 120 houses were demolished which forced over 4,000 people to leave their homes.[493]

These events not only shocked the international administration in Kosovo, but also the entire national and international community. It demonstrated that the situation in Kosovo was far from being stable, and more profound steps were needed in order to address the final status problem, and the issue of proper minority protection. Even though the events marked a major

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[488] Krammer and Džihić, *Die Kosovo-Bilanz*, 67-68
[489] Final Results of the 2002 Local Elections
[490] Krammer and Džihić, *Die Kosovo-Bilanz*, 64
[491] Ibid., 69
[492] European Stability Initative, *Parimi i Lozanës, Multietniciteti, territori dhe ardhmëria e serbëve të Kosovës* (Berlin, Prishtinë: European Stability Initative, 2004), 5
[493] Bernhard Chiari, „Zurück in den Krieg? Die Unruhen vom März 2004," in *Kosovo, Wegweiser zur Geschichte*, eds. Bernhard Chiari and Agilolf Keßelring (Paderborn, München, Wien, Zürich: Verlag Ferdinand Schöningh, 2006), 101

blow in the efforts of UNMIK to not only install democratic institutions per se, but also to introduce democratic values, rules and procedures within the public, the plan to hold the next local and parliamentary elections was not changed. However, it was acknowledged that it would be difficult to re-involve minorities in the process.

Turning now to the elections, four years after the first voters registry was established, the number of the eligible voters has increased to 1,412,680, while the turnout has decreased, yet again, to 49.52%. From a total of 690,089 valid votes, minorities have managed to win 28,403 votes, or 4.11%. Serbs boycotted this local election, mainly as a result of the violent events described above. Some Serbs used their right to vote, yet this was only in symbolic numbers. They managed to win 1,783 votes, or 0.25%. Bosniak parties won in total 8,944 votes, or 1.3%. Turks, organized around KDTP Kosova Demokratik Türk Partisi, won 8,353 votes, or 1.21%. Roma, Ashkali and Egyptian Parties won a total of 6,623 votes or 0.96%, and the Gorani minority managed to secure 2,700 votes or 0.39%.[494]

d) The fourth local elections – 17 November 2007

The 2007 elections, as the last ones held under the authority of UNMIK, for the central and local level were boycotted by the local Serbs. The government of the Republic of Serbia repeatedly urged Kosovo's Serbs to boycott this election. Serbs were warned not to take part in institutions that were soon to become institutions of an independent Kosovo. Kosovo's Serbs responded positively to this call whereas those who ignored this call, managed to win 4 seats in the Leposavić local municipal assembly. Bosniak parties won 11 seats, and Turk KDTP won 4 seats (3 in Prizren and 1 in Prishtina). RAE parties managed to secure 6 seats, and the Gorani initiative managed to win 2 seats in Dragash.[495]

As previously described, UNMIK conducted some reforms for the 2007 local elections. Municipality mayors were now elected directly from the people, and not by municipal assemblies. The election of mayors was based on the two-round system. Votes for the mayor candidates went directly to the parties lists of candidates for the local assemblies. A total of 1,454,174 voters were eligible, while the turnout for the election decreased again to 39.4%.

[494] Final Results of the 2004 Local Elections, http://www.kqz-ks.org/Uploads/Documents/Rezultatet%20perfundimtare_lvlfbrjqla.pdf accessed online on 25.01.2017, This document does not contain the number of seats won by minority parties in each municipal assembly, thus it was not possible, as in the results of other elections, to analyze the numbers of minorities represented on the local level.

[495] Final Results of the 2007 Local Elections, http://www.kqz-ks.org/Uploads/Documents/rezultatetfinalekuvendkomunal_oqklmadvmp.pdf accessed online on 25.01.2017

As a result of the Serb boycott, four municipal mayors, in the municipalities with Serb majority were co-opted.[496]

This part of the study shows that the participation of minorities in elections and thus in the local institutions during the international administration of Kosovo varies from election to election. This variation reflects the scale of differences between the two major communities. Only the elections of 2002 marked a significant participation by the Serb community in the election process, thereby raising the number of Serb representatives within local municipal assemblies from 51 to 94 members. Adding the number of other minority representatives, 23, the total number of minority community representatives reached 117 or a total of 12.7% after the same elections. The results of the 2002 elections show that minority representation in democratic institutions has reached a satisfactory level, however, this level was still far from a fair representation.

Alternatively, the results of the other three local elections in 2000, 2004, and 2007 clearly shows that the process faced many obstacles. The Serb community was under direct influence of the Serbian parties, and the Serbian government, which in every possible way influenced the local Serb population whether or not to take part in the elections. Even though the Serb community mostly boycotted the elections for Kosovo's institutions, they regularly took part in the Serbian elections.[497] As for other minority communities, they managed to gradually increase the number of their representatives at the local level, while the number and percentage of their votes remained somehow stable with only minor changes. Overall, the percentage of minorities represented in local assemblies decreased gradually from election to election, from 6.1% in 2000 to 4% in 2004 and 2.93% in 2007. The 2002 elections was an exception that marked the highest percentage (12.7%) of minority elected representatives. It is also important to mention that given the rise of the number of eligible voters, the general turnout during the four elections dramatically decreased, from 79% in 2000 to 39.4% in 2007. Apart from the Serb boycott, the emergence of the Self-Determination Movement, "Levizja Vetëvendosje", and a wide popular disappointment with political parties, might be the main causes for the significant decrease in the population interest to participate in the democratic process.

[496] http://www.kqz-ks.org/sq/zgjedhjet-komunale-2007 accessed online on 25.01.2017
[497] Florian Bieber, "Ethnic Minorities in Serbia, Montenegro and Kosovo: Constitutional Norms and Realities," in *Ethnic Relations in South Eastern Europe, Problems of Social Inclusion and Exclusion*, ed. Nikolai Genov (Münster: Lit Verlag, 2004), 142

Before moving on to discuss issues of financial decentralization during the international administration, it is important to get a glimpse on what happened at the local level after elections. The formation of government coalitions across many municipalities resulted difficult because of the ample political differences between the LDK and PDK / AAK.[498] Minority parties and their representatives were often drawn in the bargaining of coalition building, which automatically meant that one or the other side of the majority would critically regard the choices of minority representatives. Serbs have refused to take part in the local assemblies of Mitrovica and Štrpce, while in other municipalities some Serbs have refused to participate in the local institutions at all.[499] In the three northern Serb majority municipalities of Leposavić, Zubin Potok, and Zvečane local governments were formed due to political forces associated with political parties in Serbia.[500] Difficulties in establishing post-electoral local governments were also reported in multi-ethnic municipalities, for instance in Novo Brdo, the process was characterized by conflict between the two largest communities, Serbs and Albanians.[501]

The 2004 and 2007 Serb boycott of the municipal elections presented a major backslide in the process of minority integration. Serbia organized local elections across Kosovo in May 2008 which created a difficult situation on the ground. Institutions of local government in the three Serb majority municipalities in the north were now occupied by representatives elected in the Serbian elections. In municipalities south of the Ibar river, in Gračanica and in Štrpce, this parallel elections triggered a conflict between the new elected representatives and the existing institutions of local government.[502] Serbia started an offensive in strengthening their parallel local government institutions across all of Kosovo where Serbs were present. As a result, the three northern municipalities became Serb parallel municipalities, while the Serb majority municipalities in the south had two institutions of local government, an official Kosovo one, and a parallel Serbian one. This situation complicated the institutional constellation within Kosovo, furthermore, it complicated the relations between institutions of Kosovo and the Serb community.

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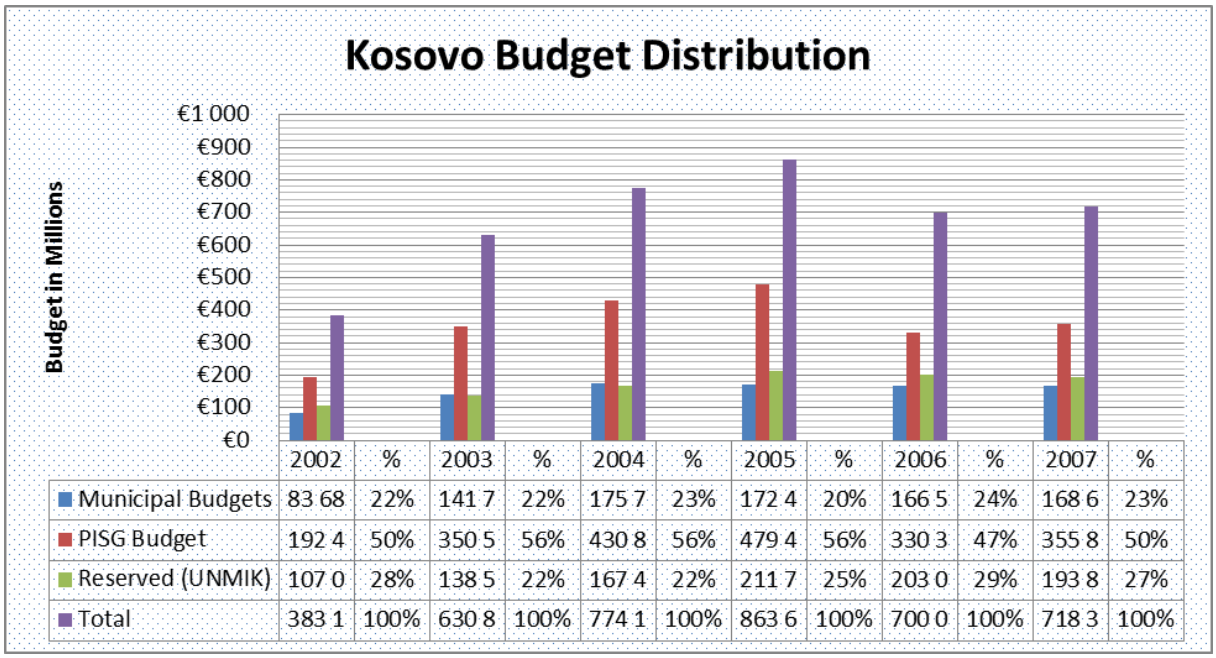
[498] Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2000/1196, 15 December 2000, para. 5
[499] Ibid., para. 7
[500] Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2001/218, 13 March 2001, para. 4
[501] Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2003/113, 29 January 2003, para. 19
[502] Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2008/458, 15 July 2008, para. 6

IV.3. Financial Decentralization and Priorities under the International Administration

Simple statistical analysis was used to present the budget distributions between the years 2002 and 2007, and to describe some relevant trends in these distributions. The data is a combination of planed and revisited budgets per year during the international administration. As there is always a discrepancy between planed and actual spent budget, the data presented below is mainly based on the planed budget.[503] It serves only to analyze the trends towards the financial capacities and priorities of local government institutions.

It can be seen from the data in the chart below that the overall budget of Kosovo resembled the process of self-government institution building and the gradual transfer of powers from the international administration to local institutions. Between the years 2002 and 2005 there was a major general budget increase. During 2006 and 2007 the reserved budget for institutions under the competences of UNMIK started to decrease monetary, thus symbolizing the gradual transfer of powers. Turning now to the focus of the research towards the local government, it can be seen that on average 22% of the total Kosovo budget went to municipalities. This included the funding of the local educational system, local health system, and the administration of local governments.

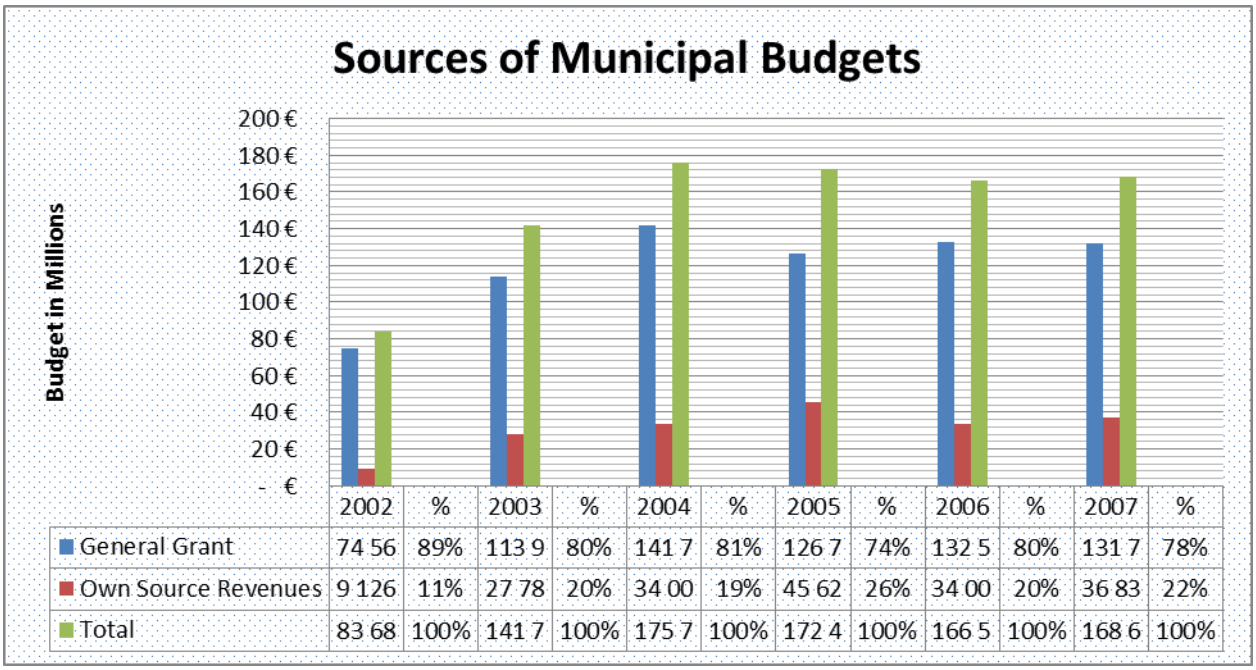
[503] Budget Data's represented in the charts have been gathered as follows: Year 2002: Regulation No. 2001/37 on the Approval of the Kosovo Consolidated Budget and Authorizing Expenditures for the Period 1 January to 31 December 2002; Year 2003: European Stability Initiative, *The Kosovo General Government 2003 Budget*, online at http://www.esiweb.org/pdf/bridges/kosovo/2/18.pdf, accessed on 09.02.2017; Year 2004: Schedules of the Regulation No. 2003/41 on the Approval of the Kosovo Consolidated Budget and Authorizing Expenditures for the Period 1 January to 31 December 2004; Year 2005: Schedules of the Regulation No. 2005/12 on the Approval of the Kosovo Consolidated Budget and Authorizing Expenditures for the Period 1 January to 31 December 2005; Year 2006: Schedules of the Regulation No. 2005/55 on the Approval of the Kosovo Consolidated Budget and Authorizing Expenditures for the Period 1 January to 31 December 2006; Year 2007: Administrative Direction No 2007/10 implementing UNMIK Regulation No 2006/61 on the approval of the Kosovo Consolidated Budget and authorizing expenditures for the period1 January to 31 December 2007



	2002	%	2003	%	2004	%	2005	%	2006	%	2007	%
Municipal Budgets	83 68	22%	141 7	22%	175 7	23%	172 4	20%	166 5	24%	168 6	23%
PISG Budget	192 4	50%	350 5	56%	430 8	56%	479 4	56%	330 3	47%	355 8	50%
Reserved (UNMIK)	107 0	28%	138 5	22%	167 4	22%	211 7	25%	203 0	29%	193 8	27%
Total	383 1	100%	630 8	100%	774 1	100%	863 6	100%	700 0	100%	718 3	100%

Figure 4: Distribution of the Kosovo budget 2002-2007

The chart presented below illustrates that the overall budget of the municipalities has constantly increased between the year 2002 and 2004, while experiencing a decrease during the years 2005 and 2006. This chart, however, has been primarily presented to show the limited capacities of municipalities to collect revenues on the local level. Local authorities have been regularly engaged in finding adequate mechanisms to increase own sources of revenue and achieved only limited success. As can be seen, the own sources of revenue occupied approximately 20% of the total municipal budgets. This situation was shortly improved during the year 2006 with reaching up to 26%. Alternatively, the year 2002 was the weakest year with only 11% revenue generated through own source revenues at the local level. Overall, this chart indicates that municipal budgets during the international administration mainly depended on the financial sources from the central government. This data reveals that during this period municipalities were only partially autonomous in budget projections while the central government retained the main right to approve or to disapprove these projections. Moreover, it can be argued that UNMIK was struggling to establish financially capable self-sustaining institutions at the local level.



	2002	%	2003	%	2004	%	2005	%	2006	%	2007	%
General Grant	74 56	89%	113 9	80%	141 7	81%	126 7	74%	132 5	80%	131 7	78%
Own Source Revenues	9 126	11%	27 78	20%	34 00	19%	45 62	26%	34 00	20%	36 83	22%
Total	83 68	100%	141 7	100%	175 7	100%	172 4	100%	166 5	100%	168 6	100%

Figure 5: Sources of municipal budgets 2002-2007

The following chart shows how municipality budgets were distributed during the international administration. The blue pillars represent municipal budgets in total. It can be observed here that the major part of the budget, on an average of 59% was spent on wages and salaries (red pillar) of the local administration employees, LCO´s, education and health institutions. In fact, 21% of the municipal budget was spent on goods and services (green pillar). Finally, municipalities spent on average 24% of their budgets for different capital projects within their municipalities. These projects included, infrastructure, water and waste management, education and health facilities, public services, and only covered a very small part of the needed investments. The share of the capital investments was increased during 2004 and 2005, thus showing a general improvement in budget planning. However, this situation lasted only for two consecutive years, falling back to 21% of the share during 2006 and 2007.

Analyzing the chart below, it can be claimed that during the 2002-2007 period, municipalities have raised the number of employees exceeding the actual needs, especially within the local administration. After every elections period, political parties and interest groups had to fulfill their pre-election commitments and provide employment for those who were engaged in their cause. This mismanagement was only observed by the international administration, and no concrete actions were taken to stop this negative trend. In the best case, the chart below should have shown us a gradual increase of the capital investments share within local budgets year over year but the trend is opposite. Increases in wages and salaries by the central government only worsened this negative balance.

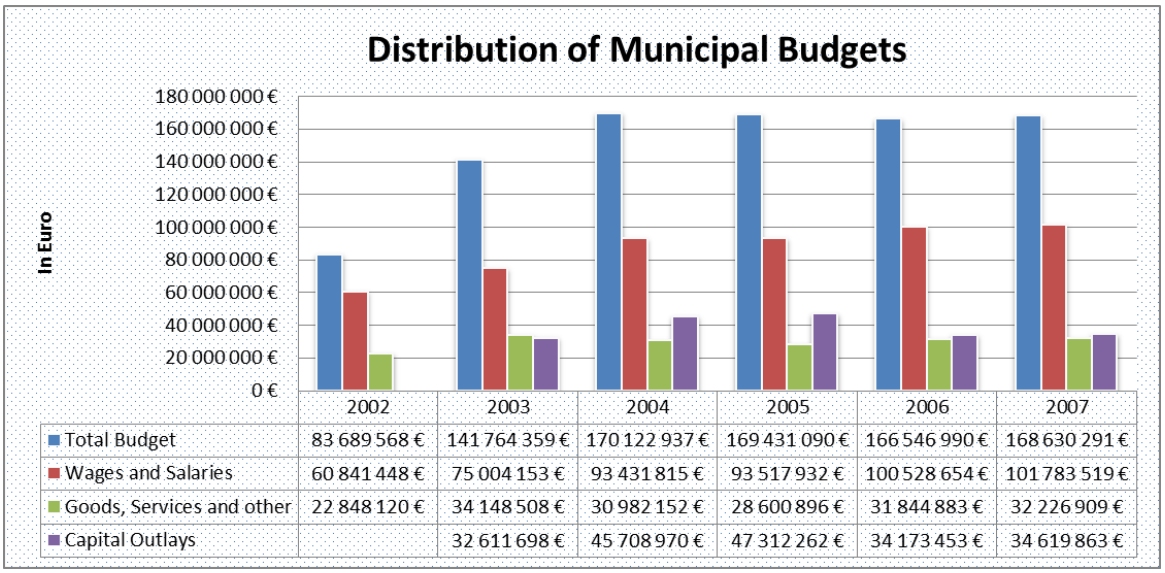


Figure 6: Distribution of municipal budgets 2002-2007

The chart below shows that the number of employees within the Local Community Offices decreased from 334 in 2002 to 204 in 2007. The general number of administration employees increased substantially from 2002 to 2003, followed by a decrease afterwards. Now, the number of LCO´s employees represented in average 4.3% of the municipal administrations. This shows us that only 4.3% of the municipal administration employees were dealing with issues concerning minority communities within municipalities. Obviously, other municipal employees outside the LCO´s might have been engaged in issues concerning minority communities but still that number was low.

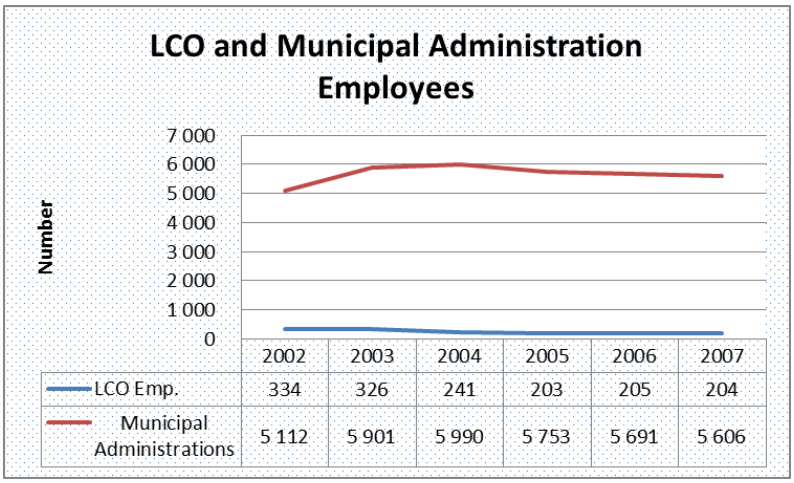
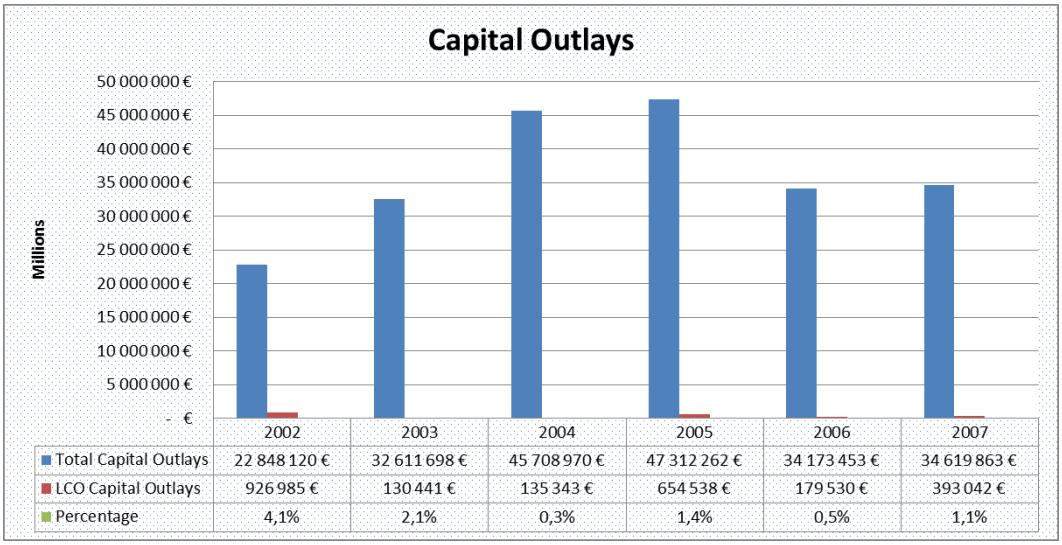


Figure 7: LCO and municipal administration employees 2002-2007

As far as the financial means available for the LCO´s are concerned, the figures were very low and had no real impact. The budget reserved for capital projects varied every year, as can be seen in the following chart, from a promising 926,000 Euros available in 2002 to approximately 130,000 Euros in 2003 and 2004 but the situation improved slightly in 2005. In general, the share of the LCO´s capital projects within municipalities ranged from a maximum

of 4.1% to a minimum of 0.3%. This implies that projects within minority communities were clearly not a priority for local governments, if they were not totally neglected. The financial share for LCO´s remained several times smaller than the share of minority communities within most municipalities. According to a study,[504] during the year 2003, approximately 13.2% of municipal budgets were reserved for minority issues. This was achieved by the application of the "Fair Share Financing Principles" which guaranteed the allocation of a certain amount of the local budgets for minorities. This budget, however, was not put into the direct disposal of the LCO´s.

Nevertheless, one of the major positive issues concerning the LCO´s was the establishment of a specific budget line for the same. This enabled the LCO´s to retain some autonomy in budget management. Furthermore, it should be noted that apart from capital investments realized directly by the LCO´s, local and central governments frequently invested directly in projects of interest for minority communities. Likewise, international organizations active during that period in Kosovo, were largely engaged in solving minority communities problems.



	2002	2003	2004	2005	2006	2007
Total Capital Outlays	22 848 120 €	32 611 698 €	45 708 970 €	47 312 262 €	34 173 453 €	34 619 863 €
LCO Capital Outlays	926 985 €	130 441 €	135 343 €	654 538 €	179 530 €	393 042 €
Percentage	4,1%	2,1%	0,3%	1,4%	0,5%	1,1%

Figure 8: Distribution of capital outlays 2002-2007; *Data for the year 2002 apart from capital outlays contains also goods and services

In brief, it should be noted that during this period Kosovo was economically and financially relying on foreign aid, while at the same time increasing institutional capacities to generate internal financial sources. Kosovo was struggling with a poor budget, which was mainly spent on wages, salaries, goods and services it was difficult to invest in major projects which would improve the life of the majority and minority communities. Some 22% of the general budget

[504] Kosovar Institute for Policy Research and Development, "Local Governance and Administration in Kosovo," Policy Research Series, Paper #4 (Prishtina, 2004), 13-14

was dedicated for municipalities, of which only a very limited amount was available for LCO´s. The lack of effective mechanisms for revenue generation through own sources characterized this period of the international administration. The lack of financial means resulted in a slow institution-building process on the local level, thus having a major impact on the long-term financial stability perspectives of municipalities. In other words, during the international administration minority communities were often financially left outside the priority list of local governments.

IV.4. Conclusions

The international administration was entrusted with the management of a `threefold transition process`, as Rücker, the former SRSG argues: "from war to peace, from dictatorship to democracy and, in addition, from a communist economy (Yugoslav style) to a market economy."[505] The former SRSG asserts that UNMIK `did reasonably well` in accomplishing a convoluted operation which was lacking "a clear political horizon".[506] Similarly, Weller points out that the international administration established institutions which: "did generally provide a reasonably stable and secure environment", acknowledging however, that this process was generally delayed and the institutions lacked efficiency.[507] Krammer and Džihić emphasize that taking into account the large amount of money which flowed into Kosovo, and which was distinctively higher than in other post-conflict situations, and the large number of international personnel, in 2000 KFOR numbered nearly 50,000 troops and around 50,000 internationals were engaged within different organizations,[508] results can be considered only desirable.[509]

Both UNMIK and KFOR failed in the first intervention phase to prevent the criminal and interethnic violence which spread across Kosovo. During the first five months of the international administration, 379 persons were murdered and a large number of the victims were minorities.[510] Every second day 5 people were murdered. This statistics demonstrates the violent, almost anarchic situation faced by the international presence in the aftermath of the conflict. Furthermore, the violent events of March 2004 proved the existence of a fragile

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[505] Joachim Ruecker, *Standards and Status, How Kosovo Became Independent* (München, Berlin: Verlag Otto Sagner, 2011), 16
[506] Ibid., 128
[507] Marc Weller, *Contested Statehood, Kosovo´s Struggle for Independence* (Oxford, New York: Oxford University Press, 2009), 189
[508] Krammer and Džihić, *Die Kosovo-Bilanz*, 21
[509] Ibid., 1
[510] Human Rights Watch, "Abuses After June 12, 1999," accessible online on http://pantheon.hrw.org/reports/2001/kosovo/undword2c.html accessed on 15.02.2017

security situation in Kosovo. The events demonstrated that the interethnic conflict and hatred was still widespread.

Turning back to the efficiency of the international administration, Mühlmann, who was personally engaged in Kosovo, in his PhD thesis, gives an interesting insight into the establishment phase, which includes approximately a period of 18 months of the international administration. Summarizing the work of UNMIK, he argues that the mission has generally failed to build up competent and professional personnel, which, in addition lacked basic working materials.[511] There was a prolongation in the civil registration process, issuance of personal documents, car registrations, and difficulties with property issues.[512] International organizations within the mission were mostly working independently, without a clear division of responsibilities, thus often interfering others' work. Not only did they fail to communicate and coordinate internally, but UNMIK also failed to effectively communicate with KFOR. On the financial level, the system was mainly based on foreign financial assistances. UNMIK failed to introduce a sustainable financial system.[513]

Hofbauer, as the name of his book may suggest, gives a wide critic on the general work of UNMIK, and especially on the powers attributed to the SRSG. He argues that UNMIK was in the first place a dictatorial system, with legislative and executive powers vested in one man, who unrestrictedly ruled Kosovo. The same man, could for example, write laws and execute them, without being controlled by any legitimated parliamentary authority. Above all, he granted himself (the SRSG), and all of the mission's personnel immunity over all types of legal breaches. International employees could only be removed by the respective state of the engaged person. In conclusion, he states that `the SRSG` is simply `the absolute law` in Kosovo.[514] Unlike Hofbauer, Kellerman points out that seeing the SRSG as a dictator is an overestimation. Fast and uncomplicated decision-making procedures are required in such post-conflict situations, with the possibility to rashly adapt and react to possible threats.[515] Altogether, the studies presented thus far provide evidence that most authors have analyzed the work of UNMIK from a critical point of view, even though acknowledging few positive developments within specific areas.

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[511] Mühlmann, "Internationale Verwaltung am Beispiel des Kosovo," 428-442
[512] Ibid., 236
[513] Ibid., 428-442
[514] Hannes Hofbauer, *Experiment Kosovo, Die Rückkehr des Kolonialismus* (Wien, Promedia Druck- und Verlagsges.m.b.H., 2008), 118
[515] Beate Kellermann, *Das Kosovo zwichen Standard und Status – vom bewaffneten Konflikt in die unsichere Demokratie* (Stuttgart: ibidem Verlag, 2006), 137

It would be naïve to assume that UNMIK failed in everything. It should be acknowledged that UNMIK had ambitious plans, thus the desired results couldn't be achieved. With regards to the establishment of the local government system, UNMIK did a moderately good job. The initial struggle to liberate and establish local institutions has at least past without any security incidents. In other words, UNMIK, as a general rule of international administration, prioritized the preserving of peace. As a result of this strategy, many ad hoc decisions were taken to preserve peace, while the creation of modern local government institutions, based on principles of good governance, were frequently bypassed.

On the issue of financial decentralization and financial priorities including budget distributions, it should be noted that funding for majority dominated municipalities and minority dominated municipalities did not follow any particular/important trend. During this period in terms of budget allocations and minorities is that municipalities were obliged to spend a predetermined percentage of their budget on minority related projects, in accordance with the share of the minority population within the municipality. This practice, as previously mentioned, was implemented under the principles of fair share financing. The particular trends for allocation of funding between majority and minority municipalities will be analyzed more broadly in one of the main parts of the research, namely, fiscal and financial decentralization in Kosovo.

It is crucial for this international administration period that legal provisions adapted at the central and local levels to protect minorities were compiled from the most advanced mechanisms present within the international legal system. The creation of a legal base was followed by the introduction of shared-rule principles on the central as well as local levels and minorities were granted participation possibilities. Nevertheless, it should be noted that the situation on the ground was quite different from the legal one. In practice, minorities were facing different obstacles in daily matters and their rights were constantly violated.[516] Bieber accurately describes this situation: "At the same time, the current legal instruments for protection of ethnic minority rights might be formally satisfactory, but they do not address the underlying tensions. In many instances the "roof" for the protection of minority rights has been built, but the "house" underneath which would have tangible benefits for the affected communities is still missing."[517]

[516] Bieber, "Ethnic Minorities in Serbia, Montenegro and Kosovo," 134
[517] Ibid., 145

Above all, UNMIK constantly failed to integrate the northern part of Kosovo into the international administration system. There was only a partial success in the Serb enclaves throughout Kosovo. Serbian institutions, as parallel institutions, remained intact in the Serb inhabited areas, making it difficult not only for Serbs but also for other minorities living within the same areas, to integrate in the newly established system. Only in areas where minority communities where physically connected to the majority population a formal communication and cooperation was established. Serb political parties in Kosovo, with an exception,[518] reflected mainly political parties in Serbia and followed their interests.[519] The northern part remained de facto within the Serbian system of governance. Political views represented from both, the Serb population in Kosovo and from the state institutions of Serbia, as shall be seen in the next section, remained diametrically opposed to that of the majority population in Kosovo. One side was aiming for independence, while the other was aiming towards Serbia in one way or another.

[518] Srpska Liberalna Stranka was an exception to the rule. The Party formed in 2006 recognized Kosovo institutions and regularly participated in the governance system. It was created in Gračanica, thereby challenging the northern based Serbian political parties and their dependence on Belgrade.

[519] Bekim Baliqi "Innenpolitik und Parteiensystem im Kosovo," in *Die Republik Kosovo – Der jüngste Staat Europas*, eds. Olaf Leiße, Martin Roth, Christian Gesellmann (Baden-Baden: Jenaer Beiträge zur Politikwissenschaft, Band 15, Nomos, 2013), 56

CHAPTER V: BETWEEN DECENTRALIZATION, AUTONOMY, AND PARTITION THE AHTISAARI PACKAGE

V.1. Serb Interests in Kosovo

With the beginning of the Yugoslav breakup process, Serbia´s politics towards the Serb population outside Serbia was starting to be established on the idea of territorial protection. The rights of the Serb people could only be protected through ethnic territorial arrangements within republics where the Serb population represented a considerable number of the overall population. It was claimed that the Serb population could not be placed in a minority position. This protection from `majorization`, as it was called, can only be realized through territorial protection of the Serb population. Furthermore, the core idea behind these plans was to territorially connect, where possible, the Serb inhabited areas with Serbia.[520] This strategy, as argued below, was instantly applied towards the Kosovo problem.

Serbian visions for the future of Kosovo in different time-phases included ideas of regionalization, cantonization, and a combined territorial and non-territorial autonomy for the Serbs in Kosovo. A regionalization plan was proposed by a group of Serb intellectuals as early as 1997, while a cantonization plan came mostly to light during 1998, and it resurfaced again during the status negotiations. Later, during the international administration, the Serbian parliament approved a territorial and non-territorial plan for the autonomy of Serbs and other minorities in Kosovo. All proposals, in one or the other way, aimed at partitioning Kosovo between Albanian and Serb dominated areas.

The first proposal of the Serb intellectuals was presented as a project `for the resolution of the Kosovo problem`. This project named as "The Proposal for the Democratic Resolution of the Kosovo and Metohija Question" was in other words, a plan to regionalize Serbia, whereby Kosovo would be divided into two regions, Kosovo and Metohija. One of the arguments was based on the claim that Kosovo was `traditionally` never one territorial unit. The new created Serbian regions, according to the proposal, would have regional assemblies with a mixed central and regional government bodies. Serbs would be granted special rights. Unlike other regions, these two Kosovo regional assemblies would, in addition, have a second parity based

[520] Veton Surroi, *Emri i Autonomisë* (Prishtinë: Botimet Koha, 2015), 27

assembly chamber, where half of the representatives would be Serbs and other minorities. It was argued that the existence of this chamber would make it impossible for Albanians to make unilateral decisions, which could be: "harmful to any ethnic group or the country as a whole". Additionally, local municipalities would be split into much smaller units.[521]

The second proposal, cantonization, was based on the Swiss model. It aimed at creating ethnically different cantons within Kosovo. The Serb cantons would be established mainly within rural areas, including the property of the Serbian Orthodox Church (SOC). The canton boundaries would be completely newly redrawn. According to the proposal, five Serb majority cantons would be created. The first one would have been territorially based on the Leposavić, Zubin Potok, and Zvečan municipal boundaries. The second canton would include Serb villages between Fushë Kosovë and Lipjan. The third canton would be created between the Kamenica, Viti, and Gjilan triangle. The fourth canton would present an enlarged version of the Štrpce municipality, which would include the Gora region and territories inhabited by Muslim Slavs, mainly villages around the city of Prizren. The last canton would be created between the Pejë, Klinë, and Istog triangle.[522] These cantons would, among others, have police and judicial authority. This new territorial units, would represent around 30% of the Kosovo territory.[523]

Apart from establishing rural cantons, the proposal includes a complex administration of multiethnic cities. Assemblies within multiethnic cities would be based on a bicameral system. Chambers would have the right to block each other. It was argued that realization of this project would rule out the: "The ethnic majority dominance (…) dominance which ethnic Albanian abused between 1968 and 1981 in their effort to force Serbs to flee Kosovo and Metohija."[524] A similar `blocking each other` bicameral system would be created on a Kosovo wide provincial level.[525] The proposal, obviously foresaw autonomy for the Albanian majority cantons. Both proposals, it should be noted, were not even close to the rights that Kosovo enjoyed under the 1974 constitution, thus they presented only a plan for an un-proportional Serb ethnic-territorial enlargement within Kosovo.

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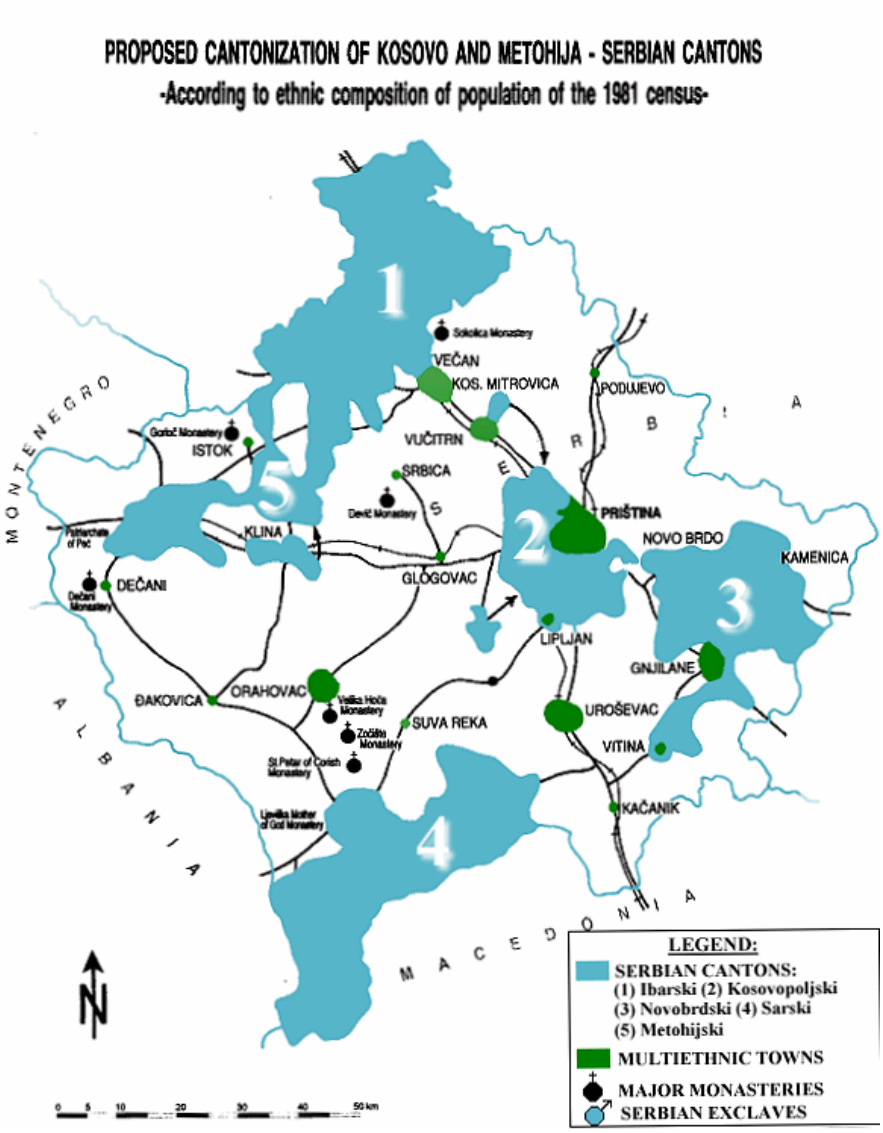
[521] "The Regionalization of Kosovo and Metohija, A Serbian Proposal, 1997," in *Serbia´s Kosovo Drama: A Historical Perspective,* Dušan T. Bataković (Belgrade: Čigoja Štampa, 2012), 252-254
[522] "Cantonization of Kosovo-Metohija: A Proposal 1998," in *Serbia´s Kosovo Drama: A Historical Perspective,* Dušan T. Bataković (Belgrade: Čigoja Štampa, 2012), 258-259
[523] Ibid., 259
[524] Ibid., 260
[525] Ibid., 261



Map 1: Serbian Cantonization Plan (source: https://jaksicmarko.files.wordpress.com/2015/06/cant_map.gif)

The third proposal, adapted to the new created situation on the ground, emerged in 2004. Then, the Serbian National Assembly adopted a "Plan for a political resolution of the situation in Kosovo and Metohija", which in other words was the plan to create a Serb Autonomous Association in Kosovo. It was argued that if this plan is admitted, then it would assure the territorial integrity of Kosovo and will not represent any form of partition,[526] and as such it should be established through a UNSC Resolution.[527] In order to guarantee an adequate protection of Serbs and other minority communities in Kosovo, the application of combined territorial and non-territorial autonomy arrangements are required. On the one hand, the territorial autonomy would be enhanced through the creation of Serb dominated regions

[526] Narodna skupština Republike Srbije, *Plan za političko rešenje sadašnje situacije na Kosovu i Metohiji*, Odluka o utvrđivanju plana za političko rešenje sadašnje situacije na Kosovu i Metohiji (29 april 2004), 2
[527] Ibid., 11

which would include other non-Albanian communities. On the other hand, the non-territorial, cultural and personal autonomy would be granted to all the members of minority communities residing outside the autonomous regions.[528] This would be possible through the application of special collective rights for the group.[529]

The realization of the territorial autonomy would be implemented through the establishment of five autonomous regions. These regions would include "municipalities, parts of municipalities and settlements where Serbs were in a majority position before 1999". Similarly, taking into account that a large amount of private property was registered on Serbs, this property would accordingly be included within the autonomous regions.[530] Furthermore, as the demographic situation in the main cities has changed after 1999, a just compensation (compensatio iustum) was to be enforced.[531] The autonomous regions, Central-Kosovo, North-Kosovo, Pomoravska, Sharmountain, and Metohija would also include historical and religious objects. Nevertheless, this should be implemented where some physical connection exists.[532]

Autonomous regions would have political and legal institutions and wide competencies over different issues. Political and legal institutions would include a regional parliament, a government, and regional first and second instance court.[533] Regions would control the local police force and civil protection as well as manage policies within the education, health, social, cultural, and sports sectors. In economy, regions would conduct the privatization process and they would even control the industrial and mineral development. As one of the top competencies, it was planned, that regions would enjoy the right to create and be part of international regional co-operations.[534] The proper implementation of the competencies and the existence of regional institutions would be financed through central government donations and through the application of a wide system of own source revenue mechanisms.[535]

Partition/territorial re-definition plans for Kosovo were also publicly heralded by the highest politicians in Serbia. Nebojša Čović, for example, during his term of office as the Vice-Prime Minister of Serbia, was arguing that between the Serbian historical right and the Albanian

[528] Ibid., 4
[529] Ibid., 6
[530] Ibid., 3
[531] Ibid.
[532] Ibid.
[533] Ibid., 5
[534] Ibid., 4-5
[535] Ibid., 6

ethnic right over Kosovo, a division into two territorial entities would present a fair solution to the problem.[536] In the same way, Prime Minister Djindjić saw the resolution of the Kosovo question with a partition of Kosovo, or within a framework of new territorial re-arrangements for the protection of Serbs in Kosovo.[537] Similarly, Koštunica, who exercised the position of the Yugoslav President, and later as Prime Minister of Serbia, was in favor of cantonization. He constantly suggested that the idea of a multiethnic Kosovo remains elusive. The only protection for the Kosovo Serbs, Koštunica further argued, is within a territorial cantonization, which would be autonomous from the central institutions in Prishtina.[538] The realizations of the core idea of these projects have not remained only public declarations of the Serbian officials. Serbs were taking operational measures to implement this partition on the ground in Kosovo.

Serbs in Kosovo, as described earlier, were divided into two different worlds. In the northern part of Kosovo, a *de facto* Serbian state administration remained in control of the public life, while the southern Serb enclaves were struggling whether to integrate or to boycott Kosovo institutions. The northern part of Kosovo after the NATO intervention gradually degraded into a lawless region. Klasing argues that this region was under the direct control of various groups, such as: "local political authorities, corrupt officials, self-proclaimed defenders of the Serbian cause, local businessmen and simple criminals".[539] Using this lawless `free` territory, Kosovo Serbs declared in 2003 the "Union of Serb municipalities in Kosovo and Metohija", requesting "the immediate return of Serbian forces and maintenance of "Yugoslav integrity and sovereignty", "decentralization", "self-administration" and lastly "creation of a Serb entity" in Kosovo".[540] Following a similar scenario in 2008, Kosovo Serbs declared again a "Kosovo Serb Assembly" in a form of a local Kosovo-Serb Parliament. All these steps on the ground were constantly supported by Serbia and their political representatives.[541]

The content of different ideas and concepts about the form of the Serb territorial autonomy to be implemented in Kosovo has remained more or less the same. Only the envisaged borders

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[536] Enver Hoxhaj, "The politics of ethnic conflict regulation in Kosovo," Discussion Paper 39 (London: Centre for the Study of Global Governance, 2005), 38
[537] Petritsch, Kaser, Pischler, *Kosovo Kosova; Myten, Daten, Fakten*, 252
[538] Kellermann, *Das Kosovo zwichen Standard und Status,* 192; see also Hoxhaj, The politics of ethnic conflict regulation in Kosovo," 40
[539] Hanns-Christian Klasing, "Kosovo- ein Fallbeispiel für die Statusproblematik," in *Die Republik Kosovo – Der jüngste Staat Europas*, eds. Olaf Leiße, Martin Roth, Christian Gesellmann (Baden-Baden: Jenaer Beiträge zur Politikwissenschaft, Band 15, Nomos, 2013), 261 (authors translation)
[540] Hoxhaj, "The politics of ethnic conflict regulation in Kosovo," 39
[541] Ksenija Petrović, "Die Rolle Serbiens in der zukünftigen Entwicklung des Kosovo," in *Die Republik Kosovo – Der jüngste Staat Europas*, eds. Olaf Leiße, Martin Roth, Christian Gesellmann (Baden-Baden: Jenaer Beiträge zur Politikwissenschaft, Band 15, Nomos, 2013), 284

and the official names of these plans have changed, mainly adapting to the political situation in Kosovo. Krammer and Džihić pointed out that Serbian strategy for pushing forward the agenda of the territorial protection of the Serb population in Kosovo was starting to be revived once again with the beginning of the decentralization process in Kosovo. From the perspective of Serbia, it was this decentralization process which would implement the plan for ethnic territorial re-regulations in Kosovo.[542] Sonja Biserko also argued that: "all belgrade efforts shall be focused on cantonization or "SAO-ization" of Kosovo, or on division of Kosovo along the ethnic lines."[543] The international community and Kosovo institutions on the other side, considered the decentralization process as a plan to raise governance effectiveness.

UNMIK and Kosovo institutions were interested in improving the governance system by ceding more authority to local governments.[544] According to Kellerman, the significance of implementing decentralization was based on two goals. The first and primary goal was to strengthen local government, while the second goal was to relieve the administrative burden of the central institutions.[545] Apart from authority transfer, UNMIK and Kosovo institutions agreed upon the necessity to create new municipalities within the same process of decentralization. New municipalities were firstly established as pilot units, while transforming gradually to fully operative municipalities.

V.2. Negotiations for the Settlement of the Kosovo Final Status

It may be argued that after several years of international administration in Kosovo, the time to deal with its political status was starting to be seen on the horizon. Unlike Serbia and Russia, the international community was not interested in pushing the status talks endless. Besides, the 2004 March riots showed that a continuation of the status quo was no longer feasible. For these reasons, Kai Eide, acting on behalf of the Secretary General of the UN, reporting at the end of 2004 on the situation in Kosovo recommended that the time to start preparations to discuss the future status has come. Eide argued: "There will not be any ideal moment for starting such preparations — not even a good moment."[546] In addition to the necessity to start

[542] Krammer and Džihić, *Die Kosovo-Bilanz*, 87
[543] Citation from Bekim Baliqi, "Zur Frage der nationalen Identität am Beispiel des Kosovo," (Diplomarbeit, University of Vienna, 2005), 93
[544] Krammer and Džihić, Die Kosovo-Bilanz, 86
[545] Kellermann, *Das Kosovo zwichen Standard und Status*, 149-150
[546] Kai Eide, "Report on the situation in Kosovo: Summary and recommendations," (UNSC S/2004/932, Letter dated 17 November 2004 from the Secretary-General addressed to the President of the Security Council, 2004), 4, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/kos%20S2004%20932.pdf accessed online on 23.03.2017

the negotiations, Eide recognized that the decentralization process is one of the most important priorities for Kosovo. “The violent events of March have demonstrated the urgent need to give the Serb minority greater authority over local administration in areas with a more concentrated Serb population”, argued Eide. Furthermore, Eide welcomed the political will of the majority community to implement decentralization measures. This process, should however, according to Eide, not only involve the Albanian and Serb communities, but also the Serbian government.[547] With the publication of Eide´s report, a period of diplomatic engagement to solve Kosovo´s final status began.

Prominent diplomats Marti Ahtisaari and Albert Rohan were appointed with the duty to present a proposal for the final status for Kosovo. Before presenting any proposal, the diplomats had to arrange negotiations between institutions of Kosovo and Serbia. As a result, United Nations Office of the Special Envoy of the Secretary General for the Future Status Process for Kosovo, or UNOSEK, was established in Vienna.

The views and expectations of both parties were diametrically different regarding the final political status of Kosovo. With the knowledge of these differences, Ahtisaari never opened the issue of political settlement to the parties. Instead, he directed the negotiations towards the resolution of practical issues on the ground. Minority protection mechanisms and especially decentralization moved in the foreground of the talks. Decentralization became the main battleground of the negotiations. More than half of the 15 rounds of negotiations were conducted to solve this issue.[548] Marc Weller, summarizes the main points discussed on decentralization with the following description:

> “This engagement related in particular to the number and delimitation of municipalities that would enjoy powers of self-governance, and the extent of these powers. Belgrade was demanding the establishment of some 15 new, mainly Serb-inhabited, municipalities. In some instances these might be small, including only several hundred inhabitants. In other instances the population balance was to be adjusted in favor of an ethnic Serb majority. There was also the proposal that displaced persons in Serbia be directed towards these new areas, rather than returning to their homes. Kosovo, on the other hand,

[547] Ibid., 14
[548] Marc Weller, “Negotiating the final status of Kosovo,“ Chaillot Paper no. 114 (EU Institute for Security Studies, 2008), 35

proposed the establishment of three new ethnic Serb municipalities, later upping the offer to five under intense international pressure."[549]

Kosovo was willing to grant special protection and participation mechanisms for minority communities. Serbia, on the other side, was unsurprisingly: "interested in territorial solutions, arguing that ethnic Serbs would be safe only in areas under ethnic Serb control."[550] Serbian negotiators also attempted unsuccessfully to bring up the cantonization issue on the table.[551] Similarly to the creation of new municipalities, parties were also having different understandings of the future co-operation between the Serb majority municipalities. Serbia was pushing forward the idea that municipalities should be able to form a distinct administrative body, which would be in charge of the issues related to the Serb majority municipalities. Fearing a potential territorial partition, Kosovo at this point refused such an idea. Kosovo was, in addition, unwilling to allow a special relation between this distinct administrative body and Serbia.[552]

Simply put, Kosovo was aiming independence as the final goal. It was clear that gaining independence means giving something in return. Everything within the Kosovo legal framework which would not jeopardize state´s functionality was more or less acceptable.[553] However, in the first place, Kosovo was not willing to create institutional inefficiency. Bringing a new level of government within the existing twofold central-local system was not acceptable.[554] Kosovo also accused Serbia of trying to bring up apartheid governance models, which were, according to Hofbauer, based on the model of autonomous Jewish settlements in the West bank, which are actively supported by Israel.[555] Interestingly, even though Kosovo was continuously against the idea of purely ethnic based municipal boundaries, it later accepted the application of the same idea.

Stefan Lehne later noted: "Both understood that in the existing climate of mistrust and hostility a genuine integration of Albanians and Serbs was not a realistic alternative. Peaceful

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[549] Ibid., 35, see also Stefan Lehne, "Resolving Kosovo´s Status" (Austrian Institute for International Affairs, Policy Paper, 2009), 5
[550] Weller, "Negotiating the final status of Kosovo, " 36
[551] Ibid., 35
[552] Weller, *Contested Statehood*, 203-204
[553] Surroi, *Emri i Autonomisë,* 48
[554] Lehne, "Resolving Kosovo´s Status, " 5
[555] Hofbauer, *Experiment Kosovo*, 208

coexistence between two communities largely minding their own business and with limited contacts with each other seemed the only realistic solution".[556] On the other side, Kosovo did not only agree to create new enlarged municipalities with a Serb majority, sometimes including entire Albanian villages, but also to enlarge the property of the Serbian Orthodox Church. The entire chapter on decentralization was presented at the end as a compromise. In reality, neither side did legally at this point accepted the same.[557]

V.3. The Final Status Proposal and Decentralization

Even though the requests of both sides were irreconcilable, Ahtisaari and his team managed to present a comprehensive proposal which would regulate the political status of Kosovo and grant special rights and protection mechanisms for minority communities. Interestingly, independence was never mentioned within the proposal. However, the rights and obligations granted to Kosovo presented attributes that only independent states enjoy. Analyzing this whole process, Judah argued: "What Ahtisaari was trying to do was to find a legal and better formula for a situation that in many ways already existed but to move it forward within the context of an independent Kosovo."[558]

The Kosovo final status proposal published on 2 February 2007, defines the nature of Kosovo in its first article: "Kosovo shall be a multi-ethnic society, which shall govern itself democratically, and with full respect for the rule of law."[559] Furthermore, the first article also defines that: "The exercise of public authority in Kosovo shall be based upon the equality of all citizens and respect for the highest level of internationally recognized human rights and fundamental freedoms, as well as the promotion and protection of the rights and contributions of all its Communities and their members".[560] In short, Kosovo was defined as a society composed of different, but equal communities. However, as some of the communities are in a minority position, numerically smaller than the majority community, they would enjoy special legal and power-sharing rights.

Turning to the focus of the topic, decentralization and local governance, Ahtisaari´s proposal defines the municipality as the "basic territorial unit of local self-government".[561] A similar definition was accepted within the Rambouillet accords in 1999, where it was foreseen that:

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[556] Lehne, "Resolving Kosovo´s Status," 6
[557] Hofbauer, *Experiment Kosovo*, 207
[558] Tim Judah, *Kosovo: What Everyone needs to Know* (New York: Oxford University Press, 2008), 113
[559] Comprehensive Proposal For the Kosovo Status Settlement (UNSC, S/2007/168/Add.1), Article 1.1
[560] Ibid., Article 1.2
[561] Ibid., Article 6.1

"The basic territorial unit of local self-government in Kosovo shall be the commune. All responsibilities in Kosovo not expressly assigned elsewhere shall be the responsibility of the communes".[562] The creation of new municipalities or redrawing of municipal boundaries, on the other side, was not explicitly treated within the Rambouillet accords. It was envisaged that changes in the number and boundaries of the municipalities could be later created by the Kosovo Assembly in coordination with the existing municipalities.[563] Unlike the Rambouillet Accords, Ahtisaari concretized the number of Serb majority municipalities and draw their exact boundaries.

The detailed decentralization plan, it was argued, was presented in order: "To address the legitimate concerns of the Kosovo Serb and other Communities", a plan that would: "encourage and ensure their active participation in public life, and strengthen good governance and the effectiveness and efficiency of public services throughout Kosovo".[564] Accordingly, in order to accommodate mainly the needs of the Serb community, the proposal foresaw the establishment of new municipalities. These new municipalities will be established correspondingly within the ethnic division lines, explicitly described within the proposal. The plan thereby created a system, of ethnically based municipalities where this was possible. Concretely, according to the plan, the city of Mitrovica would be divided into two municipalities, municipality of South Mitrovica and the predominantly Serb municipality of North Mitrovica.[565] Furthermore, in addition to the existing municipalities with a Serb majority population, Leposavić, Zvečan, Zubin Potok, and Štrpce, five more municipalities would be established, namely, Gračanica, Novo Brdo (enlarged version of the existing municipality), Ranilug, Parteš, and Klokot.[566] Otherwise, the Serb community in Kosovo would manage their affairs through the authority of a total of ten municipalities.

As far as the core propositions of the local government system are concerned, these were based on the 1985 compiled European Charter of Local Self-Government.[567] As such, the plan contains enhanced versions of parts of the Charter. The plan can best be treated under two main headings: a) Symmetric provisions - competencies and delegated authorities of

[562] Rambouillet Accords: Interim Agreement for Peace and Self-Government in Kosovo, S/1999/648, 1999, Chapter 1, Article 1, para. 8, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20S%201999%20648.pdf accessed online on 22.03.2017
[563] Ibid., Article VIII, para. 1
[564] Comprehensive Proposal For the Kosovo Status Settlement, Annex III
[565] Comprehensive Proposal For the Kosovo Status Settlement, Annex III, Article 13.1
[566] Ibid., Attachment to Annex III
[567] European Charter of Local Self-Government (Strasbourg: European Treaty Series 122, 1985)

municipalities and b) Asymmetric provisions – extended competencies of Serb majority municipalities.

V.3.1. Symmetric provisions - competencies and delegated authorities of municipalities

1. Municipal competencies – included the right of municipalities to first manage the local economic development, including issuance of licenses, environment and health protection, and management of local emergency situations. Secondly, municipalities were granted competencies in spatial planning, service delivery, and the right to name and maintain public premises. Thirdly, management of education, excluding the third level, and primary health services were defined as local competencies. Furthermore, municipalities were foreseen to manage services involving family and housing, tourism and cultural activities. Finally, except from the explicitly named competences, municipalities could manage: "Any matter which is not explicitly excluded from their competence nor assigned to any other authority".[568]

2. Delegated authority – was foreseen to be managed in a combination of local-central exercise of authority. This would include the management of cadastral, civil and voter's registries. In addition, the central government would delegate competencies in issues regarding business permits, administration of social assistance, and the protection of forests.[569] As described in the theory part, the delegated authority remains under indirect control of the central government. However, taking into account the need to increase efficiency in governance, a part of the delegated authority may gradually become competence of the local government.

3. Local budgets – autonomous budget planning and independent spending are core principles of effective local government. In order to fulfill its obligations local governments financially rely primarily on the central government grants, while struggling to also increase the share of own source revenues. Now, the goal of the central government should normally be focused on helping out the weaker municipalities taking into account and reacting to different needs.[570] In the same way, based on the principles enshrined within the European Charter of Local Self-Governance the proposal foresees that: "central grants shall be revised to include a fair and transparent block grant system, ensuring greater municipal autonomy in

[568] Comprehensive Proposal For the Kosovo Status Settlement, Annex III, Article 3
[569] Ibid., Annex III, Article 5
[570] These principles are also embedded within the European Charter of Local Self-Government, Article 9

the allocation and expenditure of central funds".[571] Moreover, the Ahtisaari proposal foresees the need of creating effective local own source revenue mechanisms, which do not fall within the competencies explicitly reserved for central authorities.[572]

4. Co-operation between municipalities – should take place within a clearly defined legal environment. Common needs and obligations bring municipalities to join forces, either bilaterally, or as mostly applicable in a form of associations. Organizing a co-operation in this form does not only include national inter-municipal co-operations but also the rights to co-operate with similar organizations on the international level.[573] Correspondingly, the same principles were included in the Ahtisaari proposal. It was, however, specifically described that municipalities may not act on issues specifically reserved for local governments, for instance, issuing of regulations and election of municipal bodies.[574] On the other side, such co-operations may include establishment of administrative bodies which could manage, for example common projects, or establishment of bodies which would work to increase the capacities of local government institutions.[575] The plan also included the right of municipalities to form and participate in an association of Kosovo municipalities.[576]

5. Supervision of municipalities – should be conducted continuously by the central government authorities, usually by a ministry dealing with local government issues. Nevertheless, the supervision is limited to the compliance of municipal acts and decisions with the Kosovo constitution and applicable laws.[577] In case of a legal dispute between the central and local authorities, a competent court may be engaged to legally resolve the dispute.[578] In the same way as the previous provisions, the supervision of municipalities is also enshrined within the European Charter of Local Self-Government.[579]

V.3.2. Asymmetric provisions – extended competencies of Serb majority municipalities

1. Education and Health – The management of higher education institutions, including the obligations that are related to their work, was assigned as an additional competence to the

[571] Comprehensive Proposal For the Kosovo Status Settlement, Annex III, Article 8.3
[572] Ibid., Article 8.2
[573] European Charter of Local Self-Government, Article 10
[574] Comprehensive Proposal For the Kosovo Status Settlement, Annex III, Article 9.1.1
[575] Comprehensive Proposal For the Kosovo Status Settlement, Annex III, Article 9.1.2 and 9.2.2
[576] Ibid., Article 9.2
[577] Ibid., Article 6.1
[578] Ibid., Article 6.1.3
[579] See European Charter of Local Self-Government, Article 8

municipality of North Mitrovica.[580] The university itself would operate autonomously,[581] while the municipality of North Mitrovica would retain the: "authority to exercise responsibility for this public Serbian language university".[582] In addition to a Serbian language university, Serbian primary and secondary schools would have the right to use text books and the same curricula applied in Serbian schools. Text books and curricula would have to be formally approved by the central authorities in Kosovo.[583] In addition to the enhanced competences in education, three of the Serb majority municipalities North Mitrovica, Gračanica, and Štrpce, would not only manage primary health services, but they would also run regional hospitals.[584]

2. Security and Cultural matters – Albanians have agreed as early as the Rambouillet negotiations to grant the municipalities the right to choose the local police commander.[585] Even though this right within the Rambouillet Agreement was foreseen to be applicable on all municipalities, Ahtisaari´s plan granted this right only to the Serb majority municipalities. According to the plan, Serb majority municipalities would have the right to propose two names for the position of the local police commander, while the central government would have to formally choose one of the proposed names.[586] On the cultural matters, the plan foresaw that the Serb majority municipalities would: "exercise responsibility for cultural affairs, including, (…) protection and promotion of Serbian and other religious and cultural heritage within the municipal territory as well as support for local religious communities",[587]

3. Special relations between the Serb majority municipalities and Republic of Serbia – Article 10 and 11 of the Annex VIII of the proposal defines the right of the Serb majority municipalities to co-operate and receive technical and financial help from institutions of Serbia. Any intention of such co-operation will have to be scanned and approved by the Kosovo Ministry of Local Government Administration.[588] The proposal even includes the idea to establish a common Kosovo-Serbia commission which would facilitate future co-operations between the Serb majority municipalities and institutions of Serbia.[589]

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[580] Comprehensive Proposal For the Kosovo Status Settlement, Annex III, Article 4.1.1
[581] Ibid., Article 7.2.1
[582] Ibid., Article 7.2.3
[583] Ibid., Article 7.1.1 and 7.1.2
[584] Ibid., Article 4.1.2
[585] Rambouillet Accords, Chapter 2, Article II, para. 5
[586] Comprehensive Proposal For the Kosovo Status Settlement, Annex VIII, Article 2.6
[587] Ibid., Annex III, Article 4.1.3
[588] Ibid., Article 10.2, 10.3 and 10.4
[589] Ibid., Article 10.6

What is more important, institutions of Serbia would have the right to finance different projects and events which may be conducted and organized within a certain Serb majority municipality in Kosovo. Any financial or technical aid, should however, be limited within the scope of municipal competencies, and would have to be open and accessible for the public. Furthermore, municipalities would have to report any such aid within their annual reports. Money transfer would pass through the official banks operating in Kosovo, and transfer information would be accessible to the central government authorities. [590] Granting asymmetric provisions for the Serb majority municipalities were rejected by Kosovo, claiming that such arrangements would "introduce cantonization by the back-door". Still, Ahtisaari and his team ignored any objections to these provisions.[591] If nothing else, Pettifer claims, at least these asymmetric provisions will provide Serbia with mechanisms to constantly influence Kosovo domestic affairs.[592]

V.4. Independence and the Day After

The proposal should have presented the final stage of resolving the status question, however it did not. The failure to adopt the proposal within the UNSC pushed the international community to now directly address the issue of the future political status of Kosovo. So, it only opened a new phase of diplomatic efforts. The last attempt to find a solution which would be acceptable to both Kosovo Albanians and Serbia was conducted by a tripartite diplomatic body consisting of high diplomats from the EU, USA, and Russia. The intention was, as Lehne points out, to: "´leave no stone unturned in the search for a solution´ the whole range of options (including autonomy, independence, partition) was once more discussed without, however, leading to any significant evolution of the positions of the two parties".[593] Both parties simply remained stuck to their positions.

As described earlier, it should be re-noted that, from the moment it was clear that Serbia was about to lose Kosovo, their intentions were reoriented towards partition. First, an attempt to impose partition by force was conducted with the involvement of the Russian troops in 1999,[594] and later through a continuous obstruction of the UN mission in Kosovo. With the

[590] Ibid., Article 11
[591] Weller, *Contested Statehood*, 214
[592] James Pettifer, "The Ahtisaari Report – Totem & Taboo," Balkan Series 07/08 (Defense Academy of the United Kingdom, Conflict Studies Research Center, 2007), 2
[593] Lehne, "Resolving Kosovo´s Status," 10
[594] Zbigniew Brzezinski, "Get serious about Kosovo," in *Kosovo: Contending Voices on Balkan Interventions,* ed. William Joseph Buckley (Grand Rapids and Cambridge: Wm. B. Eedermans Publishing Co., 2000), 326

presentation of the final status proposal, as observed by Ker-Lindsay, Serbia opposing the possible independence of Kosovo showed signs: "that partition might in fact be acceptable compromise if put on the agenda". [595] Even though this option was marginally discussed, the international community remained committed to the idea of territorial integrity, even if applied to a seceding Kosovo.[596]

Lacking any compromise towards the final status, Kosovo in coordination with its main western partners declared independence on 17 February 2008. The declaration included explicit commitment to fulfill any obligation arising from the status proposal. The first part of the declaration was as follows:

> "We, the democratically elected leaders of our people, hereby declare Kosovo to be an independent and sovereign state. This declaration reflects the will of our people and it is in full accordance with the recommendations of UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement." "We declare Kosovo to be a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law. We shall protect and promote the rights of all communities in Kosovo and create the conditions necessary for their effective participation in political and decision-making processes." Finally: "We accept fully the obligations for Kosovo contained in the Ahtisaari Plan, and welcome the framework it proposes to guide Kosovo in the years ahead. We shall implement in full those obligations including (…) those that protect and promote the rights of communities and their members."[597]

On the international level, a gradual recognition process started. Serbia, backed by Russia continued to oppose the `unilateral declaration` and refused to accept the new created momentum. Above all, Serbia encouraged the local Kosovo Serb population to cut all ties with the Kosovo central government. Furthermore, many Serbs also abandoned multi-ethnic institutions which were gradually build by the international administration. New parallel local government administrations were also established within the Serb majority municipalities.[598] Serbia´s new strategy, besides aiming

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[595] James Ker-Lindsay, *Kosovo: The Path to Contested Statehood in the Balkans* (London, New York: I.B. Tauris, 2009), 84
[596] Weller, *Contested Statehood*, 4
[597] "Declaration of Independence," The full text of the declaration can be found online: http://www.assembly-kosova.org/?cid=2,128,1635, accessed on 16.04.2017
[598] Lehne, "Resolving Kosovo´s Status," 13

partition, was now directed in sabotaging the new state.[599] As a result, as insisted by Belgrade, Kosovo Serbs mostly ceased to co-operate with Kosovo institutions. Schmitt, commenting the declaration of independence and the reaction of the Serb population within Kosovo interestingly maintains: "It seems as if independence had not solved the issue of Kosovo, but merely opened a new chapter in an almost hundred years old confrontation".[600]

A summary of this part of the study, specifically commenting on the status proposal, might be best reflected in the following words of Rücker: "After all, two thirds of the settlement proposal were about the rights, and in fact privileges, of the Kosovo Serbs, it was so to speak an excellent deal".[601] Equally, Lehne points out that: "Ahtisaari failed (unsurprisingly) as a mediator on the core status issues but succeeded in preparing a comprehensive and high-quality proposal for a settlement".[602] In other words, almost everybody would agree that the provisions and mechanisms for the protection of minority rights within the proposal, once implemented, would present one of the most advanced legal provisions for minority protection. Although the planned legal provisions were advanced, a consensus within the Kosovo political scene on the same issue was lacking, concludes Bieber.[603] Bieber furthermore remarks, that in order to fulfill such advanced provisions, in addition to the political will, it would require sufficient financial resources, and an advanced administration,[604] which Kosovo obviously lacked. Thus, it may be concluded that the proposal included advanced rights for minority communities, especially for the Serb population, however, it presented not always practically applicable provisions. Still, the proposal remains plausible. In 2008, Ahtisaari was also awarded a Nobel Peace Prize for his peace efforts, not only in Kosovo, but also on other parts of the globe. Thus, his appointment to head the Kosovo final status process was by no means random.

V.5. Minority Communities and Their Situation on the Ground

It has been mentioned in the previous parts that the situation of minorities remains far from satisfactory. There has constantly been a visible discrepancy between the legal situation, and

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[599] Weller, „Negotiating the final status of Kosovo," 92
[600] Schmitt, *Kosovo: Kurze Geschichte einer zentralbalkanischen Landschaft*, 371 (authors translation)
[601] Ruecker, *Standards and Status*, 78
[602] Lehne, "Resolving Kosovo´s Status," 18
[603] Florian Bieber, "Ein multiethnischer Staat? Institutionelle Ausformung und politische Wirklichkeit," in *Die Republik Kosovo – Der jüngste Staat Europas*, eds. Olaf Leiße, Martin Roth, Christian Gesellmann (Baden-Baden: Jenaer Beiträge zur Politikwissenschaft, Band 15, Nomos, 2013), 147
[604] Ibid., 149

between the situation on the ground. The reduction of this gap presents a complex institutional and societal process. As the most important part of this process, decentralization plays a pivotal role. It is thus important, before analyzing decentralization, to have an overview of the general minority situation on the ground, especially in the period before the declaration of independence. The factual division of Kosovo into a northern Serb dominated part and the rest of Kosovo, including the establishment of compact enclaves of Serb majority settlements, present the basis for understanding the situation of minority communities in Kosovo.

The current division line, running through the city of Mitrovica, was initially set up by the French KFOR troops. The French troops, confronted with the serious security situation in the process of the Serb retreat, stopped at the Ibar River and immediately erected military post-blocks. This effectively prevented any Albanian from crossing into the northern part.[605] KFOR, and later UNMIK, as previously argued, failed to take effective control of this part of Kosovo. This has been regarded as a major `strategic mistake` of the international community. The enforcement of a secure environment in entire Kosovo, including the north should have been the undisputed initial aim, as MacShane points out: ”imposing security all over Kosovo should have had priority.” This was difficultly achievable because, as he further argues: “every decision having to be referred back to the UN headquarters in New York and with the KFOR troops micro-managed by the defense ministries of each contingents home nation, this was easier said than done.”[606]

As a result of this blurred situation, Serbia has retained and gradually reinforced its institutions in Kosovo, especially in the northern part. These institutions include, for example, educational, cultural, and health facilities, as well as local governments and security structures. These institutions have been financed by Serbia,[607] and they have become known as the Serb parallel structures. Few studies have investigated these structures in any systematic way, thus a thorough analysis remains difficult. What is certain, however, is that these structures have been tolerated by the international presence in Kosovo.[608] UNMIK has formally tried to dissolve these structures and even reached an agreement with Belgrade on this issue.[609] Nevertheless, in practice, UNMIK had to admit to a form of cohabitation with

[605] William G. O´Neill, *Kosovo An Unfinished Peace* (Boulder & London: International Peace Academy occasional paper series, Lynne Rienner Publishers, 2002), 45-46
[606] Denis MacShane, *Why Kosovo Still Matters*, (London: Haus Publishing Ltd, 2011), 63-64
[607] Krammer and Džihić, Die Kosovo-Bilanz, 83
[608] Rossbacher, *Friedenssicherung*, 177, see also Sami Ukelli, “Ist der Frieden im Kosovo/Kosova von Dauer?” Schriften der Johannes Kepler Universität Linz Nr. 114 (Linz: Trauner Verlag, 2008): 88-89
[609] Rossbacher, *Friedenssicherung*, 179

the parallel structures in Serb majority areas.[610] Rücker, the former SRSG recalls: "Our policy was to tolerate parallel structures in the education and health sectors, to reject parallel structures in administration, i.e. Belgrade attempts to govern Kosovo more or less directly, and to strongly reject parallel security structures."[611] Oppositely, Belgrade controlling the Serbs of Kosovo, initially allowed a formal cooperation of the Serbs with UNMIK, [612] while on the ground, Belgrade was working to further strengthen and expand its parallel institutions.[613] It constantly argued that these institutions were vital for the survival of the Serb population in Kosovo. This argument was especially used for the Serbs living south of the Ibar River. According to some reports, in 2012 the parallel structures have been employing some 22,000 persons. Furthermore, some estimates suggest that Serbia has spent more than 6.2 billion Euros, only between 1999 and 2011, for the functioning of its parallel structures in Kosovo.[614]

The northern part gradually degraded into a lawless territory. The several Albanian families that remained, the Bosniak and the Roma communities, found themselves in a minority position, within a Serb dominated environment. In the south, Serbs together with a large number of Roma, fleeing violence, established compact enclaves around small Serb settlements. Gorani villages within the Gora mountainous area, also remained, in some form, organized as an enclave. Possessing linguistic proximity with the Serbs, they mainly continued their constant ties with the Serb community. Similarly, the Roma community, as previously mentioned, remained bound to the Serb settlements. Ashkali and Egyptian communities, on the other side, speaking Albanian, and being predominantly Muslim, remained within Albanian settlements. Roma, Ashkali, and Egyptians (RAE) remain, in both Abanian and Serb dominated environments largely discriminated. They mostly live in compact city quarters, which often lack even basic infrastructure. The Bosniak community, sharing the same religion as the Albanians, and the same linguistic characteristics as the Serbs, present a constructive community, which has retained links with both communities. They remain, however, politically leaned towards the majority. Turks are concentrated in the region of Prizren, and especially in the newly established municipality of Mamushe. Turks shared religious similarities with Albanians, and remained bound to the majority. In brief, this

[610] Hofbauer, Experiment Kosovo, 165
[611] Ruecker, *Standards and Status*, 113
[612] Ansola, "The United Nations in Kosovo," 18
[613] Ukelli, "Ist der Frieden im Kosovo/Kosova von Dauer?" 89
[614] Petrovic, "Die Rolle Serbiens," 293-294

short description shows that the life of various communities in Kosovo has mainly been, and mostly remains shaped by the Albanian and/or Serb interests in Kosovo.

The international efforts to create a multi-ethnic Kosovo, according to Džihić and Kramer, were from the beginning based on fictive expectations. Authors base this assumption on the argument that Kosovo has never had a history of multiethnic socialization and tolerance.[615] Some success, however, was seen in the integration of the Serbs living south of the Ibar River, who, even under constant pressure from Belgrade, showed willingness to cooperate first with UNMIK and later with the Kosovo institutions.[616] Now, the history of this whole situation brings us to the current situation, and to the current efforts to implement a Kosovo wide decentralization. The aim of the decentralization process, among others, is to integrate/transform the parallel structures into legal institutions of local governance in Kosovo. In accordance to this process, the Serb established enclaves were remodeled to form self-rule institutions or institutions of local government. The whole process has constantly been refused in the north.[617]

As explained in the introductory paragraph of this chapter, it is clear that there is a gap between the legal and actual situation of minorities in Kosovo. The legal system for the protection of minorities established through the Ahtisaari package has often been understood only as a formal condition for independence. As such, this system has failed to effectively involve all institutional and social capacities to promote the integration and protection of minority rights. As a result, there is a discrepancy between the `ambitious` legal and institutional mechanisms for minority protection and the `political reality `on the ground.[618] The inability of the Kosovo wide institutions to effectively implement the legal and institutional mechanisms for minority protection, according to Bieber, are attributable to the limited institutional capacities, negative perceptions of minorities, and to the `ambitious` internationally imposed legal system. Bieber further argues that the limited institutional capacities are based on the inability of the institutions to guarantee the effective rule of law. Furthermore, the majority population often regards minority legal protections as forms of social and economic privilege.[619] This evidence suggests that a successful implementation of good governance, minority protection, and minority integration depends on the

[615] Vedran Džihić and Helmut Kramer, "Der Kosovo nach der Unabhängigkeit" (Internationale Politikanalyse, Friedrich Ebert Stiftung, 2008), 15
[616] Ukelli, "Ist der Frieden im Kosovo/Kosova von Dauer?" 89
[617] Bieber, "Ein multiethnischer Staat?" 152-153
[618] Ibid., 142
[619] Ibid., 150

implementation of the decentralization process. Effective self-rule for minorities through local governance forms an advanced tool to counter the above weaknesses of the system, and to decrease the gap between the legal and practical situation. Nevertheless, it should also be noted, that it will further remain difficult to effectively protect local minorities from local majorities, and as this problem is here to stay, the empowerment of central government institutions, combined with a successful decentralization will play a central role in the future development of Kosovo. Finally, a successful decentralization in Kosovo can only be effective if it is based on the factual situation on the ground, namely, if it takes into account the dispersed nature of minorities, their financial dependencies and needs, and if it enables their representation and participation in the decision-making process. The next chapter describes the principal findings of the study.

CHAPTER VI: ADMINISTRATIVE, FISCAL, AND POLITICAL DECENTRALIZATION IN KOSOVO

This part of the study intends to determine the effects of administrative, fiscal, and political dimensions of decentralization on the likelihood of minority rebellion against the state. It also investigates whether or not the application of decentralization has improved the possibilities for minority communities to effectively participate in the political and socio-economic life in Kosovo. For this purpose, this chapter is divided into three parts. The first part considers the administrative decentralization, the second part considers the fiscal decentralization, and the third part considers the political decentralization in Kosovo. It should be noted that this chapter is unable to encompass every element of every dimension of decentralization, however, it includes a review of the following selected argumentations.

In the first part, this chapter analyzes the impact of administrative decentralization on minority communities. First, it argues that where possible, the municipal territorial organization has been established based on the needs of minority communities. Second, it argues that the decentralization process has been characterized by serious difficulties which still remain in the northern parts of the country. Third, it argues that there are serious drawbacks to the institutional practices for the application of minority rights mechanisms. Fourth, it argues that the possibilities for minority communities to affect the local decision-making process remain limited. Fifth, it argues that the benefits of decentralization are undermined by limited inter-institutional cooperation. Finally, it also argues that local governments in Kosovo enjoy extensive decision-making autonomy.

In the second part, this chapter mostly reviews the financial capacities of local governments. It first argues that local government's financial sustainability is undermined by the weak capacities of local authorities to collect own source revenues, especially in minority municipalities. Second, it argues that the central government's financial transfers and grants play a pivotal role in the `survival` of local governments. Third, it argues that the method of central government grant allocation is based on elements of equalization, which can, however, be jeopardized by the lack of accurate statistical data, lack of flexibility, non-objective central government investments, and donor led projects. Fourth, it argues that the reliance of local governments on forms of indirect project financing can risk the financial sustainability of local governments in the long-term. Lastly, it argues that apart from some elements,

municipalities enjoy a relatively high degree of fiscal and financial autonomy, and more importantly, they tend to involve at least the Albanian majority municipalities and minority communities in the budgeting process. In sum, the second part of this chapter argues that the basis of a sound fiscal decentralization has been set.

In its third part, this chapter first argues that political decentralization has increased opportunities for an effective and adequate political representation of minority communities. Second, it argues that it has established the formal legal basis for direct participation of citizens in the decision-making process. Third, it argues that decentralization has created favorable conditions for the Serb community to administrate 10 municipalities, and to increase their political representation in the local municipal assemblies. Fourth, it argues that political decentralization has not solved the problem of smaller communities to establish adequate local level political and non-political representation. Finally, it argues that the effectiveness of accountability and transparency mechanisms remain limited. To sum up, this chapter argues that the formal requirements for political decentralization have indeed been established, but that the failure to put its elements into institutional practice undermines the benefits of political decentralization, and thereby its conflict mitigating effect.

VI.1. Administrative/Institutional Decentralization in Kosovo

The administrative or institutional dimension of decentralization is an important aspect of constitutional design in divided and post-conflict societies. It is now been well-established from a number of studies that constitutional design plays a significant role in drafting of peace agreements, and in managing diversity in multiethnic societies. As a result, the intention of this part of the study is to argue that the constitutional design drafted by Ahtisaari and his team, presents an advanced foundation for the accommodation of ethnic minorities in Kosovo. The main challenge, however, remains the prospect of its applicability. The focus of this analysis is on decentralization, the functioning of local governments, and specifically the functioning of local mechanisms for the protection and promotion of minority rights, and their impact on minorities.

Administrative decentralization, as described in theory, presents the constitutional design of the state and its provisions on ´who does what and where´. In other words, administrative decentralization is focused on the institutional constellation, its functioning, and its operations of the local government. USAID described administrative decentralization, also cited in chapter II, as: “the institutional architecture - structure, systems, and procedures - that

supports the implementation and management of those responsibilities under the formal control of subnational actors."[620] According to Rondinelli, the basis of decentralization is built upon the: "laws, regulations, and directives that clearly define the relationships among different levels of administration, the allocation of functions among organizational units, the roles and duties of officials at each level of government, and their limitations and constraints."[621] Now, the first step for analyzing the administrative decentralization in Kosovo leads us to the constitution, laws, bylaws, and other formal acts which regulate the functioning of local governments. A clear legal framework, as argued by Parker, presents a basis for an effective administrative decentralization.[622]

The recent trend in constitutional designs in Southeastern Europe has been moving towards the inclusion of advanced (international) provisions for minority accommodation and participation. On the one hand, it is hoped that including these provisions would diminish the possibility of internal conflict, while on the other hand, it would facilitate the difficult path towards European integration.[623] Kosovo, less as a general trend but more as a compromise towards independence, designed one of the most advanced constitutions when it comes to minority rights.[624] Its constitution and the overall legal framework basically reflects the Ahtisaari Plan. Weller, commenting on the constitutional drafting process in Kosovo, recalls:

> "The constitution of the republic of Kosovo is fully compliant with the ahtisaari document. In order to ensure this, it simply restated verbatim the key commitments of the comprehensive proposal that were mandatory. There was a debate within the constitutional commision as to whether it would be possible to rephrase some of those provisions. However, the international agencies involved wisely deemed it prudent to insist on a literal adoption of Ahtisaari language in certain key areas. These included, in particular, the provisions on communities. While this precluded the adoption of additional, more far-reaching provisions by the kosovar drafters, it also reduced the risk of an accidental dilution of the ahtisaari commitments."[625]

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[620] USAID, *Democratic Decentralization Programming Handbook*, 14-15
[621] Denis A. Rondinelli, "Government Decentralization and Economic Development: The Evolution of Concepts and Practices," in *Comparative Public Administration: The Essential Readings*, eds. Eric E. Otenyo and Nancy S. Lind (Amsterdam, Boston, a.o.: Research in Public Policy Analysis and Management, Volume 15, Elsevier JAI Press, 2006), 443
[622] Parker, "Decentralization: The Way Forward for Rural Development?" 33
[623] Alice Engl and Benedikt Harzl, "The Inter-relationship between International and National Minority-Rights Law in Selected Western Balkan States," *Review of Central and East European Law* 34 (Leiden: Martinus Nijhoff Publishers, Koninklijke Brill NV, 2009), 311-312
[624] Weller, *Contested Statehood*, 257
[625] Ibid., 250

As a result, the constitution of Kosovo guarantees applicability of the international agreements and instruments for the protection of human rights, and for the protection and promotion of minorities.[626] It guarantees minorities, among others, cultural freedom and protection, the use of their language in private and public affairs, right to education, and the right to establish civil society organizations and media.[627] It also guarantees minorities participation in the central government,[628] in the Consultative Council for Communities,[629] and an "equitable representation in employment in public bodies and publicly owned enterprises at all levels."[630] In addition, twenty seats are reserved for minorities in the national parliament,[631] a parliamentary committee for minority issues is established,[632] and a double majority is required for laws that affect minorities.[633] Finally, Kosovo's constitution guarantees the participation of minorities in the civil service,[634] judicial system,[635] the constitutional court,[636] police,[637] the intelligence agency,[638] office of the ombudsperson,[639] and the central election commission.[640] In an expanded version, all these rights have been included in the Law No. 03/L-047a on the Protection and Promotion of the Rights of Communities and their Members in Kosovo.[641] These examples show that an extensive scope of the law guarantees protection and promotion of minorities in Kosovo. Given this discussion of the general legal framework, the next section of the study addresses the territorial administrative constellation of Kosovo's local government system and municipal administrative governance structures.

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[626] Constitution of the Republic of Kosovo, Article 22; These agreements and instruments, as listen in the constitution are as follows: 1. Universal Declaration of Human Rights; 2. European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; 3. International Covenant on Civil and Political Rights and its Protocols; 4. Council of Europe Framework Convention for the Protection of National Minorities; 5. Convention on the Elimination of All Forms of Racial Discrimination; 6. Convention on the Elimination of All Forms of Discrimination Against Women; 7. Convention on the Rights of the Child; 8. Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.
[627] Constitution of the Republic of Kosovo, Article 59
[628] Ibid., Article 96, Para. 3 and 4
[629] Ibid., Article 60
[630] Ibid., Article 61
[631] Ibid., Article 64, Para. 2
[632] Ibid., Article 78
[633] Ibid., Article 81
[634] Ibid., Article 101
[635] Ibid., Article 103, Para. 3 and 6, and Article 108, Para. 6, Article 109, Para. 4, Article 110, Para. 3
[636] Ibid., Article 114, Para.3
[637] Ibid., Article 128, Para. 2
[638] Ibid., Article 129, Para. 2
[639] Ibid., Article 133, Para. 2
[640] Ibid., Article 139, Para. 4
[641] For more see, Law No. 03/L-047a on the Protection and Promotion of the Rights of Communities and their Members in Kosovo

VI.1.1. Territorial organization of the Kosovo local government system

Kosovo's local government system currently comprises of 38 Municipalities.[642] Ten municipalities have a Serb majority, one (Mamushe) has a Turkish majority, and the rest have an Albanian majority. The municipality of Mitrovica has been split into a Serb majority North Mitrovica, and into an Albanian majority South Mitrovica.[643] The existing municipality of Novo Brdo was enlarged with additional cadastral zones[644] in order to include Serb settlements. A total of ten new municipalities were established, including North Mitrovica, Novo Brdo, and municipalities initially launched as pilot projects.

The territorial organization of Kosovo has been tailored in a way to primarily meet the needs and preferences of the Serb community. However, preferences of other minority communities have mostly been neglected. During 2011, research conducted by Ivļevs and King shows that 70% of the Serb respondents would rather live in separate areas than in ethnically mixed areas. Oppositely, 72% of Albanian respondents, and 85% of other minorities respondents indicated that they prefer living in multi-ethnic areas.[645] Similarly, a study published in 2016 shows that 72% of Serb respondents believe that the establishment of the new Serb majority municipalities was a good arrangement.[646] Yet, according to Hadden, opting for an ethnically separate option of municipal territories is not always a good choice. He points out that: "There are understandable reasons for members of distinctive minority communities to want to live in the same parts of towns and cities, if only to facilitate the enjoyment of their culture and to increase their sense of security. But the development of mono-ethnic ghettos and the associated communal separation in education and economic activity is often regarded as a primary cause of communal tension and conflict."[647] In brief, he argues that being oriented towards the preferences of the Serb community, namely to respect their wish to live in distinct administrative units, probably reduces the chances of conflict from a short-term perspective, while increasing it from a long-term perspective. The map below illustrates the current territorial administrative local government system.

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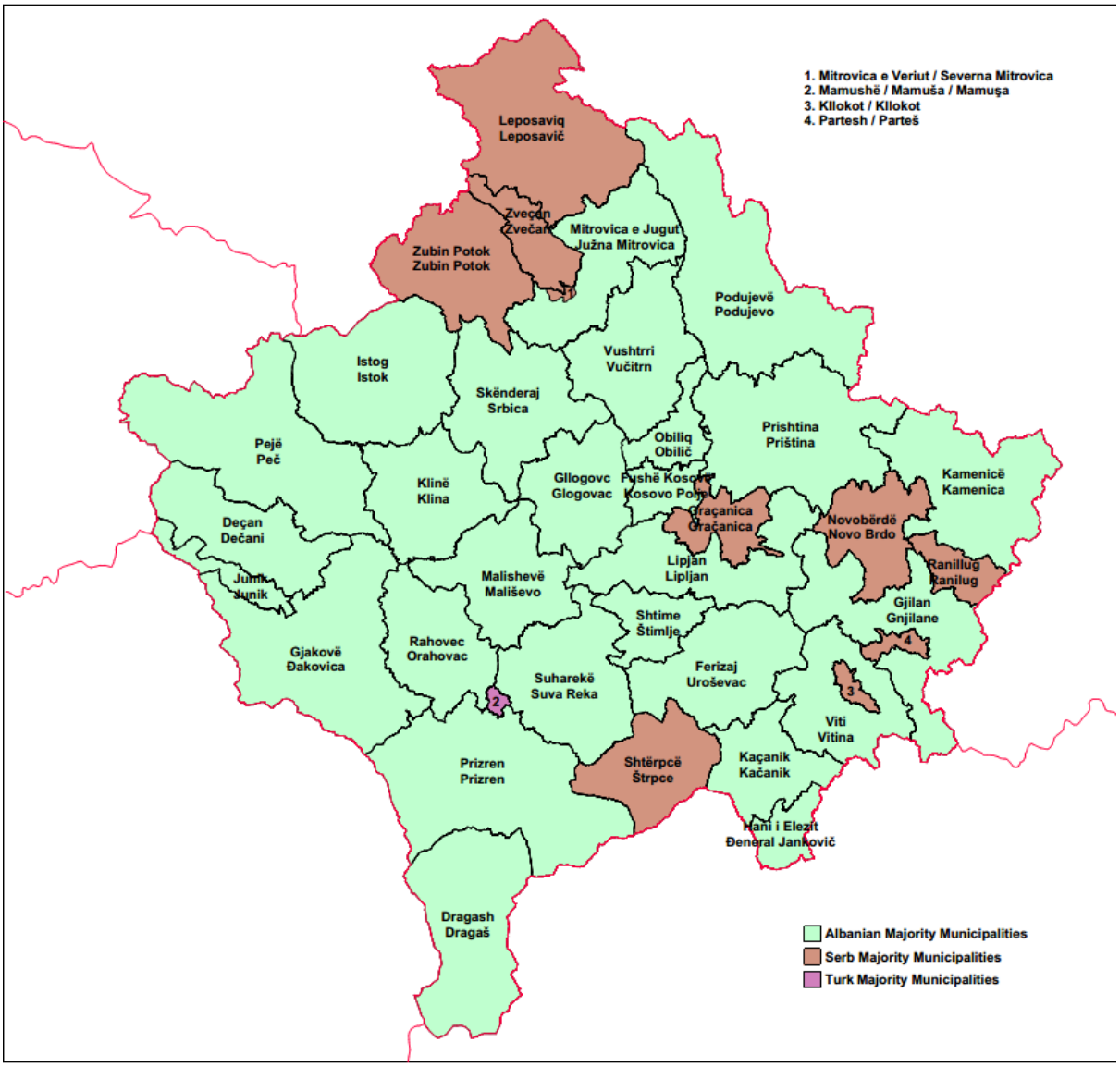
[642] Law Nr. 03/L-041 on Administrative Municipal Boundaries, Article 5
[643] Ibid., Article 5.4
[644] Ibid., Article 5.3
[645] Artjoms Ivļevs and Roswitha M. King, "Together or Apart? Attitudes towards multi-ethnic state and ethnically mixed communities in post-independence Kosovo" (Høgskolen i Østfold, Arbeitsrapport 2011:11), 6
[646] Samet Dalipi and Krenar Shala, "The Role of Decentralization on Security Improvement and Peace-building in Kosovo" (Friedrich Ebert Stiftung, 2016, http://library.fes.de/pdf-files/bueros/kosovo/13856.pdf), accessed online on 05.02.2018, 15
[647] Tom Hadden, "Integration and Autonomy: Minority Rights and Political Accommodation," in *Power Sharing: New Challenges for Divided Societies*, eds. Ian O´Flynn and David Russell (Ann Arbor, London: Pluto, 2005), 40-41



Map 2: Territorial organization of Kosovo's local government system

VI.1.2. Decentralization – the process

The initial phase of the decentralization process was characterized by political and administrative difficulties. Establishing new municipalities, extending existing ones and transitioning municipalities from one system to another has not been an easy task for Kosovo's authorities and for the international community. A majority of the Albanian community expressed their concerns for the mono-ethnic concept of decentralization, the (un) sustainability of the new (small) municipalities, and the over-empowerment of the Serb community. Alternatively, the Serb community found itself divided between cooperation and boycott. Smaller minority communities were again caught in a process dominated by Albanians and Serbs. Except from the establishment of a Turkish majority municipality of

Mamushe, these communities did not manage to advance their voice for the establishment of other municipalities.

The establishment of the Ranilug municipality resulted in difficulties due to significant influence from the local Serb parallel municipality in the Ranilug village. The new municipal authorities were forced to settle in a temporary building in another village, named Ropotovë e Madhe.[648] The current administration, in violation with the law,[649] still remains in the same village.[650] The same situation can be found in Parteš.[651] In addition, the municipal preparation team has faced several threats from the opposing Serbs.[652] In Klokot, the establishment of the municipality was initially refused by both, the Albanian and the Serb communities.[653] There were even institutional obstructions by the municipality of Viti, where Klokot was created, to transfer and fulfill the necessary obligations for a smooth transition.[654] This situation created favorable conditions for the recruitment of mainly unprofessional staff in the newly created administration.[655] These consequences will have a long-term effect on the efficiency of the new local administration. Similarly, some difficulties occurred in the municipality of Novo Brdo, that was created in 1989 and was functioning based on the Kosovo system.[656] The plan to change municipal borders was opposed by authorities of several affected villages, including the mayor of Gjilan. The inhabitants of these villages initiated civil procedures against the process that significantly increased their physical distance from municipal services.[657] Such attempts to change the course of decentralization remained unsuccessful. Nevertheless, the `struggle` to oppose these changes continued at an institutional level. For instance, the municipality of Gjilan delayed the transfer of essential cadastral registries. [658] The municipality of Prishtina continued to issue building permits for projects implemented within

[648] European Parliament, *The Decentralization Process in Kosovo and the Cration of the New Municipalities (A Kosovo-Albanian and a Kosovo-Serb minority view*) (Brussels: Directorate-General for External Policies of the Union, EP/EXPO/B/AFET/FWC/2009-01/Lot1/22 and 23, EU, 2010), 29
[649] See Law Nr. 03/L-041 on Administrative Municipal Boundaries, Article 5
[650] Xhavit Krasniqi (Director of Budget and Finances, Municipality of Ranillug), interview by author, September 23 2016
[651] Vesna Jovanović (Director of Education, Health, Social Issues, Youth, Culture, and Sports, Municipality of Partesh), interview by author, September 23 2016
[652] Besnik Tahiri, "Decentralisation and Local Governance Reform: Clear on paper blurred in practice" (Pristina: Kosovo Local Government Institute, Friedrich Ebert Stiftung, 2010), 20
[653] Hasan Rashiti (Deputy Mayor for Communities, Municipality of Kllokot), interview by author, September 23 2016
[654] European Parliament, *The Decentralization Process in Kosovo*, 29
[655] Hasan Rashiti, interview
[656] Milorad Milošević (Mayors Cabinet, Municipality of Novo Brdo), interview by author, May 11 2017
[657] Besnik Tahiri, "Implementing Decentralization in Kosovo: One Year On" (Pristina, Kosovo Local Government Institute, Friedrich Ebert Stiftung, 2009), 11
[658] Tahiri, "Decentralisation and Local Governance Reform," 24

the new boundaries of the Gračanica municipality.[659] Long-standing municipalities were obliged to transfer all the: "documents that have to do with archives, cadastral zones, property tax, land use, urban planning and civil registry"[660] to the newly established municipalities.

Furthermore, central government's work has contributed to various delays. For instance, the central government formally granted the necessary competencies, while in practice it failed to implement a rapid transfer of the necessary instruments for an effective administration of these competencies. As a result, the newly established municipalities were lacking essential financial means. Moreover, municipality staff were not ready to deal with the ever increasing number of transferred competencies.[661] The central government also failed to keep pace with the decentralization process by not processing other segmentally important laws. Several competencies in tourism, water and waste management, and emergency were transferred to the local level even though the legislation on its management and administration were lacking.[662] All these examples show that the implementation of the decentralization process has faced a fair share of difficulties that still remain today, especially in the northern parts of Kosovo.

The four Serb majority municipalities in northern Kosovo continue to function in a hybrid system of governance. They use both, the Serb as well as the Kosovo local governance system.[663] As agreed between Belgrade and Prishtina in the Brussels agreement, these municipalities are at the initial stages of their transition from the Serb to the Kosovo local governance system. In this regard, Hodžić points out that the North Mitrovica municipality, at least its municipal administration, has made positive steps, while Zubin Potok, Zvečan, and Leposavić are still stuck in the initial phase of the process.[664] The administration of these municipalities has only partially been created.[665] In North Mitrovica, the mayor and some staff members are located in a separate building from the rest of the administration,[666] thus dividing municipal organs in two parts. In Leposavić, the deputy mayor argued that for the

[659] Ibid., 38
[660] Ministry of Local Government Administration, *Progress Report on Implementation of Decentralization in the Republic of Kosovo* (Prishtinë: Government of the Republic of Kosovo, 2012), 29-30
[661] Tahiri, "Decentralisation and Local Governance Reform," 31
[662] Ibid., 26
[663] Stefan Djokić (Chief of Personel, Municipality of Zvečan), interview by author, May 16 2017
[664] Adrijana Hodžić (Head of the Municipal Administration Office for North Mitrovica), interview by author, September 15 2016
[665] Xhevat Tafa (Head of the Municipal Monitoring Division, MLGA), interview by author, September 26, 2016
[666] Haxhi Krasniqi (High Official for the Evaluation of Municipal Services, MLGA), interview by author, September 26, 2016

past four years, his municipality has been functioning based on the Kosovo local governance system.[667] However, the following section will argue that this is not completely true.

Reports from Kosovo's government show that the four municipalities in the north have failed to adapt to the rules and regulations of the legislation. According to these reports, the northern municipalities have failed to create a unified administrative structure and adapt official emblems.[668] The education and health sectors still function in accordance with the Serb system, thereby preventing an enactment of the enhanced competencies, as guaranteed by the law.[669] Furthermore, public services are provided by enterprises that are managed by parallel institutions.[670] Procurement and budget procedures are often not based on Kosovo's legislation.[671] The European Commission progress report notes that the budget procedure, even when based on the Kosovo system, is accompanied by serious delays and is in violation of the central government's recommended time frames.[672] Finally, one of the major problems for the central government and northern municipalities remains the population census in this part of the country.[673] Most Serbs boycotted the 2011 population census, and they continue to refuse it today. As a result, the central government has had to rely on unverified data for budget distributions and/or in determining the allowed number of staff for each municipality.

These problems can be traced to different causes. The main one is the existence of a powerful structure of the Serbian state. These structures generally obstruct the process of decentralization in a constant manner, and more specifically, they obstruct the work of municipalities. Both sides, Prishtina and Belgrade, tend to use the EU facilitated negotiation process mainly as a tool towards European integration than as a tool to improve the life of citizens in the north. They often intentionally prevent the implementation of the Brussels agreements on the ground, and/or use the same process for achieving some specific short-term strategic goals.[674] These agreements intend to facilitate, among others, the integration of the north into the Kosovo system. Under these circumstances, even though Kosovo institutions achieved a certain level of success in the south, the penetration of Kosovo's institutions and

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[667] Miroslav Ivanović (Deputy Mayor, Municipality of Leposavić), interview by author, May 16 2017
[668] Ministria për Dialog, *Raport mbi Gjendjen në Zbatimin e Marrëveshjeve të Brukselit 1 janar 15 qershor 2016* (Prishtinë: Government of the Republic of Kosovo, 2016), 10-11
[669] Ibid.
[670] Ibid., 11
[671] Ibid.
[672] European Commission, *Commission Staff Working Document, Kosovo 2016 Report*, (Brussels: EU, 2016), 9
[673] Ministria për Dialog, *Raport (…)1 janar 15 qershor 2016*, 11
[674] For more details see Cemaliye Beysoylu, "Implementing Brussels Agreements: the EU´s facilitating strategy and contrasting local perceptions of peace in Kosovo," *Southeast European and Black Sea Studies*, Vol. 18, No. 2 (2018): 205

system in the north remains difficult. In addition, the entire decentralization process in the north has been: "undermined by low levels of interest, inexperienced candidates and threats against those selected by local power figures."[675] Finding persons who are willing to cooperate is another problem, as: "The North already has an established political elite and a new one cannot be created from scratch as in the enclaves."[676] To sum up, the decentralization process in the north, and partially in the south has been characterized by a wide range of problems, interferences, and unwillingness and as such, it continues to remain fragile.

Additionally, the decentralization process has had a debatable impact on other minority communities. The Turkish minority community was the only community that directly benefited from the process. Initially established as a pilot project, the Turkish Mamushe municipality has successfully been transformed into a fully operative municipality. In this municipality the decentralization process was conducted without any particular difficulties.[677] Alternatively, the dispersed nature of the Roma, Ashkali, and Egyptian settlements did not create favorable conditions for the establishment of a municipality. However, this remains debatable for the Bosniak and Gorani communities. Both communities live in several compact areas. For instance, in Dragash, the local Slav speaking Muslim population, known as the Gorani community comprises of approximately 13,000 community members. However, 4,100 of them have declared themselves as Bosniaks, 9,000 as Gorani,[678] and others have declared themselves either as Albanians or as Turks. As a result, a small community has been split politically.[679] In addition, the Gorani community has constantly been relying on the Serb parallel institutions. They favor the creation of the Gora municipality which would be under Serb influence. Alternatively, Bosniaks favor the establishment of a Gora municipality, which would remain outside of the Serb influence.[680] This situation makes it difficult to argue in favor of the creation of a Gora municipality. Lastly, Aga from the Bosniak community, questions the lack of a Bosniak majority municipality as: "If Ranilug could become a municipality, why would this not be possible for Dragash, Rečane, and/or Vitomirica, where

[675] European Parliament, *The Decentralization Process in Kosovo*, 34
[676] Ibid.,
[677] Ilyas Bayraktar (Deputy Mayor, Municipality of Mamushe), interview by author, September 7 2016
[678] Kosovo Agency of Statistics, *Population Census 2011*, http://askdata.rks-gov.net/PXWeb/pxweb/sq/askdata/askdata_14%20Census%20population_Census%202011_3%20By%20Municipalities/tab%205%204.px/table/tableViewLayout1/?rxid=b4d2f88b-5bb3-4b70-b925-4c390a128e7b accessed online on 11.02.2018
[679] Bajram Hodža (Director of Inspections, Agriculture, Tourism, Forestry, and Rural Development, Municipality of Dragash), interview by author, May 10 2017
[680] Ibid.

the Bosniaks are mostly concentrated?"[681] Giving respect to this question, Aliji maintains that the failure to have a Bosniak majority municipality comes as a result of poor and nonconcrete lobbing by the community.[682] The possibility of establishing new municipalities remains open,[683] however, it depends more on political decisions than on certain criteria.[684] It can be concluded that in terms of a territorial organization, the Ahtisaari plan bypassed the concerns of other non-Serb minority communities, while the current situation in Kosovo allows for little room for administrative territorial improvements.

VI.1.3. Local government administrative structure and minorities´ participation mechanisms

Turning now to the institutions on the local level, as described in chapter IV, almost the entire structure and competencies established during the international administration are still in place. Article 12 of the Constitution of Kosovo stipulates that "Municipalities are the basic territorial unit of local self-governance in the Republic of Kosovo."[685] The constitution, moreover, recognizes the applicability of the European Charter on Local Self-Government,[686] and it defines that the nature of local government should be oriented towards the needs of minority communities.[687] It is in this vein that the Law on Local Self-Government was promulgated. This law foresees a pivotal role for municipalities in exercising public authority. According to the law, municipalities have the right to exercise "all powers which are not explicitly reserved for the central institutions."[688] Finally, as the law on local self-government is based on the Ahtisaari Plan, detailed municipal competencies can be found in the respective chapter. The structure and functions of local government institutions will be explained in the following section.

The local government system in Kosovo reflects a presidential system of governance, as opposed to UNMIK, which initially opted for a local government system based on parliamentary rules. Municipal mayors are directly elected by the people, and they head the local executive. They are not accountable to the local municipal assembly, which exercises

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[681] Šerif Aga (Deputy Chairperson for Communities of the Municipal Assembly, Municipality of Dragash), interview by author, May 10 2017
[682] Hajradin Aliji (Head of the Municipal Office for Communities and Return, Municipality of Prizren), interview by author, September 16 2016
[683] See the Law Nr. 03/L-041 on Administrative Municipal Boundaries, Article 12
[684] Xhevat Tafa, interview
[685] Constitution of the Republic of Kosovo, Article 12, Para. 1
[686] Ibid., Article 123, Para. 3
[687] Ibid., Article 123, Para. 4
[688] Law Nr. 03/L-040 on Local Self-Government, Article 4

only a formal oversight role. This system allows for fast decision-making, it gives local mayors considerable space for action, and it might be more stable, as it does not depend on the local assembly. Nevertheless, this system is also prone to institutional blockades between mayors and the assembly, and it also creates favorable conditions for unilateral rule by mayors. Indeed, this system of local governance assigns mayors a major role for effective application of local mechanisms for the protection and promotion of minorities. Therefore, the following section of the thesis will first argue that the effective application of minority rights mechanisms is primarily based on the political will of the mayor or of his affiliates, instead of the established system. Second, it will argue that the established mechanisms for minority participation in local government plays only a formal role with only limited influence over the decision-making process. Finally, it will argue that the limited applications of inter-municipal and intra-municipal cooperation, as well as the passive role of the central government reduces the benefits of decentralization, especially for improving the possibilities of minority communities. The following section will provide an account of the local institutions, minority participation mechanisms, and the overall efficiency of the system. The figure below depicts the local government administrative structure of these institutions and mechanisms.

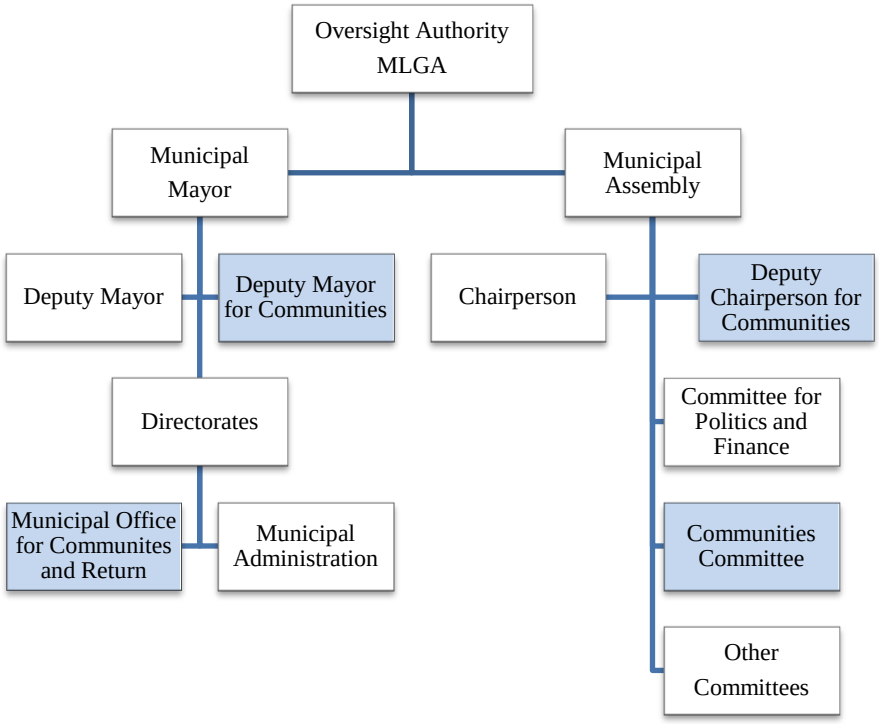

Figure 9: Local government administrative structure; four mechanisms for the protection and promotion of minority communities are colored

VI.1.4. The municipal assembly

The municipal assembly represents the citizens of the municipality. It is directly elected by them,[689] on a four year basis.[690] Depending on the population size, the municipal assemblies have at least 15 members, while the capital city has 51.[691] They have competencies to adopt the statute, municipal budgets, set municipal payments rates, adopt decisions over municipal symbols, road names, and municipal agreements.[692] Moreover, according to the law, every municipal assembly has two permanent committees, including the committee on politics and finance, and the community committee.[693] The community committee has at least one member of each community residing in the territory of the municipality, and it also includes members from the majority community. Minority communities constitute the majority within the committee. This committee deals with a wide range of issues that may affect the life of minority communities.[694] In addition, a deputy chairperson for communities has to be appointed in municipalities comprising of more than 10% minority communities.[695] The deputy chairperson deals also with minority issues.[696] This post is enshrined within the constitution.[697]

The `presidential system` of local government leaves the municipal assembly at the periphery of political power and decision-making. Its work is mainly dictated or influenced by the municipal mayor. Its oversight mechanisms, forms of ´checks and balances´, in relation to the mayor have been degraded to simple one-way reporting and budget approvals. There are three main factors that have contributed to the causes of this degradation. First, the municipal assembly is dependent on the mayor for securing appropriate work space and necessary financial means.[698] Second, as a result of a relatively poor remuneration, members of the municipal assembly remain passive for most of the mandate and fail to address different important issues, including possible mismanagement by the mayor.[699] Third, Hajnal and Péteri argued that as early as 2010, that several elements of the electoral system: "have a clear

[689] Ibid., Article 35
[690] Ibid., Article 37
[691] Ibid., Article 36
[692] Ibid., Article 40
[693] Ibid., Article 51
[694] Ibid., Article 53
[695] Ibid., Article 54
[696] Ibid., Article 55
[697] See the Constitution of the Republic of Kosovo, Article 62
[698] Kosovo Local Government Institute and Local Government Information Unit, "Necessity to Re-Think Decentralization?!" (Prishtinë, 2016), 14
[699] Besnik Tahiri, "The Municipal Mayor - A Representative or a Dominant Authority?" (Prishtina: Kosovo Local Government Institute, Friedrich Ebert Stiftung, 2012), 11

tendency to detaching the Assembly as such from the electorate and to making them, from a citizen´s perspective, an alienated, faceless and distant mass of people."[700] Formal provisions have failed to effectively address and solve these issues, as noted by Tahiri: "rather than striking a balance of mutual control" formal provisions have "led to the total domination of Mayor of Municipality over the Municipal Assembly."[701] In its progress report, the European Commission has also noted that the oversight role of the municipal assemblies is weak.[702] Therefore, it can be concluded that the role of the municipal assembly has been downgraded to a toothless institution of local government. This has seriously limited the effectiveness of the following two minority rights mechanisms.

a) Deputy chairperson for communities

The first mechanism within the municipal assembly for the participation and promotion of minority communities is the position of a deputy chairperson for communities. This position is established in municipalities that comprise of more than 10% minority communities.[703] The deputy chairperson is responsible for all minority related issues within the municipal assembly.[704] A 2016 OSCE report shows that the position of a deputy chairperson has been established in nine municipalities, six of which were Serb majority municipalities. However, despite being legally obligated, Gračanica failed to establish this post.[705] The nine established positions were filled with representatives of different communities, namely, five were Albanians, two were Bosniaks, and the last two were of Turk and Ashkali communities. [706] Another OSCE report from 2014 shows a positive pattern of establishing the position of a deputy chairperson in municipalities where minorities do not exceed 10% of the local population. In total, eight municipalities have followed this pattern.[707]

These OSCE reports indicate that the deputy chairpersons have formally fulfilled their legal obligations. They have participated regularly in the municipal assembly meetings.[708] They

[700] György Hajnal and Gábor Péteri, "Local reform in Kosovo. Final Report" (Forum 2015, Kosovo Foundation for Open Society, 2010), 39
[701] Tahiri, "The Municipal Mayor," 8
[702] European Commission, *Kosovo 2016 Report*, 9
[703] Law Nr. 03/L-040 on Local Self-Government, Article 54.1
[704] Ibid., Article 55
[705] OSCE, *Mechanisms for the Protection and Promotion of Communities´ Rights – Information Sheets, Deputy Mayors for Communities and Deputy Chairpersons for Municipal Assembly for Communities 2016* (OSCE, 2017, http://www.osce.org/mission-in-kosovo/305541?download=true accessed online on 30.01.2018), 2
[706] Ibid.
[707] OSCE, *An Assesment of Local-level Mechanisms for the Protection and Promotion of Communities´ Rights and Interests in Kosovo* (OSCE, 2014), 18
[708] Ibid.

were regularly paid for their work, while only a small number reported a lack of appropriate working means.[709] More importantly, the deputy chairpersons managed to strengthen the formal institutional link between different local level minority protection and promotion mechanisms and their municipalities.[710] Alternatively, nearly 80% of the deputy chairpersons have failed to be transparent towards their institutions. For instance, they have failed to brief the municipal assembly on their work.[711] This shows that municipalities formally comply with the legal provision that requires the position of a deputy chairperson within the municipal assembly however, the effectiveness of these mechanisms remain questionable. As such, an additional mechanism for the channeling of minority concerns is created. It appears that its importance gravitates towards its role as a participation mechanism, than as a mechanism for the promotion and protection of minorities. Overall, this position gains more weight for the local political coalition bargaining process, than as a minority protection mechanism.

b) Communities committee

The communities committee presents a more advanced mechanism for the participation and promotion of minority rights within the institution of the municipal assembly. In comparison with the deputy chairperson for communities, communities committees are established in all municipalities in Kosovo, irrespective of the number of minorities.[712] Every community in the municipality is represented with at least one member within the committee.[713] Article 53.2 of the Law on Local Self-Governance stipulates that this Committee:

> "shall be responsible to review compliance of the municipal authorities with the applicable law and review all municipal policies, practices and activities related with the aim to ensure that rights and interests of the Communities are fully respected and shall recommend to the Municipal Assembly measures it considers appropriate to ensure the implementation of provisions related to the need of communities to promote, express, preserve and develop their ethnic, cultural, religious and linguistic identities, as well as to ensure adequate protection of the rights of communities within the municipality."[714]

[709] Ibid.
[710] Ibid.
[711] OSCE, *Mechanisms for the Protection and Promotion of Communities´ Rights – Information Sheets, Deputy Mayors for Communities and Deputy Chairpersons for Municipal Assembly for Communities 2016* (OSCE, 2017, http://www.osce.org/mission-in-kosovo/305541?download=true accessed online on 30.01.2018), 2
[712] Law Nr. 03/L-040 on Local Self-Government, Article 51.5
[713] Ibid., Article 53.1
[714] Ibid., Article 53.2

There are considerable deficiencies in the application of this mechanism. First, the establishment of this mechanism does not always fulfill the legal requirement for including all minority communities, and second, smaller communities are not able to effectively channel their concerns and/or requests. Formally, communities committees have been established in all municipalities in Kosovo, and they have held 359 meetings in 2016.[715] Members of the committee mostly have fair working means at their disposition,[716] and in almost 85% of the cases, the communities committees have been meeting regularly. [717] Regarding its effectiveness, the latest OSCE report based on the monitoring of these committees points out that: "in the majority of cases the CC has failed to undertake substantive duties as outlined in the legal and policy framework."[718] In addition, the same report shows that communities are often not represented within committees,[719] as shall also be seen in the example below.

Another OSCE report from 2014 provides an interesting insight on the issue of meeting the legal criteria for the inclusion of all minority communities in the committee. In many municipalities, minority communities were not represented in the committee as required by law. The Serb and the Roma community were not represented in 8 cases. The Ashkali community was not represented in 13 cases, while the Egyptian community was not represented in 15 cases. Moreover, the Gorani community was not represented in 14 cases, while the Turkish and Bosniak communities were not represented in 20 and 23 cases, respectively. Alternatively, representatives of the majority community have been present in every committee. [720] Overall, these figures indicate that the Turkish and the Bosniak community were the most underrepresented groups in the local communities committees. Above all, these figures indicate that in most cases, municipalities have failed to meet the legal criteria related to the establishment and functioning of the committees.

It should be noted that even when smaller communities were represented in the committee, they had difficulties in channeling their concerns. For instance, the Egyptian member of the communities committee in the municipal assembly of Rahovec reported that: "We are indeed meeting, but as the old popular saying goes *you cannot build a fence with only one piece.* I

[715] Ministria e Administrimit të Pushtetit Lokal, *Raporti i Funksionimit të Komunave të Republikës së Kosovës, Janar – Dhjetor 2016* (Prishtinë: Republika e Kosovës, 2017), 9-10
[716] OSCE, *Mechanisms for the Protection and Promotion of Communities´ Rights – Information Sheets, Communities Committees 2016* (OSCE, 2017, http://www.osce.org/mission-in-kosovo/305526?download=true accessed online on 30.01.2018), 1
[717] Ibid.
[718] Ibid., 2
[719] Ibid., 1
[720] OSCE, *An Assesment of Local-level Mechanisms*, 19-20

have seen myself, because I speak in the communities committee, but my words are taken by the wind. Their position (the committee, author's comment) is more formal, concretely, they don´t help us in any way."[721] However, the communities committee can play an important role in the involvement of minority communities in local planning and decision-making processes. One such example from the same municipality shows that the local budget distribution dedicated for minority settlements has been set and approved within the committee.[722] To sum up, it can be argued that the mechanism of the communities committee has great potential, not only for the formal inclusion of minority communities in the decision-making process, but also for the activation of an effective institutional minority concerns transmission mechanism. This mechanism would have been far more effective if the institution of the municipal assembly would not have been pushed on the verges of the political decision-making cycle.

VI.1.5. The municipal mayor

The municipal mayor represents the central and the most powerful figure in the local government management structure. Therefore, the promotion of minority rights are often dictated by their personal attitudes. The mayor is directly elected by the citizens for a four-year term.[723] The mayor leads the executive branch of the municipality and manages a wide range of municipal competencies which are not reserved for other municipal institutions.[724] The deputy mayor[725] and directors[726] who manage different branches of the local government are appointed by the mayor, as part of the local executive. A second deputy mayor for communities might also be appointed. Returning to the post of the mayor, Hajnal and Péteri argue that: "mayors tend to appear as well-known, central figures of the local government scene."[727] They further emphasize that this situation is created mostly as a result of the difficult electoral process through which the candidates have to pass in order to win the seat.[728]

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[721] Bujar Morina (Representative of the Egyptian Community, Communities Committee Municipality of Rahovec), interview and translation by author, May 10 2017
[722] Jovan Bojić (Acting Head of the Municipal Office for Communities and Return, Municipality of Rahovec), interview by author, May 12 2017
[723] Law Nr. 03/L-040 on Local Self-Government, Article 56
[724] Ibid., Article 58
[725] Ibid., Article 58
[726] Ibid., Article 62
[727] Hajnal and Péteri, "Local reform in Kosovo. Final Report," 38
[728] Ibid., 38-39

The combined legal, electoral, and practical elements of the post enable the mayor to exert his influence over all important institutions of the local political life. Commenting on the factual power of the mayor, Besnik Tahiri asserts that: "The Mayor of a Municipality has the potential to become a monarch: an untouchable person during his mandate in the Municipality."[729] The concentration of political and financial decision-making power enables the mayor to directly or indirectly control non-government organizations, the local media, and possible political opponents inside and outside the municipal assembly.[730] More importantly, the municipal mayor is not accountable to the municipal assembly. Tahiri explains that mayors are accountable to the citizens and to their local party structures. However, if closely analyzed, it becomes evident that the accountability burden towards the party structures significantly outweighs the accountability burden towards the electorate.[731] Apart from elections, the electorate does not possess any other effective mechanisms to hold the mayor accountable. In short, this situation gives mayors significant room for action.

Turning our attention to field evidence, some results from the Serb majority municipalities follow a rather disturbing pattern. It could also be argued that these results follow a rather promising ´integrative` pattern, which remains controversial. This pattern is connected to the work of Serb mayors, namely, with the fact that some of them govern the parallel Serb municipality and the Kosovo municipality simultaneously. This has been reported, for example, in the municipality of Štrpce.[732] Similar case has been observed in Novo Brdo where the mayor has found a rational way to use his time. For instance, he works in the parallel municipality before noon, and in the Kosovo municipality after noon.[733] In Klokot, the interviewed deputy mayor for communities reported that the municipal mayor was probably still working in the parallel institutions, as he had been working there before starting at the newly established small municipality.[734] This field evidence suggests that the limited and dubious commitment of the Serb majority municipalities' mayors to strengthen the municipalities of the Kosovo system can negatively affect the process of decentralization. An effective functioning of the municipality is highly dependent on the work and commitment of the municipal mayor. Nevertheless, it should be noted that as a result of many unsolved

[729] Tahiri, "The Municipal Mayor," 10
[730] Ibid., 9
[731] Ibid., 10
[732] Dušan Krstić (Chief of Mayors Cabinet, Municipality of Štrpce), interview by author, May 12 2017
[733] As discussed by author with municipal employees of Novo Brdo
[734] Hasan Rashiti, interview

structural questions regarding parallel institutions, for instance in education and health, these mayors still remain bound to the parallel municipalities.

a) Deputy mayor for communities

Another minority related position, similar to the deputy chair for communities within the municipal assembly, is foreseen for the executive branch, namely the deputy mayor for communities. The deputy mayor for communities is appointed by the mayor with a formal approval of the municipal assembly. This position is also established in municipalities with more than 10% minority communities.[735] During 2016, a total of 15 municipalities have established the position of the deputy mayor for communities. This includes seven Serb majority municipalities and seven Albanian majority municipalities. Mamushe has also established this position. In seven cases, this position was established even though it was not required by the law.[736] Albanians have held eight such positions, Serbs and Ashkali have held two, and Bosniak, Turkish, and Roma communities have held one such position.[737] The only municipality which failed to establish the position of the deputy mayor for communities was Dragash. This failure came as a result of an institutional deadlock resulting from the local elections. Minority political parties represented in the municipal assembly won eight seats in total. Now, these eight seats have been divided into two evenly strong political groupings that have made it impossible for one or the other candidate to secure the necessary votes.[738]

The example of the Dragash municipality shows that the same argument used for the deputy chairperson for communities, can be used for the position of the deputy mayor for communities. Namely, that this position is more important for political bargaining than for the protection and promotion of minority communities. In addition, this example shows that minority communities occasionally fail to cooperate even on important matters concerning their communities. Nevertheless, in municipalities where this position has been established, deputy mayors for communities have fulfilled their formal role, as required by the law.[739] Moreover, earlier reports show that the work of deputy mayors has been characterized by a

[735] Law Nr. 03/L-040 on Local Self-Government, Article 61
[736] OSCE, *Mechanisms (...) Deputy Mayors for Communities and Deputy Chairpersons for Municipal Assembly for Communities 2016*, 1
[737] Ibid.
[738] Bajram Hodža, interview
[739] OSCE, *Mechanisms (...) Deputy Mayors for Communities and Deputy Chairpersons for Municipal Assembly for Communities 2016*, 1

fair cooperation with other municipal organs,[740] and that the minimum legal requirements were mostly met.[741] In conclusion, it can be argued that, besides being a politicized position, its effectiveness is highly dependent on the will of the person exercising this position. The comment below best illustrates this situation: "everything depends on the governing structure, as you know, democracy is a strange thing. If someone comes who wants to work, he works. If someone comes only to fill the position, then it all depends on the person, it depends on the people who are in power."[742] To put it more simply, this minority participation and promotion mechanism relies more on personal attitudes, than on the effectiveness of the system.

VI.1.6. Municipal offices for communities and return

The mechanism of the municipal offices for communities and return (MOCR) is the most advanced form of minority rights protection and promotion on the local level. There are several legislative and practical arguments that support this claim. First, based on the law, MOCR have been established in every municipality, in some cases including those with lower numbers of minorities. Second, it is a permanent local government administrative organ, as opposed to the previously analyzed political positions for minority participation. Third, it is represented in the executive decision-making process, and its head is a part of the civil service and not a political appointee. Fourth, it is the first and most common address for minorities' requests and concerns. Finally, it represents an advanced mechanism because it plays an active role in the inner-municipal coordination, inter-municipal coordination, and in the coordination with central government institutions. Every issue connected with minorities passes through this mechanism.

Turning now to the legal provisions, MOCR serve as local offices: "which shall protect and promote the rights of communities, the equal access of all communities to public services and the creation of conditions for sustainable return of refugees, displaced persons and repatriated persons."[743] Furthermore, legal provisions stipulate that these offices have to be established in every municipality, and that they play an integral part in municipal administration.[744] MOCR also act as a focal point in the coordination between the central government and local authorities for issues regarding minorities and their return.[745] The estbalished mechanism of

[740] OSCE, *An Assesment of Local-level Mechanisms*, 17
[741] Ibid.
[742] Jovan Bojić, interview
[743] Regulation No. 02/2010 for the Municipal Offices for Communities and Return, Article 1, Para. 1
[744] Ibid., Article 3, Para. 1 and 2
[745] Ibid., Article 4, Para. 3, and Article 7, Para. 1.6

these offices closes the local government administrative triangle of the mechanisms for the participation, protection, and promotion of minority communities.

Based on the 2016 OSCE observations, the municipal offices for communities and return have not been established in the northern part of the country, namely in the Serb majority municipalities. In the other 34 municipalities, they have succesfully been established.[746] However, the evidence from field research shows that there are some discrepancies.[747] In Parteš, for example, the MOCR has never been established. As a matter of fact, there is actually no need to establish one, as Jovanović from the municipality of Parteš said: "We don't have minorities, nor the office for communities, we also don't have the deputy mayor for communities, because we don't have other communities."[748] Neverthelles, this still remains in violation with the law. In the northern municipality of Leposavić, the deputy mayor argued that the MOCR has been established and it is being managed by a Bosniak.[749] Similarly, the municipality of Zvečan has also established the MOCR, in both, within the municipal administration, and as a remote office in an Albanian inhabitated village. The office is managed by an Albanian.[750] In the North Mitrovica municipal administration, the necessity to establish an office for communities and return was questioned. The analogy of the following comment can be traced back to the initally explained need for collective group rights. Hodžić, who heads this municipal administration comments:

> "When we initially started to establish the office (the North Mitrovica Office, authors comment), I was heading it, I have choosen not to establish the office for communities. I have analyzed what this office does, and in reality everything the people from the office did was connected with human rights and social cases. (…) I believe that this is an obligation (to help the people in need, authors comment), regardless of their community background, if you are a social case, you are a social case, and the service dealing with social issues has to treat everyone equally, and there is no need for someone to receive support or help only because they belong to this or that community. I believe that communities should not be distincted. (…) The

[746] OSCE, *Mechanisms for the Protection and Promotion of Communities´ Rights – Information Sheets, Municipal Offices for Communities and Return 2016* (OSCE, 2017, http://www.osce.org/mission-in-kosovo/305501?download=true accessed online on 30.01.2018), 1

[747] These discrepancies may also come as a result of the different time frames between the OSCE study and author´s field study.

[748] Vesna Jovanović, interview

[749] Miroslav Ivanović, interview

[750] Stefan Djokić, interview

> municipality of North Mitrovica is truly a multiethnic city. (...) This means that we share the same problems, same challenges, and the same solutions."[751]

The importance of this mechanism can be circumvented with difficulty. The MOCR are the first address for minorities. Therefore, these offices play a significant role in the proper channeling of minority demands and concerns. This importance has been highlighted by almost all interviewees. Šerif Aga, for instance, described the MOCR as the `first station` for communities,[752] while Haxhimustafa asserted that with the establishment of this office, minorities have a `specific address`.[753] Aliji, argued that the office plays a pivotal role in addressing minority issues within the municipality. While explaining how they work, he points out: "we simply listen to what communities' needs are, and in coordination with the mayor, deputy mayor, and others within the municipality, try to improve minorities living and working conditions."[754] Hara, on the other hand, puts an emphasis on the need of these offices to further strengthen their role within the `municipal setup`.[755] He remarks that these offices are: "a bit isolated from the main decision-making process", however, they also have, as he puts it: "great potential to bring these community members of minority groups into the decision-making process."[756] To sum up, it is exactly this mechanism that has the resources and necessary information to channel minority demands and concerns to other minority related mechanisms, the municipal management, and the central government. Strengthening its role remains yet a challenge to deal with.

Another challenge for the municipal offices for communities and return is that they are not based on equal representation of all communities. There are several cases where smaller minorities are not adequately represented within these offices. There are a total of 145 people working within the MOCR across Kosovo. The Serb and the Albanian community are the most represented communities, with 62 members from the Serb community, and 33 members from the Albanian community. Other communities are represented as follows: Bosniak (17), Roma (11), Ashkali (7), Egyptian (6), Turk (4), Gorani (3), and Montenegrin (2).[757] The municipality of Rahovec presents an example of where communities are not only improperly

[751] Adrijana Hodžić, interview
[752] Šerif Aga, interview
[753] Xhemali Haxhimustafa (Deputy Mayor, Municipality of Rahovec), interview by author, September 6 2016
[754] Hajradin Aliji, interview
[755] Yusuke Hara (Human Dimension Officer for South Kosovo, OSCE), interview by author, May 20 2017
[756] Ibid.
[757] OSCE, *Mechanisms for the Protection (...) Municipal Offices for Communities and Return 2016*, 1

represented within the MOCR, but also shows that resolving situations of minority under/non-representation are rarely solved. In this municipality, Bujar Morina, the representative of the Egyptian community has constantly addressed the issue of non-representation of the RAE community to the municipal management.[758] The head of the Rahovec MOCR has also argued in favor of engaging a representative of the RAE community in his office.[759] More interestingly, the senior management has also shared its concerns about the non-adequate representation of communities within this office.[760] Now, even though there is acceptance within the municipal administration that the MOCR has an imbalanced representation of different communities, little has been done to improve this situation. There are considerable reasons to suggest that many MOCR across Kosovo share the same problem.

Furthermore, municipal offices for communities and return are often neglected by the municipal management and their role within the municipal administration is being minimized. As a result, these offices often lack a proper dedication for their mission. Nevertheless, the 2016 OSCE report on the work of the MOCR concluded that: "Most of the municipal offices for communities and return have achieved to implement the main duties from the legal framework, however some of them have failed to undertake substantive duties related to the internal municipal co-ordination and information sharing."[761] Now, even though the offices have met the basic legal requirements, they have failed to take a more active role within the municipality and beyond. For example, the office employees have failed to conduct ample visits to minority localities, and to evaluate the situation of minority community returnees.[762] Some offices have also failed to regularly exchange information and to coordinate their work with the Ministry for Communities and Return.[763] In the case of Dragash, Hodža mentioned that there is a tendency of the Ministry for Communities and Return to bypass the MOCR, and instead to cooperate and finance projects of the Gorani led parallel institutions.[764]

In Rahovec, the acting head of the municipal office for communities and return stated that his office is not receiving the necessary attention from municipal management. In response to the

[758] Bujar Morina, interview
[759] Jovan Bojić, interview
[760] Xhemali Haxhimustafa, interview
[761] OSCE, *Mechanisms for the Protection (...) Municipal Offices for Communities and Return 2016*, 2
[762] OSCE, *Community Rights Assesment Report, Fourth Edition* (OSCE, 2015, http://www.osce.org/kosovo/209956?download=true accessed online on 30.01.2018), 30
[763] Dragana Mladenović (Chief of the Return and Communities Office, MCR), interview by author, September 9 2016, see also Ymer Llugiqi (Official, MCR), interview by author, September 9 2016
[764] Bajram Hodža, interview

question "can we say that the office, in comparison with other directorates, is being neglected", he replied: "Totally, this can absolutely be said."[765] Furthermore, he stated: "during the past two years I have tried to channel this problem to other addresses, to line ministries, I was told that we are structurally a part of the municipality (…) and that we should solve our problems alone."[766] He explained: "First they didn't secure us working space. We also have an office in Velika Hoča, they were forcing us to come to work here (in the main municipal building in Rahovec, authors comment). Then I saw that they haven't even read our work plan, but instead they were forcing me to either bring those employees or to fire them if they refuse."[767] This situation only changed due to the mayor's intervention. The MOCR, apart from its remote office, is still working in a tiny $4m^2$ office space. However, Bojić asserts that this is connected with the current political management of the municipality, and less with the governance system itself.[768] This account exposes the weaknesses of the system, and it shows how legal provisions for the establishment of minority protection and promotion mechanisms can easily be neglected during implementation.

The second pillar of activities of the MOCR is associated with return and reintegration of displaced persons. This activity is decreasing year after year and relates to the number of persons who wish to return to Kosovo. Figures presented by the Ministry for Communities and Return for the year 2015 show that only 704 persons have returned to Kosovo,[769] while another 20,000 persons are interested in returning.[770] The return and reintegration process remains very difficult because of a general lack of interest on the one side, and because of the hardships returnees face, on the other side. In most cases, displaced persons have built their new life in countries where they currently reside. The interviewed official of the Ministry for Communities and Return recalled some cases from his visit to displaced persons in Belgrade, he said: "I saw some of them, when they left they were 13, now they are 30, they can make a request for a house, but in my opinion they will not return to Kosovo."[771] He furthermore argued that social schemes of the neighboring countries are much more advanced than those of Kosovo. Some families receive more financial help from the states where they currently

[765] Jovan Bojić, interview
[766] Ibid.
[767] Ibid.
[768] Ibid.
[769] Ministry for Communities and Return, *Yearly Buletin no. 9* (http://mzp-rks.org/bilten/bilten_albanski.pdf accessed online on 20.02.2018), 5
[770] http://mzp-rks.org/al/ accessed online on 20.02.2018
[771] Ymer Llugiqi, interview

reside, than they would receive upon returning to Kosovo.[772] Alternatively, persons who decide to return are mostly elderly people, families rarely return.[773]

Even when they return, they must face a difficult economic and social situation. They can rarely find a job or start their own business.[774] The infrastructure in the returnee settlements is mostly poor. There is lack of proper school spaces and healthcare institutions.[775] Mladenović reported that: "there is a problem with everything a family, every category and generation, needs for a normal life."[776] Furthermore, in some cases they are faced with different types of harassment.[777] As such, sustainable return remains a problem. There have been several cases where the ministry or other organizations have built houses for the returnees, who, left soon after they received the house keys.[778] As Milošević said: "people are leaving, there is no perspective, no jobs."[779] They have the right to sell their re-built houses[780] since prevention mechanisms are lacking.[781] This in turn irritates the remaining communities, some of whom have to wait for a long time before their houses can be rebuilt.[782] Therefore, it can be concluded that the whole cycle of minorities return and reintegration is characterized by considerable difficulties and challenges.

In addition to their standard work with minority communities, municipal offices for communities and return were burdened by the central government to work on the process of repatriation. Considering that only for the year 2017, approximately 4,657[783] persons were repatriated from different western countries, it is obvious that the workload of the MOCR has significantly increased. Repatriation is a process that involves a wide range of activities connected with sustainable integration of the repatriated persons. This in turn directly limits the possibilities of the office to effectively deal with minority issues.

[772] Ibid.
[773] Dragana Mladenović, interview; see also Ymer Llugiqi, interview
[774] Dragana Mladenović, interview
[775] Ibid.
[776] Ibid.
[777] European Commission, *Kosovo 2016 Report*, 29
[778] Jovan Bojić, interview
[779] Milorad Milošević, interview
[780] Ymer Llugiqi, interview
[781] Jovan Bojić, interview
[782] Ibid.
[783] Statistical data on repatriation can be found online on https://mpb.rks-gov.net/Publication.aspx accessed on 20.02.2018

VI.1.7. Inter-municipal, intra-municipal, and international cooperation between municipalities

A systematic understanding on how inter-municipal, intra-municipal, and international cooperation between municipalities contributes to the development of interethnic relations is still lacking. Nevertheless, it can be argued that inter-municipal and intra-municipal cooperation mechanisms present a significant instrument of centripetalism. This can especially be observed in cases like Kosovo, where several minority municipalities exist, and where several minority community settlements are within a local or national majority dominated municipality. The existence of such situations increases the need for cooperation between municipalities, and between municipalities and sub-municipal units. In Kosovo, one of the major drawbacks of the current system of local self-government is not the lack of appropriate legal provisions for such cooperation, but the lack of its application. The applicability of these forms of cooperation are mostly of an unsystematic and short-term nature. The applicability of international cooperation between municipalities is almost nonexistent. A possible explanation for this situation may be the lack of adequate strategic planning of municipalities and the lack of political will by local decision-makers.

On the one hand, the law on local self-government guarantees the right of municipal cooperation, it stipulates that municipalities can ´carry out functions of mutual interest` which fall `within their areas of competence´.[784] On the other hand, the law on inter-municipal cooperation even defines several possible forms of inter-municipal cooperation. Accordingly, municipalities can establish joint working groups, joint administrative bodies, joint public institutions, joint public enterprises, and joint public-private partnerships.[785] A recent government report from 2016 shows that the cooperation between municipalities is extremely limited. According to the report, 30 out of 38 municipalities have not taken part in any inter-municipal project. It is even more concerning that only one Serb majority municipality has taken part in one such project.[786] Furthermore, six out of ten Serb majority municipalities, and the only Turkish majority municipality did not have any agreement on inter-municipal cooperation. Seven Serb majority municipalities and the Turkish majority municipality did not have any international agreement on municipal cooperation.[787]

[784] Law Nr. 03/L-040 on Local Self-Government, Article 28
[785] Law Nr. 04/L-010 on Inter-Municipal Cooperation, Article 9
[786] MAPL, *Raporti i Funksionimit të Komunave të Republikës së Kosovës, Janar – Dhjetor 2016*, 32
[787] Ibid.

Results from the conducted interviews also show that cooperation between municipalities has been limited only to ad hoc projects, or cooperation of an administrative nature. Even when cooperation occurs, this is mostly as a result of the interest of a third party to encourage such cooperation. Talking about this issue, Hara said: "general cooperation is growing, but still led by donors."[788] He further pointed out that: "municipal officials are aware about this concept of the inter-municipal cooperation, but their common practices are more led or facilitated by this foreign donors or foreign agencies."[789] This view was echoed by another interviewee who argued that the inter-municipal cooperation of his municipality depended on the priorities and interests of the donor agencies.[790] When the projects are not donor driven, municipalities often cooperate on matters of infrastructure, and this is mostly when a certain road passes through two or more municipalities. This was the case in Klokot, where several municipalities cooperated and lobbied for central government funds in order to repair a regional road.[791] Similar projects on an inter-municipal basis involving minority municipalities were also conducted between the municipalities of Novo Brdo and Gjilan,[792] and between the municipalities of Rahovec and Mamushe.[793] The nature of waste management, for instance, also imposes different forms of inter-municipal cooperation.[794] Municipalities also cooperate on an administrative consultative basis that involves experience exchanges between same departments,[795] information sharing between municipal officials,[796] or it might take a more profound form, as for example, the cooperation between the Prizren Municipal Office for Communities and Return and their regional counterparts.[797] In brief, the nature of inter-municipal cooperation remains very limited, as the deputy mayor of Rahovec puts it: "municipality of Mamushe is physically near us (...) but besides verbal cooperation we do not have concrete cooperation, (...) the cooperation between us is not on a satisfactory level."[798] This conclusion remains applicable for most cases.

The four Serb majority municipalities in the north cooperate more on a political level than on a practical one. They often use political coordination as a mechanism of inter-municipal

[788] Yusuke Hara, interview
[789] Ibid.
[790] Dušan Krstić, interview
[791] Hasan Rashiti, interview
[792] Milorad Milošević, interview
[793] Ilyas Bayraktar, interview
[794] Instituti Riinvest, "Menaxhimi i Mbeturinave në 16 Komuna, Mundësitë për Bahkëpunim Ndër-Komunal" (Prishtinë: 2016), 8, see also Hasan Rashiti, interview
[795] Ilyas Bayraktar, interview
[796] Jelena Ilić (Mayors Cabinet, Municipality of Gracanica), interview by author, September 8 2016
[797] Hajradin Aliji, interview
[798] Xhemali Haxhimustafa, interview

cooperation. These four municipalities, for instance, take a unified stance in communication and in lobbying, especially towards the central government.[799] Thus, their inter-municipal priority still remains of a political nature. They have some cases of cooperation, like waste management[800] or experience sharing,[801] however, all these remain very limited. The northern municipalities still do not have any official cooperation with a municipality south of the Ibar River. Concerns were expressed that this might be due to language barriers. Djokić explained that the younger generations of Albanians do not speak Serbian, while the Serbs do not speak Albanian.[802] Therefore, this remains a major obstacle for establishing inter-municipal cooperation between the Serb majority municipalities and the Albanian majority municipalities. This lack of cooperation has a direct impact on inter-ethnic relations at the formal institutional level, and on the informal civic level.

Too little attention has been paid to forms of sub-municipal cooperation. This mechanism, if properly applied, could significantly decrease the gap between the minority inhabited areas and the majority dominated municipalities. Legal provisions for such cooperation are not absent. The law on self-government foresees the right of municipalities to enter cooperation agreements: "with villages, settlements and urban quarters within its territory to ensure that the services are offered closer to all citizens of the municipality."[803] Agreements on cooperation may include issues such as: "urban and rural planning, water supply, public health, local environment protection, tourism, open areas and cemeteries, cultural and sports activities."[804] All these possibilities of cooperation mostly remain on paper. Hajnal and Péteri, writing about the sub-municipal units in Kosovo came to the following conclusion: "The institutions of sub-municipal representation in the large size Kosovar municipalities are weak."[805] Even though they were reporting in 2010, not much has changed today. More interestingly, the Council of Europe's recommendations on the local government reform were presented in 2003, and they included an extensive role for sub-municipal units.[806] The proposal foresaw the establishment of 280 sub-municipal units, including 40 city units. The proposal also included a wide range of competencies, institutions, and political participation

[799] Miroslav Ivanović, interview; see also Adrijana Hodžić, interview
[800] Miroslav Ivanović, interview
[801] Stefan Djokić, interview
[802] Ibid.
[803] Law Nr. 03/L-040 on Local Self-Government, Article 34.1
[804] Administrative Instruction No. 2008/08 "For Agreements on Cooperation of Municipalities with Villages, Dwellings and Urban Quarters" (Ministry of Local Government Administration), Article 3
[805] Hajnal and Péteri, "Local reform in Kosovo. Final Report," 95
[806] Council of Europe, *Reform of Local Self-Government and Public Administration in Kosovo*: *Final Recommendations* (Information documents, SG/Inf(2003) 40, 2003), 19-23

for sub-municipal units.[807] This proposal remains important today, not much in the sense of territorial reorganization, but more in recognizing the positive role that sub-municipal units can play within a local government structure. This is true especially in regards to increasing possibilities of small minority inhabited settlements. In this case, subsidiarity only remains desirable. As such, one may suppose that the limited inter-municipal, intra-municipal, and international cooperation between municipalities undermine the possible benefits of decentralization.

VI.1.8. Central government oversight and local government autonomy

The European Charter of Local Self-Government recognizes the critical role played by central governments for securing an effective decentralization. This effectiveness can only be achieved by guaranteeing the decision-making autonomy of local authorities. Therefore, it is the Charter that limits the role of central governments to only oversee the work of local authorities and to ensure that the local decision-making is in accordance with legal provisions of the state.[808] This concept was also adapted in the Constitution of Kosovo.[809] Central governments can, nevertheless, use different methods to interfere in the work of local governments. This is noted by Agrawal and Ribot as: "the two main strategies central governments use to undermine the ability of local governments to make meaningful decisions are: by limiting the kinds of powers that are transferred and the domain in which such powers can be exercised; and by choosing local institutions that serve and answer to central interests."[810] Furthermore, autonomy of local governments can be undermined by vague legal provisions and/or by vague administrative procedures which can create favorable conditions for central government's constant interference in the work of local authorities.[811]

Turning now to the evidence from municipalities, it seems that the central government respects the decision-making autonomy of the local authorities. In all cases, the interviewees reported that they do not have any open questions or problems, at least not of a serious nature, with line ministries or the Ministry of Local Government Administration. The MLGA, as an oversight authority of the central government, conducts regular evaluations of the compatibility of municipal acts with the law. This control is also done in coordination with line ministries, in which case the MLGA plays the role of a `connecting bridge` between

[807] Ibid.
[808] European Charter of Local Self-Government, Article 8
[809] Constitution of the Republic of Kosovo, Article 124, Para.7
[810] Agrawal and Ribot, "Recentralizing while decentralizing," 301
[811] Ibid., 321

different government agencies.[812] During 2016, for example, the MLGA evaluated 810 municipal assembly acts, while 1,016 were sent for evaluation to other ministries. From a total of 1,826 evaluated acts, 38 resulted to be in violation with the applicable laws,[813] of which 18 have since been reviewed and improved by municipalities. Alternatively, Serb majority municipalities have failed to improve 10 municipal acts during the same year.[814] Tafa, who is heading the municipal monitoring division within the MLGA, believes that adoptions of illegal acts are not made based on a specific purpose. They are mostly adapted as a result of deficient legal knowledge by the local administration and/or the local leadership.[815]

Local government's autonomy in decision-making is specifically cemented in the fact that the central government institutions do not have the right to repeal local government acts. In cases of violation, an impartial judicial court has the final say on the contested matter.[816] Thus, besides the right to initiate an administrative or legal procedure, the central government lacks any effective sanction mechanisms.[817] This situation strengthens the benefits of decentralization, as Agrawal and Ribot point out: "The ability of accountable local authorities and governments to make and implement decisions is in some sense the defining feature of any effective decentralization. If local governments always must seek approval from superiors before undertaking an action, decentralization is meaningless."[818] It should also be noted that the Ministry of Local Government Administration or any other ministry do not necessarily play the role of a discipline authority, they also constantly support local governments in their overall development. The MLGA has, for instance, a department for the evaluation of municipal services. This department provides continuous recommendations for improvements of the municipal public services.[819] To further strengthen decentralization, it can be expected that this supportive role of the central government should evolve into a more effective mechanism of local problem-solving.[820]

[812] Xhevat Tafa, interview; seee also Haxhi Krasniqi, interview
[813] MAPL, *Raporti i Funksionimit të Komunave të Republikës së Kosovës, Janar – Dhjetor 2016*, 14
[814] Ibid.
[815] Xhevat Tafa, interview
[816] European Parliament, *The Decentralization Process in Kosovo*, 14
[817] Xhevat Tafa, interview; see also Venera Kosumi (Chief of the Local Government Capacity Building Division, MLGA), interview by author, September 26 2016
[818] Agrawal and Ribot, "Recentralizing while decentralizing," 303
[819] Haxhi Krasniqi, interview
[820] Yusuke Hara, interview

VI.1.9. Conclusions

A proper arrangement of the local government's territorial division and a proper composition of inner-municipal institutions play a central role in determining the impact of administrative decentralization in improving political, social, and economic possibilities of minority communities. Therefore, a properly designed `architectural´ basis of the local governance system contains elements which increase the chances of a peaceful accommodation of various ethnic groups within the state and decrease the chances of inter-ethnic conflict. As this study has identified, some of these conflict-decreasing elements in Kosovo are advanced internationally based legal provisions, municipal borders adapted to accommodate minorities, extensive local government minority protection and promotion mechanisms, and local government decision-making autonomy. Even though advanced administrative institutional principles of decentralization have been established greater efforts are needed to ensure the efficacy of the system. As Cheema and Rondinelli argue: "the foundation for successful decentralization" is based on: "local capacity building—that is, increasing the ability of an institution, organization, group, or individual to perform required functions effectively, efficiently, and in a sustainable manner."[821] It is this efficacy that has the potential to reduce conflict, as outlined by Grasa and Camps: "Administrative efficiency can also be regarded as a war preventor to the extent that it functions eroding the underlying causes for violence because the system works, the government can provide a better and a more costefficient service, and, also, closer to the citizen."[822]

To summarize the main points, in its efforts to build an efficient system of governance and to reduce the chances of conflict, Kosovo has established a minority oriented territorial organization of the local government system. A major drawback of this form of territorial organization is the creation of very small municipal units. This has created a largely fragmented system with some units encompassing approximately 100,000 inhabitants, and some merely reaching 5,000. The small governance units remain institutionally weak, as Baliqi points out: "these municipalities are only surviving, but they are not functioning properly."[823] This part of the research has also shown that municipalities are autonomous in their decision-making. Oppositely, citizens in the north are still not able to see the benefits of this Kosovar autonomous system of local governance. The decentralization process remains in

[821] Cheema and Rondinelli, "From Government Decentralization to Decentralized Governance," 17
[822] Grasa and Camps, "Conflict Prevention and Decentralized Governance," 35
[823] Bekim Baliqi (Universityof Prishtina, Professor), interview by author, September 8 2016

its initial phase and as such, governance effectiveness in this part of the country remains very weak. The Bosniak and the Gorani community have been left only with hopes that they will also create their own municipality in the future. One of the most significant findings of this study is the dominance of the mayor within the inner-municipal power distribution and its effects on minorities. The municipal assembly, the four mechanisms for the protection and promotion of minorities, and civil society organizations and local media, remain within the mayor´s orbit of power. The municipal office for communities and return, and to some extent the community committee present advanced minority rights mechanisms. The other two mechanisms are politically influenced. Further empowerment of all four local-level minority related mechanisms remains a challenge. Finally, challenges also remain for increasing cooperation between different municipalities. Central government and foreign donors should further encourage more advanced forms of cooperation. Effective administrative decentralization decreases the formal institutional gap between the majority and minority communities in Kosovo. The following part of the study moves on to present research evidence on fiscal decentralization in Kosovo.

VI.2. Fiscal Decentralization in Kosovo

There are multiple definitions of fiscal decentralization. In the general literature, the term tends to be used to refer to: "a redefinition of the roles and responsibilities of the various levels of government in the conduct of fiscal policy."[824] In a more narrow sense, and adapted to the case of Kosovo, fiscal decentralization can be understood as the process of devolving fiscal powers to local governments. In other words, this means creating the necessary fiscal and financial conditions for an effective operationalization of local government institutions. As argued by Ezcurra, this is directly: "associated with a lower risk of civil armed conflict."[825] In addition, Ezcurra argues that: "the processes of fiscal decentralization may affect intrastate conflicts and, in turn, be affected by them, giving rise to a reverse causality problem."[826] Therefore, tendencies for internal conflicts can be affected by fiscal policies, and *vice versa*, conflict tendencies can affect fiscal policies. For this reason, adoption of adequate fiscal decentralization policies play a decisive role in the process of ethnic accommodation, and the reduction of conflict possibilities.

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[824] Annalisa Fedelino, Teresa Ter-Minassian, and International Monetary Fund, *Making Fiscal Decentralization Work: Cross-Country Experiences* (Washington D.C.: International Monetary Fund, Occassional Paper, 2010), 17

[825] Roberto Ezcurra, „Fiscal decentralization and internal conflict: an empirical investigation," *Environment and Planning C: Government and Policy* Vol. 33 (2015): 588

[826] Ibid., 589

The most important elements of fiscal decentralization are embedded in the constitution of Kosovo. The constitution guarantees the right of municipalities to collect own source revenues, and to receive adequate financing from the central government institutions.[827] These constitution based fiscal mechanisms enable municipalities to fulfill their duties and responsibilities in accordance with the law. Moreover, these regulations are in compliance with the European Charter of Local Self-Government, which specifies that: "Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers",[828] and these financial resources shall be in accordance with: "the responsibilities provided for by the constitution and the law."[829] Therefore, in order to analyze fiscal decentralization policies in Kosovo, an in-depth review of sources of municipal budgets will be presented.

VI.2.1. Central and local government budget distributions

Before analyzing the sources of local municipal budgets, it is important to present the `big picture` of fiscal decentralization. Therefore, this part serves as an introduction to more detailed policies of fiscal decentralization in Kosovo. The figure below illustrates how the overall budget of Kosovo is distributed according to the level of government. From this figure, it can be seen that the share of the local government's budget has been stable at around 22% to 25% of the overall Kosovo budget. More importantly, this data demonstrates that the fiscal distribution between the central and the local levels of government has found a stable ground. During seven consecutive years, it has been subject only to minor changes. This signals the application of a stable, predictable, and sustainable budget distribution policy.

[827] The Constitution of the Republic of Kosovo, Article 124, Para.5
[828] European Charter of Local Self-Government, Article 9, Para.1
[829] Ibid., Para.2

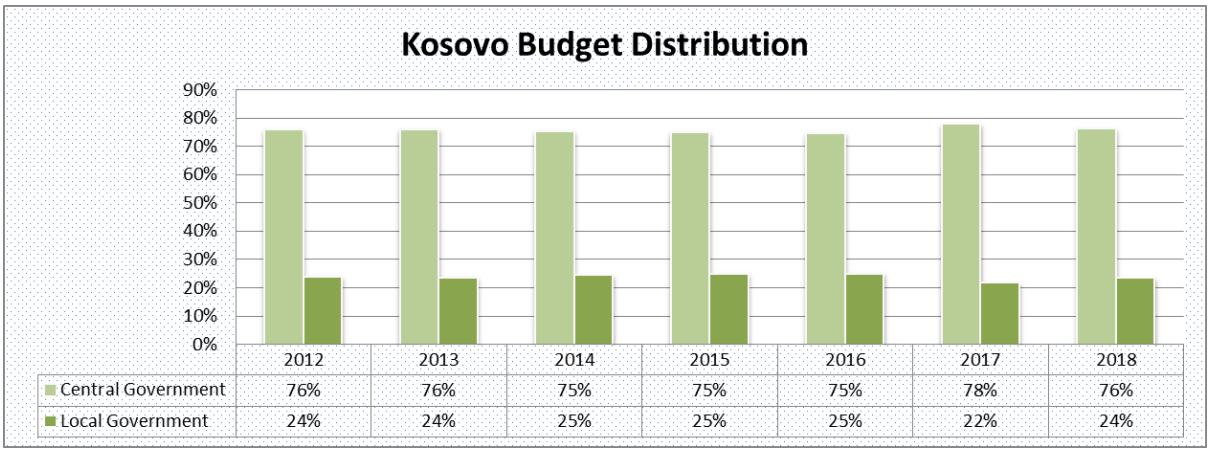

Figure 10: Central and local government budget distributions according to their share of the overall budget (Sources: Law No. 04/L-079 on Budget of the Republic of Kosovo for the Year 2012; Law No. 04/L-165 on Budget of the Republic of Kosovo for the Year 2013; Law No. 04/L-233 on Budget of the Republic of Kosovo for the Year 2014; Law No. 05/L-001 on Budget of the Republic of Kosovo for the Year 2015; Law No. 05/L-071 on Budget of the Republic of Kosovo for the Year 2016; Law No. 05/L-125 on the Budget of the Republic of Kosovo for the Year 2017; and Law No. 06/L-020 on Budget of the Republic of Kosovo for the Year 2018

If we compare the data for the year 2016 (see the figure below) with other selected OECD countries, it can be seen that Kosovo lies approximately at the average OECD level. Its local government budget shares are similar to the budget shares of Latvia, Czech Republic, Iceland, UK, and Estonia. The importance of this figure lies in the fact that it shows different shares across different types of countries. Whether federal or unitary, small or big, budget distribution shares of these countries are a result of long-term application of country specific fiscal policies. As a result of this, the share of local government budgets varies significantly, from 7% in Greece, 8% in Ireland, 63% in Denmark, 50% in Sweden, and 39% in Finland. The large share of the local government budgets in the Nordic countries demonstrates that these countries have achieved to establish a financially sustainable system of local governance, with extensive local revenue capacities.

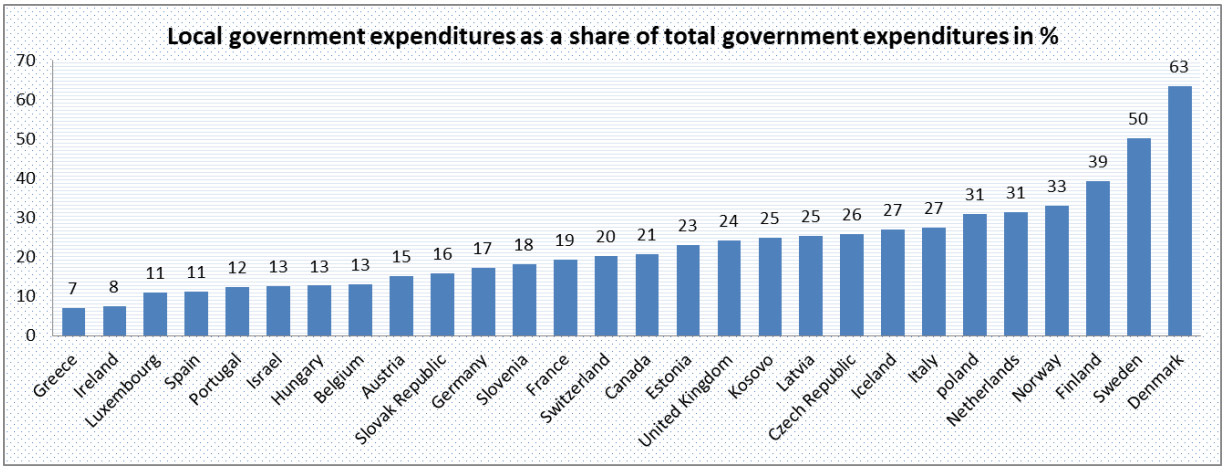

Figure 11: Local government expenditures as a share of total government expenditures in Kosovo and in selected OECD countries for the year 2016 (source: for OECD countries http://www.oecd.org/tax/federalism/fiscal-decentralisation-database.htm#C_Title (accessed online on 08.03.2018), for Kosovo see Law No. 04/L-079 on Budget of the Republic of Kosovo for the Year 2012; Law No. 04/L-165 on Budget of the Republic of Kosovo for the Year 2013;

VI.2.2. Own source revenues

Fiscal decentralization enables municipalities to adopt various fiscal mechanisms to collect own source revenues. In other words, municipalities have the right to impose taxes, fees, and tariffs within the boundaries of the municipality.[830] These fiscal rights are mostly defined by the central government and/or they are embedded in the constitution or in the law. In some cases, especially in states with inner grievances, the central government tends to limit the disposition of fiscal mechanisms for local governments, with the aim to limit their autonomy. [831] Nevertheless, in cases where fiscal decentralization is applicable, local governments dispose with several fiscal mechanisms. Bird argues that the most applicable mechanisms on the local level are as follows: "User charges, property tax, excises, personal income tax, payroll tax, sales tax, business taxes."[832] This, however, differs from country to country, and from the applied level of decentralization.[833] In most cases, local governments do not manage with excises, sales, income, and payroll taxes. Property taxes, business taxes, and user charges and fees are the most suitable fiscal mechanisms which can easily be managed on the local level.

Article 8 of the Kosovo Law on Local Government Finance foresees the following categories of own source revenues. First, it foresees the right of municipalities to collect: "municipal taxes, fees, user charges, other payments for public services provided by the municipality, and regulatory charges and fines authorized by the present law."[834] Furthermore, it foresees the right of municipalities to gather financial means from the sale of municipal moveable property, locally owned public enterprises, co-payments for education and health, and from rents of municipal properties. Finally, this law foresees the right of municipalities to receive foreign donations, and to collect other financial means which can be generated in accordance with the law.[835] Financial statistical data shows that property tax is the most important tax for

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[830] Norbert Kersting et al. *Local Governance Reform in Global Perspective* (Wiesbaedn: VS Verlag für Sozialwissenschaften, 2009), 22
[831] Parker, "Decentralization: The Way Forward for Rural Development?" 28
[832] Richard M. Bird, "Local and Regional Revenues: Realities and Prospects," in *Perspectives on Fiscal Federalism,* eds. Richard M. Bird and François Vaillancourt (Washington D.C.: WBI Learning Resources Series, The World Bank, 2006), 192
[833] For more see, Maria Flavia Ambrosanio and Massimo Bordignon, "Normative versus positive theories of revenue assignments in federations," in *Handbook of Fiscal Federalism,* eds. Ehtisham Ahmad and Giorgio Brosio (Cheltenham, UK, Northampton, MA, USA: Edward Elgar Publishing Limited, 2006), 308-309
[834] Law No. 03/L-049 on Local Government Finance, Article 8
[835] Ibid.

local governments in Kosovo. During 2016, revenues from the property tax accounted for about 37% of all revenues collected on the local level. The second most profitable revenue source accounting about 25% was gathered from building permits.[836] As described above, approximately 40% of the revenues were gathered from other sources.

This data confirms that avenues of own source revenues in Kosovo are mostly in accordance with the arguments presented in the literature on fiscal decentralization. Davey, for instance, argues that: "Taxes on land and buildings are the most common revenue solely assigned to local government."[837] This is mostly because of its immovable character, which makes it easy for local authorities to collect these taxes, as Ambrosanio and Bordignon point out: "No relevant problems arise from differences in rates and administrative practices across jurisdictions, the tax base being immobile; there are relatively few problems of tax fraud and avoidance; and tax revenue is relatively stable and predictable."[838] Alternatively, Bird draws attention on the fact that proper management of property taxes can sometimes be complicated. There can be disagreements on the value of the taxing base.[839] In addition, Bird argues that in transitional states, tax rates can be minimal and it can be difficult to cover all regions and settlements. More importantly, as it can be seen in Kosovo, local authorities may face difficulties in collecting these taxes.[840]

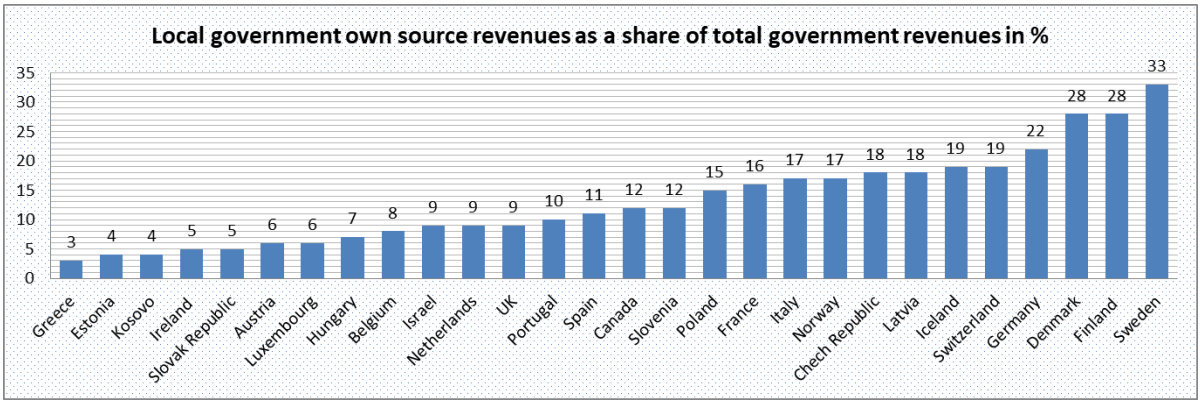

Figure 12: Local government's own source revenues as a share of total government revenues in Kosovo and in selected OECD countries for the year 2016 (source: for OECD countries http://www.oecd.org/tax/federalism/fiscal-decentralisation-database.htm#C_Title (accessed online on 08.03.2018), for Kosovo Korniza Afatmesme e Shpenzimeve 2018-2020, Ministria e Financave, Republika e Kosovës, 2017, p.27)

[836] MAPL, *Raporti i Funksionimit të Komunave të Republikës së Kosovës, Janar – Dhjetor 2016*, 33
[837] Keneth Davey, "Fiscal Decentralization in Eastern Europe: Stages of Reform," in *The Kosovo Decentralization Briefing Book*, eds. Robert D. Ebel and Gábor Péteri (Budapest: Kosovo Foundation for Open Society & Local Government and Public Service Reform Initiative, Open Society Institute, Forum 2015, 2007), 44
[838] Ambrosanio and Bordignon, "Normative versus positive theories of revenue assignments," 326
[839] Bird, "Local and Regional Revenues;" 181
[840] Ibid., 183

The capacity of local governments in Kosovo to collect local taxes is limited. This situation not only affects sustainability of local governments, but also the effectiveness of decentralization. A simple comparison of the local government's own source revenues as a share of total government revenues for the year 2016 (see the table above) shows that Kosovo's local governments have only managed to collect about 4% of the overall government revenues. Even though there is no preference on what the per cent share of local government revenues should be, the 4% share is very low when compared to some OECD countries. In this regard, Kosovo has similar shares with Greece, Estonia, Ireland, and the Slovak Republic. However, it lies far behind the OECD average. Another study reveals that Kosovo also lies behind the region in terms of local government revenues. Only Moldova has lower local government own source revenues than Kosovo, while Albania, Macedonia, and Bosnia have slightly higher shares.[841] As expected, there are discrepancies between different municipalities within Kosovo.

Municipalities	2014	%	2015	%2	2016	%3
Albanian Majority Municipalities	57,974,950 €	96.9%	54,686,122 €	95.7%	66,415,667 €	97.0%
Serb Majority Municipalities	1,782,847 €	3.0%	2,428,313 €	4.2%	2,020,632 €	3.0%
Turk Majority Municipality	62,498 €	0.1%	52,763 €	0.1%	56,244 €	0.1%
Total:	59,820,295 €	100.0%	57,167,198 €	100.0%	68,492,543 €	100.0%

Table 1: Own source revenues according to municipalities´ ethnic majority (source: Korniza Afatmesme e Shpenzimeve 2018-2020, Ministria e Financave, Republika e Kosovës, 2017, p.76)

The table above presents the breakdown of own source revenues according to the ethnic majority of municipalities. Most notably, the table shows that Serb majority municipalities have achieved to collect approximately 3% of the overall municipal own source revenues during 2014 and 2016, and approximately 4.2% during 2015. Considering that Serb majority municipalities represent a quarter of all Kosovo municipalities, their own source revenues are well below the expected level. Alternatively, the table below shows that the four northern municipalities are barely collecting any own source revenues. During the three presented years, these municipalities did not manage to collect more than 4% of own source revenues in comparison with Serb majority municipalities in the south. The same table also shows that only Gračanica has achieved to gather some 60% of all own source revenues amongst the Serb majority municipalities during 2014 and 2016, while these numbers reach 70% during 2015. This can be traced to the high demand on building permits in this municipality. There is, however, also a positive trend of the smaller Serb majority municipalities in the south that

[841] NALAS, *Fiscal Decentralization Indicators for South-East Europe: 2006-2015* (Network of Associations of Local Authorities of South-East Europe, Sixth Edition, 2017), 23

increased their own source revenues during 2016, in comparison with revenues in 2014 and 2015.

No.	Municipality	2014	%	2015	%2	2016	%3
1	Leposavić	14,764 €	0.8%	19,874 €	0.8%	22,380 €	1.0%
2	Novobrdo	166,321 €	9.3%	187,189 €	7.7%	237,259 €	10.4%
3	Štrpce	259,587 €	14.6%	231,679 €	9.5%	260,405 €	11.4%
4	Zubin Potok	8,680 €	0.5%	6,531 €	0.3%	9,128 €	0.4%
5	Zvečane	16,454 €	0.9%	10,603 €	0.4%	11,566 €	0.5%
6	Gračanica	1,033,849 €	58.0%	1,699,488 €	70.0%	1,365,429 €	59.9%
7	Klokot	116,032 €	6.5%	91,726 €	3.8%	118,120 €	5.2%
8	Mitrovica North	20,532 €	1.2%	27,400 €	1.1%	44,005 €	1.9%
9	Partesh	30,655 €	1.7%	41,486 €	1.7%	67,676 €	3.0%
10	Ranillug	115,973 €	6.5%	112,337 €	4.6%	145,069 €	6.4%
	Total:	1,782,847 €	100.0%	2,428,313 €	100.0%	2,281,037 €	100.0%

Table 2: Comparison of Own Source Revenues of various Serb Majority Municipalities (source: Korniza Afatmesme e Shpenzimeve 2018-2020, Ministria e Financave, Republika e Kosovës, 2017, p.76)

The most likely cause of low own source revenues of local authorities in Kosovo is the difficult economic situation. This situation prevents local authorities from effectively collecting local taxes. The same has been observed by Kauzya who argues that: "There is a limit beyond which a hungry person can milk a hungry cow."[842] Kauzya means that: "however efficient and effective a tax system is, if it is taxing a poor population, it will yield poor revenues."[843] This is, indeed, the situation in Kosovo that has the lowest GDP per capita in south-east Europe.[844] Furthermore, it has a very high poverty rate (30%), and a very high unemployment rate (35%).[845] The economic situation also remains difficult in the Serb dominated north Kosovo, which may also be one of the causes of low tax collection there. The unemployment rate in the north is about 35%.[846] A study conducted in 2015, shows another example of why the own source revenues in the north are low. According to the study, approximately 30% of businesses in this part of Kosovo pay their taxes to both, Kosovo's institutions and the parallel Serb institutions. Alternatively, approximately 28% pay their taxes only to Serb institutions, while only 15% of businesses in the north pay their taxes to institutions of Kosovo.[847] Now, based on these findings, it can be argued that the citizens in the north tend to pay their taxes to the local parallel Serb institutions, rather than to the

[842] John-Mary Kauzya, "Local Governance Capacity-Building for Full-Range Participation: Concepts, Frameworks and Experiences in African Countries," DESA Discussion Paper No. 33 (2003): 8
[843] Ibid.
[844] UNDP, *Kosovo Human Development Report 2016, Making the labour market work for women and youth* (Prishtina: UNDP Kosovo, 2016), 21
[845] Ibid., 18; see also European Commission, *Kosovo 2016 Report*, 51
[846] Instituti Riinvest, "Potencialet Ekonomike në Veri të Kosovës" (Prishtinë, 2015), 13
[847] Ibid., 33

official municipalities of Kosovo. Moreover, it can also be suggested that local authorities in the north either lack any willingness to collect local taxes, or they tend to register the collected taxes on the Serb parallel system, because as previously argued, they still function in a hybrid form. To sum up, the difficult economic situation combined with other relevant factors limits the ability of local governments to effectively raise the share of their own source revenues.

Overall, the results of these findings indicate two patterns. First, that Kosovo's local governments are weak in terms of collecting own source revenues in comparison with OECD countries and south-east European countries. Second, that most of the Serb majority municipalities are functioning poorly in terms of collecting own source revenues, and this makes them more dependent on central government grants. The failure of the four northern municipalities to collect own source revenues is reflected in the inability of these municipalities to finance more projects, and thereby to demonstrate the benefits of decentralization to the local citizens.

VI.2.3. Central government transfers and grants

To date, numerous studies have highlighted the importance of financial transfers from higher levels of government to lower levels of government. In most cases, local governments around the globe are unable to finance their expenses solely through their own source revenues. As a result, the central government provides additional financial means to lower levels of government. These central government transfers mostly come in the form of one, or more grants.[848] These transfers aim to secure minimal standards for the functioning of local governments, and they aim to secure their efficiency.[849] Today, local governments of some countries rely more on the central government's support than of other countries. As pointed out by Dafflon and Madiès, local governments of developing countries cover more than half of their expenses with central government grants.[850] In OECD countries, this level reaches about 33%.[851]

[848] Ambrosanio and Bordignon, "Normative versus positive theories of revenue assignments," 308
[849] James Manor, *The Political Economy of Democratic Decentralization* (Washington D.C.: Directions in Development, The World Bank, 1999), 70
[850] Dafflon and Madiès, "Decentralization: A Few Principles," 47
[851] Popic & Patel, "Decentralization: Equity and Sectoral Policy," 20-21

According to the literature, there are four main objectives of the central government's transfers to lower levels of government. The description used by Parker offers the most comprehensive explanation. He argues that the main aim of central government transfers is:

> "to bridge the *fiscal gap* that may result from a mismatch between revenue means and expenditure needs, leading to a revenue shortfall; to compensate for the presence of *interregiornal differentials* in income and resource capabilities that creates inefficiencies due to fiscally-induced migration, as factors of production gravitate toward richer areas; to ensure *common minimum standards* across jurisdictions to enable poorer areas to provide an acceptable level of service; and to alleviate inefficiencies arising from *interjurisdictional spillouers,* where people enjoy the benefits of a public good but do not contribute to the cost of providing it, possibly resulting in subnational levels of government considering only the benefits that accrue within their own jurisdiction and under-providing the public good."[852]

Methods or forms by which the central government transfers grants to lower levels of government vary across countries. There is no single formula that can be used in every situation however, there are some general principles. Péteri maintains that the method of distribution should: "reflect the policy objectives of the government in a specific period."[853] A similar line of argumentation was used by Shah.[854] Oppositely, Ahmad and Searle argue that the method/form of central government grants should be entrenched in the legal system of the state. This creates the basis for a transparent grant allocation system.[855] In addition to the principle of clarity, Dafflon argues that in order to guarantee macroeconomic stability, the central government should retain some oversight authority over the local government.[856] Now, encompassing the above described principles, Petchey and Macdonald identify three main forms of central government grants, which are: "unconditional (the recipient government has

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[852] Parker, "Decentralization: The Way Forward for Rural Development?" 29-30; almost the same descriptions can also be found in Dafflon and Madiès, "Decentralization: A Few Principles," 47-48; and in Ehtisham Ahmad and Bob Searle, "On the implementation of transfers to subnational governments," in *Handbook of Fiscal Federalism,* eds. Ehtisham Ahmad and Giorgio Brosio (Cheltenham, UK, Northampton, MA, USA: Edward Elgar Publishing Limited, 2006), 381

[853] Gábor Péteri, "Fiscal Equalization in South Eastern Europe", in *Fiscal Equalization in South Eastern Europe,* ed. Gábor Péteri (Budapest: The Fiscal Decentralization Initiative for Central and Eastern Europe, Local Government and Public Service Reform Initiative – Open Society Institute, 2006, http://pdf.usaid.gov/pdf_docs/Pnadk272.pdf accessed online on 08.03.2018), 13

[854] Anwar Shah, "Fiscal Decentralization and Fiscal Performance," World Bank Policy Research Working Paper 3786, (2005): 28

[855] Ahmad and Searle, "On the implementation of transfers to subnational governments," 383

[856] Bernard Dafflon, "The assignment of functions to decentralized government: from theory to practice", in *Handbook of Fiscal Federalism,* eds. Ehtisham Ahmad and Giorgio Brosio (Cheltenham, UK, Northampton, MA, USA: Edward Elgar Publishing Limited, 2006), 276

complete discretion over how the funds are used), conditional (they can be spent only on certain services or only on infrastructure), or matching (requiring a matching contribution from the recipient government)."[857]

a) Forms of central government grants

The unconditional or general purpose grant is provided in a sum-lump form to local governments. This type of grant allows local governments to spend these funds in a way they see fit, thereby preserving their financial decision-making autonomy.[858] This grant is most commonly distributed using a factor based formula.[859] Alternatively, conditional or special purpose grants allow local governments to spend these funds only based on a strict criteria established by the central government.[860] These grants can either have a long-term purpose (open-ended nature), or they can be bound to specific investments (close-ended nature).[861] Finally, matching grants are bound to the ability or will of the local governments to co-finance a certain project connected to the matching grant. If the local government is not able, and/or willing to co-finance a certain project, then no matching grant will be provided.[862] To sum up, if measured by the discretion of local governments to spend the central government grants, matching and conditional grants would be placed on the lower end of the autonomy measuring scale, while the general grant would be placed on the upper end of the measuring scale.[863] As a result, the central government can restrict local financial autonomy depending on the grant type.

b) Principles of central government grants

Several reviews of the principles that should guide governments in determining the method/form of the central government grant, and for that matter the whole fiscal decentralization process, have been presented in various studies. These principles can be

[857] Jeffrey Petchey and Garry Macdonald, "Financing Capital Expenditures through Grants", in *Intergovernmental Fiscal Transfers,* eds. Robin Boadway and Anwar Shah (Washington D.C.: Public sector governance and accountability series, The World Bank, 2007), 425

[858] Anwar Shah, "A Practitioner´s Guide to Intergovernmental Fiscal Transfers," in *Intergovernmental Fiscal Transfers,* eds. Robin Boadway and Anwar Shah (Washington D.C.: Public sector governance and accountability series, The World Bank, 2007), 2

[859] Péteri, "Fiscal Equalization in South Eastern Europe," 8

[860] Shah, "A Practitioner´s Guide," 4

[861] Ahmad and Searle, "On the implementation of transfers to subnational governments," 383

[862] Parker, "Decentralization: The Way Forward for Rural Development?" 31

[863] Robert D. Ebel and Serdar Yilmaz, "Fiscal Autonomy," in *The Kosovo Decentralization Briefing Book*, eds. Robert D. Ebel and Gábor Péteri (Budapest: Kosovo Foundation for Open Society & Local Government and Public Service Reform Initiative, Open Society Institute, Forum 2015, 2007), 67

found scattered in the studies by Dafflon and Madiès,[864] Parker,[865]as well as the study on decentralization conducted by UNDP.[866] The most comprehensive version of these principles can, however, be found in the study by Shah. In his study, Shah sets up a series of 15 principles for intergovernmental grants, including: (1) `Clarity` in defining the goals of the grant; (2) `Autonomy` of spending for local governments; (3) `Revenue adequacy` local governments financial resources should match spending needs; (4) `Responsiveness` the opportunity to adjust/adapt the grant to unpredictable changes; (5) `Equity` should be created to lessen the horizontal gap between local governments; (6) `Predictability` presents the possibility of local governments to perceive in advance their financial situation; (7) `Transparency` should guide the grant distribution; (8) `Efficiency` guarantees that the grant will not be affected by local spending preferences; (9) `Simplicity` should follow the grant allocation, which should remain unaffected by distinct interests of local governments; (10) `Incentive` should be applicable for effective local financial management; (11) `Reach` presents the evaluation of the grant form based on who benefited the most, and those who benefited the least; (12) `Safeguarding of grantor´s objective` through grant conditionality; (13) `Affordability` a close-ended nature of grants with no financial risks for the grantor; (14) `Singular focus` following specific goals through specific grants; and (15) `Accountability for results` should be twofold, spending accountability for local governments, and grant implementation accountability for the donor.[867] Indeed, these 15 principles provide the basis for a sound central government policy of financial intergovernmental transfers and more importantly, an effective fiscal decentralization.

c) Central government transfers and grants in Kosovo

The grants allocation process in Kosovo is managed by a grants commission. This commission is comprised of the most important line ministries of the central government, including the office of the prime minister, and by four randomly chosen municipality mayors, of which one is from a minority municipality.[868] Central authorities distribute four different types of grants to local governments. They provide a general grant of an unconditional nature, specific grants for education and health,[869] and they may also provide other specific transfers

[864] Dafflon and Madiès, "Decentralization: A Few Principles," 54-55
[865] Parker, "Decentralization: The Way Forward for Rural Development?" 30
[866] UNDP, *Decentralization: A Sampling of Definitions*, p.9 and Annex 4
[867] Shah, "A Practitioner´s Guide," 15-16; All the principles have been named exactly in the same way as named by Shah in his work, their description has been paraphrazed.
[868] Law No. 03/L-049 on Local Government Finance, Article 32, Para. 1
[869] Ibid., Article 24 and 25

and/or grants.[870] The most important funding transferred to local governments is the general grant. This grant comprises approximately 10% of the central government's total revenues.[871] For equalization purposes, first a sum of 140,000 euros is allocated to municipalities. However, this sum is deducted by one euro per inhabitant of the municipality.[872] As such, this funding directly benefits smaller municipalities. Furthermore, for the same equalization purpose, the central government has also introduced an interim measure by which 2.7% of the general grant is allocated for municipalities with less than 22,000 inhabitants.[873] Now, the remaining sum of the general grant is allocated by the formula presented in the figure below. The largest portion of the general grant (89%) is allocated in accordance with the population size of the municipality. In fact, 6% is allocated according to the territorial size of the municipality and the remaining 5% is allocated according to the proportion of minority communities within a majority municipality (3%), while 2% is allocated directly to minority municipalities.

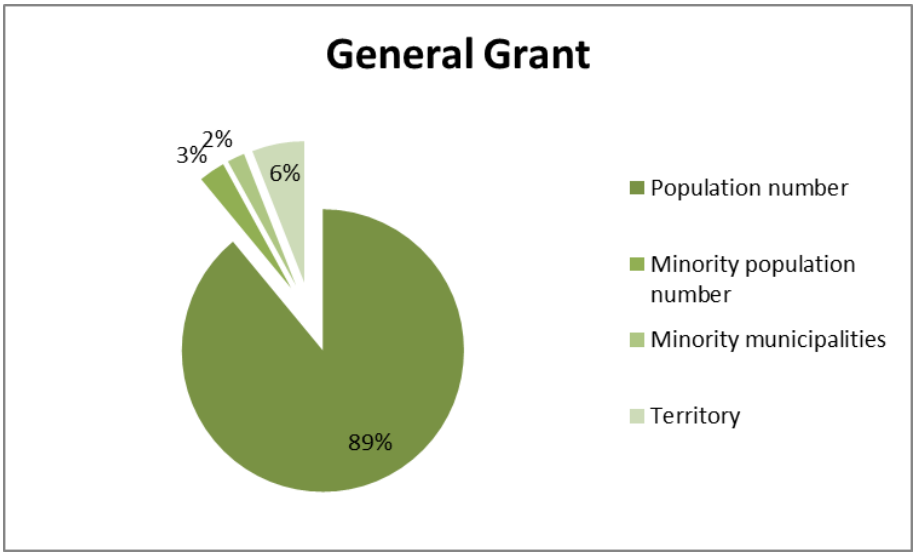


Figure 13: Formula for the distribution of the general grant (Source: Article 24 of the Law No. 03/L-049 on Local Government Finance)

Writing about the central government's grant distributions based on a per capita formula, Kitchen gives the following insightful summary:

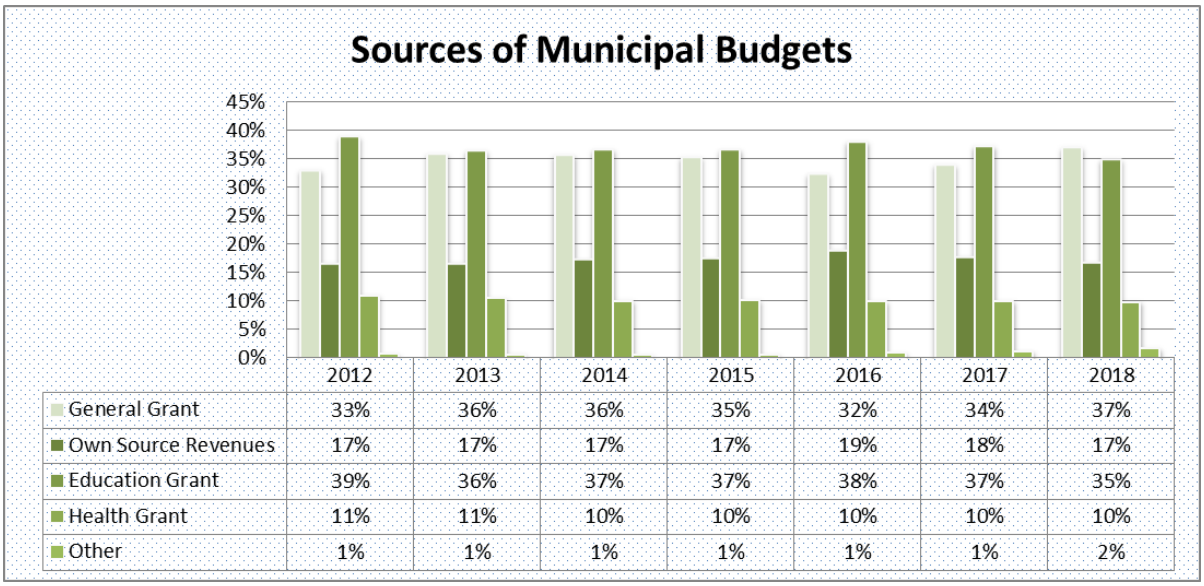
> "Per capita grants are generally used to close a fiscal gap or reduce a vertical fiscal imbalance. They are block grants designed without an equalization component,

[870] Ibid., Article 26, 27 and 29, These articles of the law foresee transfers for delegated competencies, grants for enhanced competencies, and extraordinary grants
[871] Ibid., Article 24, Para. 2
[872] Ibid., Para. 3
[873] Law on amending and supplementing the Law No. 03/L-049 on Local Government Finance, Article 2; This interim measure is foreseen to be into force until 2019

> although they may have an equalizing effect on the ability of local governments to deliver comparable levels of service. Per capita grants are neutral (allocatively efficient) in their effect on expenditures, because they do not distort the relative prices of providing local services. They are predictable to the extent that population is predictable, but they are not necessarily flexible. A municipality that loses population but still has the same expenditure requirements, for example, will see its grant diminish. Per capita grants are easy to understand and simple to administer. Like all unconditional grants, they lack accountability for donor governments because the donor has no control over how the money is spent. In summary, per capita grants are relatively easy to administer but deficient in other important ways. Because they are based on population, per capita grants do not reflect expenditure needs. Furthermore, grants of this kind do not take account of a municipality's ability to raise revenues from its own sources."[874]

Alternatively, specific grants for education and health are conditional grants. The allocation of these grants is based on the open-ended long-term concept. The main aim of these grants is to ensure a minimum standard of quality across the country in education and health. Similar to the general grant, these grants are allocated according to a formula which takes into account, for example, the number of students enrolled in schools for the education grant, or the population size and the average age of the population for the health grant.[875]In accordance with internationally set rules and standards, the central government also provides specific transfers for the operationalization of delegated competencies on the local level.[876] Local governments with enhanced competencies, such as North Mitrovica, for managing the university or the regional hospital also receive a specific grant for enhanced competencies.[877] Finally, the central government may allocate emergency grants to municipalities to cover their unexpectedly costs.[878]

[874] Harry Kitchen, "Grants to Small Urban Governments," in *Intergovernmental Fiscal Transfers,* eds. Robin Boadway and Anwar Shah (Washington D.C.: Public sector governance and accountability series, The World Bank, 2007), 500
[875] Law No. 03/L-049 on Local Government Finance, Article 25
[876] Ibid., Article 26
[877] Ibid., Article 27
[878] Ibid., Article 29



	2012	2013	2014	2015	2016	2017	2018
General Grant	33%	36%	36%	35%	32%	34%	37%
Own Source Revenues	17%	17%	17%	17%	19%	18%	17%
Education Grant	39%	36%	37%	37%	38%	37%	35%
Health Grant	11%	11%	10%	10%	10%	10%	10%
Other	1%	1%	1%	1%	1%	1%	2%

Figure 14: Sources of Municipal Budgets according to their share of the local government budgets (Sources: Law No. 04/L-079 on Budget of the Republic of Kosovo for the Year 2012; Law No. 04/L-165 on Budget of the Republic of Kosovo for the Year 2013; Law No. 04/L-233 on Budget of the Republic of Kosovo for the Year 2014; Law No. 05/L-001 on Budget of the Republic of Kosovo for the Year 2015; Law No. 05/L-071 on Budget of the Republic of Kosovo for the Year 2016; Law No. 05/L-125 on the Budget of the Republic of Kosovo for the Year 2017; and Law No. 06/L-020 on Budget of the Republic of Kosovo for the Year 2018

The above chart shows that more than 80% of local governments´ budgets are comprised of transfers and grants from the central government. This chart also shows a general stability of local government budgets in terms of their sources. The share of the general grant has slightly increased from 2012 where it accounted for 33% to 2018 where it accounts for 37%. This is a slight positive trend, as the general grant is the only grant that allows local governments to use discretion in their spending. Considering the share of own source revenues, the chart reveals that local governments have spending discretion over slightly more than half of their available budget. The chart also shows that the share of the specific grant on education has steadily declined from 2012 (39%) to 2018 (35%). The share of the specific grant on health and other types of specific grants has remained stable during the analyzed years, with a share of 10% and 1-2%, respectively.

Returning to the principles for central government grant allocations presented above, it can be argued that the method/form of grant distribution in Kosovo applies, fully or partially, almost all principles which are necessary to secure a stable financial system. Furthermore, these principles tend to eliminate potential conflicts between local governments and the center, or more concretely, between Serb majority municipalities and the central government in Prishtina. Two principles are currently not applicable to the process of grant distribution. The principle of government responsiveness, the ability to change/adapt the grant, lies in the hands of the grants commission. Nevertheless, apart from regular budget revisions, big changes in the grant scheme were not applicable. This practice has a positive impact on the fairness of

the grant distribution. Another principle which is not applied during grant allocation is the principle of granting incentive based transfers. The practice of rewarding efficient local governments has yet to be installed. It can be argued that the most important applied principles for the establishment of a stable fiscal decentralization are the principles of local government spending autonomy, and the principle of equity. The level of spending autonomy of local governments in Kosovo will be discussed more broadly in one of the following sections, while the principle of equity will be discussed in the following section.

The equity or equalization principle represents one of the most important principles connected to conflict management. It is through this principle that the central government tends to create a form of horizontal equality between different local governments. Financial equality presents the cornerstone of an effective ethnic accommodation strategy. Now, taken together, the application of a universal grants allocation formula for all local governments, and the findings from the field study, which are presented in the following section, suggest that the current system of central government grant allocation presents a considerably fair system. To support this claim, the argument by Boadway can be used, who argues that: "transfers that are equal per capita to all jurisdictions are none the less implicitly redistributive if financed out of federal general revenues because the latter come disproportionately from jurisdictions with higher per capita tax bases."[879] Moreover, if we take into account that one of the main aims of equalization is to help smaller and financially weaker municipalities,[880] then through the support of municipalities with minority population, and minority municipalities, the formula applied in Kosovo meets this requirement. In addition, the application of the equity principle, as argued by Ahmad and Searle, ``enhances `fairness``,[881] while Reschovsky pointed out that equalization has the capacity to: "reduce, or even eliminate, fiscal disparities among provincial or local governments."[882] Therefore, equalization policies play a crucial role in diminishing conflict possibilities.

d) The central government budget allocation method and field research findings

In municipal and central government institutions where interviews were conducted, there was a common opinion that the grant allocation method is fair. Petrit Popova, who heads the

[879] Robin Boadway, "Intergovernmental redistributive transfers: efficiency and equity," in *Handbook of Fiscal Federalism,* eds. Ehtisham Ahmad and Giorgio Brosio (Cheltenham, UK, Northampton, MA, USA: Edward Elgar Publishing Limited, 2006), 355

[880] Péteri, "Fiscal Equalization in South Eastern Europe," 7

[881] Ahmad and Searle, "On the implementation of transfers to subnational governments," 402

[882] Andrew Reschovsky, "Compensating Local Governments for Differencies in Expenditure Needs in a Horizontal Fiscal Equalization Program," in *Intergovernmental Fiscal Transfers,* eds. Robin Boadway and Anwar Shah (Washington D.C.: Public sector governance and accountability series, The World Bank, 2007), 398

department of local government budgets within the Ministry of Finance argued that there are no discriminations or favoring certain municipalities during the allocation of the government grant. Every municipality is treated equally, including minority municipalities.[883] The deputy mayor of Rahovec similarly argued that the applied formula for the general grant is: "A formula against which no one has any objections, because it is a general formula."[884] Hara also remarked that through this formula, the central government has `to some extent` achieved to create a form of equalization between small and big municipalities.[885] However, two main issues about the allocation method were identified as problematic. The first is lack of flexibility, while the second is lack of accurate population data due to the Serb boycott of the national census in 2011.

On the issue of flexibility, Hodžić argued that during the budget allocation, the central government should take into considerations the specific situation of the municipalities in the north of Kosovo, namely, their institutional hybrid/transitional position. Thus, Hodžić's main criticism was that the budget allocation method simply lacks the element of flexibility.[886] The same argument was used by Jovanović who stated that the system lacks flexibility in regards to practical issues. She pointed out an interesting example where donor led projects almost always required a certain financial contribution (co-financing) from the benefiting municipality. This is, however, frequently difficult to secure. On the one hand, municipalities already have planned budgets, and on the other hand, because it is difficult for small municipalities such as Parteš with limited budgets to secure the required co-financed sum.[887] This shows that a lack of budgeting flexibility can also have a negative impact on local governments.

The more evident problem with the budget allocation method is the lack of accurate statistical data. This problem came up in discussions with the Serb majority municipalities south of the Ibar River. For instance, in the municipality of Gračanica, Ilić reported that they receive the general grant for 10,000 inhabitants, while the real number of inhabitants is close to 25,000. As a result, the general grant for the municipality is at least 50% smaller than it should be.[888]

[883] Petrit Popova (Head of the Local Government Budget, Ministry of Finance), interview and translation by author, September 2 2016
[884] Xhemali Haxhimustafa, interview
[885] Yusuke Hara, interview
[886] Adrijana Hodžić, interview
[887] Vesna Jovanović, interview
[888] Jelena Ilić, interview

The same problem was reported in the municipality of Novo Brdo,[889] and in the municipality of Štrpce. In Štrpce, Krstić argued that because of the same problem, they lose out on approximately 500,000 euros in grants annually.[890] Therefore, the application of a fair budget allocation method needs to be based on accurate data. As argued by Ebel and Péteri: "The complex grant allocation formulae require proper statistical and fiscal information; otherwise there would be no way to ensure objectivity in grant allocation."[891]

Furthermore, the four municipalities in northern Kosovo have not taken part in the census at all. In their case, the central government uses data based on forecasts from the statistical office. There is a great possibility that these forecasts exceed the real population number. One concern regarding this practice was whether this was actually fair, especially towards the Serb majority municipalities in the south. One interviewee, who preferred to remain anonymous while speaking about this issue, argued that this practice is not fair at all. His line of argument was that the central government should have rewarded the Serb majority municipalities in the south for their ´loyalty´ towards the republic, instead of favoring the northern municipalities. On the contrary, the central government has chosen to discriminate the same during budget distributions.[892] Indeed, this practice remains problematic.

In addition to the above-mentioned point on favoritism during budget allocation, a variety of perspectives were also expressed on the extensive financing possibilities of northern municipalities. First, these municipalities have a double budget source. They receive grants from both, Kosovo and Serbia.[893] Second, these municipalities have access to a specific `development fund` that was established as a result of the Brussels agreements. This agreement foresees that a part of the customs revenues from the north, should be redistributed in the same region, namely, in the four northern municipalities. Accordingly, approximately 6.6 million euros were allocated from this fund for different projects in the northern municipalities until 2016.[894] In the long-term, this situation has the potential to create fiscal disparities between the four northern municipalities, and municipalities south of the Ibar River. Tafa, from the MLGA acknowledges that the risk of fiscal disparity is real.[895] More

[889] Milorad Milošević, interview
[890] Dušan Krstić, interview
[891] Robert D. Ebel and Gábor Péteri, "Intergovernmental Transfers," in *The Kosovo Decentralization Briefing Book,* eds. Robert D. Ebel and Gábor Péteri (Budapest: Kosovo Foundation for Open Society & Local Government and Public Service Reform Initiative, Open Society Institute, Forum 2015, 2007), 127
[892] Anonymous interview
[893] Stefan Djokić, interview
[894] Ministria për Dialog, *Raport(...)1 janar 15 qershor 2016,* 24
[895] Xhevat Tafa, interview

importantly, another interviewee argued that the fiscal disparity has the potential to revive resentments from the southern municipalities, and generally from the population.[896] The evidence presented here suggests that the central government has failed to address another principle of fiscal decentralization, the principle of `Reach`. A proper application of this principle would require that the central government considers `who benefited the most, and who benefited the least´ during the budget allocation process. It seems that the importance of `integrating the north` has overshadowed the importance of the ´reach´ principle and equality.

With a limited impact potential, two other elements that could create disparities between different municipalities, and between different majority and minority inhabited settlements are 1) central government directly financed projects, and 2) donor led projects. Directly financed projects by the central government tend to be based on political patronage or other subjective preferences. This practice has been seen in various municipalities. Ivanović, for example, notes that this has been functioning according to the: "who is closer, takes more" postulate.[897] In the same way, Krstić argues that: "If a minister comes from Mitrovica, he will certainly give more to Mitrovica",[898] while Haxhimustafa points out that there is a great possibility that, if the minister of education comes from a certain village, then a new school will be built either in the same village, or in a place of his preference.[899] This practice has resulted in some minority municipalities being neglected in such centrally financed projects. Aga and Hodža from the municipality of Dragash argue that projects financed by the central government tend to be implemented more in the Albanian inhabited areas, than in the minority inhabited areas in their municipality.[900] Furthermore, Jovanović reports that for instance, the municipality of Parteš has been neglected by the Ministry for Communities and Return. She believes that this has taken place because of political differences between the municipal representatives and the ministry representatives.[901] Şala, from the Turk majority municipality of Mamushe also notes that they have sent several concrete projects to central institutions, which were mostly rejected.[902]

Alternatively, donor led projects in comparison to central government led projects tend to invest more in minority settlements. The following comment by Hara best illustrates this

[896] Anonymous interview
[897] Miroslav Ivanović, interview
[898] Dušan Krstić, interview
[899] Xhemali Haxhimustafa, interview
[900] Šerif Aga, interview, translation by author; see also Bajram Hodža, interview
[901] Vesna Jovanović, interview
[902] Skender Şala (Director for Budget and Finances, Municipality of Mamushe), interview by author, September 7 2016

tendency: "The donor led projects, I do see the tendency that the municipalities having bigger non-Albanian communities seems to be more advantaged in getting the donors. Because a lot´s of donor led projects have elements for the promotion of non-Albanian communities in the decision-making process, or generally public affairs."[903] These examples show that benefits of fiscal decentralization can easily be undermined by non-objective investment methods that have the potential to further enforce inner-municipal and inter-municipal disparities.

VI.2.4. Borrowings

Local government borrowing represents the third form of financing expenditures by municipalities. In order to fulfill their duties and responsibilities, especially in strategic investments, local governments may use borrowings as an alternative form of financing for local projects. Ahmad et al. argue that: "borrowing might be explicit, for example, through issuance of debt or contracting of loans, or indirect, such as through the build-up of arrears or accounts payable."[904] Explicit borrowing forms are credits from the central government, banks, or other financial institutions. Other examples include leasing and municipal bonds.[905] Indirect forms of financing mainly include pending local government payments towards local contractors.

It has now been well-established from various studies that borrowings play an important role in local economic and social development. For instance, Ebel and Yilmaz argue that borrowing `promotes efficiency and equity`,[906] while Swianiewicz argues that borrowing `provides fiscal space for economic development planning`.[907] The use of borrowing may specifically be advantageous for financing local government capital investments. Swianiewicz points out that borrowing for such types of investments: "provide a flow of benefits over time". He further argues that if borrowing is properly used, namely only for capital investments, then borrowing: "not only becomes a viable alternative to other sources of financing (…), but, in fact, becomes a tool for the achievement of the goals of fiscal equity

[903] Yusuke Hara, interview
[904] Ehtisham Ahmad, Maria Albino-War, and Raju Singh, "Subnational public financial management: institutions and macroeconomic considerations," in *Handbook of Fiscal Federalism,* eds. Ehtisham Ahmad and Giorgio Brosio (Cheltenham, UK, Northampton, MA, USA: Edward Elgar Publishing Limited, 2006), 406
[905] Paweł Swianiewicz, "Local Borrowing and Municipal Dept," in *The Kosovo Decentralization Briefing Book*, eds. Robert D. Ebel and Gábor Péteri (Budapest: Kosovo Foundation for Open Society & Local Government and Public Service Reform Initiative, Open Society Institute, Forum 2015, 2007), 137-138
[906] Ebel and Yilmaz, "Fiscal Autonomy," 70
[907] Swianiewicz, "Local Borrowing and Municipal Dept," 136

and efficiency." [908] As such, borrowing represents an important fiscal tool for local governments, which can only be effective if subject to hard budget constraints.[909]

The fiscal system applicable in Kosovo is based on the principles of hard budget constraints. Apart from strict budget regulations, the Law on Public Depts also foresees that the central government will not pay for any failed borrowing payments of municipalities.[910] Effective hard budget constraint policy is indeed based on the principle by which the central government does not cover local government depts. According to Bahl and Martinez-Vasquez, the central government should be: "committed to a "no-baillout strategy"", and the central government should: "shy away from year-end deficit grants."[911] Davey adds another principle to the principle of no bailout, namely the principle of a consistent and unchangeable sum of grants and tax shares allocated to local governments within a previously announced financial allocation plan.[912] Now, if the central government is committed to the principles of hard budget constraints, as endorsed in the legal provisions of Kosovo, a financially sustainable system of local government will be established. Under these circumstances, first, the hard budget constraints policy has the potential to lead to a more transparent local financial system.[913] Second, it can limit the possibilities of budget deficits and increase political accountability.[914] Third, it can strengthen the local mechanisms for the collection of own source revenues.[915] Lastly, the hard budget constraint policy has the potential to impose the practice of fiscal discipline.[916] The evidence suggests that from a long-term perspective, the application of hard budget constraint policy in Kosovo is in favor of local governments and the overall governance system.

The latest central government report on public depts, which covers the last three months of the year 2017, shows that municipalities in Kosovo do not have any public depts.[917] Even

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[908] Ibid.
[909] Ahmad, Albino-War, and Singh, "Subnational public financial management," 414; see also Swianiewicz, "Local Borrowing and Municipal Dept," 136; and Ebel and Yilmaz, "Fiscal Autonomy," 70
[910] See for example Article 30, Para. 1.12, and Para. 2.4. Chapter X of the Law No. 03/L-175 on Public Depts (Ligji për Borxhet Publike)
[911] Roy Bahl and Jorge Martinez-Vasquez, „Sequencing Fiscal Decentralization," World Bank Policy Research Working Paper 3914 (2006): 24
[912] Davey, "Fiscal Decentralization in Eastern Europe," 44
[913] USAID, *Democratic Decentralization Programming Handbook*, 13
[914] Dafflon, "The assignment of functions to decentralized government," 289
[915] Bahl and Martinez-Vasquez, „Sequencing Fiscal Decentralization," 23
[916] Ibid., 39
[917] Ministry of Finance, *Të Dhënat Tre-Mujore mbi Borxhin e Përgjithshëm, Tremujori i Katërt 2017*, (https://mf.rks-gov.net/desk/inc/media/55E134A4-85FB-43DF-AF72-D62E4A79E19C.pdf accessed online on 16.03.2018), There are some limited cases where municipalities have achieved to borrow financial means, however, the burden of the dept has been registered, or has been guaranteed by the central government, and as

though The Law on Public Dept and the Law on Local Government Finance allows municipal organs to borrow financial means,[918] this report shows that despite having this right, municipalities in Kosovo have been reluctant to use this possibility. Dafflon and Madiès argue that municipalities are reluctant to use borrowings in order to finance local projects. There is a tendency of local governments to use finances from other sources such as donations, the central government, or partnerships with the private sector.[919] This reluctance has limited local government's long-term investment programs, and more importantly, it has instilled a practice of using indirect forms of financing.

Several media reports have shown that forms of indirect financing are frequently used by local governments in Kosovo. This practice, however, remains questionable because it is rarely used to finance long-term investment projects. It is mainly used to finance ad hoc projects for electoral purposes and/or to award more tenders to politically affiliated private firms. As a result, local governments tend to enter contractual obligations that exceed their political mandate. These financing forms can be difficult to control for the central government, and as such they jeopardize the financial stability of municipalities. In short, these examples show that the reluctance of local governments to borrow financial means through `legal and transparent` procedures has reinforced the tendency of local governments to rely on indirect forms of financing. Alternatively, this undermines the benefits of fiscal decentralization, and threatens the overall sustainability of municipalities as well as the local government system.

VI.2.5. Fiscal and financial autonomy of municipalities

The core issue of fiscal and financial autonomy of municipalities is related to their ability to decide autonomously on their revenues and spending, without interference from higher levels of government. For example, Shah describes the term `local fiscal autonomy` to refer to the: "discretionary ability to raise revenues and authority and flexibility in the use of local resources."[920] Based on Shah´s definition, there are two main forms of local autonomy, including fiscal autonomy and financial or spending autonomy. First, fiscal autonomy can broadly be described as the right of local authorities to set up taxes, determine tax rates, and

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such they do not figure as official municipal depts. One example is the municipality of Prishtina, which has used the borrowing mechanism in order to buy buses for public transport.

[918] See Chapter X of the Law No. 03/L-175 on Public Depts (Ligji për Borxhet Publike), and Article 30 of the Law No. 03/L-049 on Local Government Finance

[919] Dafflon and Madiès, "Decentralization: A Few Principles," 57

[920] Anwar Shah, "Corruption and decentralized public governance," in *Handbook of Fiscal Federalism*, eds. Ehtisham Ahmad and Giorgio Brosio (Cheltenham, UK, Northampton, MA, USA: Edward Elgar Publishing Limited, 2006), 478

collect local taxes.[921] Second, financial or spending autonomy refers to the ability of local authorities to: "decide alone, fully independently, the categories, quantity and quality of services that it intends to offer its residents,"[922] and this is closely connected to the: "volume of resources that a local government can devote to financing its own decisions."[923]

The degree of autonomy of local governments in establishing fiscal rules and regulations can best be determined in accordance with the level of government that has the right to set tax rates and the tax base. In the previous section on own source revenues, types of local taxes managed by local governments in Kosovo are discussed. Based on Chapters II and III of the Law on Local Government Finance, it can be argued that municipalities in Kosovo have a great degree of discretion in determining the local tax base and tax rates.[924] This law enables municipalities to establish their own tax base and tax rates in accordance with the municipal regulations.[925] For instance, Ebel and Yilmaz argue that if a local government has autonomy in setting the tax rate and tax base, then the local government has a high revenue autonomy, or a high fiscal autonomy. Alternatively, if the central government sets either the tax rates or tax base, or both, then the local government has partial autonomy or no autonomy at all.[926] In short, fiscal regulations in Kosovo have set up a high degree of fiscal autonomy for local governments.

Article 2 of the Law on Local Government Finance guarantees financial or spending autonomy of municipalities for financial means obtained from own source revenues, and general central government grants.[927] Oppositely, local governments have limited autonomy in managing financial means obtained from specific grants on education and health,[928] transfers for delegated competencies, and grants for enhanced competencies.[929] Local government's spending autonomy is also limited by the centrally set budget ceilings for each spending category, no right to re-allocations between different budget categories, and a limit on the number of staff who can be hired by municipalities.

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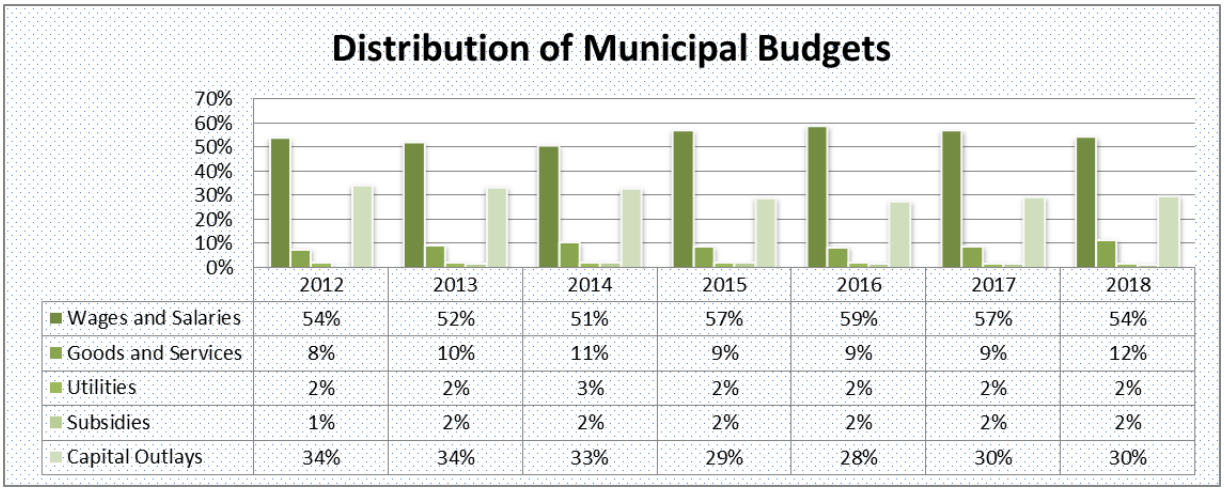
[921] Dafflon and Madiès, "Decentralization: A Few Principles," 42
[922] Original citation is from Dafflon and Perritaz, 2003, cited from Dafflon and Madiès, "Decentralization: A Few Principles," 45, authors use the term budget autonomy
[923] Dafflon and Madiès, "Decentralization: A Few Principles," 42
[924] See chapter II and III of the Law No. 03/L-049 on Local Government Finance
[925] Article 10.4 of the Law No. 03/L-049 on Local Government Finance, nevertheless, sets some limitations to the local govenrments rights to set tax bases for businesses
[926] Ebel and Yilmaz, "Fiscal Autonomy," 66
[927] Law No. 03/L-049 on Local Government Finance, Article 2
[928] Ibid., Article 25
[929] Ibid., Article 28

Limiting the number of employees for municipalities has significantly slowed down the transition process of the Serb majority municipalities. These municipalities have been facing difficulties in adapting the Kosovo system, because this system allows a far lower number of employees in comparison to the Serb parallel system. The problem of limited autonomy in staff employment has been emphasized by Jovanović, who pointed out that the Kosovo system allows the municipality of Parteš to hire only 76 staff, while the Serb parallel system allows the local authorities to hire 220 staff.[930] A similar situation was reported in the case of Leposavić, where the Kosovo system allows for a staff of 550, while the Serb parallel system allows for a staff of 1,500.[931] The same problem has been emphasized by Hodžić in North Mitrovica, who argued that with regards to employment, the central government should apply an ad hoc special approach towards the Serb majority municipalities, in order to overcome the problem of limited employment budgets.[932] However, this is unlikely to happen. The limited autonomy of local governments in employment, or the budget limits for employment, has caused considerable difficulties in the Serb majority municipalities.

Centrally set budget ceilings for different spending categories, and legal provisions preventing local governments from re-allocating finances between these categories, have also been highlighted as a problem in several municipalities. It is obvious that municipalities have different needs. Some municipalities need more finances for goods and services, some need more for utilities or subsidies and transfers, while others would rather invest more in capital investments. Krstić, for example, has complained about the limited amount of finances in the category of subsidies and transfers in the municipality of Štrpce.[933] In North Mitrovica, there was a greater need for more finances in the category of goods and services,[934] while the deputy mayor of Klokot declared that their municipality would rather invest more money in capital projects than in other categories.[935]In comparison to the deputy mayor of Klokot, Hara argues that municipalities would rather need more money in categories like goods and services or subsidies, than in the category of capital outlays.[936] Thus, the needs of municipalities vary considerably and these examples show that centrally set budget rules and budget ceilings for different spending categories limits the spending flexibility of local

[930] Vesna Jovanović, interview
[931] Miroslav Ivanović, interview
[932] Adrijana Hodžić, interview
[933] Dušan Krstić, interview
[934] Adrijana Hodžić, interview
[935] Hasan Rashiti, interview
[936] Yusuke Hara, interview

governments. In fact, Hara points out: "it is not necessarily easy to maneuver in a way that these municipalities want."[937]



	2012	2013	2014	2015	2016	2017	2018
Wages and Salaries	54%	52%	51%	57%	59%	57%	54%
Goods and Services	8%	10%	11%	9%	9%	9%	12%
Utilities	2%	2%	3%	2%	2%	2%	2%
Subsidies	1%	2%	2%	2%	2%	2%	2%
Capital Outlays	34%	34%	33%	29%	28%	30%	30%

Figure 15: Distribution of municipal budgets according to spending categories share of the overall local government budget (Sources: Law No. 04/L-079 on Budget of the Republic of Kosovo for the Year 2012; Law No. 04/L-165 on Budget of the Republic of Kosovo for the Year 2013; Law No. 04/L-233 on Budget of the Republic of Kosovo for the Year 2014; Law No. 05/L-001 on Budget of the Republic of Kosovo for the Year 2015; Law No. 05/L-071 on Budget of the Republic of Kosovo for the Year 2016; Law No. 05/L-125 on the Budget of the Republic of Kosovo for the Year 2017; and Law No. 06/L-020 on Budget of the Republic of Kosovo for the Year 2018

The table above serves as an example of how local governments spend their financial resources, and how budget category ceilings affect their spending practices. This table shows that over a seven year average, local governments have spent the largest proportion of their budgets (55%) on wages and salaries. For the purpose of financing their operation in the past three years, local governments have spent 9% of their budgets. For 2018 they plan to spend 12%. The largest share of local government spending over which they have discretion is the category of capital outlays. Local governments have dedicated on average 31% of their budgets to this category. Lastly, local governments have spent nearly 2% of their budgets on public utilities, and the same share of the budget was distributed from the category of subsidies. A study on the distribution of municipal budgets across south-east European countries during 2015 reveals that Kosovo's local governments are spending way too much in the category of wages and salaries. Only Macedonia (49%), and Moldova (43%) come close to Kosovo (57%). Kosovo's average spending for wages and salaries is also far above the EU (33%) average, and the South-east European (32%) average. Furthermore, Kosovo is spending approximately 9% below the average level of the EU (26%) and the south-east European countries (23%) on goods and services.[938] The importance of this comparison lies in the fact that these figures show how decisions of the central government affect the spending

[937] Ibid.
[938] NALAS, *Fiscal Decentralization Indicators for South-East Europe: 2006-2015*, 32

possibilities of local governments. Namely, the figures on wages and salaries are overwhelmingly affected by the decision of the central government to raise salaries in the education, health, and/or civil service sectors. It can be argued that these practices significantly limit the `spending maneuvering` of local governments.

Let us now turn to consider other factors which may affect the financial situation of local governments. The previously mentioned centrally set regulations have cost millions of euros for municipalities over the past years. If municipalities are unable to spend the total amount of the allocated budget within a certain category, then they must return these funds to the central government. These funds are registered as municipal surpluses. This practice might intentionally be imposed by the central government and concerns about this practice have been mentioned in the municipality of Parteš. In this regard, Jovanović maintains that every year their municipality has to return nearly 10% of the budget to the central government. She also claims that the online system commonly fails at the end of the year which prevents the municipalities from timely registering all expenditures.[939] Jovanović also noticed that their municipality, which is a small municipality, routinely receives additional funds for goods and services.[940] This situation has not only triggered the municipality of Parteš, but also all Kosovo municipalities to spend their budget in any way possible to return as little as possible to the central government. A 2016 study has come to similar conclusions and argues that: "being limited by applicable laws, the complicated procurement procedures and the lack of budget revision, municipalities are expected to have tens of millions in surplus each year."[941] This account shows that even though the central government regulations tend to establish fiscal discipline on the local level, they also bear serious side effects.

Apart from these limitations on budget spending, a majority of interviewed respondents across Kosovo agreed that municipalities are autonomous when deciding about their spending priorities. For instance, Djokić argues that their municipality, Zvečan, is autonomous when deciding about financial issues. He also points out that the central government never grants the exact amount of funds requested by the municipality, nevertheless, this cannot be regarded as central government intervention.[942] In Mamushe, the director of finance said that besides some budget limitations, they have a generally autonomous decision-making process on

[939] Vesna Jovanović, interview
[940] Ibid.
[941] Kosovo Local Government Institute and Local Government Information Unit, "Necessity to Re-Think Decentralization?!", 17
[942] Stefan Djokić, interview

spending priorities.[943] More importantly, all of the three interviewed officials of the Ministry of Local Government Administration, and Popova of the Ministry of Finance, strictly argued that municipalities have financial autonomy. Popova said that the Ministry of Finance does not interfere during the budget planning's on the municipal level in any way. Municipalities have full autonomy over setting their priorities and budget spending.[944] Tafa states that: "municipalities have a full autonomy within the budget limitations,"[945] with the similar argument Krasniqi and Kosumi supported this.[946] The evidence from both, the municipal and the central level, suggests that municipalities have, as promulgated by the law and in accordance with the standards of an effective fiscal decentralization, financial autonomy within the rules and regulations set by the law, and the Ministry of Finance.

VI.2.6. Municipal budget planning and minorities

Several municipalities have achieved to formally involve minority communities in the budget planning process, and to actually include their demands in the budget. Other municipalities, including the Serb majority municipalities in the north of Kosovo have not only failed to involve minority communities in the budget planning process, but they have also failed to hold the legally required public budget hearings. This situation is not favorable, as examples from other countries show, because: "participatory budgeting can serve as a critical link between communities and government."[947] Moreover, Ebel and Vaillancourt emphasize that through a transparent budget planning and implementation process, accountability can be established.[948] Thus, creating a transparent budget planning process and establishing a link between communities and the government necessarily requires the involvement of minority communities.

The report of the Ministry of Local Government Administration shows that during 2016 some 200 budget hearings were held in 31 municipalities across Kosovo. Seven municipalities, which include five Serb majority municipalities, the Turk majority municipality of Mamushe, and the municipality of Gjakova, have failed to organize public budget hearings.[949] In some

[943] Skender Şala, interview
[944] Petrit Popova, interview
[945] Xhevat Tafa, interview
[946] Haxhi Krasniqi, interview; and Venera Kosumi, interview
[947] UNDP, *Decentralization: A Sampling of Definitions*, 20
[948] Robert D. Ebel and François Vaillancourt, "Intergovernmental Assignment of Expenditure Responsibility," in *The Kosovo Decentralization Briefing Book*, eds. Robert D. Ebel and Gábor Péteri (Budapest: Kosovo Foundation for Open Society & Local Government and Public Service Reform Initiative, Open Society Institute, Forum 2015, 2007), 82
[949] MAPL, *Raporti i Funksionimit të Komunave të Republikës së Kosovës, Janar – Dhjetor 2016*, 14

cases where no public budget hearings were held, local authorities have used alternative methods in order to include minorities' demands in the budget. The municipality of Zvečan has, for example, consulted the deputy mayor for communities while preparing the budget.[950] It can, however, be assumed that in other municipalities either a similar method was used, or minority communities were not consulted at all.

In municipalities where public budget hearings were held, the interest of citizens was limited. These hearings were characterized by a low number of participants and a low quality of debate.[951] Nevertheless, there is a positive trend of involving minority communities in the budget planning process, not only through formal hearings, but also through other local minority participation mechanisms, and most importantly through directly contacting the minority population. Yusuke Hara, who has been observing the work of the southern municipalities, reports that: "there has been an increasing number of the practice of holding budget hearings, so municipal official outreach to the communities, to some group, to collect their needs and interests."[952] Hara, furthermore, recalls some practices from the municipality of Rahovec and Prizren: "Last year in the case of Rahovec, the municipality did organize a kind of consultation gathering in the upper Rahovec (a city quarter inhabited by minority communities, authors comment) and also in the village of Velika Hoča (village with a Serb majority, authors comment). This is also the case here (Prizren, authors comment), they at least visited a few villages where these biggest non-Albanian communities live."[953] More importantly, Hara notes that:" Some of them (minority demands, authors comment), I can say, are actually incorporated and executed in the budget planning."[954]

In the multiethnic municipality of Dragash, there is consent that minority communities should receive some 42% of the budget for investments in accordance to their population share.[955] Budget demands of minority communities here, are either channeled through public hearings, minority representatives in the local administration,[956] or through the official requests of minority inhabited settlements.[957] Similarly, Aliji argued that the Prizren MOCR plans the budget according to requests from minority communities,[958] while the acting head of the

[950] Stefan Djokić, interview
[951] MAPL, *Raporti i Funksionimit të Komunave të Republikës së Kosovës, Janar – Dhjetor 2016*, 14
[952] Yusuke Hara, interview
[953] Ibid.
[954] Ibid.
[955] Bajram Hodža, interview
[956] Šerif Aga, interview, authors translation
[957] Bajram Hodža, interview
[958] Hajradin Aliji, interview

Rahovec MOCR argued that they even approve the list of investments within the communities committee of the municipal assembly.[959] The municipality of Štrpce, Novo Brdo, and the municipality of Mamushe channel minority demands into the budget planning only through public hearings.[960] They are not applying any specific approach to involve minority communities in budgeting. The director for budget and finances of the municipality of Mamushe, when asked about the involvement of minority communities in the budget planning process, said: "We organize public debates, they are open. In these debates everyone can submit a request."[961]

In conclusion, this account shows that some municipalities only tend to fulfill the minimal legal requirements regarding the process of budget planning. They frequently do not involve minority communities in this process. Even when minority communities are involved, the budget for these communities remains limited. The municipality of Rahovec has, for instance, allocated only some 35,000 Euros for capital investments for the MOCR for the year 2016. Morina correctly draws attention on how small this budget is. He argues that the Serb community will probably receive some 15,000 to 20,000 euros, while other communities, specifically the RAE community, will receive in the best case 10,000 euros.[962] The acting head of the Rahovec MOCR also points out that the budget is very limited. However, he believes that 35,000 euros are better than nothing. He recalls that in the previous years, financial means dedicated to minority community projects have simply been re-oriented into projects for the majority community.[963] Alternatively, the deputy-mayor of Rahovec believes that this is a fair sum, as it reflects the proportion of minority communities in the overall population of the municipality.[964] In general, during 2016 twenty municipalities have allocated some 1.1 million euros for the `support of minority communities`. Fourteen municipalities have not allocated such funds. This includes nine Serb majority municipalities and the municipality of Mamushe.[965] To sum up, minority communities are frequently excluded from the budgeting process, and/or they receive only a small part of the municipal financial investments. This is particularly visible in the case of minority municipalities. If not properly addressed, this practice will further reduce the participation of minorities, and more

[959] Jovan Bojić, interview
[960] Dušan Krstić, interview; Milorad Milošević, interview; and Skender Şala, interview
[961] Skender Şala, interview
[962] Bujar Morina, interview
[963] Jovan Bojić, interview
[964] Xhemali Haxhimustafa, interview
[965] "MAPL, *Raporti i Funksionimit të Komunave të Republikës së Kosovës, Janar – Dhjetor 2016*, 22

importantly, this practice has the potential to increase the chances of local conflict, and thus to discredit the benefits of decentralization.

VI.2.7. Conclusions

As there is no one-size-fits-all fiscal decentralization policy, it is difficult to properly compare or evaluate fiscal policies in Kosovo. Every fiscal policy is adapted to local needs and fiscal capacities. It can, however, be assumed that as a result of a significant presence of international financial institutions in Kosovo, similar to other laws, the legal basis for fiscal decentralization is in accordance with the above presented elements of a sustainable fiscal decentralization system. As the present part of the study was designed to determine the effects of fiscal decentralization on ethnic accommodation and on diminishing conflict possibilities between minority and majority communities, it can be argued that if accompanied by an adequate long-term process of strengthening local government fiscal and financial sustainability, current fiscal and financial policies can indeed strengthen the conflict reduction effect of fiscal decentralization and thereby contribute to a sustainable accommodation of ethnic minorities within the state. This would be in accordance with the conclusions made by Siegle and O´Mahony, as well as Roberto Ezcurra. Siegle and O´Mahony, who argue that adequate financial decentralization is: "linked to lower levels of ethnic conflict."[966] To determine the effects of fiscal decentralization, Ezcurra on the other hand, has compared extensive statistical data across different countries, where he concludes that: "fiscal decentralization reduces the incidence of internal conflict."[967]

This part of the study has shown that local governments in Kosovo have a weak local revenue raising capacity, and that this weakness is more obvious in minority municipalities. It has also shown that the grant allocation policies of the central government, and the legal provisions thereof, are mostly in accordance with the principle of `fairness`. Furthermore, this study has argued that local governments have discretion over managing more than 50% of their financial resources. It has also argued that there is a greater need to apply specific strategies to increase minority participation in the budget planning process. Finally, this study has identified several elements that pose a risk to fiscal decentralization, and if not adequately countered, could outweigh the benefits of decentralization. The results of this part of the research support the idea that adequate fiscal decentralization can indeed reduce the chances of internal conflict.

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[966] Siegle and O´Mahony, "Assessing the Merits of Decentralization," 21
[967] Ezcurra, „Fiscal decentralization and internal conflict," 590

VI.3. Political or Democratic Decentralization in Kosovo

Based on primary literature, Brancati summarizes the following definition to describe political decentralization: "Political decentralization refers to a division of political authority among multiple levels of government in which each level is democratically elected and has independent decision-making power over at least one area."[968] In the case of Kosovo, this would refer to the autonomous decision-making power of municipalities on the one hand, and to the organization of elections for the democratic establishment of local government institutions on the other hand. The applicability of the first point has been supported in the previously analyzed administrative decentralization. The second point, local level elections, is considered here, particularly in its connection to minority representation. Accountability, transparence, and citizen´s participation in the political process, as electorally interconnected elements of democratic decentralization, are treated as well.

Political decentralization represents the connecting part between the formal government institutions and the people. It represents the connecting part between administrative and fiscal decentralization and the society. It is the democratic component of decentralization. As Manor points out: "administrative or fiscal decentralizations without democratic elements tend to be insulated from society." [969] To avoid this insulation, political decentralization tends to establish favorable institutional conditions for the involvement of the people in the process of governance.[970] To put it more simply, the whole idea of political decentralization, is to increase the participation of the people in the decision-making process, as Nyiri writes: "Decentralization of power is practically meaningless if it is not accompanied by more citizen participation."[971]

The goal is not only to involve citizens in the formal institutions, but also to: "give citizens and/or their elected representatives more say in public decision-making in domains that extend political governance to include general socioeconomic development."[972] This account suggests that political decentralization strengthens democracy on the local level.[973] In this regard, Ribot argues that: "to be democratic institutions must be representative: accountable to

[968] Dawn Brancati, "The Origins and Strengths of Regional Parties," *British Journal of Political Science*, Vol.38, No.1, (Cambridge University Press, 2008): 137
[969] Manor, *The Political Economy of Democratic Decentralization,* 53
[970] Kauzya, "Decentralization: Prospects for Peace, Democracy and Development," 6
[971] Nyiri, "Decentralization and good governance," 12
[972] Kauzya, "Decentralization: Prospects for Peace, Democracy and Development," 5
[973] Ibid., 5-6

the people and empowered to respond." [974] Therefore, in addition to the devolved administrative and fiscal power, elections[975] create the preconditions for an effective political decentralization, and as such, can be regarded as the basis of political or democratic decentralization. In short, through democratic mechanisms political decentralization can reduce the chances of conflict, as it empowers minority communities by securing them a stake in the decision-making process,[976] as concluded by Siegle and O´Mahony: "greater level of political legitimacy are associated with lower levels of armed internal conflict."[977]

VI.3.1. Elections, proportional representation, political parties and minorities

In multiethnic societies the electoral system is carefully chosen. It is assumed that a proper electoral system has the capacity to reduce chances of conflict. There is no electoral system, however, which can be regarded as the most advanced in terms of conflict management. One system may be advantageous in one country, while the same system may be disadvantageous in another country. Therefore, the establishment of a certain type of electoral system is strongly connected to local circumstances.[978] Its success or failure in mitigating internal conflict will depend on the nature of the conflict, and on other applicable conflict management mechanisms.[979] An electoral system, after all, serves as a part of wide ranging conflict mitigating mechanisms in multiethnic societies. Reilly and Reynolds argue that an electoral system serves particularly to meet three practical goals, namely:

> "First, it translates the votes cast into seats won in a legislative chamber. The system may give more weight to proportionality between votes cast and seats won, or it may funnel the votes (however fragmented among parties) into a parliament which contains two large parties representing polarized views. Second, electoral systems act as the conduit through which the people can hold their elected representatives accountable. Third, different electoral systems serve to structure the boundaries of "acceptable" political discourse in different ways, and give incentives for those competing for power to couch their appeals to the electorate in distinct ways. In terms of deeply ethnically divided societies, for example, where ethnicity represents a fundamental

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[974] Jesse C. Ribot, "Representation, Citizenship and the Public Domain in Democratic Decentralization," *Development*, Vol. 50, No. 1, (2007): 45
[975] Manor, *The Political Economy of Democratic Decentralization*, 8
[976] Grasa and Camps, "Conflict Prevention and Decentralized Governance," 34
[977] Siegle and O´Mahony, "Assessing the Merits of Decentralization," 21-22
[978] Ben Reilly and Andrew Reynolds, *Electoral Systems and Conflict in Divided Societies*, Papers on International Conflict Resolution No.2 (Washington D.C.:Committee on International Conflict Resolution, Commission on Behavioral and Social Sciences and Education, National Research Council, National Academy Press, 1999), 1
[979] Ibid., 8

> political cleavage, particular electoral systems can reward candidates and parties who act in a cooperative, accommodatory manner to rival groups, or they can punish these candidates and instead reward those who appeal only to their own ethnic group. However, the "spin" which an electoral system gives to the system is ultimately contextual and will depend on the specific cleavages and divisions within any given society."[980]

Kosovo has adapted proportional representation as an electoral system at the central as well as at the local level. Municipalities correspond to single electoral zones.[981] Municipal assembly seats are distributed according to the Sainte-Laguë formula,[982] which allows for a neutral distribution of seats, neutral meaning it does not favor bigger or smaller parties. In addition, voters are eligible to vote only for one candidate on the open candidates list.[983] This one vote for one candidate rule, as studied by Negri, gives minorities a better chance to win seats. She argues that: "an increase in the number of preferential votes that can be cast by voters reduces the representation of minorities in parliament."[984] The study of Negri shows that the decision of the Kosovo authorities to abandon the old multiple preferential votes system was a favorable decision for minorities, as it improves their chances to win seats in the municipal assemblies. Elections for the municipal mayor, on the other side, are based on the two-round ballotage system.[985] To conclude, the proportional representation system in the case of Kosovo tends to include all ethnic groups in the local political decision-making process, and this, as argued by Reilly and Reynolds, creates the basis for `democratic consolidation´.[986]

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[980] Ibid., 6-7

[981] Law No. 03/L-072 on Local Elections in the Republic of Kosovo, Article 7.1

[982] European Commission for Democracy Through Law (Venice Commission), "Comparative Table on Proportional Electoral Systems: The Allocation of Seats Inside the Lists (Open/Closed Lists)," Study No. 764/2014 (2014, http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2014)058-bil accessed online on 01.03.2017), 73; this is embeded in the Law No. 03/L-072 on Local Elections, Article 8.1, which states that: „The total number of valid votes received by each political entity in a municipality shall be divided by 1,3,5,7,9,11,13,15 et seq. until the number of divisors used corresponds with the total number of seats to be distributed for that Municipal Assembly"

[983] Law No. 03/L-072 on Local Elections in the Republic of Kosovo, Article 7.4

[984] Margherita Negri, "Preferential votes and minority representation in open list proportional representation systems," *Social Choice and Welfare*, Vol.50, Issue 2 (2018): 298, Negri studied this phenomenon on a basis of a two party system, and on the assumption that minorities are candidates on one of the two party lists.

[985] Law No. 03/L-072 on Local Elections in the Republic of Kosovo, Article 9.5, 9.6, and 9.7. This Law stipulates the following: 9.5 A candidate is elected Mayor of a Municipality if he or she receives more than 50% plus one vote of the total valid votes cast in that Municipality. 9.6 If none of the candidates receives more than 50% plus one of the total votes cast in that Municipality, a second election shall be organized by the CEC between the two candidates who received the most valid votes. A second round of elections is held on the Sunday four (4) weeks after the first round. 9.7 The candidate who wins the majority of votes in the second round is elected as Mayor of the Municipality.

[986] Reilly and Reynolds, *Electoral Systems and Conflict in Divided Societies*, 22

VI.3.2. Political parties

Minority communities in Kosovo are politically organized in small scattered ethnic parties. The latest registration list of political parties in Kosovo[987] shows that Serbs have nine registered political parties. Most of these parties are very small. They have limited political power. Srpska Lista is the main party of the Serbs in Kosovo. It is directly backed by Belgrade, in an attempt to unify and control the political power of the Serbs in Kosovo. Bosniaks have seven registered political parties, while Goranis have four. There is also a political party registered as representing both, Bosniaks and Goranis. Turks are currently unified into only one political party, The Kosova Demokratik Türk Partisi, which enjoys a strong support from its kin-state Turkey. Roma, Ashkali, and Egyptians have in total six registered parties, two for each community. Lastly, the Montenegrins of Kosovo have two registered political parties. This account does not include political initiatives that get active only during elections, which might significantly increase the number of political entities representing minority communities.

This account shows that the electoral power of minority communities is scattered through small political parties. This especially affects the ability of minority communities to win seats for municipal assemblies in municipalities where they are in a non-majority position. The organization of minority communities only around their respective ethnic parties, it might be argued, weakens centripetal elements of political representation. More importantly, minority political parties are reluctant to join forces in order to increase their political representation. The previously mentioned example of Dragash confirms this practice. The practice of non-cooperation between minorities presents a serious drawback. Inter-ethnic political parties, civic initiatives, or coalitions would slightly improve the chances of minorities to increase their political representation at the local, and probably at the central level of governance.

Now, it is important to consider how ethnic political parties affect political decentralization. According to Brancati, it is political decentralization that inspires the creation of ethnic political parties on the local level. This happens mainly because they have better chances to win seats in the local assemblies than in the central parliament. When establishing some form of political power on the local level, then these parties have better chances to influence central

[987] All the data presented about the number of political parties in Kosovo are based on the official registry of political parties which can be found on http://www.kqz-ks.org/wp-content/uploads/2018/02/RegjistriPP-1.pdf accessed online on 03.03.2018

legislatures, and thereby they can further strengthen their political power on the local level.[988] Therefore, Brancati argues that regional parties are stronger in decentralized political arrangements, than they are in centralized political arrangements.[989] What is more important, in decentralized arrangements power is transferred to the local level, and when this power is in hand of political parties organized based on the interest of one particular group, chances of rebellion against the center increase.[990] As such, the existence of a powerful ethnic and/or regional party of the Kosovo Serbs, it can be argued, limits the positive effects that political decentralization might have on mitigating the conflict in Kosovo.[991] With regards to these cases, Brancati even proposes the use of state regulations to limit the strength of these parties.[992] In short, Brancati, based on a wide range of statistical evidence comes to the following conclusion: "political decentralization substantially reduces anti-regime rebellion (i.e. violent forms of secessionism), while regional parties intensify it. More importantly, (…) regional parties diminish the ability of decentralization to reduce anti-regime rebellion."[993]

VI.3.3. Elections for municipal mayors

Direct elections of mayors have significantly increased their role in the local decision-making process. Local municipal assemblies have entered a process of constant power decline[994] which has a direct effect on the participation and promotion of minorities at the local level. Ethnic groups which are in a numerical minority within certain municipalities find it difficult to effectively channel their demands if they do not have any direct access to the mayor. This rather disturbing pattern places the very essence of political decentralization under risk. As Evans correctly notes: "If control of decision-making continues to concentrate in powerful mayors while local councils become a shouting arena for a diverse group of sectorial interests, then elected councils may become one actor among the increasing number vying to influence local governance. This would change the character of local democracy, and legitimacy in local government will be defined primarily as effective service delivery rather than collective decision-making."[995] Now, there can be no doubt that political decentralization in Kosovo has increased the opportunities for effective political representation of minorities in municipalities

[988] Brancati, "The Origins and Strengths of Regional Parties," 136
[989] Ibid., 158
[990] Brancati, *Peace by Design,* 194
[991] Dawn Brancati, "Decentralization: Fueling the Fire or Dampening the Flames of Ethnic Conflict and Secessionism?" *International Organization*, Vol. 60, No. 3 (Cambridge University Press, 2006): 681
[992] Ibid.
[993] Brancati, *Peace by Design,* 179
[994] Matt Evans, "Democracy, Legitimacy and Local Government Electoral Reform," *Local Government Studies*, Vol.40, No.1 (2014): 51-52
[995] Ibid., 57

where they constitute a majority. This process has enabled minorities to increase the number of minority mayors across Kosovo, where this has previously been impossible.

The Serb community has succeeded to win only 4 municipal mayor posts across Kosovo in the first post-independence elections in 2009. In 2010, they succeeded to win another municipality. Such poor results were mainly because of the boycott politics. The situation changed in the 2013 local elections when the Serb community managed to win the position of Mayor in all ten Serb majority municipalities. Similar results were also achieved in the latest 2017 elections. The Serb community managed again to win all ten municipal Mayor posts, nine of which were secured during the first round of the elections.[996] These convincing results could only have been achieved after the Belgrade led campaign to unite Kosovo Serbs under the banner of one political party. The Turkish community managed to secure the municipal mayor post in the municipality of Mamushe during all three local elections.[997] Other communities have failed to secure any municipal mayor posts. More importantly, minority communities were able to secure the leadership of the local government in all of the minority municipalities, and that they were able to secure the participation in local governments in several other municipalities where they constitute a minority. This has been in line with the aim of decentralization.

VI.3.4. Elections for local municipal assemblies

There is evidence that the process of political decentralization has increased the political participation of minority communities on the local level in Kosovo. This has significantly improved their possibilities to politically channel their needs, and to influence the local decision-making process, in both, municipalities where they constitute a majority, and in municipalities where they still constitute a minority. The table below provides the summary statistics of the municipal assembly seats won according to the ethnic affiliation of political parties, and according to the electoral year.[998] The table includes a distribution of the total number of seats in every municipality of Kosovo. It mainly serves to show some representation trends of minority communities. In addition, it should be noted that the 2009 local elections were boycotted by the Serbs in northern Kosovo. The 2009 local elections

[996] Election results can be found on http://oldweb.kqz-ks.org/sq/per-kryetar-te-komunave accessed online on 12.04.2018
[997] Ibid.
[998] For the sake of analytic simplicity all the data on elections have been summarized by the author, and they can be found on The Kosovo Central Election Commission, http://www.kqz-ks.org/zgjedhjet-2/zgjedhjet-lokale/zgjedhjet-per-kuvende-komunale/ for the year 2009 and 2013 accessed online on 14.09.2017, for the year 2017 accessed online on 02.03.2018

were held in 36 municipalities, excluding North Mitrovica and Parteš, while the 2013 and 2017 local elections were held in all 38 municipalities across Kosovo.

No.	Ethnicity	2009	%1	2013	%2	2017	%3
1	Albanian	882	90.1%	798	80.8%	812	81.0%
2	Serb	57	5.8%	152	15.4%	160	16.0%
3	Bosniak	16	1.6%	14	1.4%	5	0.5%
4	Turk	19	1.9%	21	2.1%	18	1.8%
5	Roma	0	0.0%	0	0.0%	0	0.0%
6	Ashkali	3	0.3%	2	0.2%	2	0.2%
7	Egyptian	0	0.0%	0	0.0%	1	0.1%
8	Gorani	1	0.1%	1	0.1%	4	0.4%
9	Montenegrin	1	0.1%	0	0.0%	0	0.0%
10	Total	979	100.0%	988	100.0%	1002	100.0%

Table 3: Municipal assembly seats won according to the ethnic affiliation of political parties (source: The Kosovo Central Election Commission, http://www.kqz-ks.org/zgjedhjet-2/zgjedhjet-lokale/zgjedhjet-per-kuvende-komunale/ for the year 2009 and 2013 accessed online on 14.09.2017, for the year 2017 accessed online on 02.03.2018)

The Albanian community gained 81% of the total number of seats across Kosovo municipalites during the latest 2017 elections. This figure is similar to the 2013 elections, while it represents a decrease of 9% in comparison to the 2009 elections. The participation of the Serb community in the 2013 and 2017 elections have contributed to the decrease in the number of seats won by the Albanian community. During the 2017 elections, in the Serb majority municipalities where Albanians are in a minority position, they have secured only 13.5% or 23 out of 170 seats. This was mainly possible in municipalities where they constitute a significant minority, for instance, in Novo Brdo, Štrpce, and Klokot. In Mamushe, the Albanian community won only one seat. It is apparent from this table that decentralization has decreased the chances of the Albanian community to win local assembly seats in accordance to their overall population of Kosovo. As a result, there is an approximate 10% discrepancy between their representation in the local political organs and their representation in the overall population. This discrepancy can mainly be traced to the new municipalities which have been established on the ethnic principle. This has, on the other hand, enabled the Serb community to win more seats.

The Serb community can, in terms of political representation, be considered as the absolute winner of the decentralization process. The abandoning of boycott politics has enabled them to increase their representation from 5.8% in 2009 to 15.4% in 2013, and to 16% in the latest elections. In the 2017 elections Serb political parties and initiatives have managed to win a total of 160 seats. The large proportion of seats were gained in Serb majority municipalities. This, on the other side, enables the Serb community to manage local government affairs

without interference from other minority communities. In municipalities where they constitute a minority, Serbs won only 13 seats. The most interesting aspect of this distribution of local assembly seats is that it has enabled the Serb community to secure a much larger political representation compared to their representation in the overall population of Kosovo. Therefore, these figures suggest that there is a positive correlation between political decentralization and the representation of the Serb community in the local level assembly organs. It can be argued that political decentralization can significantly increase the chances of larger minority communities to gain more political power in the local decision-making process.

Smaller minority communities find it difficult to win municipal assembly seats. They are, therefore, underrepresented in several municipalities they reside. In the 2017 elections, the Turk community has, for example, managed to secure a total of 18 municipal assembly seats. They have secured 14 seats in Mamushe, 3 in Prizren, and 1 in Gjilan. They have, however, failed to secure at least one seat in Prishtina, where they received almost 500 votes. The same happened in Mitrovica, where they received 325 votes, and in Vushtrri, where they received almost 300 votes. If the municipality of Mamushe would not have been established through the decentralization process, the representation of the Turk community would have been much lower. The political decentralization process has, on the one side, increased their opportunity for political representation, while on the other side, it has failed to address the issue of their underrepresentation in Albanian majority municipalities.

The number of the Bosniak community representatives on the local level has constantly decreased from election to election. In 2009 Bosniak parties have managed to win a total of 16 seats, in 2013 a total of 14 seats, and in 2017 a total of only 5 seats. The good result of Bosniak parties for the 2009 elections can mainly be attributed to the Serb boycott, as a result of which, with only 80 votes, Bosniaks secured 6 assembly seats in Leposavić. In 2017, for instance, they have failed to secure any seat in the same municipality. In the same elections Bosniaks secured 3 seats in the municipality of Dragash, and 2 seats in the municipality of Prizren. Competing with two parties in the municipality of Pejë, where the Bosniak community resides, resulted in non-representation. If both the Bosniak parties would have joined together, they would have probably managed to secure one seat. Political divisions within the community have undermined the opportunity for their adequate political representation. In brief, political decentralization *per se* has not achieved to raise the number of Bosniak representatives on the local level.

When we analyze the situation of the smaller minority communities, non-representation and underrepresentation become more obvious. These communities are either not represented at all or they are underrepresented in several municipalities. The Montenegrin community has managed to secure a seat only once in a local assembly, namely, in 2009, in the municipality of Fushë Kosovë. The Roma community has failed to secure any seat in any local level elections. The failure of the Roma and Montenegrin communities to secure a representative on the local level is probably because they tend to vote for larger Serb parties. This trend, on the other side, may be based on the scattered nature of their residence.

Finally, the Ashkali community has managed to secure a minimum number of seats in all of the latest local level elections. In the 2017 elections they have won a seat in the municipality of Fushë Kosovë, and a seat in the municipality of Lipjan. Despite receiving 249 votes in Shtime, and 1047 in Ferizaj, they have failed to secure any seat in these municipalities. They would have won a seat in Ferizaj, if their votes would not have been split between two political parties. Similar to the case of the Bosniak community, the Ashkali community would have greater chances to benefit from political decentralization if they would unite into one political front. The Egyptian community has only managed to secure one seat in the municipality of Fushë Kosovë. In the 2009 and 2013 elections they have failed to secure any seats. Egyptian parties have managed to receive a large number of votes in Pejë (435), Gjakovë (434), and Klinë (284), nevertheless, these votes were under the threshold to translate into municipal assembly seats. The Gorani community has managed to increase their political representation from 1 seat in 2009 and 2013 to 4 seats in 2017. All of the seats were won in the municipality of Dragash. The establishment of a united Bosniak and Gorani party may have contributed to an increase in the number of seats won by Gorani. This may also be the main factor behind the decrease in the number of seats won by Bosniaks. In short, political decentralization has created better opportunities for an adequate representation of minority communities in municipalities they reside, however, the system alone is not able to guarantee their political representation. As representation derives from the electoral process, it gives better opportunities to numerically larger communities.

Political representation of minority communities has its weaknesses in properly addressing the protection and promotion of minority rights. In his analysis, Bieber identifies four such weaknesses. First, this mechanism is not able to foster inter-community formal and informal communication. It is also not able to increase their political coaction. This, on the other hand, gives the majority better possibilities to dominate the decision-making process. Furthermore,

this mechanism can lead to, as Bieber points out: "an `ethnification` of broad areas of the political process." In this situation, minority communities expand their bargaining possibilities to include issues which fall outside of their direct concern. In addition, this mechanism can difficultly improve the possibilities of smaller communities to effectively channel their needs and protect their interests. Finally, political representation of minority communities does not guarantee the representation of the community as a whole.[999] All of these weaknesses of political representation, emphasized by Bieber, can be found in different degrees in Kosovo.

VI.3.5. Direct forms of citizen´s participation in the decision-making process

The main aim of political decentralization, as initially argued, is to increase citizens' participation in the decision-making process. In multi-ethnic environments its aim is to increase the participation of minority communities in this process. The formal legal provisions of Kosovo guarantees the decision-making power to citizens by enabling them to influence the political and socio-economic decisions. The law on local self-government, for instance, enables the citizens to initiate petitions which are to be considered by the local municipal assembly.[1000] It also enables the citizens to propose regulations to the local assembly,[1001] and to oppose regulations through local referenda.[1002] Political engagement of the citizens is, however, best encouraged through governmental bodies. These bodies are supposed to set up supportive institutional mechanisms which trigger citizens´ engagement.[1003] Neven calls this: "predictable opportunities for citizen-state interaction."[1004] Where this is difficult to establish, Jackson and Scott argue that: "This becomes a vicious circle: "where participation is low, so is ownership and government legitimacy, which further reduces participation.""[1005] Thus, lack of citizens´ participation weakens democratic mechanisms and undermines the benefits of political decentralization.

Citizens´ participation can be divided in two main forms. The first form is the representation of citizens in institutions of local self-government through elections. This is considered by

[999] Florian Bieber, "Discussion Paper: Minority Rights in Practice in South Eastern Europe," *Yearbook of the Balkan Human Rights Network*, issue 01 (2004): 62
[1000] Law Nr. 03/L-040 on Local Self-Government, Article 69
[1001] Ibid., Article 70
[1002] Ibid., Article 71
[1003] Parker, "Decentralization: The Way Forward for Rural Development?" 23
[1004] Neven, "Background paper on "Decentralization"," 2
[1005] Jackson and Scott, "Local Government in Post-Conflict Environments," 16

several authors only as: "a crude instrument of popular control".[1006] This form has also been criticized that it is limited only to, as Kauzya puts it: "promote participation by representation but not through direct participation."[1007] The second form is precisely this direct participation of citizens. A comparison of these two forms of citizens´ participation in Kosovo, shows that the first form, with its possible weaknesses, has been established. The second form, direct participation, on the other side, suffers from serious deficiencies. Kosovo's citizens rarely make use of direct participation mechanisms such as civic initiatives, referenda, or petitions. Local governments, in addition, remain very passive in initiating and inciting direct participation in the local decision-making process.[1008] The previously mentioned report by the Ministry of Local Government Administration shows that municipalities are only interested in fulfilling their formal legal obligations. Several municipalities have failed, for example, to hold public meetings, while other municipalities have held precisely two public meetings within a year, exactly as required by the law.[1009] Furthermore, even when such meetings are held, participants are mostly persons connected to the local government. Ordinary citizens rarely take part in public meetings. As a result, half of Kosovo citizens´ remain uninformed about the quality of governance in their municipality.[1010] Hajnal and Péteri have come to the same conclusion while analyzing these mechanisms on the local level. In a shortened form, they conclude that: "these mechanisms are markedly weak."[1011] The evidence suggests that municipalities have failed to engage beyond legal requirements. As a result, an effective direct participation of citizens has remained very limited. This largely affects minority communities, as Shou and Haug remind us: "vulnerable groups (…) tend to be excluded" from such participation mechanisms.[1012] What follows is an analysis of the representation and participation of minorities in non-political positions and in the public sphere in general.

VI.3.6. Non-political representation and participation of minorities

Minority communities are not adequately and/or proportionally represented neither on the central nor on the local level of government. This is in violation with Article 61 of the Constitution of Kosovo, which states that: "Communities and their members shall be entitled to equitable representation in employment in public bodies and publicly owned enterprises at

[1006] Arild Schou and Marit Haug, "Decentralisation in Conflict and Post-Conflict Situations," Working Paper 2005:139 (Norwegian Institute for Urban and Regional Research, Oslo, 2005): 15
[1007] Kauzya, "Decentralization: Prospects for Peace, Democracy and Development," 6
[1008] Tahiri, "Decentralisation and Local Governance Reform," 43
[1009] MAPL, *Raporti i Funksionimit të Komunave të Republikës së Kosovës, Janar – Dhjetor 2016*, 13
[1010] UNDP, MLGA, USAID, *The Kosovo Mosaic 2015* (Pristina, 2015), 11
[1011] Hajnal and Péteri, "Local reform in Kosovo. Final Report," 46
[1012] Schou and Haug, "Decentralisation in Conflict and Post-Conflict Situations," 15

all levels".[1013] A minimum of 10% is set for the central government institutions.[1014] Representation of minority communities is 9.63% on this level. Even though the figure is almost in accordance with legal requirements, OSCE draws attention on the fact that in some central government institutions minorities are overrepresented, while in others they are underrepresented.[1015] Furthermore, OSCE notes that the most affected communities by underrepresentation are Roma, Ashkali, Egyptian, and Gorani communities. These smaller communities are not represented in accordance with their representation in the general population of Kosovo.[1016]

The legal provisions for the local level specify that minority communities should be represented within the municipal civil service based on proportional representation, taking into account the minority population within a given municipality.[1017] Thus, the law guarantees proportional representation of minority communities in the local civil service. Similar to their representation on the central level, minority communities are in many municipalities underrepresented and/or unequally represented. A report conducted by the OSCE on the representation of communities in the civil service shows that sixteen municipalities have fulfilled the minimum requirement for the employment of minorities. However, when analyzed based on the representation of each community, the report shows that only two municipalities have met proportional and equal representation of minority communities. Their representation in the remaining municipalities was mainly based on an unequal distribution of civil service posts.[1018] The most affected communities by this unequal representation are again smaller communities. The Gorani, Ashkali, and Egyptian communities, for example, are not adequately represented in any municipality they live.[1019] The Roma community is underrepresented in 80% of municipalities they live.[1020] The RAE communities, where they are represented in the civil service, are mostly engaged in unimportant low level positions.[1021] The Serb, Turk, and Albanian communities, on the other hand, are in most cases adequately

[1013] Constitution of the Republic of Kosovo, Article 61
[1014] Law No. O3/L-149 on the civil service of the Republic of Kosovo, Article 11, Para. 3
[1015] OSCE, *Representation of Communities in the Civil Service in Kosovo:Follow-Up Report* (OSCE, 2017, https://www.osce.org/mission-in-kosovo/320496 accessed online on 27.02.2018), 5
[1016] "Ibid., 12-13
[1017] Law No. O3/L-149 on the civil service of the Republic of Kosovo, Article 11, Para. 3
[1018] OSCE, *Representation of Communities in the Civil Service in Kosovo:Follow-Up Report*, 20
[1019] Ibid., 21
[1020] Ibid.
[1021] Ibid., 24

represented.[1022] These figures show the scope of minority underrepresentation and unequal representation in the municipal civil services across Kosovo.

The underrepresentation of minorities is a result of different factors. The most striking factor, it can be argued, is nepotism and non-merit based employment. This phenomenon has also been reported in the European commission progress report on Kosovo, which emphasized that: "Non-merit-based recruitment continues to adversely affect effectiveness, efficiency and professional independence of public administration."[1023] This report further criticizes the very frequently applicable practice of firing and employing civil service staff based on their political affiliation.[1024] This phenomenon has, as Hodža argues, decreased the representation of Bosniak and Gorani communities in the municipality of Dragash. Several positions previously filled with Bosniaks or Goranis, which have left their positions for various reasons, have afterwards been filled with employees from the majority Albanian community.[1025] Similarly, Aga from the same municipality confirmed that: "There is a general stagnation and decrease in employment of our people."[1026] Furthermore, in a survey conducted around Kosovo, nearly 75% of respondents from smaller non-Serb minority communities reported that they are not happy with the number of minority communities employed on the local level.[1027] This figure was around 63% for the Serb community respondents.[1028] The widespread practice of inadequate employment, which mostly affects minority communities, can best be shown through the general public perception. Almost 80% of respondents of a UNDP conducted survey: "believe that family connections, bribes, party alliances, and other non-merit based factors are most helpful in gaining employment in the public sector."[1029] In brief, non-merit based employment and widespread nepotism negatively affects the representation of minority communities on the local civil service.

Another significant difficulty for an appropriate representation and participation of minorities in the public life is connected to the use of minority languages. Minorities face serious difficulties while interacting with public bodies on the local level, although municipalities have in most cases recognized local minority languages and their use. The use of the Romani language, however, remains specifically limited. Gračanica presents an exception, it has even

[1022] Ibid., 21
[1023] European Commission, *Kosovo 2016 Report*, 10
[1024] Ibid., 11
[1025] Bajram Hodža, interview
[1026] Šerif Aga, interview (authors translation)
[1027] UNDP, MLGA, USAID, *The Kosovo Mosaic 2015*, 44
[1028] Ibid.
[1029] USAID, UNDP, *Public Pulse XIII, October 2017* (Prishtinë, 2017), 12

a translator for this language.[1030] Apart from this formal recognition, most municipalities frequently fail to orient information in minority languages, and also failed to secure official communication in their languages. Furthermore, most municipalities frequently fail to install public signs in minority languages, and to share public information in these languages.[1031] OSCE argues that the limited use of minority languages on the local level derives from underrepresentation of certain minorities in the local administration, lack of adequate personnel and finances, limited knowledge of municipal duties, and negligence of political representatives.[1032] The lack of `language compliances` can also have serious consequences on minority communities. This is evident in the case of the Reti village, in the municipality of Rahovec. There, the Gorani[1033] community is attending school in the Albanian language.[1034] As a consequence, this small community has started to gradually use the majority language in everyday life. These examples show that non-compliance of municipal authorities with legal provisions on the use of minority languages hampers their representation and participation possibilities on the non-political level.

The Roma, Ashkali, and Egyptian communities continue to be the most excluded minority communities in terms of representation and participation. They are mostly excluded from both, the political and from the non-political process. They face serious problems in employment, education, housing, healthcare, and access to public services.[1035] The UNDP human development report shows that in employment: "barriers to labour market participation are found to be structural and to begin at a very early age" for these three communities.[1036] Morina from the Egyptian community, commenting about the issue of employment in the local civil service, emphasized that they are neglected in comparison to other minority communities, as he notes: "we are being treated as chess figures". He further argues: "Everything is being done in their favor (of the Serb community, authors comment). When a job opportunity is announced, they are hired. Even if a candidate of the Roma, Ashkali, Egyptian community has a Master's degree, s/he would not be considered before a Serb candidate."[1037] Hodžić, on the other hand, points out that during the establishment of the

[1030] Jelena Ilić, interview
[1031] OSCE, *Municipal language compliance in Kosovo* (OSCE, 2014, http://www.osce.org/kosovo/120010?download=true accessed online on 30.01.2018), 24-25, see also OSCE, *Community Rights Assesment Report*, 16
[1032]OSCE, *Municipal language compliance in Kosovo*, 24-25
[1033] Self-declared as Muslims
[1034] Xhemali Haxhimustafa, interview
[1035] UNDP, *Kosovo Human Development Report 2016*, 18
[1036] Ibid.
[1037] Bujar Morina, interview (authors translation)

North Mitrovica administrative office they were indeed interested in employing someone from this community, however, lack of adequate qualified candidates has make this impossible.[1038] Now, one of the major obstacles to their employment remains education. UNDP data shows that only 53.4% of the RAE community attends secondary school,[1039] while 13.3% are even illiterate.[1040] Some small scale projects like learning centers[1041] and professional capacity building courses[1042] have had some positive effects in increasing their possibilities. Lastly, these communities face serious difficulties in channeling their demands for municipal projects. In the municipality of Rahovec, Bojić argues that it took some 7-8 years until they were able to implement a project dedicated for this community.[1043] Thus, these communities, as Hara puts it: "still remain disadvantaged, in order to make their voice heard."[1044]

In order to improve the representation and participation possibilities of minority communities on the central as well as on the local level, the central government has adapted Regulation 04/2010 "on procedures for the fair and proportional representation of communities not in the majority in the civil service of the republic of Kosovo."[1045] This regulation requires from local governments the implementation of encouraging measures and promotional activities during the recruiting process of civil service personnel.[1046] Most importantly, for qualified minority candidates, this regulation foresees reserved posts based on proportional principles.[1047] The effective implementation of these measures could increase the number of minority representatives on the local level. However, it should be noted that reserved posts for minorities, as a positive measure, could trigger majority dissatisfaction. As Lantschner notes: "if a person belonging to minority community is employed in the civil service although s/he is demonstrably less qualified than a competitor from the Albanian majority community – this would not only be a misinterpretation of the principle of affirmative action but would rightly be seen by the Albanian community as discrimination for the sake of "filling the quota",

[1038] Adrijana Hodžić, interview
[1039] UNDP, *Kosovo Human Development Report 2016*, 18
[1040] European Commission, *Kosovo 2016 Report*, 29
[1041] Ibid.
[1042] Xhemali Haxhimustafa, interview
[1043] Jovan Bojić, interview
[1044] Yusuke Hara, interview
[1045] Regulation No. 04/2010 on procedures for the fair and proportional representation of communities not in the majority in the civil service of the republic of Kosovo.
[1046] Ibid., Article 11
[1047] Ibid., Article 6

thereby discrediting the principle."[1048] She further points out that: "quality education and equal access to education for persons belonging to minority communities is the basis for being able to properly implement the constitutional imperative of "equitable representation"."[1049] There can be no doubt that a fair and equal representation of communities remains a challenge, as also correctly noted by Hara,[1050] and by the European commission in their progress report on Kosovo.[1051]

VI.3.7. Political accountability and transparence

In centralized political systems accountability of local governments is towards the central government. In these systems the central government appoints local leaders, and it rewards or dismisses them based on their performance. Local governments follow priorities set by the central government. [1052] Political decentralization, on the other hand, redraws the accountability line between local governments and the central government, reorienting the line of local government accountability towards the citizens. This reorientation is established through local elections. Elections make local governments set the needs of the citizens as their priority.[1053] These processes create political accountability, as pointed out in the UNDP sampling of definitions: "political decentralization and elections provide direct political accountability."[1054] Political decentralization provides citizens with a powerful tool to control local leaders through elections. An example on how political decentralization improves accountability is set in the explanation of Crook and Manor, who note:

> "Elected decisionmakers are closer to the citizens who elect them, and often live locally. Thus, they face greater pressure than higher-level officials to govern according to their constituents' wishes. They worry about reelection in a few years, and they receive more direct indications of discontent between elections. Bureaucrats operating in field offices of line ministries also feel greater pressure because elected representatives are now closer and more powerful. Citizens quickly discern this, and apply greater pressure on bureaucrats through elected representatives. Thus, despite

[1048] Emma Lantschner, "Protection of Minority Communities in Kosovo: Legally Ahead of European Standards – Practically Still a Long Way to Go," *Review of Central and East European Law* 33 (2008): 487
[1049] Ibid.
[1050] Yusuke Hara, interview
[1051] European Commission, *Kosovo 2016 Report*, 28
[1052] Faguet, "Decentralization and Governance," 10
[1053] USAID, *Democratic Decentralization Programming Handbook*, 10
[1054] UNDP, *Decentralization: A Sampling of Definitions*, 20

> difficulties in creating and sustaining accountability mechanisms, systems can become more accountable under democratic decentralization."[1055]

Other elements which foster political decentralization and holding elections on the local level are set in a study conducted by Fan et al. In their study, authors emphasize that citizens might be more informed about local than central level politics, and their respective performances. Decentralization simplifies the way in which citizens can differently reward or punish central and/or local levels of government. They are enabled, for instance, to vote for one party on the central level, and another party on the local level. Finally, smaller electoral units make it possible for the citizens to better organize politically, to join forces and to dismiss political leaders if necessary.[1056] The study of Fan et al. shows that the whole concept of political decentralization is to make local leaders more responsive to the needs and preferences of the local people. Similar suggestions were set by Ribot, who writing about an elected local government notes: "it is the institution that should hold public powers in the local arena and with which citizens and all local institutions can interact to coordinate and improve public accountability and responsiveness so that decision and services reflect local aspirations and needs."[1057] This improvement of public accountability and responsiveness can be achieved through different mechanisms. According to Schaeffer, these mechanisms are: "formal systems, institutions, laws, regulations, as well as the informal day-to-day practice of government", and these mechanisms should be able to instigate the following political cycle: "political leaders and bureaucrats become answerable to the citizenry for their actions and the citizenry takes on and accepts responsibility for the collective actions that governments make on their behalf"[1058] The figure below illustrates horizontal and vertical accountability lines.

[1055] Richard Crook and James Manor, "Democratic Decentralization," OED Working Paper Series, No. 11 (Washington D.C.: The World Bank, 2000): 12
[1056] C. Simon Fan, Chen Lin, Daniel Treisman, "Political decentralization and corruption: Evidence from around the World," *Journal of Public Economics* 93 (2009): 19
[1057] Ribot, "Representation, Citizenship and the Public Domain," 47
[1058] Michael Schaeffer, "Achieving Decentralized Accountability," in *The Kosovo Decentralization Briefing Book*, eds. Robert D. Ebel and Gábor Péteri (Budapest: Kosovo Foundation for Open Society & Local Government and Public Service Reform Initiative, Open Society Institute, Forum 2015, 2007), 170

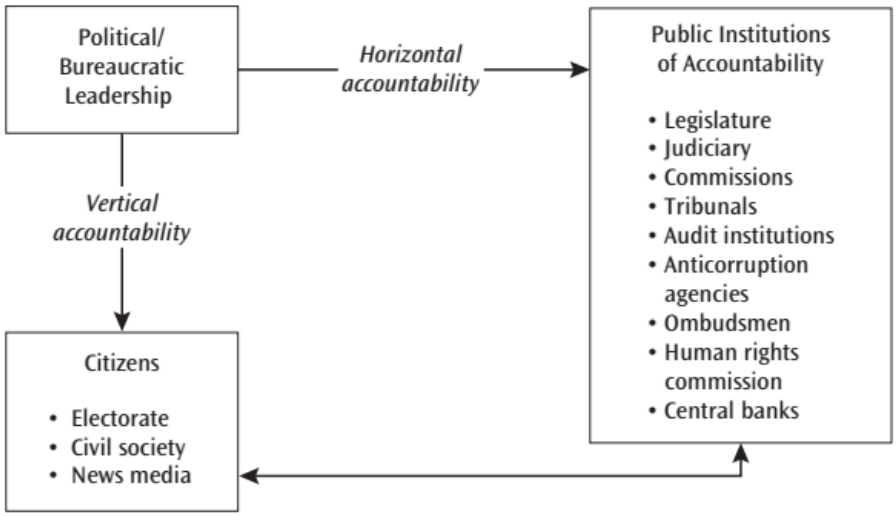

Figure 16: Horizontal and Vertical Accountability (The figure represents the exact form from its original source: Mark Schacter, "A Framework for Evaluating Institutions of Accountability", in *Fiscal Management* (Ed.) Anwar Shah, (Public Sector Governance and Accountability Series, The World Bank, Washington D.C. 2005), p.231)

Political decentralization has indeed established significant mechanisms of political accountability, at least the formal legal one in Kosovo. The link between the formal and the `informal day-today practice of government`, on the other hand, still needs to be developed. Apart from democratic election of local government institutions, the constitution stipulates that local governments should: "encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodies."[1059] The law on local self-government specifies that local governments should be accountable to the citizens.[1060] Furthermore, this law requires that municipalities hold regular public meetings,[1061] inform the citizens about local projects of public interest,[1062] establish transparent administrative procedures, and guarantee a free access to official documents.[1063] The central government report documents that several municipalities have failed even in fulfilling this basic requirements of the law. During 2016, five Serb majority municipalities, North Mitrovica, Leposavić, Zvečane, Zubin Potok, and Klokot have failed to hold any public meetings.[1064] These public meetings are essential in promoting local government accountability.

Municipal mayors are formally required to be accountable to the municipal assembly, although only through the mechanism of reporting.[1065] The stronger accountability mechanism for municipal mayors remains towards the citizens, who can not only reward or punish the

[1059] The Constitution of the Republic of Kosovo, Article 124, Para.1
[1060] Law Nr. 03/L-040 on Local Self-Government, Article 4.4
[1061] Ibid., Article 68.1
[1062] Ibid., Article 68.3
[1063] Ibid., Article 68.4 and 68.5
[1064] MAPL, *Raporti i Funksionimit të Komunave të Republikës së Kosovës, Janar – Dhjetor 2016*, 13
[1065] Law Nr. 03/L-040 on Local Self-Government, Article 58 (j)

mayor in regular elections, but they can also initiate the procedure of mayors' dismissal.[1066] This last mechanism has never been used by Kosovo's citizens. Nevertheless, the mechanism of election should be powerful enough to gradually establish a culture of political accountability. Manor argues that formal mechanisms cannot: "guarantee that elected leaders will be models of probity, responsiveness or efficiency," but, he further notes: "if they fail badly in these respects, voters tend to oust them at the first opportunity. Once that has happened to one or two sets of leaders, citizens acquire a taste for rejecting poor representatives, and their successors in office grasp the meaning of accountability, so that it becomes likely that their conduct will improve over time."[1067] Thus, it is exactly, as previously argued, that elections present the main mechanism of political accountability.

Transparency is another pillar of political decentralization which serves the purpose of accountability. It is assumed that political decentralization creates favorable conditions for the promotion of local government transparency, and through transparency it `contributes to enhanced accountability`.[1068] Transparency makes it easier for citizens to see and understand what their local government does, and consequently, it enables them to objectively evaluate their work.[1069] Government transparency is an important part of democracy. Now, as Kosovo is in a transition process to democracy, transparency is still limited. Results of a UNDP survey show that only about 50% of the respondents were informed about the work of their respective municipality, while two thirds of them never heard anything about the latest municipal assembly meetings.[1070] These results show that citizens lack even basic information about the work of their municipalities.

Another study of the Kosovo Democratic Institute has assessed the transparency of the Kosovo southern municipalities for the year 2017. This study shows that the levels of transparency at the local level needs to be improved, nevertheless, it also shows that municipalities are constantly improving their transparency practices. In their assessment of transparency on a scale from 0-100%, Rahovec has, for example, achieved 84.2%, Malishevë (77.4%), Prizren (67.1%), Suharekë (65.7%), Dragash (62.9%), and Mamushe (27.8%).[1071] In comparison to 2016, every municipality has improved their transparency. These results in

[1066] Ibid., Article 72
[1067] Manor, *The Political Economy of Democratic Decentralization,* 92
[1068] Ibid., 73
[1069] Crook and Manor, "Democratic Decentralization," 11, 17
[1070] UNDP, MLGA, USAID, *The Kosovo Mosaic 2015,* 11
[1071] Instituti Demokratik i Kosovës, *Transparometri Komunal: Prizren, Suharekë, Rahovec, Malishevë, Dragash, Mamushë, Janar – Dhjetor 2017* (Prizren, 2018, http://kdi-kosova.org/wp-content/uploads/2018/02/Transparometri-ALB-ALL-SMALL_Fin.pdf accessed online on 02.03.2018), 12

general, show a promising pattern. It can be, however, emphasized that the only minority municipality in the south has scored very low on the study. It can be assumed that the Serb majority municipalities, if part of the study, would also score low. A simple visit on the municipal websites of these municipalities shows that information, if available, is rarely updated. Even though there is lack of proper information to conduct a comprehensive study on local government transparency in Kosovo, it can generally be concluded that the lack of transparency limits the effectiveness of accountability mechanisms, and thereby it undermines the benefits of political decentralization.

Accountability mechanisms can best be evaluated, according to Schaeffer, based on three criteria. First, they can be evaluated based on the `degree of visibility`, transparence. Second, they can be evaluated based on `simplicity` of the mechanisms, and third, they can be evaluated based on `direct access` of citizens in the decision-making process.[1072] Now, it has been argued that municipalities are taking positive steps in order to increase transparency. Simplicity as a criterion, if we take into account legal provisions, is also available. The third criteria, direct participation still remains a challenge. Together these accounts provide important insights into the process of establishing mechanisms of political accountability and transparency in Kosovo. It has been argued that the formal institutional mechanisms are in place, that they have reshaped the lines of accountability, giving priority to the citizens, and that the `informal day-today practice of government`, particularly increasing transparence, remains a challenge. Strengthening these mechanisms, as argued by Siegle and O´Mahony, would create a: "more responsive government, better service delivery, and greater stability".[1073] These elements could directly influence the approach of minorities on what they really need, and an approach change would give a significant reason for decentralization to become a success story.

VI.3.8. Conclusions

To measure the decentralization level of the political decentralization applied in Kosovo, one can make use of the following questionnaire compiled by Ine Neven.

[1072] Schaeffer, "Achieving Decentralized Accountability," 174
[1073] Siegle and O´Mahony, "Assessing the Merits of Decentralization," 50

No.	Question	Yes	Partially	No
1	Are governments elected?	√		
2	Are there multi-party elections?	√		
3	Are ballots cast secretly in government elections?	√		
4	Are elections held at regular intervals?	√		
5	Are elections free and fair?	√		
6	Does the center have the authority to override results of local decisions?			√
7	Is the head of local government elected directly, indirectly or appointed?	directly		
8	How effective is civil society at keeping a check on local corruption (e.g. Through budget or anti-corruption watchdogs, media etc.)		√	

Figure 17: Political scale of decentralization, adapted from Neven (Source: Ine Neven (2003) Background paper on "Decentralization", Draft written as a Contribution to Cost-Action E19 "National Forest Programmes in the European Context, Wageningen, p.8)

If we take into account the `measuring instruments` of Neven, then the questionnaire above shows that political decentralization in Kosovo has an extensive character.[1074] This extensive character of political decentralization indicates that this process has created advanced opportunities for the Serb community to take autonomous action on issues of their concern. For the smaller minority communities it has created representation and participation mechanisms, which still lack adequate implementation. The whole process of political decentralization has been adapted to the needs and interests of minority communities, while also considering majority concerns. Indeed, political decentralization has been adapted based on the principles of good governance: "broad public engagement (participation), accountability (control of power) and transparency (rationality)".[1075] Good governance should, as frequently argued, decrease the chances of internal conflict.

VI.4. Challenges to the Decentralization Process

It is now well established that a wide range of factors can impair the process of decentralization. Depending on the specific case study, these factors vary across different countries and regions. In the case of Kosovo, there are multiple factors which undermine the benefits of decentralization. If not properly addressed, these factors could on a long-term basis even pose a serious threat to the existence of the state in its current form. Therefore, this part of the study considers shortly four main challenges to the decentralization process in Kosovo. The first challenge is the existence and functioning of Serb parallel institutions, especially the existence of parallel local government units. The second challenge is the option of partition.

[1074] Answers to questions 5 and 8 may be debatable.
[1075] Kersting et al., *Local Governance Reform in Global Perspective,* 15

The third challenge is the limited activity of civil society, while the fourth challenge to decentralization is the extensive corruption level in Kosovo.

VI.4.1. Serb parallel municipalities

Several issues regarding the Serb parallel structures have been mentioned in different parts of this study. Municipalities in the northern part of Kosovo, as previously argued are still functioning based on both, the Serb, and the Kosovo system of local governance. The situation in the south is different where Serb majority municipalities function in accordance with the Kosovo system, and parallel municipalities function in accordance to the Serb system. The parallel municipalities directly or indirectly obstruct the work of the official municipalities. Now, this part tends to offer new insights into the parallel Serb local government system, and its functioning, in the southern Serb inhabited areas. Furthermore, it will show that the work of the new Serb majority municipalities is undermined by the existence of the parallel ones.

An interview conducted with an employee of the parallel municipality of Prishtina, who preferred to remain anonymous, offers a valuable possibility to understand the situation on the ground through insightful information. The interviewee declared that there are parallel municipalities in every location in Kosovo. His municipality, for example, the parallel municipality of Prishtina which is `temporarily` located in Gračanica, has about 200 employed persons only in the municipal administration. This municipality does `business as usual`, issues documents, manages properties, and it even implements public investments in, for instance, roads, parks, and sidewalks. The interviewee declared that there are also nearly 7-8 public enterprises which employ a large number of persons, and which normally offer public services. Serb parallel municipalities, including other institutions, are under the direct authority of the Serbian governments `Office for Kosovo and Metohija`. The interviewee argued that within these parallel institutions finances can easily be misused. There are no effective control mechanisms, there are no financial audits.[1076] The main purpose of this example is to show that the work, in this case of the official municipality of Gračanica, is being constantly obstructed by the Serb parallel municipality. Maybe these two municipalities do not directly/physically interfere with one another´s work, nevertheless, there can be no doubt that the Serb parallel municipality directly interferes in the work of the newly established municipality of Gračanica.

[1076] Anonymous, (Employee of the Serb parallel municipality of Prishtina), interview by author, September 26 2016

The same situation can be observed in other Serb majority municipalities. In Ranilug, because of the parallel Serb municipality, the building of the newly established municipality has been located in another village. The municipal building of the Parteš municipality was also located in another village. Then, there are cases where public buildings, such as ambulances, have been built through financial means of the Kosovo budget, but which are managed by parallel institutions.[1077] Official Serb majority municipalities also lack qualified staff mainly because qualified persons prefer to work for the parallel institutions, which, on the other hand, offer better salaries.[1078] Even though the Serb parallel system functions more as a `cash delivery mechanism`,[1079] and even though it has limited possibilities to `offer development`,[1080] it has been constantly obstructing the work of the newly established municipalities. Therefore, their existence represents a direct threat to the sustainability of the official Serb majority municipalities, both, in the northern Kosovo, and in southern Kosovo. This problem can be solved either through their partial integration within the Kosovo system, or by their closure.

VI.4.2. The option of partition

The next major challenge to decentralization is the fact that the option of partition remains on the table. There are voices in Serbia which favor a solution, whereby the four northern Serb majority municipalities of Kosovo would join Serbia. There are also some voices in Kosovo which favor a solution of territorial exchanges with Serbia. Because of this uncertain situation, the four Serb majority municipalities in the north remain reluctant to fully integrate into the Kosovo system. Serb representatives in the north still hope that they would be able to retain their current local government structures and that there would be no need to adapt to the new system, which they have been opposing all the time. Serbs in the southern municipalities, on the other hand, fear that a possible partition could reverse all the work that has been done through the process of decentralization. Now, it is necessary to theoretically consider this option.

In his work about partition, O'Leary gives the following short summarized definition: "A political partition therefore is a fresh border cut through at least one community's national homeland, creating at least two separate political units under different sovereigns or authorities. The formal justification of a political partition is that it will regulate, that is,

[1077] Miroslav Ivanović, interview
[1078] European Parliament, *The Decentralization Process in Kosovo,* 31
[1079] Roland Gjoni, Anna Wetterberg, and David Dunbar, "Decentralization as a Conflict Transfromation Tool: The Challenge in Kosovo," *Public Administration and Development* 30 (John Wiley & Sons, Ltd., 2010): 305
[1080] European Parliament, *The Decentralization Process in Kosovo,* 14

reduce or resolve, a national, ethnic or communal conflict. Opponents protest the freshness, the novelty, the brutality, and the artificiality of dividing a "national" homeland".[1081] Chapman and Roeder while investigating the impact of partition on conflict resolution, in line with the above defined justification for partition, conclude that there is a greater possibility of conflict being reinstated when applying other options, than while applying the option of partition.[1082] In other words, they argue that partition is more effective in securing peace than other possible options. Proponents of partition, in Kosovo and Serbia, use this as an additional argument in the Kosovo-Serbia partition debate.

A possible implementation of partition would require, as argued by O´Leary, the involvement of a powerful third party.[1083] In Kosovo, this would mean the involvement of the EU, USA, Russia, or all of them combined. However, as changing existing borders is not a preferred option neither in Kosovo nor elsewhere, as O´Leary puts it: "it has become a taboo for external powers to redraw lines on the map as they see fit",[1084] it is difficult to imagine that this option would find a common ground in the near future. Writing about partition, Horowitz on the other side, draws attention that it is implausible to believe that through partition one could eliminate ethnic diversity and establish sustainable peace. This is because of the fact that almost all territories are, or could become ethnically diverse. Eliminating this diversity would only result in new conflicts, either between the new entities, within the new and/or old entities, or both.[1085] To conclude, Horowitz claims that: "The point is not that partition is always avoidable, only that, with rare exceptions, it ought to be not the policy of choice but of desperation."[1086]

Drawing on these theoretical examples, it can be argued, that discussing formally or informally the option of partition damages the whole process of decentralization. Moreover, having in mind the above described consequences of partition, it can be noted that this directly damages the interests of the Serb population in Kosovo. There is evidence to suggest that because 2/3 of the remaining Serbs in Kosovo live south of the Ibar River, partition

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[1081] Brendan O`Leary, "Partition," in *A Companion to Border Studies*, eds. Thomas M. Wilson and Hastings Donnan (Hoboken: First Edition, Blackwell Publishing Ltd., 2012), 29
[1082] Chapman and Roeder, "Partition as a Solution to Wars of Nationalism," 689
[1083] Brendan O´Leary, „Analysing partition: Definition, classification and explanation," *Political Geography* 26, (Elsevier, 2007): 903-904
[1084] Ibid., 904
[1085] Donald L. Horowitz, *Ethnic Groups in Conflict*, (Berkeley, Los Angeles, London: University of California Press, 1985), 589-590, see also Donald L. Horowitz, "Self-Determination: Politics, Philosophy, and Law," in *Ethnicity and Group Rights*, eds. Ian Shapiro and Will Kymlicka (New York, London: New York University Press, 1997), 431
[1086] Horowitz, *Ethnic Groups in Conflict*, 592

would increase the chances of conflict rather than decrease it. Partition could significantly accelerate, as Bieber puts it, the process of `decreasing in size and importance` of the Serb community in Kosovo.[1087] In brief, it is of high importance that the international community in Kosovo holds on to the principles of territorial integrity.

VI.4.3. Limited activity of civil society

Another major challenge for the decentralization process and the development of local governments is the limited activity of civil society. An active civil society is imperative for the democratic process and the progress of decentralization.[1088] Alternatively, decentralization encourages and stimulates the development of a more effective civil society on the local level.[1089] Thus, these two processes are intertwined. According to Grindle, in order to effect the work of local governments, civil society has to be capable of: "demand responsiveness to social and economic needs – extracting benefits from the government", and to: "hold public officials accountable (…) in ways that encourage them to perform their responsibilities consistently and well".[1090] Now, when civil society organizations have these capacities, then they form a democratic relation between local governments and the citizens, and vice versa.[1091] For instance, a strong civil society in Kosovo could decrease the gap between different communities, and different levels of government.[1092] In short, the development of a sustainable local government goes hand in hand with the development of a sustainable civil society, as argued in the study by UNDP: "it is the existence of local governance, combined with the emergence of local civil society institutions, that truly creates the pluralism that is central to democratic development."[1093]

In Kosovo, civil society organizations are very weak on the local level. Without adequate financial support, they either tend to be inactive, or politically biased. For instance, Tahiri reported that municipal mayors tend to control civil society organizations on the local level. They (mis-) use their right to distribute subsidies, only to politically benefit from the same.[1094]

[1087] Bieber, „The Serbs of Kosovo," 195-196
[1088] USAID, *Democratic Decentralization Programming Handbook*, 8
[1089] UNDP, *Decentralization: A Sampling of Definitions*, 16
[1090] Merilee S. Grindle, *Going Local: Decentralization, Democratization, and the Promise of Good Governance* (Princeton and Oxford: Princeton University Press, 2007), 125
[1091] Cheema and Rondinelli, "From Government Decentralization to Decentralized Governance," 15-16
[1092] Adem Beha, "Decentralization in Kosovo: A Challenge to Deal With?" *Journal of Peace, Conflict and Development*, Issue 17 (2011): 39
[1093] UNDP, *Decentralization: A Sampling of Definitions*, 16
[1094] Tahiri, "The Municipal Mayor," 15-16; see also European Commission, *Kosovo 2016 Report*, 9

In the 2016 progress report, the European Commission came to a similar conclusion and stated that: "The capacity of civil society in Kosovo to effectively engage remains uneven."[1095] More importantly, civil society organizations are especially not active in the newly established Serb majority municipalities. A central government report from 2016 shows that eight out of ten Serb majority municipalities have failed to implement any project in coordination with civil society. In other words, they have not offered any financial support for these organizations. The same was found for the Turkish majority municipality of Mamushe, and for the multiethnic municipality of Dragash.[1096] Oppositely, 26 municipalities in coordination with civil society organizations have invested approximately 2.7 million euros in 705 different projects.[1097] However, this spent amount remains very low in comparison to the actual need. This evidence suggests that in most cases, civil society organizations do not fulfill their designated role for the development of local democracy and thus, decentralization in Kosovo currently lacks a crucial part for sustainable local government development. In order to tackle this problem, local governments should develop long-term strategies that would create an effective and unbiased cooperation with the civil society. In minority municipalities, this problem should be addressed through more specific measures.

VI.4.4. Corruption

The last major challenge for decentralization is the extensive level of corruption. Corruption can be defined as: "the exercise of official powers against public interest or the abuse of public office for private gains."[1098] Corruption can occur on a high political level, which Shah describes as `Grant corruption`. It can also occur on a low level, where citizens and/or firms pay bribes to employees of the state administration. It can occur in forms such as patronage networks, clientelism, nepotism, and it can even occur in more `sophisticated` forms where groups achieve to extend their control over the main institutions of the state.[1099] In relation to decentralization, the literature is inconsistent. Some authors argue that decentralization is connected to more corruption, while others argue that decentralization actually reduces corruption.[1100] Based on their extensive study, Fan, Lin, and Treisman conclude that corruption might occur more frequently in states with multi-level governance.[1101] Grasa and

[1095] European Commission, *Kosovo 2016 Report,* 9
[1096] MAPL; *Raporti i Funksionimit të Komunave të Republikës së Kosovës, Janar – Dhjetor 2016,* 7
[1097] Ibid.
[1098] Shah, "Corruption and decentralized public governance," 478-479
[1099] Ibid., 480-481
[1100] Matei and Popa, "Impact of Decentralization on the Corruption Phenomenon," 3-4; see also Manor, *The Political Economy of Democratic Decentralization,* 101-102
[1101] Fan, Lin, Treisman, "Political decentralization and corruption," 24-27

Camps argue that as a result of power devolution to lower levels of governance, local elites tend to monopolize the `new power` by establishing corruptive relations.[1102] Matei and Popa point out that these corruptive relations can especially be established in environments that are not based on democratic practices.[1103] In short, it might be possible that decentralization triggers more corruption, but corruption has a highly negative effect on decentralization and local governance, and this makes corruption a serious threat to the efficiency of local governments.

In the recent (2017) corruption perception index published by transparency international, Kosovo has been ranked 85th out of 180 states.[1104] In comparison to previous years, the corruption perception in Kosovo has increased. This report specifically notes that in Kosovo: "voices of NGOs and media are simply not heard". [1105] Furthermore, the European Commission made a conclusion about the level of corruption in Kosovo and stated that: "corruption remains prevalent in many areas and continues to be a very serious problem".[1106] The European Commission also draw attention to the situation in the north, where public officials have failed to meet the basic requirements of the Anti-Corruption Agency of Kosovo.[1107] Based on these reports, it can be assumed that the level of corruption in Kosovo is high, both on the local and central levels. Furthermore, it can be assumed that corruption in Kosovo occurs in all the above described forms. The following excerpt best summarizes the situation in Kosovo: "There are many different types of informal institutions in Kosovo: corruption is one, but so is nepotism, cultural conventions, traditional laws or informal bureaucratic procedures. Even though informal institutions are mostly autonomous from formal systems, the crucial point is that formal and informal systems in Kosovo are not separate but co-exist and interact. Informal institutions often operate within and through the formal state." [1108] There is no doubt that corruption negatively affects the decentralization process in Kosovo. It directly threatens the governance efficiency of both, majority and minority municipalities. As this presents a complex problem, it will require complex solutions that can only be implemented by a more effective support of the international community.

[1102] Grasa and Camps, "Conflict Prevention and Decentralized Governance," 38
[1103] Matei and Popa, "Impact of Decentralization on the Corruption Phenomenon," 3-4
[1104] https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table accessed online on 12.04.2018
[1105] https://www.transparency.org/news/feature/europe_and_central_asia_more_civil_engagement_needed_part_I_I accessed online on 12.04.2018
[1106] European Commission, *Kosovo 2016 Report*, 17
[1107] Ibid., 18
[1108] Kosovo Local Government Institute and Local Government Information Unit, "Necessity to Re-Think Decentralization?!" 16

CHAPTER VII: A NEW LEVEL OF GOVERNANCE? THE AGREEMENT FOR THE ESTABLISHMENT OF THE ASSOCIATION OF SERB MAJORITY MUNICIPALITIES

The aim of this chapter, as the second main part of this study, is to shed light on the agreement between Kosovo and Serbia regarding the establishment of the Association of the Serbian Majority Municipalities (ASMM) in Kosovo. This agreement has not yet been implemented. Thus, the agreement itself serves as an object for this analysis. How it will be implemented, or if it will be implemented, remains generally important for Kosovo. For the purpose of this study, the importance lies within the association presenting an additional protection mechanism for minorities. However, this protection mechanism bears an institutional burden for Kosovo. Four main points will be analyzed in this chapter. First, this chapter with present an analysis on whether Kosovo's governance system will transform from a symmetric to an asymmetric system. Second, it will analyze the extent to which such an arrangement can be considered as a territorial autonomy arrangement, or whether it fits somewhere in between. Third, it will consider how such an arrangement affects state functionality and institutional effectiveness. Finally, it will present an account of local perceptions and expectations of the agreement.

The Agreement for the establishment of ASMM has resulted from a negotiation process between Kosovo and Serbia. This process has been facilitated and supported by the European Union. The main idea behind this process was to establish normal relations between Kosovo and Serbia by finding proper solutions to open non-political questions. Through this process, Kosovo aimed to integrate the northern part of the country into its institutional system. As mentioned earlier, this part of Kosovo has remained under the control of Serbia, or its parallel institutions. Alternatively, Serbia aimed to maximize its involvement in Kosovo, and as argued in an earlier chapter, create a wide ranging autonomy for Kosovo Serbs. As a compromise between these two distinct demands, the idea of an ASMM was established, as a mechanism which would, at the one side, allow for an integration of Serbs into the Kosovo institutional system, and which would, on the other side, allow the Serb majority municipalities to retain a distinct character.

VII.1. The Agreement

The first general agreement was reached through the acceptance of `constructive ambiguity´ [1109] by both sides on 19 April 2013 in Brussels. This "First Agreement of Principles Governing the Normalization of Relations" comprises of 15 points which were agreed upon by both sides. The agreement included several points on issues such as integrating the parallel police and judicial institutions of the northern municipalities in Kosovo's governance system. The main part of the agreement was certainly the establishment of the ASMM. It was agreed that this Association would present a distinct government body, which would have enhanced competences in issues such as economic development, education, health, and urban and rural planning. More powers may be delegated gradually to this body. This body will comprise of the Serb majority municipalities, and it will be governed through its distinct institutions, in accordance with the law applicable in Kosovo.[1110] As a result of the first agreement, on 25 August 2015 both sides agreed on the general principles / main elements for the establishment of the ASMM. The key aspects of the agreement are listed and described in the following part.

According to the agreement, the ASMM will have its own distinct institutions. These institutions will basically reflect the organizational character of the Association of Kosovo Municipalities.[1111] The highest institution will be the Association´s Assembly. The Assembly will be composed of elected members of the local municipal assemblies that are part of the Association. The Assembly will have competencies in amending the statute of the Association, define rules of procedure, and approve regulations and administrative decisions. In addition, the assembly will have the right to choose the President, Vice-President, and the Board of the Association. The President and the Vice-President will be chosen from members of municipal assemblies and municipal mayors of the Serb majority municipalities. The President will represent the Association internationally and within Kosovo. Alternatively, the seven members Board will act as an executive body: "with the right to take necessary decisions for the daily management of the Association." This Board will be supported by additional field specific `collegia`. The Association will also have its distinct administration. Employees of the administration will enjoy the status of civil servants. Similarly, a complaints office will be

[1109] "Serbia/Kosovo: The Brussels Agreement and Beyond" (SEESOX Workshop Report, St.Anthony´s College, University of Oxford, 2014), 4, see also Florian Bieber, "The Serbia-Kosovo Agreements: An EU Success Story?" *Review of Central and East European Law*, No. 40 (2015)
[1110] Law No. 04/L-199 on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia
[1111] Statute of the Association of Kosovo Municipalities (Pristina, June 2015), Article 4

established. Finally, a Council composed of municipality mayors and municipality inhabitants will act as an advisory institution: "which provides guidance to the work of the Association".[1112] The figure below presents the organizational structure of the Association.

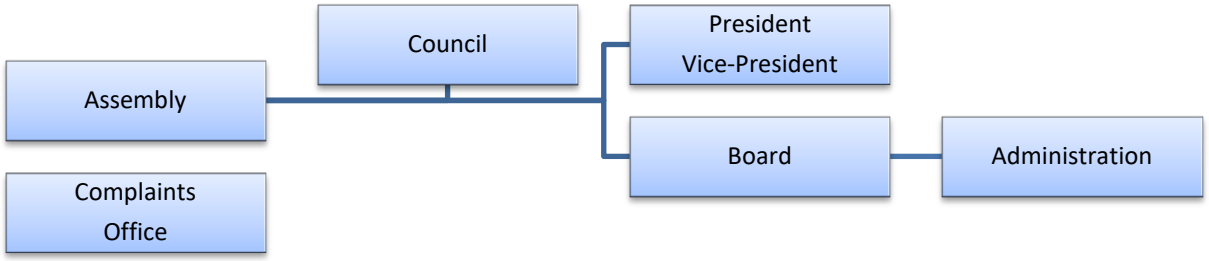

Figure 18: ASMM's organizational structure based on the agreement

The agreement foresees that the Association will exercise governmental power, described as `objectives´, in several governance areas. Firstly, the Association will have competences in local economic development, education, primary and secondary health care, social care, urban and rural planning, and in strengthening local democracy. Furthermore, the Association will represent and provide services for its members. These services will include the management of different studies, the management of the return and reintegration process, monitoring, and assessing public services. The Association may also enter international agreements with similar organizations.[1113] Above all, it should be noted that further competencies may be delegated by the central government.[1114] As can be expected, the Association will have its own budget. This would guarantee its financial autonomy in planning and spending the budget, remaining only formally bound to the central government financial provisions.[1115] As can be observed in the figure below, the Association's budget will consist of contributions from its members, self-revenues, central government transfers, and most importantly contributions, grants, donations, and other forms of financial support from third parties.[1116] Serbia would be a major funder of the Association.

[1112] "Association/Community of Serb majority municipalities in Kosovo – general principles/main elements" (25 August 2015), para.6
[1113] Ibid., para.4
[1114] Ibid., para.5
[1115] Ibid., para.16
[1116] Ibid., para.17

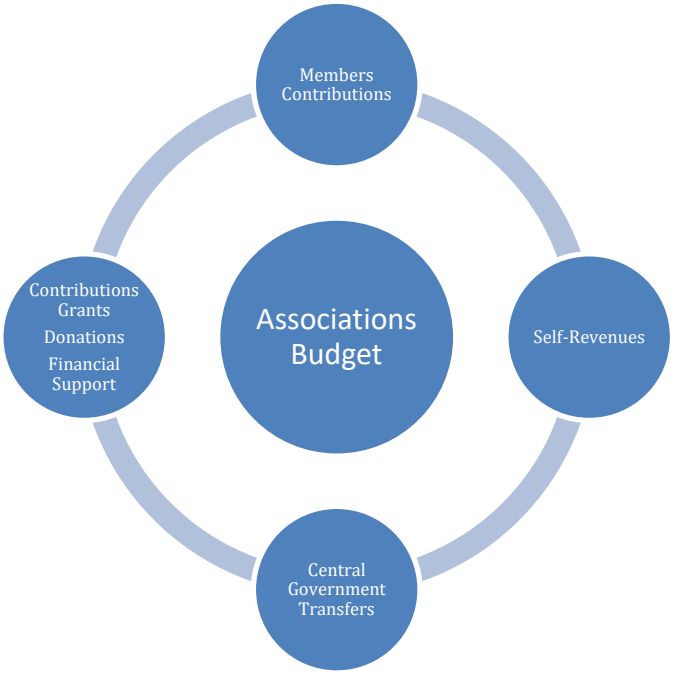

Figure 19: Association's budget according to the agreement

In addition, the Association would enjoy the right to have its distinct symbols, which would reflect its distinct ethnic character.[1117] Most importantly, once established, the Association can only be dissolved by 2/3 of its members.[1118] This provision eliminates the right of the central government to dissolve the Association. The Association will also have the right to propose amendments to legal acts,[1119] to initiate legal procedures against decisions from central authorities and other Kosovo institutions,[1120] and to appoint members in the central government,[1121] while the four northern municipalities, through the Association, will have a crucial role in appointing the police commander for the northern region.[1122] Finally, the Association will have the right to own properties, companies, and enter contractual obligations.[1123]

Thus far, the process for the Association's establishment has been brought to a standstill. This impasse has been created by the judgment of Kosovo's constitutional court which ruled that the most important parts of the agreement are not in compliance with the Constitution:

> "The Principles as elaborated in the "Association/Community of Serb majority municipalities in Kosovo – general principles/main elements" are not entirely in

[1117] Ibid., para.20
[1118] Ibid., para.19
[1119] Ibid., para.10
[1120] Ibid., para.11
[1121] Ibid., para.12
[1122] Ibid., para.13
[1123] Ibid., para.14

> compliance with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo."[1124]

The constitutional court, apart from deciding that several parts of the Association's Agreement are in contradiction with the spirit of the constitution, decided that the first Agreement of 2013 has legal applicability in Kosovo arguing that:

> "The First Agreement was ratified as an international agreement on 27 June 2013 by the Republic of Kosovo through its Assembly and published in the Official Gazette of the Republic of Kosovo. Thus, this international agreement becoming part of the internal legal system required for its implementation the establishment of the above Association/Community. Therefore, the establishment of the Association/Community is in compliance with the constitutional requirement and thus is part of constitutional order of the Republic of Kosovo."[1125]

According to the judgment of the constitutional court, under these circumstances, any future establishment of the ASMM shall follow the provisions of Kosovo's constitution, and comply with it. Oppositely, Weller interestingly points out that it is expectable for this kind of agreements to be in contradiction with the constitutional order of a state. He remarks: "After all, if the autonomy was established as an asymmetrical settlement, then it is unlikely to be consistent with constitutional provisions that apply in relation to the state overall, or to other regions."[1126] Therefore, with the growing political pressure, this process has entered a difficult and knotty phase. The scope of this complex situation is best summarized by one of the judges in the constitutional court who retains that the judgment has failed to: "provide comprehensible and satisfactory answer" and that: "the majority made some erroneous interpretations and conclusions, which are not instrumental in preventing any further constitutional confusion on the pertinent constitutional issues."[1127]

To sum up, the agreement has followed a logic that suits both sides. It formally resembles the main points of the Statute of the Association of Kosovo Municipalities and combines it with

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[1124] The Constitutional Court of the Republic of Kosovo, *Judgment in Case No. KO130/15* (23 December 2015), Decision, point III
[1125] Ibid., para.113
[1126] Marc Weller, "Conclusion," in *Asymmetric Autonomy and the Settlement of Ethnic Conflict*, eds. Marc Weller and Katherine Nobbs (Philadelphia, Oxford: University of Pennsylvania Press, 2010), 301
[1127] The Constitutional Court of the Republic of Kosovo, *Dissenting Opinion of Judge Bekim Sejdiu in the case KO 130/15* (Pristina, 23 December 2015, Ref, No.: MM 878/15), 1-2

additional points, all intentionally written in an ambiguous way.[1128] If the judgment of the constitutional court is circumvented and the argumentation presented by Weller is accepted, then the Association can be established as a legal entity with its own institutions, distinct symbols, and with a wide range of competencies. Its main aim will be to "promote the interests of the Kosovo Serb community".[1129] It is important to note that, if analyzed properly, there is considerable evidence to suggest that the Association has an evolving character. Once established, the Association may evolve in two directions. First, it will have the right to accept new members, thus making it possible to expand its influence to other existing or new municipalities. Second, it will have the right to negotiate the ceding of new competencies from the central government. These two elements of the Association will probably drag Kosovo into a continuous negotiating spiral with unpredictable consequences. Once established, there is a great possibility that the Association will only move towards more autonomy, and not in the opposite direction. In the following section, it will be argued that with a possible application, in its current form, of the Agreement for the establishment of the ASMM, Kosovo's governance system will transform from a symmetric decentralized system into an asymmetric decentralized system of governance. This new asymmetric situation may lead to new grievances in the long-term, and may reduce the significance of the decentralization process as a minority accommodation mechanism.

VII.2. From Symmetry to Asymmetry

The application of asymmetric arrangements can play an important role in addressing the issue of minority accommodation. Asymmetric arrangements mostly evolve as a result of internal heterogeneity within states. In such cases, either a distinct group has an aspiration to gain more power from the central government, meaning more autonomy, or a state may apply this strategy to incorporate a rebellious unit within the state.[1130] Both of these elements are present in the case of Kosovo, particularly the second one. The application of asymmetry, in this case the establishment of the ASMM, can be considered as a tool for integrating the north into the governance system of Kosovo. This option has come as a result of the failed attempt to integrate this part through the decentralization process.

In the literature, an asymmetrical system of governance is described as a system where at least one of the governing units enjoys enhanced competences and more autonomy than other

[1128] See Bieber, "The Serbia-Kosovo Agreements,"
[1129] "Association/Community of Serb majority municipalities in Kosovo," para.9
[1130] John McGarry, "Asymmetry in Federations, Federacies and Unitary States," *Ethnopolitics*, Vol. 6, No. 1 (Routledge, 2007), 105

governing units.[1131] In federal systems, this may be a republic enjoying more autonomy than other republics, whereas in unitary systems, it may be a region or a unit of local self-government enjoying more powers than other regions or other units of local self-government. According to Weller, asymmetry may be classified as two distinct forms, de-facto and de-jure asymmetry. As Weller notes: "De-facto asymmetry is related to the `felt` degree of competence and power, in accordance with factors such as population size, economic and fiscal resources of the respective entities."[1132] It has been argued that a de-facto asymmetry is present in all systems of governance.[1133] De-jure or formal asymmetry is related to the asymmetric provisions enshrined in the legal system of a state.[1134] There is no doubt that proper analysis of asymmetrical systems has to take into account both, the formal legal side, as well as other relevant factors. By considering both elements, the impact of asymmetry on a system of governance may be determined. This is followed by an account of positive and negative effects of asymmetry.

Summarizing some general positive effects of asymmetry, McGarry presents an original account of the arguments discussed by four authors:

> "Adeney writes that asymmetrical federalism is "an important element in managing conflict in diverse states". Conversi notes that asymmetric arrangements are "durable and practical" as well as "flexible and effective" in managing and preventing ethnic conflict. A specialist on Spain, he argues that asymmetry was "necessary" for maintaining state unity there. Hechter concurs that different nations are likely to seek different degrees of self-government and that asymmetrical governance represents an "entirely sensible" response. He believes, as I do, that giving nations appropriate levels of self-government can help to forestall demands for secession, rather than always exacerbating such demands, as is alleged by critics of pluralist federalism. Rezvani points out that asymmetrical governance "has a strong empirical record of helping to mitigate many seemingly intractable conflicts.""[1135]

While the application of asymmetry may certainly have positive effects in several cases, it may also trigger negative effects in other cases. The analysis of the de-jure and de-facto asymmetry with the establishment of the ASMM, taking into account the following factors

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[1131] Ibid.
[1132] Weller, "Introduction," 8
[1133] Weller, "Conclusion," 298
[1134] Weller, "Introduction," 8
[1135] John McGarry, "Asymmetrical autonomy and conflict regulation: A response to Adeney, Conversi, Hechter, and Rezvani," *Ethnopolitics* Vol. 6, No. 1 (Routledge, 2007), 133

which apply to the case of Kosovo, it is doubtful that the application of asymmetry has the potential to become the final solution for the Serb-Albanian conflict in Kosovo. The case of Kosovo is strongly connected to its specific context, and the application of asymmetry should only be analyzed by taking into account this specificity. In his interesting analysis, Weller correctly points out that in cases where a part of a territory is controlled by a group that is hostile to the central government of the state: "asymmetrical autonomy arrangement may present a convenient way of merely renaming the existing situation as a settlement",[1136] thereby the: "Termination of the conflict is traded for recognition and legitimation of the exercise of (…) authority."[1137] Exactly the same situation can be observed in Kosovo.

With regard to this situation, it is essential to analyze the weaknesses of this asymmetrical arrangement in the case of Kosovo. *First*, Weller points out that there is considerable possibility that the new autonomous governance structures are not interested in advancing the common state.[1138] This point fully applies to the case of Kosovo. It is difficult to imagine that the Agreement for the establishment of the ASMM will achieve something that has been unachievable for the past 18 years. Neither Belgrade, nor the majority of Kosovo Serbs are interested in a successful Republic of Kosovo. A formal integration within Kosovo's governance structures may be applicable, but a factual one merely remains desirable. *Second,* Weller argues that there is a possibility that the central government´s authority to exercise its powers over the entity will only remain limited.[1139] Now, as emphasized by Bieber, taking into account two weaknesses of the Kosovo state, it can be argued that Kosovo's central government will hardly be able to implement every decision towards the entity, or its territory. Bieber argues that the weakness of Kosovo to function as an efficient state derives, on the one side from: "a low-level state capacity as a result of the limited tradition of statehood and a historically grounded skepticism towards the state by its population", and on the other side, from its inability to extend and apply its legitimacy across the whole territory of Kosovo.[1140] This limited state capacity and its inability to extend authority throughout Kosovo can best be described through the following examples. In July 2011, the central government failed to effectively take control of the two northern border crossings by use of the police force. In addition, it has been claimed by Serbian officials that an agreement has

[1136] Weller, "Conclusion," 305
[1137] Ibid. 305
[1138] Ibid.
[1139] Ibid., 306
[1140] Florian Bieber, "Building Impossible States? State-Building Strategies and EU Membership in the Western Balkans," *Europe-Asia Studies*, Vol.63, No.10 (Routledge, 2011): 1788

been reached where the Kosovo Security Forces will not operate in the northern part of the country. This claim can hardly be confirmed, as many of the Brussel agreements remain secret. Finally, apart from its inability to take control of the territory by force, the central government also struggles to implement its legislation in the north. This can best be observed in the Law on the Trepça mines and its industrial complexes.[1141] As soon as the Law was promulgated by the Kosovo Assembly, Belgrade and representatives of the north declared that this law will not be applicable in the north of Kosovo, at least not in its current form.

Third, Weller claims that in this type of asymmetrical arrangements a fair economic and fiscal integration and distribution is rather challenging.[1142] Paragraph 17 of the Agreement for the establishment of the ASMM foresees, as described above, that the Association will have its own budget. It may be argued that the four sources of budget foreseen for the ASMM may affect the financial equality between Serb majority municipalities and other municipalities in Kosovo. Alternatively, not to mention the inability of Kosovo's institutions to collect taxes in the north. *Fourth*, Weller also describes the possibility that the asymmetrical entity may not comply with democratic rules.[1143] To further analyze this point would rather be hypothetical. However, if seen from the perspective of the current political situation in the Serb majority municipalities, it might be suggested that the political process in those municipalities will be ruled by Belgrade, through its affiliate political party in Kosovo. This would weaken the elementary democratic postulates. The *fifth* point to which Weller draws attention is connected to the ability of the central government and international organizations to oversee possible human rights abuses, especially of marginalized groups within the entity.[1144] One example can be used here, namely the inability of UNMIK and then of the central government to implement the decisions of the Kosovo Property Agency (KPA) in the north. Thus, creating a situation of constant property rights abuses of minority communities in the north, and to a lesser degree in the Serb majority municipalities south of the Ibar river. The protection of general human rights and specifically the protection and promotion of minority rights will remain a challenge throughout Kosovo. This challenge will obviously be much greater within the Serb majority municipalities. The *sixth* point, as described by Weller, is the possibility that other units of governance, or other communities may seek the same rights as guaranteed for the asymmetric entity.[1145] This is rather not applicable to the case of Kosovo. Weller´s *final*

[1141] See, Law No. 05/L – 120 on Trepça, 2016, Assembly of the Republic of Kosovo
[1142] Marc Weller, "Conclusion," 306
[1143] Ibid.
[1144] Ibid.
[1145] Ibid.

point is the lack of institutional capacity within unitary states to address different issues of an asymmetrical nature.[1146] In sum, these points describe the possible weaknesses of asymmetrical arrangements that may transform a status quo into an agreement.

The evidence reviewed here raises several important questions about the weaknesses of the possible implementation, in its current form, of the Agreement for the establishment of the ASMM. These weaknesses are especially visible in cases such as Kosovo, where the lack of effective institutions may present an opportunity for asymmetrical entity to move further away from the authority of the central government. To summarize, Weller reminds us that: "Asymmetry is therefore not likely to offer a simple solution to difficult circumstances. It is in itself a challenging and complex concept. However, if asymmetrical autonomy designs are developed in a way that takes account of the complexities of the underlying conflicts, and are combined with other tools of state construction, they do offer a way out of otherwise unresolvable conflicts."[1147]

Let us now return to one of the main questions of this study: how the asymmetric arrangements for the Association of Serb majority municipalities will transform Kosovo's governance system. With the application of the Ahtisaari package, a symmetrical system of governance was foreseen for Kosovo. Nevertheless, this package involved asymmetrical provisions for Serb majority municipalities in education, health, security, and culture.[1148] Thus, with Ahtisaari´s package, Kosovo was foreseen to function as a unitary state with limited asymmetrical provisions. Now, if we take into account McGarry´s distinction of a federacy and an asymmetrical unitary system, it might be argued that Kosovo is not only evolving into an asymmetrical system, but it is actually becoming a federacy. In his description, McGarry points out that if the central government is not able to abolish the autonomous entity, and if the rights of the entity are protected by the constitution, then: `a "federacy" exists´.[1149] The first point of the argument can be found in paragraph 19 of the Agreement for the establishment of the ASMM, which states that: "The Association/Community can only be dissolved by decision of its Assembly adopted by a 2/3 majority of its members".[1150] This paragraph demonstrates that the right to dissolve the entity will lay within the entity itself, and not with the central government. The second point will

[1146] Ibid.
[1147] Ibid.
[1148] See Chapter V
[1149] McGarry, „Asymmetry in Federations, Federacies and Unitary States," 105
[1150] "Association/Community of Serb majority municipalities in Kosovo," para.19

probably be fulfilled in accordance with the decision of the constitutional court, which as described previously stipulates that international agreements become part of Kosovo's legal system.[1151] As such, the first agreement for the establishment of the ASMM has become part of the legal system, and thus, it is constitutionally protected. To sum up, there is evidence to suggest that Kosovo may become a federacy. Assuming that one of the above mentioned points will fail to be fully implemented with the establishment of the ASMM, then Kosovo, if not evolving into a federacy, will certainly evolve from a symmetric decentralized system of governance (with limited asymmetry) to an asymmetric decentralized system of governance. In order to make some comparisons, the following sections will present an account of examples of asymmetrical arrangements applied in several states.

There are many examples of asymmetrical arrangements within federative, regional, devolutionary, and unitary systems of governance. Frequently, these asymmetric systems have similarities with Kosovo, where one or more units of government have more powers than other similar units of government. These units present the self-governing mechanism for national minorities. Alternatively, having only an administrative character, other territorial divisions may exist within states which do not reflect national differences within it. Canada is a common example of the application of asymmetry for the accommodation of a distinct national group. In Canada, Quebec has a French majority that enjoys more powers than other provinces such as Ontario or Alberta, that only reflect an administrative division within the majority nation.[1152] Another example of similar asymmetrical arrangements can be found is Spain. There, as Kymlicka argues, Catalonia,[1153] the Basque Country, and Galicia present the self-governing units of distinct national groups, while the overall state has a total of 17 administrative regions.[1154] Similarities can also be found within the Russian federation, where for example Tatarstan and North Ossetia present a self-government unit of national minorities who enjoy more powers than other similar non-minority units.[1155]

Asymmetrical autonomy arrangements for the Aaland Island and South Tirol are considered successful examples of dealing with secessionist movements in Finland and Italy.[1156] United

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[1151] The Constitutional Court of the Republic of Kosovo, *Judgment in Case No. KO130/15*, para.113
[1152] Kymlicka, *Politics in the Vernacular*, 102
[1153] Currently the self-governing and autonomy rights of Catalonia have been suspended by the Spanish central government
[1154] Kymlicka, *Politics in the Vernacular*, 102
[1155] Ibid., 104
[1156] Stefan Wolff, "Cases of Asymmetrical Territorial Autonomy," in *Asymmetric Autonomy and the Settlement of Ethnic Conflict*, eds. Marc Weller and Katherine Nobbs (Philadelphia, Oxford: University of Pennsylvania Press, 2010), 42-43

Kingdom has applied asymmetric devolution of power for Scotland, Wales, and Northern Ireland. Similarly, Belgium has transformed from a unitary state into an asymmetric federal system of governance.[1157] Moldova has also applied asymmetry in granting territorial autonomy for the Gagauz municipalities.[1158] In contrast with the above described functioning examples of asymmetric arrangements, there are also several cases where asymmetry has either been refused by the central government, as in the case of Corsica,[1159] or where it has failed as a conflict resolution mechanism. As Roeder argues: "asymmetry does not appear to be a guarantee against secession: the de facto secessions of Abkhazia and South Ossetia from Georgia and of Nagornyi Karabakh from Azerbaijan, as well as the de jure secessions of Singapore from Malaysia and of Eritrea from Ethiopia suggest that, even if asymmetrical ethnofederations do not break up, pieces of asymmetrical ethnofederations often break away."[1160] Similarly, McGarry describes two main critics in connection with asymmetric arrangements. The first is its `centrifugal` potential,[1161] while the second is the right of minority members of the parliament to vote on issues that do not directly concern them, while other members of parliament are not allowed to vote on matters concerning their entity.[1162] In short, the application of asymmetric arrangements may work in some cases, and it may fail in other cases. Its functionality, as argued above, is strongly connected with the case where it is applied.

In this whole process of transforming Kosovo from a symmetric into an asymmetric system of governance, two objectives of the Serbs of Kosovo and of Belgrade can be distinguished. The *first* objective is to elevate the status of the Serbs in Kosovo into a recognized distinct national group, moving away from the concept of a multiethnic Kosovo, and distancing themselves from being part of the "minority", or from being put in the same group, for instance, with the Turkish or RAE minority. This has been observed by McGarry who points out that: "The aspiration of nationalities for recognition is conceptually distinct from the aspiration for significant autonomy, but the two are interrelated and in practice often go together.

[1157] Michael Keating, "Asymmetrical Government: Multinational States in an Integrating Europe." Publius, Vol. 29, No. 1 (Federalism and Compounded Representation in Western Europe, 1999), 71

[1158] For more about the Gagauz Autonomy arrangments see Oleh Protsyk, "Gagauz Autonomy in Moldova: The Real and the Virtual in Post-Soviet State Design," in *Asymmetric Autonomy and the Settlement of Ethnic Conflict*, eds. Marc Weller and Katherine Nobbs (Philadelphia, Oxford: University of Pennsylvania Press, 2010); and Claus Neukirch, "Autonomy and Conflict Transformation: The Gagauz Territorial Autonomy in the Republic of Moldova," in *Minority Governance in Europe*, ed. Kinga Gál (Budapest: Local Government and Public Service Reform Initiative, 2002)

[1159] Kymlicka, *Politics in the Vernacular,* 104

[1160] Roeder, "Ethnofederalism and the Mismanagement of Conflicting Nationalisms," 216

[1161] McGarry, "Asymmetry in Federations, Federacies and Unitary States," 112

[1162] Ibid., 112-113

Nationalities seek both. Constitutional recognition as a nation or people may be seen as a means for achieving more autonomy, and more autonomy than other regions may be seen as a form of recognition."[1163] The intention in this case is to establish dualism in governing Kosovo. Thus, creating a distinct governance unit is not as important as creating an asymmetrically distinct national governance unit, which is related and bound to its nation/minority. This intention can also be seen in the Canadian case, where Quebec is not only territorially, but also nationally recognized as a distinct national unit of the French population.[1164] Commenting on this, McGarry argues: "It may also be feared that asymmetry, particularly when there is explicit recognition of the nationality's peoplehood, marks the specified unit as a place apart, and is likely to fuel secessionism."[1165]

The *second* objective is related to the purpose of establishing a clearly defined and recognized territorial unit. Serb efforts to include Albanian villages in the newly created municipality of North Mitrovica, only to have the Ibar river as a natural and administrative boundary best reflect this purpose. Another example of this practice can be found in the case of establishing the boundaries of the new municipalities created via the decentralization process. Importance and priority in this process has been given to the territorial boundaries of the new municipalities, and to a lesser extent to governance issues. As the ASMM will be established as a legal entity that will exercise its competences over a clearly defined territory, it can be argued that this distinct legal and territorial entity presents the basis for future secessionism. To put it more simply, it is important for Belgrade to establish a territorial and legal basis, which will remain open as a future secessionist prospect. In one of his analysis, O´Leary highlights the importance of territorial and legal entities for secession. He argues that ethnic groups have to first establish their territory as a basis for secession. Groups without established territories would have to fight for one, either politically or by force.[1166] As O´Leary notes: "Only a putative equal with a recognized territory secedes; by contrast, an unequal struggles for liberation. Secessionists have territories; liberationists, by contrast, must establish their territory. (…) This distinction between secessionists and liberationists implies no bias, and conforms to much political language."[1167] He further correctly argues that: "It is easier to have a secession recognized (…) than it is to have a partition recognized."[1168]

[1163] Ibid., 109
[1164] Ibid., 110
[1165] Ibid., 108
[1166] O´Leary, „Analysing partition," 893
[1167] Ibid.
[1168] Ibid., 899

Therefore, the establishment of the ASMM as a distinct national, territorial, and legal entity for the Serbs in Kosovo presents a further step into possible secession, and it might open doors for new grievances. Lastly, McGarry argues that asymmetrical units representing a small proportion of the overall population and with limited asymmetry can hardly threaten the central authority.[1169] Nevertheless, the secessionist potential in Kosovo, having especially in mind the role of Serbia, should not be underestimated. The next section presents an analysis of territorial autonomy arrangements, and their resemblances in the case of the ASMM.

VII.3. The Association of Serb Majority Municipalities as a Form of Territorial Autonomy

Personal, cultural, and territorial autonomy forms have already been described in the section on theoretical frameworks of this research. Now, based on the same theoretical descriptions, it can be argued that mainly due to a lack of territorial cohesion of the Serb inhabited areas, the Constitution of Kosovo, based on the Ahtisaari Plan, grants minority communities different forms of personal and cultural autonomy. Alternatively, the agreement for the establishment of the ASMM has gained fresh prominence with many arguing that in addition to personal and cultural autonomy provisions, it presents new elements of territorial autonomy for the Kosovo Serbs. Therefore, this section of the thesis investigates different elements of territorial autonomy in order to determine the nature of the ASMM. It sheds new light on the ongoing debate, and tries to answer to what extent this Agreement creates a territorial autonomy for the Serbs in Kosovo.

There are no clearly defined tools to describe a territorial autonomy. However, ten elements elaborated by Weller in the introduction to his book *Asymmetric Autonomy and the Settlement of Ethnic Conflict*,[1170] can be useful for this analysis. These elements can be applicable, partially applicable, or not applicable to the case of Kosovo. According to Weller, the *first* element of a territorial autonomy is its `demographic distinctiveness`. This element is applicable to the case of Kosovo, as the territory of Serb majority municipalities is defined according to ethnic criteria, thus having a distinct `ethnic, cultural, linguistic, and religious` character. Furthermore, the whole idea of the ASMM is based on demographic distinctiveness. One could possibly argue that this element is not applicable to this case because it encompasses several detached municipalities. The example of the Gagauz territorial autonomy in Moldova clearly demonstrates that territorial autonomy can also be applicable as

[1169] McGarry, "Asymmetry in Federations, Federacies and Unitary States," 113; and McGarry „Asymmetrical autonomy and conflict regulation," 135
[1170] Weller, "Introduction," 4-5

a cluster of detached territorial self-government units.[1171] The *second* element emphasized by Weller is based on functional devolution, and not merely on deconcentration or delegation of the central government authority. As described previously, given that the ASMM will exercise autonomous authority over certain competencies, it can be argued that the second element is also applicable to the case of Kosovo. The *third* element is based on the legal guarantees provided within the state for territorial autonomy. Weller points out that the central government does not have the right to unilaterally abolish the autonomy. The applicability of this right is also defined within Point 19 of the Agreement, which stipulates that the Association can only be dissolved by a qualified majority of its members.[1172] Furthermore, the autonomy will be constitutionally protected as a result of the parliament´s approval of the first agreement.[1173]

The *fourth* element of a territorial autonomy is based on `legal supremacy` of the autonomous entity. The ASMM will have full legal autonomy to exercise competences granted to the entity within its statute, which is based on the Agreement. Any interference from the central government may be legally challenged by the ASMM.[1174] Therefore, even though the ASMM is bound to the legal system of Kosovo, it can be argued that it will retain legal supremacy over the competencies granted to the entity. The *fifth* element is reflected in the right of the autonomy to draft its own statute. This element can only be partially applicable to the case of Kosovo, as the statute drafting is not entirely reserved for the ASMM. The agreement foresees that the statute will be drafted by a joint team based on the general principles/main elements of the agreement. The Statute draft will be subject to common approval of the negotiating parties at the Brussels negotiations. The Association will have the right to present amendments to the statute, which will have to be in compliance with the constitutional provisions of Kosovo. [1175] The *sixth* element of a territorial autonomy is the right to carry out `significant` legislative and executive `competences`. This element is only partially applicable to the case of the ASMM, as there is no clear evidence that the Association will have significant legislative competencies, besides probably the right to promulgate certain bylaws. This element has been determined as partially applicable because the Association will still have significant executive competencies over several governance issues.

[1171] Protsyk, "Gagauz Autonomy in Moldova," see also Neukirch, "Autonomy and Conflict Transformation," 107-123
[1172] "Association/Community of Serb majority municipalities in Kosovo," para.19
[1173] The Constitutional Court of the Republic of Kosovo, *Judgment in Case No. KO130/15*, para.113
[1174] "Association/Community of Serb majority municipalities in Kosovo," para.11
[1175] Ibid., para.20

The *seventh* element is based on `parallel action` of the territorial autonomy and of the central government to exercise power over citizens residing within the autonomy. This element can be considered as partially applicable, as the central government currently exercises very limited authority over the citizens of the northern part of Kosovo. It is hardly expectable in the near future that the central government will extend its full authority in the north. This is actually also the main idea behind the Agreement, to limit the `interference` of Prishtina in the Serb inhabited areas. Thus, it can be argued that the central government of Kosovo will only have formal authority over the citizens of the municipalities that are part of the Association, especially in the northern part of Kosovo. The *eighth* element represents the right of territorial autonomy to establish international cross-border co-operations. The ASMM will have a special relationship with its kin state, Serbia. In addition, it will be allowed to establish national and international co-operations with similar entities inside and outside Kosovo.[1176] Thus, the element of `limited external relations powers` is applicable to the case of the ASMM.

The *ninth* element is described as the right of the territorial autonomy to have its own `legislative, adjudicative, and executive institutions`, including here local courts, local police, and executive agencies. This element is also applicable to the case of the Association, that will have an assembly resembling legislative power and a President as well as a Board resembling executive power. Furthermore, in previous Brussels agreements it was set that the north will also have a basic court and a distinct police directorate. At this time, it remains unclear if the Association will have the right to establish executive agencies. However, this does not change the fact that the ASMM will have its distinct institutions, as one of the ten elements of territorial autonomy described by Weller. Finally, the *tenth* element is based on the availability of centripetal or `integrative mechanisms`. According to Weller, these mechanisms include a `dispute settlement mechanism` usually within the constitutional court; `arrangements for the transfer of resources`, and representation mechanisms for the entity within the central institutions. At present, all of the three centripetal mechanisms are in place in Kosovo. First, the agreement for the establishment of the ASMM determines that possible disputes between the central government and the Association can be settled by a court, or the constitutional court.[1177] Second, the agreement clearly defines the resources that will be available to the Association.[1178] Third, mechanisms of representation for the Serb community

[1176] Ibid., para.4 m
[1177] Ibid., para.11
[1178] Ibid., para.17

are already in place. For instance, reserved seats in the Kosovo assembly and the central government as well as quotas in judiciary and state administration.

No.	Elements of Territorial Autonomy	applicable	partially applicable	not applicable
1	Demographic distinctiveness	√		
2	Devolution	√		
3	Legal entrenchment	√		
4	Legal supremacy	√		
5	Statute-making powers		√	
6	Significant competencies		√	
7	Parallel action		√	
8	Limited external relations power	√		
9	Institutions	√		
10	Integrative mechanisms	√		

Figure 20: Ten elements of territorial autonomy and its applicability to the case of the ASMM in Kosovo, (source: Marc Weller "Introduction", in Marc Weller and Katherine Nobbs (Eds.) *Asymmetric Autonomy and the Settlement of Ethnic Conflict* (University of Pennsylvania Press, Philadelphia, Oxford, 2010), p. 4-5)

Similar to Weller's ten well-elaborated elements of territorial autonomy, Hannum identifies four main elements of a `fully autonomous` territory, at least within `western oriented democracies`.[1179] According to him, a fully autonomous territory would have legislative power over issues such as: "primary and secondary education, the use of language, the structure of local government, and land use and planning",[1180] and this power would be exercised through a locally elected assembly. In addition, the existence of an executive organ, approved by the center should be present in such arrangements. Another element of a full autonomy is the existence of local judicial organ. Possible disputes between the center and the autonomy would be regulated by mutually agreed dispute mechanisms. Finally, Hannum asserts that power-sharing mechanisms should exist between the center and the autonomy, reminding us that: "Autonomy is not equivalent to independence, and autonomous governments should not expect to be immune from the influence of central governments. At the same time, however, the state must adopt a flexible attitude which will enable the autonomous region to exercise real power, precisely when that exercise of power runs counter to the state's inherent preference for centralization and uniformity."[1181]

There is considerable evidence to suggest that the ASMM presents a suitable form of territorial autonomy. Furthermore, the Association eliminates the deficiencies of the lack of a compact territory, which was necessary for the establishment of territorial autonomy for the

[1179] Hannum, "Autonomy, Sovereignty, and Self-Determination," 467-468
[1180] Ibid.
[1181] Ibid.

Serbs in Kosovo. It thus includes, as the Gagauz territorial autonomy, scattered territorial units.[1182] Now, as territory `remains the most important basis for political mobilization`,[1183] it can be argued that through the establishment of the ASMM, Belgrade has secured an efficient long-term tool for political mobilization of the Kosovo Serbs. Thus, it has secured the opportunity, not only to constantly influence Kosovo's domestic politics, but also to endanger the territorial integrity of the new state.

VII.4. Institutional Functionality VS Ethnic Accommodation

There are several elements of the ASMM that may obstruct a normal institutional functionality in Kosovo. This section of the thesis highlights the importance of four different elements and their potential effect on the institutional architecture of the state of Kosovo. To begin, one element argues that the establishment of a new governmental entity for the accommodation of minorities does not necessarily counter secessionist movements. Furthermore, kin-state policies, cross-border cooperation's, and the direct control of Kosovo's Serbs by Belgrade present interesting examples of how institutional functionality of Kosovo may be influenced and sabotaged by a foreign state. Lastly, it will be argued that Kosovo's governance system will land somewhere between the Macedonian and the Bosnia and Herzegovina´s governance system in terms of institutional functionality and flexibility. In one of his critiques, Surroi as one of the main participants in the pre-status negotiations correctly suggests: "If the Ahtisaari Plan created an asymmetry on the verges of functionality, the new "historical" Brussels agreements create two management systems."[1184] Here, Surroi draws attention to the prospect that the establishment of the ASMM can be associated with increased risk of institutional dysfunctionality. Similar warnings have also been issued by the European Center for Minority Issues in Kosovo in their broad analysis of the Association of Serb Majority Municipalities:

> "Concerns about the functionality of the Kosovan state shouldn't be discarded light-heartedly. While each new agreement between Pristina and Belgrade diminishes the presence of Serbian law and state institutions in Kosovo, the Association clearly perpetuates a strong role for Serbia in the affairs of Kosovo's Serb community. If not clearly conceived as an exercise in inter-municipal cooperation, Belgrade's proactive approach to the affairs of Kosovo Serbs, using political and financial clout to ensure

[1182] See for instance,Brunner and Küpper, "European Options of Autonomy," 23
[1183] Keating, "Asymmetrical Government," 75
[1184] Surroi, *Emri i Autonomisë,* 48 (authors translation)

obedience, could make the Association into a real hindrance to Kosovo's further institutional development."[1185]

The creation of the ASMM has a direct impact on the institutional construction of Kosovo. The Association serves as a new governmental entity in an otherwise institutional system of governance where public authority is divided between the central and the local level of governance. Officials in Kosovo have repeatedly claimed that the obligation for the creation of the Association derives from the Ahtisaari Plan, and it is thus to be created. Indeed, the creation of an Association is mentioned in Annex II, Article 9 of the Ahtisari Plan, which states: "Based upon the principles of the European Charter of Local Self-Government, municipalities shall be entitled to form and participate in an association of Kosovo municipalities for the protection and promotion of their common interests, in accordance with the law."[1186] Furthermore, the Plan states that this Association should offer several services such as: "training, capacity building, technical assistance, research related to municipal competencies and policy recommendations."[1187] These parts of the Plan, even though very clear, have brought both sides to discuss the nature of the Association. As a result, a new `entity` with enlarged authority, in comparison with the Ahtisaari Plan was created, thereby shaking the underlying premises of the institutional architecture of Kosovo.

In the form presented within the Agreement, the Association does not resemble the Association of Kosovo Municipalities, which is a Non-Government Organization. Bekim Sejdiu, one of the Judges of the constitutional court in the case that declared parts of the Agreement unconstitutional argues that: "Delivering "public functions" is an attribute of the government bodies, which, as a general rule, does not belong to non-government or private organizations."[1188] He further claims that the right of the employees of the Association to be treated as public (government) employees, the right of the Association to have a distinct budget, co-own private companies, and the right not to allow members to exit the Association, suggests that the Association will have attributes of: "a separate unit of self-government vested with executive, in addition to supervisory and representative functions."[1189] Therefore, in the eyes of Judge Sejdiu, the creation of the Association interferes with the current

[1185] ECMI, *The Association/Community of Serb-Majority Municipalities: Breaking the Impasse* (Prishtina: European Center For Minority Issues Kosovo, Pax, 2016), 10
[1186] Comprehensive Proposal For the Kosovo Status Settlement, Annex II, Article 9
[1187] Ibid.
[1188] The Constitutional Court of the Republic of Kosovo, *Dissenting Opinion of Judge Bekim Sejdiu*, 11-12
[1189] Ibid.

institutional `hierarchical order` of Kosovo.[1190] This interference obviously raises the possibilities of institutional dysfunctionality. Chapman and Roeder claim that `alternative institutional arrangements`, such as the creation of the ASMM, are not necessarily more effective in countering centrifugal movements.[1191] Shortly, even though Kosovo committed itself to the introduction of a new governmental entity, thereby creating institutional ambiguity, it does not suggest that this will weaken or halt centrifugal forces within the state.

One of the factors that might hamper institutional functionality in Kosovo is the right of the Association to have special relations with Serbia, as its kin-state, and to establish cross-border cooperation with similar organizations of other states. O´Leary points out that minorities often seek to: "establish or reestablish political linkages across state borders, that is, cross- border institutions, ranging from functional cooperation to confederal bodies." [1192] Territorial accommodations per se are considered limited, and as such can hardly meet the needs of a dynamic ethnic group dispersed through two or more polities. As a result, extensive power sharing arrangements mostly include the right of the entity to establish special relations with its kin-state.[1193] Based on this international practice described by O´Leary, Ahtisaari also included in his proposal the right of the Association to cooperate with similar institutions outside of Kosovo and to retain special relations with its kin-state.[1194] Now, let us take into account the decision of the Venice Commission. The Commission stated in its report that kin-state laws entailing provisions for their ethnic kin outside of their state borders can only be applicable if the host state agrees to accept the same.[1195] Deducing this decision of the Venice commission to the case of Kosovo, Serbia as a kin-state of the Serbs of Kosovo, does not directly apply any specific law for the Serbs of Kosovo. Instead, it considers the same citizens of Serbia, thus ignoring the above mentioned decision. Based on the same decision, it can be argued that Serbia constantly interferes in Kosovo´s internal affairs. Serbia´s policies towards the Serbs of Kosovo are unilateral. Therefore, the right of the Association to establish cross-border cooperation only legitimizes the current situation of Serbian unilateral policies towards Kosovo's Serbs. Kosovo´s formal consent to such cooperation, taking into account the power of Serbia to control Kosovo's Serbs, will not change the fact that Serbia will keep a powerful

[1190] Ibid., 10
[1191] Chapman and Roeder, "Partition as a Solution to Wars of Nationalism," 680
[1192] O´Leary, "Power Sharing in Deeply Divided Places," 29-30
[1193] Ibid.
[1194] Comprehensive Proposal For the Kosovo Status Settlement, Annex II, Article 9
[1195] Zsuzsa Csergő and James M. Goldgeier, „Kin-State Activism in Hungary, Romania, and Russia: The Politics of Ethnic Demography," in *Divided Nations and European Integration,* eds. Tristan James Mabry et al. (Philadelphia: University of Pennsylvania Press, 2013), 107

tool to jeopardize Kosovo´s institutional functionality. Commenting on similar situations O´Leary correctly concludes: "institutionalized cross-border cooperation and the formation of bodies with executive powers in more than one formally sovereign jurisdiction, by contrast, do entail at least a pooling – if not necessarily a diminution – of sovereignty."[1196] Finally, Deda also believes that the situation described by O´Leary can be observed in the case of Kosovo. He argues that the Agreement for the establishment of the ASMM only creates: "a shared sovereignty and co-governance of Kosovo and Serbia over the Kosovo Serbs."[1197] Even though cross-border cooperation between ethnic kin should exist, in the case of Kosovo however, this right only strengthens centrifugal forces and hinders the establishment of functional and effective institutional ties between different governmental levels.

Another factor that may jeopardize Kosovo´s institutional functionality and thus swinging the pendulum towards the possibility of secession is the existence of a unified, Belgrade controlled, ethnic political party of the Kosovo Serbs, namely the Serb List or `Srpska Lista`. Brancati in her work claims that the existence of a powerful ethnic party within states raises the chances of separation. She mentions three distinct detrimental courses that such ethnic parties may follow. First, ethnic parties may: "create regional cleavages that may be rooted in, but are not preordained by, political, social, and economic differences across regions, and may even be fabricated entirely."[1198] Second, Brancati points out that ethnic parties often promote legislation or regulations that may diminish the power and authority of other regions, or as in the case of Kosovo, of other municipalities, or which may diminish the rights of minorities within their own entity. Third, ethnic parties are generally able to swiftly mobilize masses to accomplish their political goals. They may mobilize the masses to protest, reject the central government's authority, and even pursue separation with the use of force.[1199] This has been observed several times in the northern part of Kosovo. These three courses that ethnic parties may follow give them the power to jeopardize institutional functionality within states, especially within weak states, such as Kosovo. As Brancati notes: "Regional parties also have a greater incentive to promote both conflict and secessionism in weakly democratic states and in periods of transition, depending on the leadership style of party elites and the amount of competition they face from other regional parties."[1200] There is no serious competition

[1196] O`Leary, "Debating Consociational Politics," 35
[1197] Ilir Deda, "Kosovo after the Brussels Agreement: From Status Quo to an Internally Divided State" (Konrad Adenauer Stiftung, Policy Briefs Kosovo, 2013), 4
[1198] Brancati, *Peace by Design,"* 15
[1199] Ibid.
[1200] Ibid., 60

between `Srpska Lista` and other Serb political parties or initiatives in Kosovo. Any political movement outside the `List` is suspiciously regarded by Serbs.[1201] There is no doubt that the `List` has not only placed the Serb majority municipalities south of the Ibar River under control,[1202] but it has also managed to centralize the decision-making power of Kosovo's Serbs. This accordingly raises its possibilities to effectively use one or more of the described secessionist courses.

The main interest of the Serbs in the northern part of Kosovo is not only to legitimize the current situation through the negotiation process, but also to ensure that the role of the central government remains minimal. This can be observed in the fact that the Ahtisaari Plan already granted most of the self-government rights requested by the Serbs. They see the expansion of the central government authority in the north as a threat.[1203] On the one side, Ernst argues that this part of Kosovo: "will rather live its own separate life from Pristina and the majority population."[1204] On the other side, Weller points out that autonomy agreements often remain indifferent with regards to the functioning of the central government institutions within the autonomous entity, and the general cooperation between the autonomy and the central government.[1205] Lack of clear legal provisions and political will to implement central government authority within the autonomy may lead to institutional rivalry. Disputes between the center and the autonomy can be settled by a dispute mechanism, which in the case of Kosovo would be the constitutional court. In this case, Weller argues that there is a great possibility that the representatives of the constitutional court could be in a majority not sympathizers of the autonomous entity.[1206] Therefore it is difficult to imagine that it could properly set disputes between the two government authorities. Not only will the possibility of institutional rivalry, and indeed institutional dysfunctionality remain, but it might also, as Ernst puts it: "endanger the functionality of the state as a whole."[1207] In brief, the inability of the central government to extend and exercise its authority over the municipalities of the ASMM, significantly limits the chances of institutional and democratic functionality within Kosovo.

[1201] Andreas Ernst, "The April Agreement – A Step towards Normalization between Belgrade and Pristina?" *Contemporary Southeastern Europe*, Vol.1, No.1 (2014): 125
[1202] Ibid.
[1203] Stefan Lehne, "Kosovo and Serbia: Toward a Normal Relationship" (Carnegie Endowment for International Peace, Policy Outlook, 2012), 11
[1204] Ernst, "The April Agreement," 125
[1205] Weller, "Conclusion," 302
[1206] Ibid., 304
[1207] Ernst, "The April Agreement," 125

Analyzed from an institutional functionality and flexibility perspective, and generally as a system of governance, Kosovo is moving from being similar to the Macedonian system of governance to being more similar to the Bosnia and Herzegovina´s system of governance. Without the Agreement for the establishment of the ASMM, Kosovo could be classified as a decentralized system with two levels of government, a central and a local one. Macedonia is currently also functioning based on the same system of governance. Given the establishment of the ASMM with strong elements of territorial autonomy, Kosovo has a tendency to move closer to the Bosnia and Herzegovina´s system of governance. It would be an exaggeration to argue that Kosovo may become as dysfunctional as Bosnia and Herzegovina, while still resembling some similarities. The evidence suggests that when compared on the regional level, Kosovo´s system of governance will become less flexible than the Macedonian system, but more flexible than Bosnia and Herzegovina´s system of governance. Bieber and Keil present and account for the flexibility of the Macedonian and the Bosnia and Herzegovina´s power-sharing systems. According to them, Bosnia and Herzegovina is more prone to institutional dysfunctionality and blockade as a result of the Dayton based `heavily institutionalized´ power sharing system. Alternatively, Macedonia is applying only some elements of classical power sharing mechanisms, thereby remaining more flexible with some immunity from possible institutional deadlocks.[1208] These examples show that strong power sharing mechanisms at the central level may decrease the chances of institutional functionality. Wolff claims that autonomy arrangements for minorities may weaken their interest in central government policy making process, thus reducing the chances of institutional deadlock.[1209] In Kosovo, there is a twofold tendency. On the one side, Kosovo's Serbs want to minimize the role of the central government, which would reduce the chances of potential institutional deadlocks. On the other side, there is a strong tendency of potential institutional rivalry between the central government and the Association, which might bring other forms of institutional deadlocks, and diminish the general functionality of Kosovo as a normal sovereign state. This applies particularly to questions of common interest, for instance, in defense policies.

To sum up, this part of the research identifies four factors that might play a significant role in the future institutional functionality of Kosovo. The findings show that the establishment of the ASMM changes the institutional structure of Kosovo. Furthermore, these findings show

[1208] Florian Bieber and Sören Keil, "Power-Sharing Revisited: Lessons Learned in the Balkans?" *Review of Central and East European Law* 34 (Martinus Nijhoff Publishers, 2009): 344
[1209] Wolff, "Post-Conflict State Building," 1797

that granting autonomy to minority communities through territorial arrangements does not necessarily mean diminishing the power of centrifugal forces. In addition, this type of arrangement increases the chances of institutional deadlock and decreases the flexibility of state institutions. In conclusion, with regards to institutional functionality in Kosovo, it is noteworthy to cite the interesting opinion of Churcher, who points out: "A pragmatic view might be that any agreement acceptable to Belgrade will simply lead, in reality, to endless dysfunctionality."[1210]

VII.5. Local Perceptions and Expectations

There is considerable uncertainty and disagreement across the municipalities in Kosovo regarding whether or not the ASMM should be established and what it should look like. However, there is agreement amongst almost all interviewee that the whole process around the establishment of the ASMM has been `ambiguous` and `unclear`. As a result, the expectations vary profoundly from municipality to municipality and from community to community. As it can be expected, the Albanian community views the idea of the ASMM from a critical perspective. Alternatively, the Serb community hopes that an autonomous authority for the Serb majority municipalities could improve their overall possibilities to more effectively protect and promote their interests in Kosovo. Just like for other issues, other minority communities are split between the Serb-Albanian lines.

A large share of the Albanian population (39%) believes that the establishment of the ASMM will have no practical impact whatsoever. Approximately 25% believes that it might trigger tensions with the majority population, while the same share of the population believes that the ASMM has no actual perspective. Only 11% believes that the ASMM has the potential to `offer more peace and security`.[1211] There was a common view amongst the Albanians interviewed by the author that there is nothing wrong with the establishment of the ASMM, if this Association is established in accordance with the constitution of Kosovo, and if this Association functions in accordance with the applicable legal provisions of Kosovo.[1212] Bekim Baliqi, for example, commented: "if this (the Association, authors comment) will serve the citizens, and if this will protect minorities, then I see this initiative as useful."[1213] Some concerns were, however, expressed that the establishment of the ASMM could jeopardize the

[1210] Robert A. Churcher, „The European Unions role in Kosovo/Serbia negotiations, Success or Failure" (Kosovo and Serbia: a Pathway to Peace, House Committee on Foreign Affairs, Subcommittee on Europe, Eurasia, and Emerging Threat, 2013), 11
[1211] Dalipi and Shala, "The Role of Decentralization on Security," 20
[1212] See, for instance, Bekim Baliqi, interview; Xhevat Tafa, interview; and Hasan Rashiti, interview
[1213] Bekim Baliqi, interview

whole minority integration process that has been achieved in the past years.[1214] Furthermore, concerns were expressed, that the ASMM could evolve through time in unexpected directions.[1215] Writing about the possible majority opposition to such agreements, Kymlicka argues that there is indeed a tendency for the majority population to oppose such agreements.[1216] He further points out that: "much of the opposition to asymmetry amongst the majority national group is rooted in a latent ethnocentrism—i.e. a refusal to recognize that the minority has a distinct national identity that is worthy of respect. This fits into the long history of neglecting or denigrating the desire of national minorities to remain culturally distinct societies."[1217] Kempin Reuter concludes that: "A dissatisfied majority is dangerous as it affects the willingness to further implement and promote minority rights", and this: "leads to ethnic tensions."[1218] Therefore, it remains important that the ASMM functions in accordance with Kosovo's legal system.

A majority of Kosovo's Serbs (65%) believe that the ASMM `will offer more peace and security`. Only 8% of them believe that it will have no impact, while 9% believe that it might trigger tensions with the majority. 18% of the Serb respondents believe that the ASMM has no actual perspective.[1219] Amongst the Serbs interviewed by the author, there was a common view that the establishment of the ASMM is positive. Nevertheless, the respondents agreed that there is little available information on this issue.[1220] Speaking about the ASMM, Hodžić argues: "I believe that through the association of Serb municipalities, the Serb community has the opportunity to fight against assimilation."[1221] Djokić similarly argues that the ASMM will offer more: "security for the Serb community to remain in these areas."[1222] Krstić believes that through the establishment of the ASMM, better cooperation opportunities will be created between the Serb majority municipalities in the south and those in the north. In addition, Krstić hopes that through the ASMM, the Serb majority municipalities in the south could receive some additional funds from the development fund dedicated for the north.[1223]

[1214] Ymer Llugiqi, interview
[1215] Haxhi Krasniqi, interview
[1216] Kymlicka, *Politics in the Vernacular,* 104
[1217] Ibid., 105
[1218] Tina Kempin Reuter, "Including Minority Rights in Peace Agreements: A Benefit or Obstacle to Peace Processes after Ethnic Conflicts?" *International Journal on Minority and Group Rights* 19 (Martinus Nijhoff Publishers, 2012): 385
[1219] Dalipi and Shala, "The Role of Decentralization on Security," 20
[1220] See, for example, Adrijana Hodžić, interview; Dušan Krstić, interview; Jelena Ilić, interview; Miroslav Ivanović, interview; and Stefan Djokić, interview
[1221] Adrijana Hodžić, interview
[1222] Stefan Djokić, interview
[1223] Dušan Krstić, interview

Concerns were, however, expressed by Serbs living in Albanian majority municipalities that there are little chances for the ASMM to benefit them.[1224] Another expressed concern was that the Serb population in Kosovo (wrongfully) believes that the establishment of the ASMM will `solve all their problems`.[1225] Talking about this issue, an interviewee concluded: "Their job is to help (the job of the ASMM, authors comment), and I believe that they will help, but it is not an institution that can change history."[1226] The following comment perfectly summarizes the expectations of the Serbs from Kosovo: "many want the Association to be something it can never be – a replacement for Serbia in its old form."[1227] Indeed, high expectations of Serbs in this phase of the process may result in high disappointments in a later phase of the same process.

The exclusion of non-Serb minority communities from the most important political processes in Kosovo has become an ongoing practice, which has continued with the latest negotiations for the establishment of the ASMM. This practice of `exclusion` was apparently installed during the UNMIK administration.[1228] For example, the failure to include Roma, Ashkali, and Egyptians in the Ahtisaari led status negotiation process also demonstrates the reluctance of, not only Albanians and Serbs, but also of the international community to include minorities in important processes in Kosovo.[1229] As a result of this exclusion, non-Serb minority communities negatively view the establishment of the ASMM. Morina, for example, complained that everything being done in Kosovo is only for the good of the Serbs,[1230] while the Turk deputy mayor of Mamushe declared that the decision to establish the ASMM is a `big mistake`.[1231] Interviewees from the Bosniak community have drawn a parallel between the ASMM and Republika Srpska in Bosnia and Herzegovina. They argue that in contrast with Bosnia, Kosovo should not allow the establishment of a distinct ethnic authority.[1232] Commenting on this whole situation around the ASMM, and the non-Serb minorities, Yusuke Hara states:

[1224] Jovan Bojić, interview
[1225] Vesna Jovanović, interview; see also Miroslav Ivanović, interview
[1226] Anonymous, interview
[1227] Balkans Policy Research Group, *The Association of Serb Municipalities: Understanding conflicting views of Albanians and Serbs* (Prishtina: Policy Report, 2017, 28
[1228] See, Adem Beha, "Minority Rights: An Opportunity for Adjustment of Ethnic Relations in Kosovo," *Journal on Ethnopolitics and Minority Issues in Europe*, Vol.13, No.4 (2014): 98
[1229] For more on the RAE exclusion in the past processes see, Karin Waringo, "Ensuring Romani Interests in the Status Negotiation Process" (Strasbourg: Policy Paper prepared by the European Roma and Travellers Forum, 2006)
[1230] Bujar Morina, interview (authors translation)
[1231] Ilyas Bayraktar, interview
[1232] Hajradin Aliji, interview, and Šerif Aga, interview

> **"**I think that if everybody wants to make this country, to make the society as the multiethnic and as open to any. If this country wants to acquire the values of multi-ethnicity and diversity, than the creation of this association would actually make this country to go backwards. Because at the moment that this is only concerned for the Serbs, and then what about the others? And then giving them some sort of autonomies, which again make communities other than Serb disadvantaged. Because then what to do, because why only Serb, why we don't have that kind of system? Like some of the Kosovar activists always told me, this creates again a gap between the communities, not necessarily between the Albanian and Serb, but among these communities. When you look at the constitution it is very clear, 6-7 official communities should be on the equal foot, and I don't think this association would, let´s say help, this constitutional capital to realize in practice."[1233]

It can be seen from these examples that the agreement for the establishment of the ASMM has divided the general opinion. On the one hand, Albanians fear that the association could pose a risk to the republic in the long term. On the other hand, they view the association as a tool to integrate the north. Serbs widely believe that the association will grant them extensive autonomy. RAE, Turk, and Bosniak communities believe that the association could risk the whole idea of a multiethnic Kosovo. It is important to note that requests of one community undoubtedly affect other communities, and as argued by O´Flynn, this is in contradiction with `democratic equality` that: "requires us to realize that ultimately, groups simply do not have the right to demand their own way, without caring about the space allowed to others to shape their own relation to the polity."[1234]

VII.6. Conclusions

To summarize this situation, the problem of northern Kosovo started as early as 1999, when the first KFOR troops entered the country. In Mitrovica, in an apparent attempt to separate warring parties, the French troops created a military delimitation line between the Albanian inhabited south and the Serb inhabited north. This tactical measure undertaken by the French created a new reality on the grounds in Kosovo.[1235] The northern part continued to be administered by Serbian institutions. UNMIK failed to establish its full authority in this part of the country, while KFOR failed to effectively counter military and criminal groups that

[1233] Yusuke Hara, interview
[1234] Ian O´Flynn, „Review Article: Divided Societies and Deliberative Democracy," *British Journal of Political Science* Vol. 37, No. 4 (2007): 751
[1235] Rathfelder, *Kosovo. Geschichte eines Konflikts*, 288

succeeded in establishing and holding an almost ethnically pure region.[1236] The country as a whole has been separated between the two major ethnic groups. Kosovo's Serbs have also been separated into the Serbs living south of the Ibar River, and the Serbs living north of the river. Kosovo's Serbs living in the south have been mostly moderate and more or less willing to work first within the provisional institutions of self-government, and later within Kosovo's institutions. The Serbs in the north constantly refused any cooperation with Kosovo's institutions. Given the support and encouragement by Belgrade, they remained stiff at this position.[1237] After the declaration of independence, Serbs in the northern part of Kosovo started to engage politically and began to look for new solutions outside of an independent Kosovo. Under these circumstances, in 2008, the Serbs founded the Assembly of the Community of Municipalities of the Autonomous Province of Kosovo and Metohija.[1238] This assembly resembled similarities with the 2003 founded Association of Serb Municipalities and Settlements of Kosovo and Metohija. Now, it can be argued that the establishment of the ASMM only resembles a legitimization of the previous attempts of Kosovo's Serbs to create their own distinct entity. Alternatively, due to a lack of international support and Kosovo's inability to unilaterally integrate this part within its system,[1239] Kosovo was left with almost no other option besides accepting the Serb promulgated ASMM.

The government of Kosovo has already unsuccessfully tried to use the stick and carrot tactic to integrate the northern part into its system. Kosovo created a special fund for the economic development of the north, thus trying to financially attract the northern municipalities to join the countries system of governance. The money has been used, whereas it had no effect on the formal integration. Moreover, the government of Kosovo tried to integrate, or at least it tried to extend its authority, on the northern part by using special police forces. As expected, this attempt failed. However, the central government authorities succeeded in placing the two northern border crossings under its formal control.[1240] Most importantly, the act of sending special police forces to the north made it clear that the status quo was no longer acceptable. One might also argue that the use of limited force was only formal, while the actual aim of the government was `to start moving things`. To put it more simply, the aim was to legitimize the upcoming negotiations, and above all, to legitimize the upcoming new political processes and the resulting compromises.

[1236] Ibid., 333-334
[1237] Ruecker, „Standards and Status," 109
[1238] Hofbauer, "Experiment Kosovo," 243
[1239] Bieber, "Ein multiethnischer Staat?" 155
[1240] Klasing, "Kosovo- ein Fallbeispiel für die Statusproblematik," 263-264

Alternatively, Serbia has achieved most of its realistic objectives towards Kosovo. The "4 Point Plan" presented by the Serbian President Tadić in 2011 has been almost fully implemented. The first point of the plan foresaw a wide ranging decentralization process with Serbian majority municipalities enjoying extensive competencies.[1241] This point has already been implemented, as presented within the Ahtisaari Plan, through the overall decentralization process in Kosovo. From five existing Serbian municipalities, this process created ten Serb majority municipalities. The second point foresaw the creation of a distinct northern region which would enjoy some form of autonomy in the decision-making process.[1242] It can be argue that this point is in the process of being fulfilled. The Agreement for the establishment of the ASMM guarantees special rights for the four northern municipalities, in addition to the competences guaranteed to the Association as a whole. The third point foresaw a unique treatment and protection of the properties of the Serbian Orthodox Church.[1243] This point has been fulfilled. The special rights of the SOC are already entrenched in the constitution. This right has also been presented in the Ahtisaari Plan, and as such it overrules the constitution of Kosovo as well as any other future laws and bylaws which could endanger the SOC. The last point of the plan presented by Tadić, foresaw the establishment of a mechanism which would deal with property issues.[1244] Since 2000, this mechanism has also been in place as the Housing and Property Directorate. From 2006, property claims are considered by the Kosovo Property Agency. However, it seems that President Tadić included this point here not because of a lack of such mechanisms, but more because these mechanisms have partially failed to effectively enforce their decisions. This further hampered the return process of the Serbs in Kosovo. These examples show that apart from failing to stop the independence of Kosovo and failing to partition the country, Serbia has still achieved a remarkable result in shaping Kosovo's current situation.

Returning now to the problems in the north, Weller argues that in these situations, it is very difficult to broker a settlement. In general, he argues that several cases around the globe, with similar elements as Kosovo, remain unsettled. These cases particularly include states where:

> "(a) a secessionist group effectively controlled territory, (b) the government was unable to displace it or to effect a decisive outcome, and (c) there was no willingness or capacity to force a settlement though international diplomatic or military intervention. Given the relatively strong position of the secessionist group (which

[1241] Lehne, "Kosovo and Serbia," 9
[1242] Ibid.
[1243] Ibid.
[1244] Ibid.

> benefits from the status quo at least in the short to mid-term), international mediation efforts were not able to focus on complex power sharing as a solution. Instead, the settlements focused on preserving the status of self-governance that was generated by the secessionist groups through force, rather than on a more complex power sharing solution that would require a greater element of cooperation between the secessionists and the central authorities."[1245]

The same happened with the agreement for the establishment of the ASMM in Kosovo. The evidence presented in this chapter suggests, as similarly argued by Weller, that the `internationally proposed/imposed´[1246] solution for Kosovo, the Ahtisaari Plan, remains the only viable solution for the north and for Kosovo in general. Gallucci, who served as a UN regional representative in Mitrovica, between 2005 and 2008, correctly points out that through effective implementation of this plan, the separation of the north and a forceful integration could be avoided.[1247] Lehne argues that this plan could be better elaborated and its advantages could be presented differently. This would probably make it more acceptable in the north.[1248] In general, this plan also remains suitable because it contains a balance between integrative provisions and self-governing rights for minorities, specifically for Kosovo's Serbs. Similarly, Weller notes that successful examples of conflict resolutions show us the importance of balance between integrative mechanisms and human and minority rights provisions. Lack of such balance creates fragmentation, as Weller notes: "Instead of consolidating the unity of the state in the long term, they may contribute to its disintegration."[1249]

Analyzing the importance of balance between integrative provisions and the establishment of a self-governing entity for minorities, it can best be described using an example of the `Rope Pulling Game`. In the `Rope Pulling Game`, there are two teams, each positioned on either end of the rope. The whole point of the game, as in every game, is to beat the opponent. If the teams are equally strong, balance is maintained. If one of the teams has more power, it can exert a greater pull on the rope and disturb the balance. As such, the stronger team wins the game. Now, simplifying this example and applying it to Kosovo, imagine that the central government is standing at one side of the rope, while Kosovo's Serbs along with the ASMM

[1245] Weller, "Introduction," 7
[1246] Bieber and Keil, "Power-Sharing Revisited," 343
[1247] Gerard M. Gallucci, "The Ahtisaari Plan and North Kosovo" (Transconflict, Policy Paper, 2011), 3, http://www.transconflict.com/10/wp-content/uploads/2011/11/PolicyPaper_AhtisaariPlanNorthKosovo.pdf accessed online on 30.11.2017
[1248] Lehne, "Kosovo and Serbia," 12
[1249] Weller, "Conclusion," 305

are standing on the other side. Both parties will pull the rope constantly in their direction. Any moves by the central government towards more centralization, or any further strengthening of the ASMM, would have the potential to disturb the balance. As argued above, this balance is essential for the survival of the overall state. The agreement for the establishment of the Association leaves an open door for further strengthening of the same, and any further insistence for more power, as Kymlicka puts it: "Reflect a desire to weaken the bonds with the larger political community, and indeed question its very authority and permanence."[1250] Kymlicka further argues that: "Multination states cannot survive unless the various national groups have an allegiance to the larger political community they cohabit."[1251] Therefore, the establishment of the ASMM will probably require a permanent, difficultly sustainable balance between the central government and the Association. Finally, there is no doubt that in its current form, the establishment of the Association creates a permanent risk of partition. As Deda concludes:

> "Given the new institutional arrangements the first agreement provides, it is unlikely that its implementation will lead to integration of the Kosovo Serbs in the new state. Rather, the new institutions will deepen the inter-ethnic divide, this time strengthened through an institutional separation. With a legal jurisdiction of Serbia over the Kosovo Serb settlements and municipalities, as long as Serbia does not recognize Kosovo's independence, and as long as the latter remains outside the United Nations, it is more likely that the Brussels brokered agreement will be a new status quo and another attempt to a peaceful partition rather than an attempt to strengthen Kosovo's ability to function as an independent and multi-ethnic state. This is fully in line with Serbia's cohesive policy of partition of Kosovo, strengthening Belgrade's new attitude of changing means to achieve its long-term goal."[1252]

There is no doubt that an Association of Serb Majority Municipalities should be established. However, its establishment should be based on the provisions within the Ahtisaari Plan, the constitution of Kosovo, and the current statute of the Association of Kosovo Municipalities. The creation of the ASMM could be based on similar examples of Associations, or only on their formal role, created in the region and other multi-ethnic states. It could be based on the

[1250] Kymlicka, *Multicultural Citizenship,*181
[1251] Ibid., 13
[1252] Deda, "Kosovo after the Brussels Agreement," 5

example of the Joint Council of Municipalities in eastern Croatia.[1253] This council represents an association of several Serb municipalities, and it enjoys the status of an autonomous administrative unit with competencies in appointing political representatives, interacting with media, and dealing with cultural and educational issues.[1254] The ASMM could be based on an example of the Alliance of Serb Municipalities in the Federation of Bosnia and Herzegovina.[1255] It could also be based on an example of The Francophone Association of Municipalities which is engaged in improving the administrative capacities of the French community within municipalities in Ontario, Canada.[1256] Overall, these cases support the view that the establishment of the ASMM should primarily take into account the real needs of the Serbs in Kosovo. As the Balkan Policy Research Group writes: "It is only for the benefits of the Kosovo Serbs" and as such, it should not be politically biased: "The Association should not be an instrument for Belgrade."[1257]

To summarize, this chapter shows that positive and negative effects of asymmetric autonomy arrangements are closely related to the analyzed case study. Some elements may strengthen centripetal forces, thus increasing the chances of creating a functional state, and decreasing the chances of conflict. In other cases, the same elements may only strengthen centrifugal and separatist forces, giving them institutional means to pursue their goals. Overall, this increases the chances of conflict. The results of this investigation show that the establishment of the ASMM, in its current form has the potential to exacerbate the ethnic conflict in Kosovo. Furthermore, it undermines the benefits of decentralization as the primary and leading mechanism for conflict resolution and ethnic accommodation. These results are based on the following concluding remarks. First, there is enough evidence to suggest that the ASMM presents a form of territorial autonomy. Second, the transformation of the governance system in Kosovo from a symmetric to an asymmetric system increases the distance between the central government and the Serb ethnic community, thereby considerably strengthening centripetal forces. Third, as a territorial autonomy with asymmetric provisions, the ASMM limits the efficiency and functionality of institutions and the overall state. It increases the possibilities of institutional rivalry between the central government and the ASMM that may

[1253] Article 12 of the Erdut Agreement, the Agreement can found online on https://www.zvo.hr/dokumenti/c731c4afbd208ca.pdf , accessed online on 18.12.2017
[1254] Article 7 of Odluka Vlade Republike Hrvatske za osnivanje Zajedničkog Vijeća Općina https://www.zvo.hr/dokumenti/3004a109384d6b0.pdf , accessed online on 18.12.2017
[1255] http://www.rts.rs/page/rts/sr/Dijaspora/story/1518/vesti/1279170/savez-srpskih-opstina-u-bih.html , accessed online on 18.12.2017
[1256] http://www.afmo.on.ca/en/ , accessed online on 18.12.2017
[1257] Balkans Policy Research Group, "The Association of Serb Municipalities," 37

result in institutional deadlocks. Finally, these results show that all communities in Kosovo have critical views towards and different expectations from the ASMM. The final chapter provides an overall assessment of the main findings.

CHAPTER VIII: CONCLUSIONS

In an interesting example, Lustick, Miodownik, and Eidelson try to explain the correlation between secessionism and the response of state institutions with a PS-I modeling platform using a computer simulation. In their experiment, the authors created a fictional state called Beita, within which they simulated a real world situation. Beita had a majority population and a territorially based minority. The core of the experiment was to analyze the responsiveness of the minority to the application of different state policies towards the same minority. Core findings of the experiment can be summarized as two main points. The first point is that repression as a form of reducing the possibilities of secession may only work at a particular moment, however, failing to be effective in the long-term. The second conclusion is that integrating minority representatives within the state institutions may be more efficient, but it can also trigger "larger minority identitarian movements".[1258] In brief, authors argue that: "noncoercive policies available for the reduction of secessionism and secession may work only at the "cost" of a state accepting a significantly larger role in the public political arena for political expressions of historically "out-group" identities."[1259]

In a similar experiment, Miodownik and Cartrite try to explain the link between institutional accommodation for minorities and their ethnopolitical mobilization. In other words, they tried to answer the question whether decentralization increases or decreases ethnopolitical mobilization of minority groups within states. The result of their experiment (similar to the above mentioned one) shows that: "moderate levels of decentralization encourage ethno-political mobilization, while higher levels decrease it."[1260] Based on these results, Miodownik and Cartrite more broadly conclude that:

> "the risks of transferring power and responsibility to lower local or regional levels of government may be overstated, although half-hearted reforms may in fact produce the most extreme ethno-political mobilization not as a function of the realization of political demands (or lack thereof) but in the facilitation of increasing minority identity salience while simultaneously increasing the probability of identity confrontation and frustration. Entrusting regional elites with more responsibilities,

[1258] Ian S. Lustick, Dan Miodownik, and Roy J. Eidelson, "Secessionism in Multicultural States: Does Sharing Power Prevent or Encourage it?" *American Political Science Review*, Vol.98, No.2 (May 2004), 209
[1259] Ibid., 224
[1260] Dan Miodownik and Britt Cartrite, "Does Political Decentralization Exacerbate or Ameliorate Ethno-political Mobilization? A Test of Contesting Propositions," *Political Research Quarterly* 63 (4) (University of Utah, 2010), 732

> under most circumstances, seems to be the best and more appropriate way to reconcile/mitigate/regulate regional demands for autonomy. Policy makers may find that accommodation, rather than suppression or control, of the diverse interests of regions and groups will protect the integrity of the state, the political institution entrusted with the responsibility of promoting the welfare of the polity as a whole."[1261]

Furthermore, it would have been interesting to use computer simulated experiments to test the conflict reduction effects of decentralization in specific case studies. It may be theoretically possible, however it can hardly be imagined that any computer simulated experiment could explain the complex patterns of conflict within different states and regions. More importantly, there is no study that could `guarantee` that the emergence of conflict will be prevented by decentralization. This is not possible as the risk of conflict always remains. As Grasa and Camps point out: "the use of decentralized governance as a war preventor mechanism is not exempt of risks and its success cannot be guaranteed because of the existence of unpredictable contextual factors."[1262] Even the involvement of third parties or external actors cannot offer such guarantees.[1263] Sambanis argues that: "Where the actual and demanded level of decentralization/self-determination differ, we are likely to observe separatist conflict, including violence."[1264] Therefore, as there is a great possibility that these levels will differ, because "particular solutions" cannot be "valid for all times,"[1265] it can be concluded, in the words of Kymlicka, that: "in any event, the option of secession will always be present."[1266]

Nevertheless, even though it cannot be guaranteed that decentralization will prevent any possible conflict, there is considerable evidence to suggest that in Kosovo, as in most other analyzed cases including the computer experiments, has indeed the capacity to accommodate ethnic minorities and decrease the chances of conflict. Moreover, decentralization can serve as the core basis for a long-term sustainable peace effort. Factors which support this argumentation, including factors that diminish the success of decentralization, as the main findings of this study, are summarized in the following part.

[1261] Ibid., 743
[1262] Grasa and Camps, "Conflict Prevention and Decentralized Governance," 42-43
[1263] Wolff, "Managing Ethnic Conflict," 38
[1264] Sambanis, "Globalization, decentralization and secession," 202
[1265] Ghai, "Constitutional Asymmetries," 169
[1266] Kymlicka, *Politics in the Vernacular,* 116

a) Administrative/Institutional decentralization

Kosovo's constitutional order has been established based on an internationally supported document, the Ahtisaari package. This document offers far reaching rights including advanced institutional accommodation mechanisms for the protection, participation, and promotion of minorities. By incorporating elements of self-rule and shared-rule for minority communities, Kosovo's constitutional order presents one of the most advanced formal systems of institutional organization. This study shows that in terms of guaranteeing a sound self-rule for minorities, Kosovo's local government system has territorially been organized based on an ethnic model. This model enables minority communities to autonomously administer different spheres of their social, political, and economic life. The Serb community now administers ten municipalities while the Turkish community administers one. The Bosniak, Gorani, Roma, Ashkali, and Egyptian communities, living mostly in multi-ethnic areas have not directly benefited in terms of the administrative-territorial organization of the local government system that allows for the self-rule principle for minorities. Based on our findings, decentralization and its conflict mitigating effects are more visible in the six Serb majority municipalities south of the Ibar River. This also applies to the Turkish majority municipality of Mamushe. Alternatively, the four Serb majority municipalities in the northern part of Kosovo present examples of less successful decentralization. Positive effects of decentralization are still not visible in this part of the country.

Our study shows that in addition to the self-rule principle for minorities, elements of shared-rule have been incorporated in the governance system, in both majority and minority dominated institutions of local government. The established system offers local participation rights for all communities in Kosovo. Within the local executive, the interests of minority communities are protected through the position of the Deputy Mayor for Communities and through the Municipal Office for Communities and Return. Within the local legislative, the interests of minority communities are protected through the position of the Deputy Chairperson for Communities and through the Communities Committee. The establishment of communities committees in every municipality, although not always including all members of the minority communities, serve as an example of a promising pattern. The same can be argued for the municipal offices for communities and return that have been gradually established as the most advanced mechanism for minorities at the local level. A further strengthening of this mechanism would increase the effectiveness of local governments in properly dealing with minority issues. To summarize, as argued in this study, the substantive

power vested in the position of the municipal mayor has turned the role of these four shared-rule mechanisms into being more formal than practically effective in protecting and promoting minority rights. However, this fact does not diminish the importance of their existence for a successful conflict mitigating effect of decentralization.

Our research also shows that possible benefits of decentralization have been undermined by the very limited inter-municipal, intra-municipal, and international cooperation between municipalities. This study has found that international cooperation between municipalities in Kosovo and other countries are mostly nonexistent. Cooperation between municipalities within Kosovo also remains limited and weak, mostly either donor-driven or of an ad hoc character. Furthermore, the subsidiarity principle has not been applied at the local municipal level. Even though incorporated in legal provisions, forms of sub-municipal cooperation, especially between minority settlements and majority municipalities has remained weak. As argued in this study, increasing the dynamics of cooperation would lead to more effective governance. This in turn would strengthen the centripetalist elements of the local governance system.

This study also found that institutions of local governance are autonomous in their policy making and policy implementation. The Ministry of Local Government Administration retains only a formal oversight role. For instance, the ministry assures that local governments are working in accordance with the overall legal provisions, although it has no direct sanction mechanisms. Any possible conflict between the central government and local governments can be settled in a court. This shows that the system allows for a high degree of autonomy for municipalities. This decision and policy-making autonomy allows minority communities in municipalities where they constitute a majority to take and implement decisions in accordance with their distinct and/or specific interest. This is one of the most important elements of decentralization. It is in total compliance with the core foundations of minority self-rule and policies of minority accommodation. Autonomy of local government units presents the basic step towards long-term peace efforts. In general, this study shows that the administrative decentralization in Kosovo has been driven by politics of ethnic accommodation, which aims to reduce the chances of conflict and thereby to secure sustainable peace.

b) Fiscal or financial decentralization

This study brings up major findings in the area of fiscal/financial decentralization. These findings confirm that the legal provisions regarding fiscal and financial decentralization in

Kosovo are in accordance with postulates enshrined in the European Charter of Local Self-Government. These constitutional and legal provisions secure financial sustainability of municipalities. Our study also shows that around a quarter of the overall Kosovo budget is dedicated for local governments. This budget breakdown corresponds with the average of OECD countries. The share of municipal own source revenues, on the other hand, compared to the average of OECD countries remains very low. Kosovo also has one of the lowest shares of municipal own source revenues in comparison with other countries in the region. This indicates that the capacity of local governments to collect taxes remains limited. This limited capacity is more visible within the minority managed municipalities. The four northern Serb majority municipalities have failed to collect any own source revenues. The Serb majority municipalities in the south have achieved to collect small financial resources, however, this numbers remain low. Yet, Gračanica is an exception. Local governments, in addition to low own source revenues, have been reluctant in using forms of borrowings as an alternative financing possibility. In short, the limited capacity of local governments, especially of the minority managed local governments to secure local financial resources has significantly hampered their ability to finance vital local projects and to cover the cost of local services.

With regards to central government transfers and grants, this study reveals that the central government transfers a general grant, specific grants for education and health, and other grant forms of specific and/or emergency nature. The central government uses a general formula for distribution of general grants to municipalities. It also takes population size, territory of the municipality, minority population number within the municipality, and whether the municipality represents a minority into account. The largest portion of the grant (89%) is per capita based. The general grant, as the most important grant, represents slightly more than a third of the overall sources of municipal budgets. This distribution method entails elements of equalization. As argued in this research, equalization elements play a crucial role in securing a fair financial distribution between minority and majority managed municipalities. Overall, central government transfers and grants represent more than 80% of local municipal budgets. Now, taking into account the general central government grant and the own source revenues of municipalities, this study reveals that local governments in Kosovo have spending discretion on more than 50% of their budgets.

Turning to the situation on the ground, this study shows that generally there is no objection to the central government financial distribution method across Kosovo’s municipalities. Nevertheless, concerns were raised in reports regarding the inflexible nature of the budget and

lack of accurate statistical data. The later problem has resulted from Serb majority municipalities in the south receiving less financial resources, while the northern municipalities receiving more, even though they boycotted the population census. The northern Serb majority municipalities in addition to the central government transfers and grants have access to a specific development fund and to various grants from Serbia. As argued in this study, this situation has the potential in the long-term to increase the financial gap and to create fiscal disparities between different municipalities. These possible disparities are also being encouraged by subjective central government investments and by various donor agencies.

This research also shows that local governments in Kosovo enjoy a high level of autonomy in fiscal issues, while they enjoy relatively smaller autonomy in financial issues. In terms of fiscal autonomy local governments have discretion in setting both, the local tax base and the local tax rates. In terms of spending or financial issues, local governments retain spending autonomy over own source revenues and general grant. Apart from specific grants, financial autonomy is limited on the local level due to budget ceilings in each spending category, lack of re-allocation rights between budget categories, and the centrally set limits on staff numbers for local governments. These restrictions on municipal spending have caused difficulties in Serb majority municipalities. In comparison with the Serb parallel system, Kosovo's system has significantly reduced the number of employees for these municipalities. Lack of re-allocation rights and budget ceilings have also caused difficulties in several municipalities, resulting in large municipal surpluses. One of the important findings of this study indicates that municipalities spend a significant portion of their budgets (more than 50%) on wages and salaries. This average is far above that of the EU and South-east European countries. These figures show that actual spending preferences of municipalities can be applied to one third of their budgets, specifically to capital investments and subsidies. To sum up, even though local governments are limited by several control mechanisms, which is in accordance with the theory on fiscal and financial decentralization, they enjoy substantial fiscal and financial autonomy.

Another important finding of this research is that local governments are not properly involving minority communities in the budget planning process. This is mostly evident in the case of the Serb majority municipalities and in the municipality of Mamushe. Half of the Serb majority municipalities and the Turkish majority municipality have even failed to organize public budget hearings, which is in violation with the law. The situation in the Albanian

majority municipality is slightly better. The majority is often trying to involve minorities in the process either through formal mechanisms or through direct contact with these communities. Nevertheless, this study shows that even when minorities are involved, the real budget distribution for minorities remains very limited, almost insignificant. In this regard, more than a third of Kosovo's municipalities have failed to allocate specific funds for minorities. Only one Serb majority municipality has allocated such specific funds. This negative trend needs to be institutionally addressed. The involvement of minority communities in the budget planning and spending process represents one of the most crucial elements of a proper fiscal and financial decentralization. Improvements in this area have the capacity to strengthen the confidence of minority communities in their local governments. Furthermore, such improvements would decidedly strengthen the potential of decentralization to adequately accommodate ethnic minorities.

c) Political or democratic decentralization

In the area of political/democratic decentralization, this study argues that elections can be considered as the basis of this dimension of decentralization. The decision in Kosovo to adapt an electoral system based on proportional representation, including the one vote for one candidate rule, has increased the chances of minority communities to secure seats in their respective local assemblies. In contrast with the electoral system, the organization of minorities in many (ethnic) political parties has reduced their chances to secure a solid local political representation. Alternatively, the organization of the Serb community around, more or less, a single political party has the capacity to increase the chances of rebellion against the central government. This is specifically possible when these types of political parties are in control of one or more local governments.

This study also found that through decentralization and direct elections of municipal mayors, minority communities, especially the Serb and Turkish communities were able to secure the municipal mayor posts in every municipality where they constitute a majority. Therefore, political decentralization has substantially improved the chances of minority communities to control local executives and to manage local administrations. Within the local municipal assemblies across Kosovo, as shown here, the Serb community was able to secure a strong representation. Smaller minority communities still find it difficult to secure a proper representation in municipalities where they constitute a considerable minority. According to the seats won in local assemblies during the latest 2017 local elections, the Serb community was able to secure 160 or 16%; the Turkish community 18 or 1.8%; the Bosniak community 5

or 0.5%; the Gorani community 4 or 0.4%; the Ashkali 2 or 0.2%; the Egyptian 1 or 0.1%; while the Roma and the Montenegrin communities failed to secure any seats. The majority Albanian community has achieved to secure 812 seats, or 81%. The failure of smaller non-Serb minority communities to secure adequate local representation within municipal assemblies can be traced either to their scattered nature of residence, non-unification of the political force, and/or to their tendency to vote for larger mainly Albanian or Serb political parties. Overall, political decentralization has increased the chances of larger and territorially concentrated minority communities to secure appropriate and adequate local political representation. This process, *per se,* was not able to secure an adequate representation of smaller minority communities in municipalities of their residence.

Kosovo has also established advanced formal legal provisions and mechanisms for direct participation of citizens in the decision-making process. One of the findings that emerged from this study is that on the one side, citizens are mainly uninterested to take part and to be involved in mechanisms of direct citizen's participation, while on the other side, local governments have constantly failed to establish and implement creative measures which would increase direct citizen´s participation in the political process. Minority communities are most affected by this situation. Another finding to emerge from this study is that in many cases, minority communities are not adequately represented. They are either underrepresented and/or unequally represented within the civil service/administration of local governments. Gorani, Ashkali, Egyptian, and Roma communities are mostly affected by this inadequate representation. It has been argued that this inadequate non-political minority representation at the local level results mainly from non-merit based employment, widespread nepotism, and deficient application of minority language provisions by local governments. A fair and equal representation of minority communities, especially of the smaller ones, would certainly contribute to the success of the ethnic accommodation policies applied in the case of Kosovo.

Similar to the formal legal provisions and mechanisms for the direct participation of citizens in the decision-making process, Kosovo's legal system has also established various accountability mechanisms. These mechanisms include holding of regular public meetings, information sharing and access to official documents, transparent administrative procedures, and the possibility of the citizens to initiate a procedure of mayor´s dismissal. This study, however, shows that these accountability mechanisms remain weak in Kosovo. In this case, only elections can be regarded as the main mechanism of political accountability. Furthermore, this study has demonstrated that local government transparency remains limited.

Citizens mostly remain uninformed about the work of their respective municipalities. This is mostly visible in minority managed municipalities. Increasing the effectiveness of the accountability mechanisms and the improvement of local government transparence is directly dependent on the `informal day-today practice of local government`. Changing this informal practice in the long-term will remain a major challenge for the local government institutions.

d) Challenges to the decentralization process

This study has identified four main challenges for decentralization in Kosovo. The first challenge is associated with the existence of the Serb parallel municipalities across Serb inhabited areas. These parallel municipalities interfere and obstruct the work of the official Serb majority municipalities. Their impact is very strong in the four northern municipalities, while it also remains significantly high in the southern Serb majority municipalities. Until completely closed or integrated within Kosovo's system, the existence of these local level parallel institutions will pose a serious threat to decentralization. The second challenge is associated with the fact that the option of partitioning Kosovo is continuously returning as the core part of the public political debate in both, Kosovo and Serbia. As a result, the four Serb majority municipalities in northern Kosovo remain reluctant to integrate into Kosovo's governance system. The Serb majority municipalities in the south however, fear that a possible partition could reverse the whole process of decentralization. It can be concluded that, as long as the option of partitioning Kosovo across ethnic lines remains on the table, it will continue to negatively affect the decentralization process, and decrease its conflict mitigating effect.

As identified in this study, the third challenge for decentralization is associated with the limited activity of civil society organizations at the local municipal level. The capacity of civil society organizations to influence the local political decision-making process, hold local public officials accountable, and/or foster social, economic, and democratic developments remains minimal. More importantly, their influence is almost nonexistent within minority managed municipalities. This indicates that the process of decentralization in Kosovo lacks one of the most important elements, namely, a strong and vibrant civil society. In terms of developing democratic practices, this has indeed hampered the work of municipal institutions. The final challenge for decentralization is associated with the high level of corruption. In Kosovo, corruption is present in all forms at the local and central levels. It is present in minority and majority managed municipalities. Its presence seriously threats the efficiency of

local governments and poses a direct threat to the new established minority managed municipalities which diminishes the benefits of decentralization.

e) The establishment of the Association of Serb Majority Municipalities

The analysis of the agreement for the establishment of the Association of Serb Majority Municipalities (ASMM), as the second major topic within this study, has shown that if it is implemented in its current form, it will lead to three outcomes. First, it will transform the governance system from a symmetric to an asymmetric system. Second, it could be considered as a territorial autonomy arrangement. Third, it could have a major impact on the institutional functionality of Kosovo. Turning now to the issue of asymmetry, this study shows that the application of asymmetric arrangements through the ASMM in Kosovo has the capacity to increase the risk of violent or non-violent conflict. As initially analyzed by Weller, this argumentation is based on several facts. First, there is a great possibility that the new entity will not be interested in advancing the common state. Second, there is considerable evidence to suggest that the implementation of this agreement will further limit the central government's authority over a part of its territory and population. Third, a fair fiscal and economic integration and resource distribution in an asymmetric system remains problematic. Fourth, there is a possibility that the asymmetrical entity will not comply with the overall democratic rules and procedures. Fifth, overseeing possible human rights abuses within the entity remains difficult. Finally, a unitary state is often not able to address asymmetrical issues. The findings of this study demonstrate that the establishment of the ASMM has already become part of the constitutional order in Kosovo and that the central government will not have the right to dissolve the ASMM. This suggests that with the implementation of the agreement in its current form, the governance system in Kosovo will evolve from a symmetric to a asymmetric system. The findings of this study also suggest that through the creation of the ASMM, the Serb community aims to create an asymmetrically distinct national governance unit as well as a clearly defined and recognized territorial unit. To conclude, this study demonstrates that the establishment of the ASMM increases the risk of secession in Kosovo, and thereby it increases the chances of inter-ethnic violence.

On the issue of the ASMM as a form of territorial autonomy, this study found that seven of ten elements of territorial autonomy are applicable to the case in Kosovo. This study has used Weller's ten elements to identify the nature of the ASMM. First, this study found that the ASMM can be considered as a demographically distinct unit, even though it contains several detached municipalities. Second, this study illustrates that the ASMM will exercise

autonomous power over devolved competencies. Third, it shows that legal guarantees are provided for the entity and that the central government does not have rights to abolish the autonomy. Fourth, it found that the ASMM will enjoy legal supremacy over competencies devolved to the entity. Fifth, it illustrates that the ASMM will have the right to establish international cross-border co-operations. Sixth, this study found that the Association will have its own `legislative, adjudicative, and executive institutions. ´ Seventh, it illustrates that there are centripetal `integrative mechanisms` in place. Alternatively, three elements have been classified as only partially applicable. These include the rights of the ASMM to draft its own statute, carry out significant legislative and executive competencies, and exercise parallel power along with central government over the citizens of the entity. Under these circumstances, this study concluded that the ASMM may well be considered as a form of territorial autonomy.

This study has also showed that the agreement for the establishment of ASMM has the capacity to endanger a normal functionality of state institutions and to shake up the current institutional architecture within Kosovo. This argumentation has been based on four different factors. To begin, in this study, it has been argued that even though Kosovo has committed itself to establish the ASMM as a new institutional entity within the current system of governance, this will not necessarily reduce centrifugal forces within it. Next, it has been argued that a strong relationship between the ASMM and Serbia as its kin-state while considering the capacity of Serbia to directly or indirectly control the ASMM, will provide Serbia with a mechanism to constantly influence the work of different institutions within Kosovo. In this study, it is also argued that the political organization of the Kosovo Serbs around a Belgrade controlled political party and the inability of the Kosovar authorities to exercise its authority in the north raises the possibility of separation and institutional dysfunctionality. To conclude, in terms of institutional flexibility and functionality, in comparison with Macedonia and Bosnia and Herzegovina, this study argues that the Kosovo governance system will become less flexible than the Macedonian system and more flexible than the Bosnia and Herzegovina´s governance system. Consequently, in comparison with the current system, the establishment of the ASMM will result in greater chances of institutional deadlock.

The last part of this study demonstrates that there is a big gap in the opinions of different communities across Kosovo when it comes to the establishment of the ASMM. The Albanian community considers that the establishment and the work of ASMM should be based on the

constitution and the legal provisions of the state. Nevertheless, they view the establishment of the ASMM from a critical perspective. Similarly, other non-Serb majority communities regard the establishment of the ASMM as something negative. They mainly argue that it is against the spirit of the constitution which guarantees equality for all communities in Kosovo. Alternatively, the Serb community views the ASMM from a positive perspective. They are optimistic that the ASMM will improve their security situation and capacity to autonomously administer their social and economic life, as well as offer them better institutional possibilities to influence the decision-making process. The Serb community living in Albanian majority municipalities does not have high expectations from the ASMM. In brief, this study shows that there is still high uncertainty among different communities in Kosovo on whether the Association should be created, and if it is created, what role should it play within the state.

Taken together, the results of this study on decentralization show that administrative, fiscal, and political decentralization in Kosovo, with several weaknesses, has improved possibilities for minority communities to use their right to self-rule and shared-rule more effectively on the local level. Kosovo has created the foundation/basis for a sustainable and effective decentralization. It now needs to properly address the deficiencies of the system, and it needs to develop an institutional practice which would be in complete accordance with the law, and more importantly, in accordance with the postulates of democracy and the principles of minority protection. Therefore, it can be concluded that the first hypothesis of this study has been positively confirmed. Namely, that decentralization in Kosovo has the capacity to strengthen political stabilization and to reduce the risk of secession. Indeed, this case study has demonstrated that decentralization can be an effective mechanism for ethnic accommodation of minority groups.

This research also shows that the decision to establish an Association of Serb Majority Municipalities, in its current form, may increase the chances of inner-grievances, and more importantly, it can thereby diminish the benefits of decentralization. As a result, it can be argued that the second hypothesis has also been confirmed. This hypothesis stipulated that additional decentralization beyond the initial Ahtisaari based process, by establishing the ASMM, can transform the overall governance system of Kosovo. Thereby, it can stimulate a possible emergence of violent or non-violent conflict. This example shows that if a state commits itself to a certain ethnic accommodation policy, it should stick to it, rather than what has been seen in the case of Kosovo where `a solution to a solution, is not a solution`, `never-ending additional solutions` only threaten the system.

The main recommendation derived from this study is directed towards the government of Kosovo, and the international actors involved in the Kosovo project. It primarily remains the government's duty to further strengthen the capacity of local governments, while simultaneously, finding new ways to strengthen centripetal elements of the governance system. Based on the literature, these elements are essential for the overall survival of the state. In this vein, researchers have argued that: "no activities at the local level will succeed in the long run without a national state structure."[1267] Elements of solidarity between different communities are needed,[1268] as Hamber and Kelly note: "true reconciliation processes involve the development, and clear articulation, of a *common* vision by all of the stakeholders in society, from the highest political levels to the individual citizen."[1269] Horowitz argues that: "the most potent way to assure that federalism or regional autonomy will not become just a step to secession is to reinforce those specific interests that groups have in the undivided state."[1270] Kymlicka maintains that: "where this sort of solidarity and trust is lacking, demands for secession are likely to arise."[1271] Accordingly, Breen and O´Neill conclude that conflicts can only be solved by finding: "institutional innovations that recognize the strength of national attachments and yet allow for the peaceful coexistence of rival national projects within overlapping homelands."[1272] Therefore, a key policy priority should be to find a long-term balance between centripetal and centrifugal elements within the governing system of Kosovo.

Further research should be undertaken to more thoroughly explore the administrative, fiscal, and political dimensions of decentralization. New research should be focused on known and unknown factors which may influence decentralization, and its conflict reduction potential. Further research should also be conducted to determine the effectiveness of a combined ethnic accommodation policy, which might include one or more elements of decentralization, territorial/cultural/personal autonomy, self-rule and shared-rule, federalism, and minority protection, which can best be analyzed in connection to one or more case studies. Finally, as

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[1267] UNDP, "Research Paper: Governance Interventions in Post-War Situations: Lessons Learned," in *Governance in Post Conflict Situations* (United Nations Development Programme, UNDP & Chr. Michelsen Institute, *Bergen Seminar Series*, Norway, 2004), 7

[1268] Adeno Addis, "On Human Diversity and the Limits of Toleration," in *Ethnicity and Group Rights*, eds. Ian Shapiro and Will Kymlicka (New York, London: New York University Press, 1997), 142

[1269] Brandon Hamber and Gráinne Kelly, "The Challenge of Reconciliation in Post-conflict Societies: Definitions, Problems and Proposals," in *Power Sharing: New Challenges For Divided Societies*, eds. Ian O´Flynn and David Russell (Pluto Press, 2005), 192

[1270] Horowitz, *Ethnic Groups in Conflict*, 628

[1271] Kymlicka, *Politics in the Vernacular*, 91

[1272] Keith Breen and Shane O´Neill, "Introduction: A Postnationalist Era?" in *After the Nation? Critical Reflections on Nationalism and Postnationalism*, eds. Keith Breen and Shane O´Neill (New York: Palgrave Macmillan, 2010), 5-6

the decentralization process in Kosovo is continuously evolving, more studies are needed on every dimension, to follow-up on its course.

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APPENDIX

Abstract Deutsch

Dezentralisierung als Mechanismus der Konfliktbewältigung kann die Konfliktwahrscheinlichkeit zwischen verschiedenen ethnischen Gruppen eines Staates sowohl erhöhen als auch verringern. Durch Dezentralisierung können ethnische Gruppen entweder im Regierungssystem des Staates eingegliedert (accommodation) werden oder sie können die dezentralisierte Autorität dazu nutzen, ihre Haltung gegen den Staat zu stärken. Die hier vorliegende Studie untersucht Dezentralisierung als Eingliederungsstrategie für ethnische Gruppen (ethnic accommodation strategy) die derzeit im Kosovo implementiert wird. Zunächst wird untersucht wie sich administrative, fiskalische und politische Dimensionen der Dezentralisierung auf den Prozess der Eingliederung ethnischer Minderheiten ausgewirkt haben. Die Arbeit analysiert und gibt Antworten darauf, wie der Dezentralisierungsprozess die Konfliktwahrscheinlichkeit reduziert hat. Die Auswirkungen der Vereinbarung zur Gründung der Vereinigung der Gemeinden mit serbischer Mehrheit auf die Dezentralisierung und das allgemeine Verwaltungssystem des Kosovo werden auch kritisch untersucht.

Diese Forschung wurde unter Verwendung von qualitativen Methoden durchgeführt. Die Daten für diese Studie wurden aus einer Vielzahl von relevanten Büchern, Artikeln, Dokumenten, sowie tief greifenden Interviews die im gesamten Kosovo durchgeführt wurden, zusammengestellt. Die Daten wurden durch die *constant comparison analysis* Methode analysiert und durch den *inductive reasoning process* interpretiert. Zusammengefasst ergibt die Auswertung dieser Studie, dass das Kosovo die notwendige formelle Basis für eine erfolgreiche Dezentralisierung etabliert hat. Diese Ergebnisse zeigen jedoch auch, dass die Verringerung des Abstandes zwischen der formalen Dezentralisierung und ihrer effektiven Realisierung vor Ort nach wie vor die Hauptherausforderung darstellt. Wenn dieses Problem nicht systematisch angegangen wird, kann dies den gesamten Prozess auf der langfristigen Basis gefährden. Darüber hinaus deuten die Ergebnisse darauf hin, dass die Gründung der Vereinigung der Gemeinden mit serbischer Mehrheit, in ihrer jetzigen Form, das gesamte Regierungssystem des Kosovo verändern wird. Diese Änderung kann den Dezentralisierungsprozess beeinträchtigen. Zusammenfassend zeigt diese Studie die Nützlichkeit und Risiken der Dezentralisierung als eine Eingliederungsstrategie

(accommodation strategy) für Minderheiten. Sie hat das Ziel die Theorie und Praxis der Dezentralisierung zu bereichern, und was noch wichtiger ist, es kann eine wertvolle Unterstützung für Entwickler und Umstzer der Dezentralisierung, nicht nur im Kosovo, sondern auch in anderen Konflikt- und Postkonfliktsituationen weltweit sein.