THE STATE OF LOCAL DEMOCRACY IN THE WESTERN BALKANS

A Study of Local Democratic Processes and Institutions in Albania, Bosnia and Herzegovina, The Former Yugoslav Republic of Macedonia, and Serbia and Montenegro.
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This study was produced by Elena Gadjanova. It does not represent the official views of the Committee of the Regions.
FOREWORD

The future of the Western Balkans lies within the European Union. A prime political objective of the EU is to bring long-lasting stability and foster democratization in this part of South-East Europe.

The Committee of the Regions has pledged its full support in the efforts of Western Balkan countries to consolidate democracy and promote sustainable social and economic development. Local and regional authorities, both in Western Balkan countries, and their EU counterparts, must play an active role in this process. We have emphasised on numerous occasions the need for capacity-building at the regional and local level in the potential Candidate Countries, since successful ongoing process will ultimately depend on local and regional authorities. The active participation of the latter towards the European integration processes in the Western Balkans should be sought and encouraged. Therefore, a particular effort must be made to bolster democracy and the rule of law at the local and regional level.

This study provides a snapshot of the state of democracy at the local level in Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia, including Kosovo. It examines a number of factors, determining local democracy in each country – such as degree of legal and fiscal autonomy, provisions for citizens’ involvement in decision-making, implementation of minority rights, civil society, media, etc., and assesses the impact of a series of ‘external’ influences on the consolidation of democracy at the local level, such as strength and salience of central state institutions, issues of self-determination and ethnicity, as well as past international involvement. An analysis of the achievements and challenges to democracy at the local level is done on a country-by-country basis, bearing in mind the huge variations in local conditions across the Western Balkans.

Now is a crucial time for the consolidation of democracy at the local level in the Western Balkans. A lot has been achieved in recent years, ground-breaking changes have been made, and the political consensus for reform has seldom been stronger. Local authorities in the Western Balkans are at present in sharp need of support and encouragement to implement agreed reforms and it is a strategic interest of the EU’s local and regional authorities to establish long-lasting relations with their Western Balkan counterparts. By identifying the strengths and challenges to local democracy, this study can serve as a basis for a continued and enhanced cooperation between local and regional authorities in the EU and the Western Balkans.

Michel Delebarre

President of the Committee of the Regions
# TABLE OF CONTENTS

**Introduction: Democratization in the Western Balkans: Towards a Definition**

1. Concepts of Democracy and Established Definitions of Democratization  
   1
2. Local Democracy: Definition and Indicators  
   2
3. The Balkan Influence: Ways to Conceptualize Levels of Democratization Specific to the Region’s History and Developments  
   4
4. Summary  
   20

**Chapter I: Local Democracy in Albania**  
22
1. Progress towards Decentralization  
   23
2. The Institutional Framework for Local Democracy  
   25
3. The Procedural Functioning of Local Democracy  
   44
4. State Weakness in Albania  
   49
5. International Involvement in Albania  
   51
6. Economic Transition and Consolidation in Albania  
   54
7. Corruption and Organized Crime in Albania  
   56
8. Conclusion: The State of Local Democracy in Albania – Summary of Main Findings  
   58

**Chapter II: Local Democracy in Bosnia and Herzegovina**  
60
1. Progress Towards Decentralization  
   61
2. The Institutional Framework for Local Democracy  
   62
3. The Procedural Functioning of Local Democracy  
   80
4. State Weakness in Bosnia and Herzegovina  
   89
5. International Involvement in Bosnia and Herzegovina  
   90
6. Ethnicity in Bosnia and Herzegovina  
   93
7. Economic Transition and Consolidation in Bosnia and Herzegovina  
   97
8. Corruption and Organized Crime in Bosnia and Herzegovina  
   99
9. Conclusion: The State of Local Democracy in Bosnia and Herzegovina – Summary of Main Findings  
   101
Chapter III: Local Democracy in the Former Yugoslav Republic of Macedonia

1. Progress towards Decentralization
2. The Institutional Framework for Local Democracy
3. The procedural Functioning of Local Democracy
4. State Weakness in Macedonia
5. International Involvement in Macedonia
6. Ethnicity
7. Economic Transition and Consolidation in Macedonia
8. Corruption and Organized Crime in Macedonia
9. Conclusion: the State of Local Democracy in Macedonia
   – Summary of Main Findings

Chapter IV: Local Democracy in Serbia and Montenegro

1. Progress towards Decentralization
2. The Institutional Framework for Local Democracy
3. The Procedural Functioning of Local Democracy
4. Unresolved Status Issues in Serbia and Montenegro
5. State Weakness in Serbia and Montenegro
6. International Involvement in Serbia and Montenegro
7. Ethnicity in Serbia and Montenegro
8. Economic Transition and Consolidation
   in Serbia and Montenegro
9. Corruption and Organized Crime
   in Serbia and Montenegro
10. Local Democracy in Kosovo
11. Conclusion: the State of Local Democracy
   in Serbia and Montenegro – Summary of Main Findings

Conclusion: The State of Local Democracy in the Western Balkans

BIBLIOGRAPHY

ANNEXES
Introduction

DEMOCRATIZATION IN THE WESTERN BALKANS – TOWARDS A DEFINITION

1. Concepts of Democracy and Established Definitions of Democratization

Democratization can be defined simply as the process through which democracy is established. There is a broad-ranging debate among academics and policy-makers as to what constitutes democracy and what its observable characteristics are. One of the influential definitions, now widely regarded as established, is given by Diamond, Linz and Lipset. It breaks down the concept into three verifiable features: 1/ “regular, free and fair elections”, through which individuals and organized groups compete for all positions of government power; 2/ a political process, which ensures the participation and non-exclusion of all social groups within a state, and 3/ high level of “civil and political liberties” – freedom of association, assembly and demonstrations, free press and speech.

The process of post-Communist transition in Eastern Europe has led to an extension and clarification of the second aspect of the above definition in order to accommodate the efforts of institutional building and political re-adjustment needed for the establishment of democracy in the region. The focus has shifted to states’ institutional structure and democracy has become equated with “constitutionalism” – or the legal arrangements necessary to achieve political stability and an all-inclusive political process.

Hence, all new democracies’ path of democratic development is measured by indicators relating to the strength and viability of official institutions established in order to guarantee an all-inclusive political process.

2 Ibid.
2. Local Democracy: Definition and Indicators

Following from the above definition of democratization and taking into account the procedural and institutional determinants, a highly-evolved and successful local democracy needs to be able to guarantee both effective representation of its constituents and encourage their participation in local decision-making through various procedural channels (Figure 1). To achieve this, a number of institutions and processes need to be in place.

*Figure 1: The Procedural and Institutional Determinants of Local Democracy*

*Source: Adapted from IDEA, Leadership for Local Democracy, Local Democracy Assessment Guide, 2002;*
The *institutional* determinants of local democracy include the legal frameworks for the functioning of local government, electoral systems and political formations at the local level, the local government institutions, as well as civil society and the media.

The *procedural* determinants of local democracy relate to the administrative capacity for ensuring the inclusiveness and fairness of elections held, degree of openness of local authorities, provisions for minority rights implementation and their effectiveness, as well as the ability of citizens to influence local decision-making through various channels.

Hence, we can draw up the following indicators for evaluating the state of democracy at the local level:

1. **The Institutional Framework for Local Democracy**

   1.1. Legal and fiscal autonomy of local government
   1.2. Provisions and frequency of local elections
   1.3. Electoral system design and performance
   1.4. Number and membership of parties active at the local level
   1.5. Structure of council powers and decision-making procedures of local administrations
   1.6. Civil society (number and primary sphere of activity of NGOs, citizen groups, etc.)
   1.7. Local media (structure, independence, and editorial arrangements).

2. **The Procedural Functioning of Local Democracy**

   2.1. Administration, effectiveness and fairness of elections held, voter participation.
   2.2. Degree of openness of local authorities
   2.3. Fairness (policies guaranteeing wide inclusion, minority rights implementation)
   2.4. Transparency (availability of local documents to the wider public)
   2.5. Provisions for ‘citizens’ outreach’ – the right of citizens to influence local decision-making through referenda, ballots, petitions, etc.
3. The Balkan Influence: Ways to Conceptualize Levels of Democratization Specific to the Region’s History and Developments

The Balkans have posed a theoretical challenge to established views of democracy and the process of democratization. A widening gap in the democratization processes between East European countries on the one hand and the Western Balkan ones on the other was becoming all too evident by late 2001-2002. The establishment of relatively stable governments in all countries of the Western Balkans, the holding of a number of elections without major irregularities, as well as some favourable economic developments, failed to diffuse ethnic tension and bring long-lasting stability. Trust in democratic institutions remained alarmingly low and there was pervasive pessimism among citizens as to the future development of the region.

In 2005 the International Commission for the Balkans stated that “the international community has failed to offer a convincing political perspective to the societies in the region” and called for a new strategy for the democratization of the Balkans.

It was clear that there were substantial gaps in established views of the process of democratization, which failed to make it applicable to the Western Balkans. This has led analysts to reconsider existing democratization definitions and process explanations. Due to the specific historical background and developments of the region, several additional factors have significant bearing on the processes of democratic consolidation, both at national, and local level.

For the purposes of this analysis, these factors have been grouped under the following wide headings:

♦ Self-Determination Issues
♦ The Nature of Balkan States
♦ The Involvement of the International Community in the Region

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6 As demonstrated by data from numerous IDEA opinion polls, see also Table 1 below.
7 International Commission on the Balkans, *The Balkans in Europe’s Future*, 2005, p.8
3.1 Self-Determination Trumps Democratization (The Primacy of Self-Determination) - Unresolved Status Issues

It was assumed for a long time that economic stabilization and improvement in living conditions in the Balkans would divert attention from the unresolved “status issues”\(^9\). However, policies aimed at fostering economic and social development but disregarding these issues proved futile.\(^10\)

Yugoslavia’s dissolution demonstrated the primacy of self-determination over concerns about democracy. Moves towards democracy in Belgrade did not make Kosovo or Montenegro give up striving for independence. The experience of Croatia is a good example of successful democratization occurring only after state consolidation.\(^11\) The unresolved status of Kosovo and the provisional constitutional frameworks in BiH, are seen as the major obstacles to the political development of the region.\(^12\) The present constitutional structure of Bosnia and Herzegovina is deemed “dysfunctional” and Montenegro has recently held a referendum on its independence.

One lesson emerging from the region is that no sustainable local democracy can be in place before outstanding status and constitutional issues are resolved. Unresolved status issues at the state level are usually accompanied by the lack of a coherent regional government framework.\(^13\) Even in places where local and regional government provisions are in place, unresolved status issues have bearing on their stability and predictability and undermine the progress of the devolution process. It can generally be observed that across the region in question, countries with none or few unresolved status issues (Croatia, Albania, Macedonia) are in a more advanced

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\(^9\)The break-up of former Yugoslavia produced a number of territorial entities with unsettled international standing: for example, the unresolved international status of the former province of Kosovo, the referral to the Republic of Srpska in Bosnia and Herzegovina as an “entity” for a lack of better word.

\(^10\) International Commission on the Balkans, \textit{Ibid.}, p. 13


\(^12\) International Commission on the Balkans, \textit{Ibid.}, p. 18

\(^13\) As a survey of local provisions for each state will demonstrate.
state of devolution than countries or entities with outstanding status problems (Serbia, Bosnia and Herzegovina).

Hence, the presence of unresolved self-determination or “status” issues will be included as an independent variable when evaluating the level of local democracy and devolution in the Western Balkan States.

3.2 The Nature of States in the Balkans – Weak States, Quasi-states and International Protectorates

Even after the resolution of major self-determination issues in the Western Balkans, significant obstacles to democratization are posed by the nature of emerging states. The break-down of Yugoslavia led to the appearance of a ‘political patchwork’, composed of a number of independent republics (Croatia, Macedonia), international protectorates (Kosovo) and quasi-protectorates (Bosnia and Herzegovina), autonomous regions (Breko in Bosnia and Herzegovina) and even autonomous cities (Serb Mitrovica in Kosovo and Sipkovica in Macedonia).14

The growing literature on state weakness now points towards significant state failure in the Western Balkans. This has been identified as the inability of states to ensure public goods, maintain the rule of law, capture the imagination and secure the trust of their citizens and governments’ tendency to serve particular private interests.15

The ‘comparative measure of freedom’ methodology developed by Freedom House rests on similar indicators and points towards three ‘partly free’ countries in the Western Balkans – Albania, Bosnia and Herzegovina, and Macedonia. Kosovo, regarded as a special case due to its international protectorate status, is also deemed ‘partly free’.16

State weakness is a complex phenomenon. In the Balkans, it is linked to and resulting from a number of factors: constitutional design, severe ethnic divisions, the legacy of the Communist past, the difficulty of economic transition, the high levels of corruption, each of which is discussed separately below. The inadequacy of the central state institutions is particularly detrimental to the consolidation of democracy at the

15 Krastev, I, “The Balkans: Democracy without Choices”, p. 49
local level in the Western Balkans, where the process of functional decentralization is currently gathering speed. It leads to delays, administrative mix-ups, unclear division of powers. And also, citizens disillusioned with their governments, are skeptical and unlikely to trust local authorities either, which undermines the entire participatory side of local democracy.

As a result of a variety of externally-imposed constitutional frameworks in the region (discussed in more detail below, pt. 3.3), the authority and strength of Balkan states are further undermined. At the local level this leads to confusion regarding representation and responsibility and further undermines trust in local institutions.

State authorities are de facto competing with decentralized powers (mostly evident in the case of BiH and Serbia and Montenegro), with parallel institutions, unaccountable to the central authorities (Kosovo), and with external presence with un-clearly defined mandates.17

For example, the High Representative in Bosnia and Herzegovina and the Special Representative of the Secretary General in Kosovo continue to exercise significant power and have the authority to override local decisions. The specifics of the use of this authority are not well defined or understood. As a result, citizens are unable to distinguish between the various authorities and lack perception of who is responsible for what.18

It is therefore important that the overall government framework be taken into account when evaluating the level of local democracy in the Western Balkans. As argued above, the weakness of central state institutions has a negative impact on the processes of democratization at the local level. The viability of the central government and its relations with local authorities should be carefully analysed and any clashes of authority or unclear division of power or responsibilities should be duly noted and taken into account.

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17 International Commission on the Balkans, Ibid., pp 15-18
18 Ibid., p. 17
3.3 International Involvement in the Region and Leverage of International Organisations in Transforming Western Balkan States

Unlike other CEECs, who after the collapse of Communism embarked on successful transition and creation of regional structures (such as the Central European Initiative and CEFTA) with the support and encouragement of the EU, the Western Balkans became embroiled in wars of secession and self-determination.19

International involvement in the Western Balkans initially focused on reconstruction and stabilization of the region. The Stability Pact for South Eastern Europe was adopted in June 1999 with the aim of strengthening regional inter-state cooperation and streamlining existing stabilization efforts.20 The Stabilisation and Association Process was instigated by the EU soon after in order to “help bring stability to the [Western Balkans] by integrating each country into European Structures”21.

Alongside assisting reconstruction, international actors embarked on an unprecedented flurry of constitutional brokering in the region: In the years between 1994 and 2002 international negotiators fostered agreements on the constitutional framework of Bosnia and Herzegovina as part of the Dayton accords (1995), constitutional changes in the Republika Srpska (1996), a constitutional framework for Kosovo (2000), the Ohrid Agreement – providing a constitutional framework for Macedonia (2001), and the institutional provisions for the State Union of Serbia and Montenegro (2003). States in the region were pressured by the OSCE, the EU and other influential international actors to adjust their constitutional frameworks largely along ethnicity lines.22 As a result, the provisions were adopted but hardly ever implemented.23

The fact that the international community regarded the Balkans as a post-conflict region, where security consideration were to be of primary significance, led to various

20 http://www.stabilitypact.org/about/achievements.asp
21 See Introduction, Summary and Conclusions of the Stabilisation and Association Agreements with Western Balkan countries.
23 Reasons for the lack of implementation include financial shortages on the part of governments, lack of desire to prioritise minority provisions, lack of sense of urgency, etc.
temporary measures, such as the UNSCR 1244 on Kosovo or the Constitutional Charter of Serbia and Montenegro.24

What is common to all these hastily devised solutions is that they are not informed by popular mandates, but result from hard bargaining between elites in order to stop the fighting. For example, the Dayton constitutional arrangements for Bosnia and Herzegovina created two state-like entities, ten Federation Cantons, 149 municipalities and one special district (Brcko). While it proved useful in putting an end to hostilities by ensuring wide participation, it created what is seen as a ‘very incoherent and ineffective state’.25 Such a botched political structure does not encourage cooperation among the various participating groups, but leads to segmentation and increases autonomy sentiments along ethnic lines.

The number of peace-building initiatives26 in the region initially failed to produce the desired results mainly due to a lack of funds and the inability to present the region with a clear perspective for EU accession.27 Evidence of comparative studies between Balkan and other Eastern European Countries suggests that while integration within EU helps to stabilize a country and promote democratic development, partial integration has precisely the opposite effect.28

The lack of desire of the EU to offer a clear integration perspective to the countries of the Western Balkans prior to 200029 opened an ‘integration gap’ with the rest of the Eastern Europe and exacerbated the security situation in the region.

NATO’s military intervention against the Federal Republic of Yugoslavia in 1999 and the emerging evidence of massacres and ethnic cleansing convinced the EU that a more active and responsible position vis-à-vis the countries in the region was necessary. The turning point came in 2000 with the victory of the democratic

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26 Including the Royaumont initiative launched after Dayton, the US-launched Southeast European Cooperative Initiative (SECI), South Balkan Development Initiative, CEI, CEFTA, among others.
29 The European Council of Feira in June 2000 endorsed future membership of the Western Balkans as a common objective of the Union and States in the region. See Feira European Council Presidency Conclusions, June 2000.
opposition in Serbia over Slobodan Milosevic’s authoritarian regime. The change of heart within the EU towards the Western Balkans was tangibly expressed at the Thessaloniki European Council of June 2003. It was declared that the Western Balkans “will become an integral part of the EU, once they meet the established criteria”.30 The Union is convinced that “the institutionalization of the European perspective is the most efficient way to foster and accelerate the overall political, economic and administrative reforms in aspirant countries”.31

The Stabilisation and Association Process was to remain the main framework for relations between the EU and states in the Western Balkans, but with a new priority. The process of economic transition and democratization in the Balkans would now produce future EU member states. The EU’s new objective is to transform the Balkan states into member states, while assisting with state-building activities.

The sources of EU leverage in transforming acceding states are numerous.32 By linking the Stabilisation and Association Process to future accession, the EU acquired a powerful tool in influencing the democratization processes in the Western Balkan states. As part of the stabilization and association process requirements, the EU has identified several prerequisites for the successful democratization of a participating state. These are: effective governance, effective public administration, effective judiciary, effective human rights provisions, compliance with existing conditionality and international obligations.33

Care should be taken when evaluating the influence of EU leverage on democratization processes within a Western Balkan state.

As a rule, the EU’s position towards the region judges its level of democratization by the extent to which it is compatible with EU norms and standards. Genuine political developments are viewed with scepticism. The benefits of a EU membership perspective for domestic democratic processes have been well documented. EU

30 Thessaloniki European Council Presidency Conclusion, June 2003, p. 12
31 International Commission on the Balkans, Ibid., p. 14
33 See Stabilisation and Association Reports for all countries in the region of 2004 and 2005.
financial assistance for administrative and capacity-building at the local and regional level brings positive results, as numerous reports testify.\textsuperscript{34}

However, a lot remains to be desired. Public opinion surveys of the region show widespread mistrust of institutions and point towards a widening gap between the public and governing elites. While encouraging democratic reforms through its many sources of leverage, the EU also creates a democratic deficit. The imposition of constitutional changes in Macedonia is revealing in this respect. This imposition was seen as an external dictat and fed public mistrust in the institutions thus created.\textsuperscript{35}

Analysis should be made of the relations between Western Balkan countries with international organisations in general, and the EU in particular, focusing on contractual obligations undertaken, reforms implemented and their effects, as well as public support for these.

3.4 Ethnicity

As we have seen above, the results of international involvement in the region have by no means been uniformly positive. The processes of state building and democratization have been further compounded by the stark ethnic divisions in the region.

The Western Balkans, even after the ethnicity wars and ethnic cleansing of the 1990s, remain a region, containing multi-ethnic areas.\textsuperscript{36} An ongoing process of separation along ethnic lines within established nation-states has been observed in most of the territory of the Balkans and is most evident in Macedonia and the Serb autonomous region of Vojvodina.\textsuperscript{37} Hence, the ‘multi-ethnic countries’ of the Western Balkans are paradoxically composed of ‘mono-ethnic regions’. Vladimir Gligorov’s famous question “Why should I be a minority in your state when you can be a minority in mine?” relates to the local level as well. The redrawing of municipal boundaries gives renewed salience to this question. The protests against the decentralization plan of the government of Macedonia in July 2004 illustrate this point.\textsuperscript{38}

\textsuperscript{34} Example of good practices, as well as the break-down of funding by year will follow in the discussion of each Western Balkan state.
\textsuperscript{35} Krastev, I., Democracy without Choices, p. 45.
\textsuperscript{36} Bieber, ibid., p. 3
\textsuperscript{37} Ibid., p. 4
Due to the long history of ethnic conflict in the Balkans, it is often assumed that ethno-political problems are among the primary hindrance to democratization of the region. This assumption formed the core of proposed political solutions to conflicts in the Western Balkans.

The solutions thus devised allocate power to clearly defined ethnic groups in constitutionally prescribed quotas and proportions at the national level. Such is the case in the constitution of Bosnia and Herzegovina, the Ohrid Agreement on Macedonia and the constitutional framework for Kosovo. One subtle consequence of these solutions is the institutionalization of ethnic division at the highest national level, which by no means serves to dissuade tensions at the regional level. Quite the opposite, it destroys incentives for cooperation among the various ethnic groups at government level, thus undermining the strength of the state and its institutions. The fact that groups are defined according to ethnicity reinforces the ethnic division within a country and poisons relations with the central state institutions.

At the local level, the issue of ethnicity translates also to definition and safeguards of minority rights in the various regions and municipalities. Significant progress has been made in recent years regarding the legal framework for safeguarding minority rights in the Western Balkans. Croatia and the Federal Republic of Yugoslavia passed such legislation in 2002 and Bosnia and Herzegovina followed suit in 2003. All legislation adopted is modelled on the Framework Convention for the Protection of National Minorities. Challenges are now posed by the lack of implementation of the adopted legal provisions.

Another challenge is to bridge the apparent gap between the principles of “minority rights” and “civil society” in order to avoid the ghettoisation of regions of the Balkans. While the benefits of decentralization are clear, the reality on the ground is somewhat different. The danger here is that decentralization adds to ethnic separation, thus increasing the chance of ethnic conflict. Due to the ongoing process of local consolidation along ethnic lines in the Western Balkans, it has become possible that a minority group at the state level is actually a majority at the local level.

39 For a leading policy document, espousing this perspective, see the World Bank’s 2000 report “The Road to Stability and Prosperity in South-Eastern Europe”.
40 The Constitution of Bosnia and Herzegovina, for example, as well as the power sharing agreements of the Ohrid Agreement in FYROM.
41 As argued by a panel of experts in International Commission on the Balkans, Ibid.
42 Bieber, Ibid., pp 4-5
43 Ibid., p. 11
During the 1990s, majorities at the state level were also majorities at the local level, regardless of the ethnic composition of a given region (town, municipality). Later, however, the former majorities were put in a minority role. A particular problem is posed by areas with tense inter-ethnic relations, resulting from war memories or past incidents, where policies tend to be rather terse and nationalistic.\textsuperscript{44} There has been an alarming rise in what has been termed ‘grassroots nationalism’ in recent years.\textsuperscript{45}

This, alongside unclear devolution of powers and responsibilities from the state to local level, and the inability of governments to exercise power over local authorities, sometimes results in serious violations of minority rights by local authorities.\textsuperscript{46} Local governments are also less susceptible to direct international pressure, which decreases their incentives to abide by adopted rules.\textsuperscript{47}

European integration has been powerful in causing governments to undertake reform, but inefficient in dissipating local nationalist sentiments. The concerns of state majorities, who are local minorities are often neglected, paving the way to conflict and populist sentiments. Also, because the electorates of the major political parties are divided along ethnic lines, politicians do not rely on minority support to win government offices. As a result, once in office, they do not regard the concerns of minorities with due urgency.

On the positive side, there are strong indications that policies encouraging cooperation among ethnic groups at the local level could be successful, as a survey commissioned by the International Commission on the Balkans shows that on the municipal level inter-ethnic relations are much better managed compared to the national one.\textsuperscript{48}

Hence this analysis will pay special attention to inter-ethnic relations at the local and regional level in the Western Balkans, both in terms of institutionalised frameworks and actual practices. It will look for signs for volatility and attempt to analyse the sources and implications of these.

\textsuperscript{44} Ibid., p. 16
\textsuperscript{45} Attacks against minorities at the local level in Kosovo and Vojvodina in 2004, attacks against mosques in Nis and Belgrade, even attacks against Hungarian minorities have been reported.
\textsuperscript{46} Bieber, \textit{Ibid.}, pp 15-16
\textsuperscript{47} International Commission on the Balkans, \textit{Ibid.}, p. 33
\textsuperscript{48} Ibid., p. 32
3.5 Democratization in the Time of Economic Transition

The institutional capacity and democratization efforts of states in the Western Balkans were severely undermined during the 1990s by the problems and challenges of post-communist transition and also directly and indirectly by the violence and sanctions associated with the wars of Yugoslavia’s dissolution.\(^49\) As a result of the authority break-down in Albania in 1997, NATO’s military intervention against the Milosevic regime in Serbia in 1999, and the 2001 conflict in Macedonia, attempts at state-building were practically halted.\(^50\)

The so-called “development paradigm” linked the establishment of democracy in countries in economic transition with the development of the economy, the stability of the institutional framework, and the existence of a functional state.\(^51\)

A functional and growing economy has been identified as a key prerequisite for successful democratization. But the process is two-fold – democratic consolidation is both driven by and drives economic growth in the region.\(^52\) Evidence, which has forced analysts to re-consider the viability of existing theories of democratization, suggests that \textit{economic growth does not necessarily lead to public support and trust in institutions}.\(^53\) Since 1998 most countries in the Balkans have been implementing a wide package of internationally-approved reforms, which, together with substantial international assistance packages have had reasonable success in fostering growth and providing incentives for saving and production.\(^54\)

However, the transition process is at its inception and citizens have seen only few of its benefits. Some degree of economic recovery was experienced in the region alongside collapsing trust in institutions and falling optimism for the future.\(^55\)

Growth in real wages remains low, poverty indicators are alarming, and inequality is growing.\(^56\) Surveys across the region demonstrate that people are mostly concerned

\(^{49}\) Cohen, \textit{Ibid.}, p. 12
\(^{50}\) Ibid.
\(^{51}\) See the World Bank’s “The Road to Stability and Prosperity in South Eastern Europe”, 2000, for an illustration of this paradigm.
\(^{52}\) Centre for Policy Studies, \textit{Ibid.}, p. 16
\(^{53}\) Ibid., pp 20-21.


with the lack of employment, the dire economic situation, poverty, etc. The danger here is that the prolonged transition process could fuel extremist sentiments, increase violence at the local level, and undermine the democratization process. The lack of economic perspective could fuel nationalism and inter-ethnic tension at the local level.

As regards local democracy and decentralization, all countries of the region have had to overcome the legacy of a highly centralized and largely dysfunctional system of government, in which local authorities had close to no fiscal or administrative autonomy. The success of the devolution process is thus dependent on an exercise in bureaucracy and legal development on an unprecedented scale.

The development of administrative capacity for the successful adoption and implementation of measures safeguarding democracy is itself largely dependent on economic resources. Both the slow process of devolution and low levels of implementation of legislation adopted (minority protection is a revealing example) are often blamed on lack of sufficient funds and other economic priorities.

A survey of key economic trends and indicators will form an integral part of this study, alongside an analysis of regional differences in economic performance, economic and fiscal sustainability of local authorities, and funds available for institutional development and implementation of measures adopted.

3.6 Corruption and Organised Crime

The high levels of corruption in the Western Balkans pose a major obstacle to successful democratization.\textsuperscript{57} Corruption can be broken down into actual levels of corruption and perceptions of such. The literature on transitional states identifies two major types of corruption, which hinder democratization: \textit{administrative} corruption (private payments to help gain favourable treatment) and \textit{state capture} - or illicit payments made by individuals or groups to officials in order to influence various rules and procedures (such as buying of legislative votes, influencing court decisions, etc.).\textsuperscript{58} While it is evident how real levels of corruption can hinder the democratization

\textsuperscript{55} Data from IDEA attitudes survey for the years 2000-2002.
\textsuperscript{56} World Bank, “Growth, Poverty and Inequality Report: Eastern Europe and the Soviet Union”, 2005
\textsuperscript{57} Most studies agree that levels of corruption in the Western Balkans are among the highest in Europe. As a result, corruption and organised crime have been singled out as specific points to consider when offering economic assistance or judging the preparedness of a State for further integration with the EU.
\textsuperscript{58} Cohen, \textit{ibid}, p. 12
process within a state, it has been demonstrated that perceptions of deep-rooted corruption are among the main factors able to induce people to look for undemocratic forms of government.\textsuperscript{59}

What is noteworthy is that perceptions of corruption in the region exceed actual levels of such. This serves to further undermine trust in institutions, the perceived authority of politicians, and the democratic processes as a whole. The phenomenon of “eliticism”, or power vested in elites who are detached and distant from their constituencies, is ripe in the Western Balkans.\textsuperscript{60}

At the regional level, this presents both challenges and opportunities. On the one hand, the overall lack of trust in official institutions extends to local and regional bureaucracies, undermining the devolution process by increasing the volatility of local and regional political structures and providing an opportunity for the rise of populism (Table 1). The crisis of democratization in the Balkans has been seen as a problem of representation rather than anything else.\textsuperscript{61}


\textsuperscript{60} Krastev, I., “The Inflexibility Trap: Frustrated Societies, Weak States, and Democracy”, 2002.

\textsuperscript{61} Ibid. p. 31
### Table 1. Degree of Trust in State Institutions in Percentage Points

<table>
<thead>
<tr>
<th></th>
<th>President</th>
<th>Parliament</th>
<th>Government</th>
<th>Local Authorities</th>
<th>Courts</th>
</tr>
</thead>
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<tr>
<td><strong>Bosnia and Herzegovina</strong></td>
<td></td>
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<tr>
<td>Federation</td>
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<td>19.9</td>
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<td>26.0</td>
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<td>18.6</td>
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<td>27.3</td>
<td>22.7</td>
<td>18.2</td>
<td>22.7</td>
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<td><strong>Republika Srpska</strong></td>
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<td>20.5</td>
<td>31.9</td>
</tr>
<tr>
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<td>14.9</td>
<td>16.7</td>
<td>11.3</td>
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<td></td>
<td></td>
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<td>21.2</td>
<td>29.9</td>
<td>18.7</td>
<td>21.5</td>
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<td>Other</td>
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<td>20.6</td>
<td>28.8</td>
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<tr>
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</tr>
<tr>
<td>Albanian</td>
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<tr>
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</tr>
<tr>
<td><strong>Albania</strong>&lt;sup&gt;62&lt;/sup&gt;</td>
<td>-</td>
<td>39.9</td>
<td>41.1</td>
<td>40.9</td>
<td>37.2</td>
</tr>
</tbody>
</table>


<sup>62</sup> Albania was not included in the 2002 survey, done by IDEA. Data for Albania are for 2005 from IDRA (Institute for Development, Research and Alternatives) Corruption in Albania: Perception and Experience, June 2006, p.10.
As evident from Table 1, the overall lack of trust in official institutions in countries of the Western Balkans extends to local government authorities. In certain cases and among certain ethnic groups, trust in local institutions is even lower. This fact testifies to the failure of effective representation at the local level, as well as high levels of perceived corruption among local officials.

On the other hand, local authorities are by nature closer to their constituencies, and are thus well placed to bridge the representation gaps and encourage trust in the local institutional framework. The challenge is to accomplish this in a way, which does not fuel ethnic tension and does not undermine the national institutional framework. Hence, levels of trust and perceived corruption in local institutions can be viewed as a reliable indicator to the effectiveness of representation at the local level.

Criminality has permeated deeply the political and ethnic processes in the region. A number of the armed groups from the secession wars remain active to this day. The violence in Macedonia in 2000 has been directly attributed to Albanian crime groups. The Balkans are a part of international organized crime channels for smuggling drugs, cars, cigarettes, people. Albania is seen as the gateway through which illegal drugs reach Western Europe. The heads of local mafias are among the biggest political donors in the region.

At the local level the interplay between corruption, organized crime, and authorities are particularly visible. Corruption often functions disguised as ‘patronage’ – or the privileging of a certain local group over another on the basis of ethnicity, party affiliation, etc. For example, employment has been denied to certain ethnic groups (particularly returning refugees) via discriminatory ethnic policies. The fight against such discriminatory policies needs to concentrate at the state level and target state weakness and incapacity.

The analysis of the degree of democratization at the local and regional level in the Western Balkans will also take into account information on corruption practices
(where available), data on perceived levels of corruption among citizens, as well as evidence of organised crime networks and channels.

4. Summary

So far, it was argued that democratization processes in the Western Balkans follow a different path to the ones in countries in Central and Eastern Europe, due to the region’s specific historical and political developments. We have seen that a number of region-specific factors have bearing on the processes of local democratization and economic transition.

Emerging gaps in the devolution and democratization processes between Western Balkan countries and CEECs, as well as falling levels of trust in official institutions in the former have necessitated the introduction of a variety of additional indicators for conceptualising the success in the democratization process. These have been defined as:

♦ Presence of unresolved status issues.
♦ Degree of state strength and coherence of internal government structures and provisions.
♦ Influence of the International Community on Western Balkan states, particularly as regards institutional building and re-adjustment.
♦ Internal government provisions for safeguarding the rights of ethnic minorities and success of these in dissipating ethnic tensions.
♦ Level of economic transition and degree of economic growth.
♦ Evidence of corruption, perceptions of such, and presence of organised crime.

These factors only modify the state of local democracy in the Balkans, giving it a somewhat distinct ‘Balkan flavour’. Hence, for a full analysis of levels of democratization, they should be added to the existing indicators for measuring local democracy, listed in point 2 above.

The analysis of local democracy for each of the countries subject of this study will be done according to the following framework: First, the institutional determinants of local democracy will be evaluated following the indicators outlined in 2.1 above, including the legal and fiscal autonomy of local governments, provisions for local elections, civil society, media, etc. A review of the functional determinants of local
democracy will then follow, focusing on transparency and openness of local authorities, measures for guaranteeing wide inclusion, observation of minority rights, etc. (pt. 2.2 above). And, finally, the influence of the Balkan-specific modifying factors on local democracy will be analyzed, including unresolved status issues, state weakness, international involvement, ethnicity, economic transition and consolidation, and evidence of the presence of corruption and organized crime.
Chapter I

LOCAL DEMOCRACY IN ALBANIA

Country Data:

Capital: Tirana
GDP per capita (PPP): EUR 3,983 (European Commission, 2005)
GDP real growth rate: 5.9% (2005).
Population: 3.2 million
Ethnic Composition: Albanian 95%, Greek 3%, other 2%. (European Commission estimate, 2006)

Brief Historical Timeline:

1913 Independent Albania emerges after the Second Balkan War, with the support of the United States and Western European States.
1914 Collapse of the newly-independent State shortly after the outbreak of World War I.
1919 Albanian statehood re-established.
1924 Albania seeks patronage of Benito Mussolini’s Italy.
1928 The Albanian State declared a Kingdom, Ahmed Bey Zogu, a local chieftain, pronounces himself king.
1939 Mussolini’s forces occupy Albania and overthrow king Zogu.
1944 Local Communist groups take over the government of the country, new constitutional framework adopted.
1945 Enver Hoxha becomes political leader of the Albanian Communist Party and establishes a personal cult.
1985 Death of Enver Hoxha (The period between 1945 and 1985 is characterized by extreme isolation of the country, which severs all international ties in its attempt to become fully self-sufficient).
1992, December  Agreement on Trade and Economic Cooperation enters into force with the EU.
1995, July    Albania admitted to the Council of Europe.
1997    Widespread anarchy after the collapse of pyramid financial schemes and pervasive government corruption.
1997, March  UN Security Council dispatches a multinational military force to Albania to maintain order and oversee aid distribution.
1998    Albanian Constitution approved by referendum.
1999, March – June 450 000 Kosovar refugees flee into Albania, increasing the population by 15%.
2000, September  Albania becomes a member of the WTO.
2003, February  Albania starts negotiations on a Stabilisation and Association Agreement with the EU.
2006, June    Stabilisation and Association Agreement signed at the General Affairs and External Relations Council in Luxembourg.

1. Progress towards Decentralization

Local government bodies in Albania had practically no autonomy or authority between 1944 and 1992. The constitutional framework of 1944 included local government bodies in the state power pyramid, but in practice there was extreme centralization of executive functions, no political, fiscal, or administrative local autonomy. The functions, exercised by local governments, were merely an extension of the central State policy and decision-making procedures.68

Reforms towards decentralization were undertaken following the start of Albania’s transition towards democracy and free market economy in the early 1990s and gathered pace after Albania’s signature of the European Charter of Local Self-Government in 1998. Major benchmarks in Albania’s devolution process to date are the following:

- 1992, August – Law on Functions and Organization of Local Governments adopted. Politically-autonomous local authorities were set up for the first time.

Some services and functions were passed to the local level\textsuperscript{69}, but there was no real administrative or fiscal autonomy. It was still difficult to draw a distinction of responsibilities between the local and national governments at the time and the initiative of local authorities was severely limited. There was serious mismatching between allocated responsibilities and the authority to act, the low fiscal autonomy, and the democratic participation of local communities was severely impaired.

- 1992, September – Law on local government elections approved, defining the organization principles, system of elections and overseeing authorities.
- 1993 – Law on local budgets approved. Financial autonomy of local authorities remained very restricted – 95% of local budgets were guaranteed by the state budget.
- 1997 – Decision No. 204 of the Council of Ministers adopted, determining the activities and institutions to be taken over by local governments and changing the method of financing. Funds for the maintenance of institutions transferred from the state budget to each local government, allowing local authorities to determine their own priorities and expenditures.
- 1998, November - The newly-adopted Albanian Constitution lays out basic principles of decentralization, stating that “Local government in the Republic of Albania is founded upon the basis of the principle of decentralization of power and is exercised according to the principle of local autonomy”.
- 1999 – National Committee for Decentralization established by government decree.
- 1999, November – Strategy for Decentralization adopted in order to implement the constitutional provisions for decentralization.
- 2000, July – Law on Territorial-administrative Division of Local Government Units in Republic of Albania and on the Organization and Functioning of Local Government adopted, establishing the two levels of Albanian local government – the Regions and Municipalities.

\textsuperscript{69} Two levels of local authority were designated and the functioning of Municipalities and Communes at the first level were strengthened by giving them direct responsibilities and more authority. District Councils were given a coordinating function.
2. The Institutional Framework for Local Democracy

2.1 Legal and Fiscal Autonomy of Local Government

Legal Autonomy of Albanian Local Government

The laws on “The Organization and Functioning of Local Government” and on the “Administrative Territorial Division” of 2000 abolish the old District Councils and significantly reduce the level of state involvement in local government, by giving Prefectures mostly an advisory role. These laws establish a solid legal framework for the functional decentralization of local government units.

A number of further initiatives were undertaken towards decentralization in Albania since 2000. They increase the level of local autonomy significantly and include: the establishment of National Committee on Decentralization, supported by a specific expert group; the approval of a new Law on the Role of Prefects and the relationship they would have with local authorities; approval of a Law on Immovable State Properties and their transfer to Local Authorities; the creation of an agency for Inventory and Transfer of Public Properties, amendments to the Law on Civil Service to include local governments aimed at improving the recruitment and retention of civil servants in local administration.

The legal framework for the establishment of autonomous local government in Albania has now been put in place. Although some resistance of central government institutions to transferring authority has been noted, there is clear political will to complete the decentralization process. Challenges are now posed by the implementation and clarification of agreed reforms.

Albanian local government is organized on two levels: Municipalities/Communes and Regions.

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70 The Districts were a vestige of the centralized government during Communism. The 36 District Councils were controlled by 12 Prefectures, who were in turn responsible to the Central Government. Currently, a Prefect is appointed in each Region and given the task of supervising the legality of the decisions made of the Region’s constituent Municipalities and coordinating the work of local branches of the central government ministries.


The law on Territorial-administrative division of local government units in Republic of Albania of 31 July 2000 defines the format of Regions, Municipalities, and Communes in Albania. It establishes 12 Regions, 36 districts, 65 Municipalities, and 309 Communes (Figure 2).

**Figure 2: Territorial-Administrative Division of Albania**

![Diagram of Territorial-Administrative Division of Albania]

The Communes (Komuna) and Municipalities (Bashki) form the first level of local government in Albania (Figure 2), and the Regions, whose geographical boundaries coincide with the former Prefectures, form the second level.

**The Communes and Municipalities**

The basic units of local government in Albania are **Communes and Municipalities**. The **Communes** are territorial-administrative units and communities, mostly set in **rural areas** and occasionally in urban areas. The territory, name and centres of the
Communes are determined by the 2000 Law of Local Government. There are 309 Communes, the vast majority of which (93%) have less than 2 000 inhabitants.

**Municipalities** are territorially-administrative units in urban areas and occasionally in rural areas. The territory and name of Municipalities are established by law No 8653 of July 2000. There are 374 settlements in Albania (65 Municipalities and 309 Communes), a large number of which (152) have 5 000-10 000 inhabitants, and 131 have between 2 000– 5 000 inhabitants.

The new Local Government Law is consistent with the EU’s practical principle of subsidiarity. Hence, authorities at the lowest level of local government in Albania (the Municipalities and Communes) are given a number of crucial rights and responsibilities.

**Municipal and Commune Rights and Competences:**

- Right of governance. Local authorities can decide their own administrative functions and establish their own administrative structure.
- Rights of acquiring property for the public interest.
- Right of fiscal autonomy. Local authorities have the right to adopt and execute their own budget, set and collect taxes and fees in accordance with active legislation.
- Economic development right. Local authorities have the right to initiative in economic projects which are deemed able to benefit local citizens. The revenues from these activities are to be used in support of public functions.
- Right of cooperation. Local authorities are given the option to establish closer cooperation among each other or with third parties in order to further the interest of their constituents.

The Law distinguishes between two types of tasks, assigned to Municipalities and Communes: ones, which they exercise independently and others in which cooperation with government authority is needed.

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74 Stating that, where possible, executive functions will be delegated to the lowest level of government.
Exclusive Functions of Municipalities and Communes:

Infrastructure and public services:
- water and waste water supply
- construction, rehabilitation and maintenance of local roads, sidewalks and squares
- public lighting
- public transport
- funeral services and cemeteries
- city/village decoration
- parks and public spaces
- waste management
- urban planning, land management and housing

Local economic development:
- development of programs for local economic development
- regulation and functioning of public market places and trade network
- small business development as well as the carrying out of promotional activities
- provision of veterinary service
- protection and development of local forests, pastures and natural resources of local character
- social care and protection
- cultural and recreational functions.

Civil security:
- protection of public order
- law enforcement and ensuring abidance by community and Municipality acts
- civil security.

Delegated Functions of Municipalities and Communes (Functions Executed in Cooperation with the Central Government):
- administration of economic programs targeting the unemployed and other beneficiaries
- management of privatization
- construction and Maintenance of secondary roads.
The Regions

The Regions are the intermediary, or second, level of local government in Albania. Tirana Municipality is a special case and its organization and functions are regulated by a special law. 75 Twelve Regional Councils were established (one in each Region), comprising the former 36 districts. The number of Regional Council members is proportional to the number of inhabitants of the respective region. This number is stipulated by the Law of Local Government of July 2000 /article 50/, and is as follows:

Figure 3: Number of Members of Regional Councils in Albania

<table>
<thead>
<tr>
<th>Number of inhabitants of the Municipality/Commune</th>
<th>Number of representatives in Regional Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 5000</td>
<td>1 representative</td>
</tr>
<tr>
<td>5 000 – 10 000</td>
<td>2 representatives</td>
</tr>
<tr>
<td>10 000 – 30 000</td>
<td>3 representatives</td>
</tr>
<tr>
<td>30 000 – 50 000</td>
<td>4 representatives</td>
</tr>
<tr>
<td>50 000 – 100 000</td>
<td>5 representatives</td>
</tr>
<tr>
<td>100 000 and over</td>
<td>5 plus an additional representative per 50 000 inhabitants in regions with a population over 100 000</td>
</tr>
</tbody>
</table>

Regions are subdivided into districts (total of 36, as regulated by Law No. 8653 of 31.07.2000). On average, each region includes 3 districts, 4 Municipalities, and 25 Communes.

Regional Councils are given the following functions in Albania:
- coordination of activities among the various Municipalities and Communes in the region.
- development of Regional Policies and Strategies
- harmonization of regional policies with national policies.
- urban planning, which does not require state approval.
- allocation of capital expenditures in the areas of primary education and health care (Since 2005).

75 No. 8684 of 31.07.2000, defining the division of Tirana into 11 sub-municipal units, whose Mayors and councils are elected directly. All the units are under the authority of the Mayor of Tirana.
It has been noted that there is no clear conception of what the role of the Regions should be in the local government system in Albania.\textsuperscript{76} The central government has been reluctant in widening regions’ scope of responsibility for fear of limiting the consolidation of local self-government at the basic, municipal level.\textsuperscript{77}

Albania is a small country with close to 3 million inhabitants. For historical reasons, the country’s territorial-administrative structure is characterized by too many local government units. Its territory is divided into 374 first level local self-government units in which 48% of these units representing 17% of the country’s population are made up of Communes of less than 5 000 inhabitants. This is an indicator of a substantial fragmentation, giving rise to doubts about economic efficiency, as well as concerns of administrative and political nature.\textsuperscript{78}

**Fiscal Autonomy of Albanian Local Governments**

The increase of legal autonomy of Albanian local government units has been accompanied by significant fiscal decentralization. A critical package of fiscal reforms was adopted in 2002 (including the introduction of local small business tax, simplified profit tax, property taxes, and a system of local fees and charges), expanding local revenue autonomy.\textsuperscript{79}

Local own taxes are levied on properties, property transactions, turnover of local small businesses, vehicle registration, hotel services, business signs, construction, use of public space, and some temporary activities. Local fees and charges are levied on business registration, solid waste services, new residence registration, car parking, hunting, fishing, advertisements. Local governments started taking advantage of their right to spend local taxes in 2002. In result, local governments are now in charge of about 50% of their expenditures, a significant improvement to 1998, when their share was 8%.\textsuperscript{80}

The Law on Local Government introduced national shared taxes (including personal income tax and profit tax), but these have not been allocated in cooperation with local governments to date due to fears that it would increase revenue disparities among

\textsuperscript{76} SIGMA, “Balkans Public Administration Reform Assessment: Albania”, 2004, p. 27
\textsuperscript{77} Ibid.
\textsuperscript{78} World Bank, “Albania: Fiscal Decentralization Study: Executive Summary”, June 2003, p. 6
\textsuperscript{79} Ibid., p. 1
\textsuperscript{80} Freedom House, 2006, Nations in Transit: Albania, p. 18
Regions. Central government transfer amount to 90% of local revenues in the form of conditional and unconditional transfers.\textsuperscript{81} Conditional transfers are decided as part of the state budget each year without consultation with local governments. The National Strategy for Decentralization foresees the shifting of conditional transfers to larger projects and sectors. Unconditional transfers have been provided since 1998 in support of certain municipal investments and expenditures.\textsuperscript{82}

The weakness of institutions is blamed for the delay in adopting further measures for fiscal decentralization in the country. The drafting of the new Law on Local Budget and Law on Local Finance is still pending.\textsuperscript{83}

Overall, the current expenditure autonomy of local authorities is judged as “insufficient”.\textsuperscript{84} There is lack of clarity in the assignment of fiscal responsibilities and inconsistent separation in the assignment of responsibilities for capital expenditures.\textsuperscript{85} Discontinuities have been noted between the Government’s decentralization agenda and the privatization policy. For example, the Government has offered for privatization a number of assets, which are given to Municipalities with the new laws, without municipal consent or participation. There is unclear assignment of responsibilities for investment and maintenance expenditures between the local government levels. Significant disparities in per capita expenditures across local self-governing units have been noted due to the decentralization of tax revenues on a derivation basis which threatens basic social equality principles and could lead to destabilization in the medium or long-term.

The new centre-right government in power since 2005 has vowed to continue with fiscal decentralization. A three to four-fold increase in government grants to local budgets is envisaged for the period between 2006-2009.\textsuperscript{86} The central government has also expressed commitment to improve the system of conditional transfers to local

\textsuperscript{82} Such as expenses for the provision of public services and equalization grants in support of poorer Municipalities. See Gurraj, Hoxha, etc., “Local Government Budgeting: Albania”, pp 125-126.
\textsuperscript{83} World Bank, 2006, Speech of Nadir Mohammed, Country Manager at the “Decentralization and Local Self-Government in Albania”
\textsuperscript{84} World Bank, “Albania Fiscal Decentralization Study”, 2003, p. 8
\textsuperscript{85} Ibid.
\textsuperscript{86} Freedom House, 2006, Nations in Transit: Albania, Local Democratic Governance, freedomhouse.org
governments, introduce a formula for capital investments, fully decentralize water supply\textsuperscript{87}, as well as the ability to collect small taxes for business activity.

In sum, it can be observed that the legal and administrative framework for a successful decentralization are in place in Albania. The country has managed to devolve a great number of functions and responsibilities to the lowest level of local government – the Municipalities and Communes.

However, although significant progress has been made in some areas, in others implementation of agreed reforms is lagging behind. This has been attributed to weak implementation capacity, insufficient funds, institutional constraints and political and bureaucratic hindrances.\textsuperscript{88} The areas in need of further attention for successful decentralization in Albania are: high level of fragmentation of local administrative units and unclear delineation of responsibilities between Regions/Municipalities, insufficient local revenue and fiscal autonomy, inefficient system for grant transfer to local government.\textsuperscript{89}

An antagonistic central government is still able to reverse the progress in local self-government autonomy, as demonstrated by the conflict between the new center-right government and the Socialist Mayor of Tirana in November 2005.\textsuperscript{90}

The government has recently resumed substantial territorial administrative reform, which was postponed until after the 2004 government elections. The redrawing of internal administrative boundaries is foreseen over the next few years due to internal demographic changes and in order to guarantee a sufficient administrative capacity and financial autonomy to local authorities.\textsuperscript{91} A parliamentary ad hoc committee was established in order to oversee the process. However, very little progress has been achieved in adopting reforms so far.\textsuperscript{92}

\textsuperscript{87} Currently about 20\% of customers are served by local water companies. These companies are currently facing financial difficulties due to the delay in the transfer of promised state funds.

\textsuperscript{88} World Bank, Decentralization in Transition: Albania, 2004, p. vi

\textsuperscript{89} Ibid., p. vii

\textsuperscript{90} The row started with the decision of the Council for Regulation of the Territory of the Republic of Albania to demolish an over-pass, which Tirana Municipality had decided to construct. The affair was highly politicised, leading to a civil court case being filed against Prime Minister Berisha by the Mayor of Tirana, and the dispatching of a European Commission delegation to oversee the resolution as the resulting gridlock was undermining the functioning of the Municipality of Tirana.

\textsuperscript{91} OSCE Presence in Albania, Report by Ambassador Osmo Lipponen to the Permanent Council, 24 February 2004.

2.2 Provisions and Frequency of Local Elections

The Communal and Municipal Council members, and the Mayors are the elected bodies of local governments in Albania. Mayors are elected directly by in single electoral zones. Council members are elected from party lists, drawn up before the elections. The Regional Councils are composed of selected members from the Communal and Municipal Councils (according to a formula based on municipal population, see Figure 3 above). Local elections are held every three years.

The election rules and procedures are the same for municipal and Communal Council elections. Local elections are held every three years and are regulated by the 2001 Election Law, discussed in more detail below.

2.3 Electoral System Design and Performance

Candidates for Mayors and Councillors are proposed by political parties or coalitions, independents can also compete. The Mayors are elected by direct voting in single member constituencies if he/she has won more than 50% of the total eligible votes in the first round of elections, or the majority of votes in the second round (majority voting system). The members of Councils of Municipalities and Communes are selected in ascending order from the party/coalition lists provided. The number of members for each party is proportional to the total numbers of votes cast for the respective political party/coalition.

A new Electoral Code was adopted after the 2001 parliamentary elections in order to improve the framework for elections. It introduced a new formula for the composition of Electoral Commissions, which is deemed “problematic”93. The provisions related to the formation and functioning of election commissions were a result of a deal between the two largest political parties – the Socialist Party and Democratic party, which reinforced their predominant role and creates significant possibility for deadlock.94

The same is true of provisions for the membership of the Central Electoral Commission. They are in violation of Article 154 of the Albanian Constitution, which

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93 By numerous Election Observation Reports by the OSCE, as well as the Venice Commission for Democracy Through Law of the Council of Europe.
94 Decisions require a two-thirds majority and the signature of the Chairman and Vice-Chairman, who are representatives of the SP and DP.
regulates the appointments of CEC members. The Electoral Code reduced unduly the number of political parties represented in the commissions and gave a de facto power to the two leading political parties – the DP and SP – through the "5 out of 7 majority requirement" and the necessity of signature by both the chairman and vice-chairman (who are often selected by the two parties). The procedures for appointment of members of the Local Government Election Commissions (LGECs) follow a similar pattern. Hence, the 2001 Electoral Code did not provide an "effective and sustainable" framework for delineating membership of the central and local electoral commission and has been amended twice since – in 2003 and 2004.

The OSCE facilitated another agreement between the DP and SP in October 2004 in order to resolve the problem of electoral commissions appointments. According to the new agreement, one member of the Central Electoral Commission will lose his seat and the successor will be nominated by the largest opposition party (in this case the DP). The decision-making procedures of the lower level electoral commissions was also changed – qualified majority voting was removed, which had hitherto led to deadlock due to the over-politicization of commission members.

Another improvement was the introduction of a procedure for complaints and appeals, which provided a simplified and more transparent method for the resolution of disputes, but shortcoming remained nevertheless. These were: unrealistically short deadlines for decisions on appeals, reluctance of the political parties to rely on the new procedures, few provisions on the regulation of campaign financing and disclosure of contributors.

The provisions in the Electoral Code regarding ballot design and validity were of particular concern. Serious problems during the counting in the 2001 Local Elections were noted, due to the absence of clear regulations. There were significant inconsistencies regarding the validity of cast votes. The 2003 amended code remained

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95 Article 154 stipulates that the seven members of the CEC are appointed by Parliament (2 members), President (2 members), High Council of Justice (3 members). The Electoral Code places all seven nominees under the control of political parties, according to parliamentary representation, making it possible for the SP and DP to control the entire appointment process.
96 A majority of 5 votes (out of 7) is required for decisions of the electoral commission.
98 Ibid, p. 6
99 Ibid.
100 Ibid, pp 6-7
unclear as to provisions regarding vote recounts and contained numerous ambiguities of terms and definitions.\textsuperscript{101}

The long-standing issue of updating voter registers was also not resolved and provisions for notification of citizens as to their particular voting centre were not implemented.\textsuperscript{102}

The OSCE and the Council of Europe's Venice Commission issued joint recommendations on the 2003 Electoral Code and electoral administration in Albania. On the basis of these recommendations, yet another Electoral Code was adopted in January 2005, bringing about several welcome developments, particularly concerning the election administration and structure, the compilation of voter lists, counting procedures, and deadlines for complaints and appeals.\textsuperscript{103}

Local government administrations are now given all responsibilities regarding the drawing of voting lists on the basis of information from the civil status books. They were given the mammoth task of administering voter lists for the July 2005 parliamentary elections. New voter lists were drawn following door-to-door verification between November 2004 and February 2005. They were significantly more accurate than previous ones, despite some difficulties with multiple and incomplete entries, and problematic methodology.\textsuperscript{104}

However, the improved Electoral Code is still deemed inadequate for ensuring the transparency and inclusiveness of the election process.\textsuperscript{105} Problems with the allocation of mandates to party lists remain and the Code still discriminates against smaller parties, especially as regards provisions for financing and airtime.

\textsuperscript{101} OSCE, 2004, p. 8
\textsuperscript{102} One of the most persistent problems in the administration of local elections in Albania has been the inaccuracy of voter registers. In every election the opposition parties have claimed there had been a misuse of the voter registers to their disadvantage. The 2001 Election Code failed to solve the problem, due to the lack of a clear vision for a long-term solution and political will for implementing a long-term pre-registration strategy.
\textsuperscript{104} Freedom House, Nations in Transit: Albania, 2006. Local Democratic Governance section, freedomhouse.org
\textsuperscript{105} International Election Observation Mission, Parliamentary Election – Republic of Albania – 3 July 2005 Statement of Preliminary Findings & Conclusions, p. 4
A March 2005 law, which was again largely the result of a deal between the DP and SP establishes new borders for the electoral zones. The new electoral zone map does not concur with legal requirements in a number of zones, but is seen as a significant improvement to previous arrangements and deemed capable of ensuring fairer competition.106

2.4 Local Politics in Albania: Number and Membership of Parties Active at the Local Level

The Albanian political scene is dominated by two political parties – the Democratic Party (Albania’s first opposition party, founded in December 1990) and the Socialist Party (the reformed Communist Party of Albania), both at national and local level. Albanian society remains clan-based, in which Sali Berisha’s DP receives the support of the Gheg clans in the North, and Fatos Nano’s SP counts on support from the Tosk clans in the South.107

38 political parties and 1 coalition were officially registered for participation in the 2003 local elections. Around 1750 candidates competed for the 384 Mayoral seats. The Democratic Party and the Socialist Party together won over 95% of Municipal and Commune chairs and over 85% of local Council seats in the country.108

In political terms, the alliance of the Greek minority has shifted occasionally between parties, which demonstrates the lack of prejudice of Albanian political parties at the local level and their readiness to undertake multi-ethnic cooperation.109

Electoral campaigns in Albania are generally characterized by extreme polarization and bitter rivalries between the two dominant political parties – the SP and the DP.110

The 2000 local elections were marred by such rivalries, with former Prime Minister Berisha waging a campaign of accusations against the SP after losing power in 1997 and accusing the Central Election Commission and international observers of bias. The Democratic Party threatened to boycott the 2000 local elections but participated mainly due to international pressure.111 There was partial boycott of the second tour.

106 OSCE Albania Presence, 2005, p. 7. The previous delineation of Electoral Zone boundaries was seen as favouring the two major parties – the SP and the DP.
109 Ibid.
Berisha’s party wing refused to recognize the election results in places where the DP had lost, amidst complaints of manipulation of voting lists, etc. A marked improvement was noted in the campaign atmosphere of 2003. Heated rhetoric and forms of intimidation and pressure were absent. The campaign was characterized by a rise in the level of substantive debate on political issues and few personal attacks.\textsuperscript{112}

Information on public funding was released only during the third week of campaigning because the government had failed to determine and approve the funds to be allocated by the CEC in good time. Political parties are obliged to disclose their sources and uses of campaign funds, but there are no such provisions for individual candidates. Many local branches of political parties received no funds. Hence, parties and candidates with private funds had an advantage. On several occasions during the 2003 electoral campaigns, incumbents used public office to benefit their campaigns.\textsuperscript{113}

2.5 Structure of Council Powers and Decision-making Procedures

There are two level of appointments in local government in Albania: political appointments – the Mayor and Councillors, and non-political appointments: the civil servants of local government units.\textsuperscript{114}

According to the Law on Organisation and Functioning of Local Goverments, the government of each Municipality/Commune consists of a representative and an executive branch. The executive organ is the civil service of the local authority, and its head is the Mayor. Each City Council is given relative freedom in determining its own structure, which should be set in accordance with the overall Municipality development priorities, the biggest problems to be resolved, and the natural and other resources available for resolving them.

The work of local councils is done through commissions, bodies, advisory groups etc. The Law on Local Government gives every Council the right to “create committees, boards, commissions as it deems necessary for exercising specific functions”. (law 8652, article 8, pt. 1). These organisations can be institutionalised in the legal framework of the Municipality, or used on an ad-hoc basis.

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\textsuperscript{112} OSCE, 2004 Final, p. 13 \\
\textsuperscript{113} OSCE, 2004, p. 14 \\
\textsuperscript{114} Rroji, A. and Budds, J., “The Organization and Structure of Local Government in Albania”, The Compass Programme Tirana, 2001, p. 5
\end{flushleft}
Figure 4: Structure of Local Government Decision-Making in Albania

Regional Council (Composed of representatives of Municipalities and Communes)
- Legislative body: adopts statute and internal regulations;
- Decides on organisational structures, budget, tax and fee rates;
- Adopts norms and procedures for the functioning of the regional administration;
- Protects the public interest at the regional level, etc.

Chairman
- Presides over Council meetings;
- Enforces the decisions of the Council;
- Manages the regional administration and reports to the Board on its functioning;
- Appoints and dismisses administration staff;
- Guarantees the execution of the functions of the Region.

Board
- Main executive body, exercises all functions and tasks of Regional Council with the exception of the ones granted to the Council exclusively;
- Adopts decisions on its functioning;
- Reports to the Council and oversees the work of the Chairman;

Administration
Assist the work of the Regional Council, Chairman and Board.

Council of Municipality/Commune
- Main representative body: approves status and organisation structure of the Commune/Municipality;
- Approves the budget and the operation of enterprises and commercial companies;
- Establishes local fees and taxes;
- Decides on the use of municipal/communal property;
- Decides on taking loans;
- Approves administrative appointments;
- Public markets (since 2001);
- Public order (since 2002);

Mayor/Head of Commune
- Main executive body: exercises all functions not specifically assigned to the Council;
- Implements Council decisions;
- Is accountable to the Council;
- Nominates and dismisses deputy Mayors and members of administration, Bodies and Commissions;
- Exercises the juridical obligations of the Municipality;
- Is head of the Executive branch of local government, including all administrative and implementation units and services.

Administration
Assists the work of the municipal/Communal Council and Mayor/Head of Commune


- Directly-elected bodies of Local Self-Government (Political Appointments).
The 12 **Regional Councils**, established in 2000, include representatives from Communes and Municipalities – Mayors and Heads of Communes are members by right, other members are chosen among the Councillors from each Municipal/Communal Council. The chairman and vice-chairman of Regional Councils are elected by the Council members with a majority vote. They have mainly legislative and some executive power (figure 4).

Each Regional Council has government-appointed specific bodies, responsible for finance, education, health, agriculture, which act on the local level, but are dependent on and responsible to the line ministers at the national level. These vertical directorates are in charge of appointments and supervision over their sector of activity. There is conflict between these structures and the local government administrations.\(^{115}\) The conflict is political rather than administrative, because changes of regional and district authorities follow political changes at the government level. These structures are thought to hinder the activities and initiative of local government, mostly because they are perceived by local authorities as parallel and competing with their own administrations.\(^ {116}\)

The functions of the Regional Councils are poorly defined, they can rely on very little fiscal autonomy, and are caught between the central authority and the local Communes and Municipalities, either of which is very reluctant to resign powers to the Regional level.\(^ {117}\) Members of Regional Councils are not elected directly and their accountability has often been questioned by local authorities and Mayors of larger Municipalities are often unwilling to accept regional guidance.\(^ {118}\) Such conflicts are particularly evident in sectors, where centrally-established standards need to be met on the local level.\(^ {119}\)

Local authorities (Municipalities and Communes) have responded by trying to increase their spheres of activity in those sectors. Some results have been evident, such as the government decision of March 1998 regarding education, transferring maintenance and investment of local educational institutions to local governments.\(^ {120}\) However, a general lack of clarity in the assignment of specific responsibilities

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116 Ibid., p. 50
118 Ibid.
119 Most evident in the sphere of primary and secondary education, the responsibility for which have been devolved to Communes and Municipalities, but funding has often lagged behind.
120 Hoxha, A., 2001, p. 53
between Municipalities and Regions exists and bias on the part of the line ministries, responsible for the advancement of the decentralization process is suspected. Further efforts are deemed necessary in the delineation of responsibilities between local authorities and the central government.

The structure of council powers at the municipal level in Albania is modeled on Western practices and is deemed adequate to meeting the needs of democratic representation at the local level. The direct election of both Mayors and Councillors strengthens the link between constituents and local government. When established properly, this municipal structure provides for sufficient oversight between the municipal legislature and executive. The local administration under the leadership of the Mayor is the main executive, but the Council should be kept informed about the implementation of agreed policies and actions. The legislation allows for the Municipal Council to dismiss the Mayor, while it is under the Mayor’s competence to ensure the Council’s support.

The obstacles to the effective functioning of municipal government in Albania at this stage are largely technical – not all Municipalities have a well-developed functional organization, the responsibilities and activities of the different units are not always clearly defined, coordination between the various bodies is sometimes missing.

2.6 Civil Society (Number and Principal Sphere of Activity of NGOs, Citizen Groups, etc.)

It is estimated that there are 623 Civil Society Organisations (CSOs) in Albania, carrying out a wide range of activities covering a multitude of issues. They are present in all Albanian Regions, but their distribution and areas of activity are quite diverse, reflecting the region’s specific socio-economic development and priorities. NGO activities at the local level in Albania focus largely on building public cooperation and confidence in local administrations.

121 World Bank: “Albania Fiscal Decentralisation Study”, 2003, p. 8
123 Rroji and Budds, Ibid., p. 4
124 Despite some differences between CSOs and NGOs, they are insignificant for the purposes of this report and the two are used synonymously.
CSOs’ role in local and regional decision-making is largely consultative and participatory, lacking in leverage for impacting change. Major difficulties are related to the lack of capacity, collaboration, limited support from local and central authorities.126 Only around one fifth of CSOs have participated actively in the process of designing Regional Development Strategies (RDS). More than half have taken no part in the process whatsoever as they were not invited by local governments, donors, or other stakeholders.127 There are local differences in the participation and involvement rates of CSOs in local initiatives – CSOs in Kukes and Fieri were more active and involved, whereas the ones in Lezha – very little.

The majority of Albanian CSOs are concentrated in the region of Tirana. Most are donor-funded and work on project-based budgets and time-frames. Only CSOs in Tirana are financially sustainable. CSOs are aware of their crucial role in the development and democratization of Albania and are looking to expand their regional and national networks and experience.128

There is a lack of advocacy skills among NGOs in Albania and they often adopt a divisive and overly competitive attitude towards one another.129 Recent years have seen an improvement in their advocacy skills and the organization of several high-profile campaigns, but most remain weak and highly dependant on external funding.130 It is worth noting that some local governments contract a variety of services exclusively to NGOs, such as services for the disabled, and the fight against human trafficking. These contracts are usually granted in places where NGOs have developed projects based on identified grassroots needs.131

The continuing economic hardship, the proposed increase in electricity and bread prices in 2004 led to increase in the support for the youth movement Mjaft! (Enough!), which led candle-light vigils in commemoration of the death of 20 Albanian migrants en route to Italy in January 2004. In 2005 Mjaft held a vigorous campaign against the opening of a casino in Tirana, mobilizing citizens and religious leaders.132 The campaign was ultimately unsuccessful, but it demonstrated the potential of local civil society movements in upsetting the government’s plans.

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126 Ibid.
127 Ibid., p. 16
128 Ibid.
130 USAID, NGO Sustainability Index 2004, Albania, p. 59
131 Ibid., p. 62
Overall, civil society in Albania is weak. Most NGOs are donor-dependent, financially unsustainable, localized, and with limited scope of action. There is a widespread consensus on the need of capacity and administrative building in order to empower them for more active involvement in local decision-making.

2.7 Local Media (Structure, Editorial Independence and Arrangements)

There is freedom of speech and expression in Albania (stipulated by Articles 22 and 23 of the Constitution), but media independence needs to be reinforced.

There are more than 75 private television networks and 30 private radio stations. The public Albanian Radio and Television (RTSh) controls one TV channel and two radios, covering 80% of Albania’s territory. The private Klan TV covers 46% of the territory and is part of the Media 6 group, which runs other smaller TV channels, newspapers, and the internet. The second private national broadcaster – TV Arberia, covers about 30% of Albania’s territory. The majority of broadcasters have license for local broadcasting only – covering up to four Regions of Albania’s twelve.133

As for the print media, the most read newspaper is Shekulli (circulation of 20 000), followed by Panorama (15 000), Korrieri (8 000), Gazeta Scquiptare (5 000), Balkan (4 000-5 000), Tema (about 4 000).134 Albania is the country with most print media per capita in Europe, but the lowest circulation per capita.135 None of the print media in Albania is viable without external financial assistance. As a result, it is very vulnerable to corruption and influence by political and business groups.136

A study of media sustainability done by the independent consultancy IREX shows a gradual improvement in all indicators between 2001 and 2005. Highest scores in 2005 are given for the component of free speech, which is nearing almost complete sustainability.137 Problems are noted in the business management of the media, as well as the professionalism of journalists.

133 IREX, Media Sustainability Index, 2005: Albania
137 IREX, Media Sustainability Index, 2005, p. 4
Analysts note that the legal framework guaranteeing free speech is in place, but the implementation of these laws is often done under political and economic pressure. Political pressure also often hinders the activity of media regulatory bodies, such as the National Council of Radio and Television. Another consequence of direct political pressure is that issues such as media funding have not received due attention. The process of licensing is also seen as erratic and politically controlled. Observers have emphasized that no genuine media freedom can exist in the absence of adequate regulation. Also, there are regional disparities as to the range of free speech and access to information. Free speech is greater in the large cities and very limited in small towns, Municipalities, or Communes.

The national television channel – TVSH – still enjoys certain privileges regarding advertising, collecting information, or the infrastructure for broadcasting. Occasionally, during political campaigns, the TV network is found to be disseminating information in favour of the ruling party or the government in power and is generally criticized for being overly-politicized.

During the 2000 local election campaign, Albania’s state television was criticized for favouring the Socialist Party in its coverage. The ATN-1 station in Tirana was in turn criticized for covering DP election campaigning exclusively. Private media owners were often affiliated with either the SP or the DP and journalists were often bribed or enticed to investigate the opposite party.

A new framework for the coverage of election campaigns by the electronic media was provided by the 2003 Electoral Code. All political parties were given free airtime in the public broadcaster, TVSH, in proportion with each party’s parliamentary strength, non-parliamentary factions receiving comparatively less air-time. All public and private broadcasters were obliged to provide equal and balanced airtime for all political parties in accordance with parliamentary size. A Media Monitoring Board was established by the Central Electoral Commission to oversee media compliance with the new Electoral Code. MMB’s work has received largely positive reviews.

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138 IREX quote Bashkim Hoxha, journalist and director of Teuta TV.
139 Ibid., p. 6
140 Ibid., p. 7
141 The taking off the air of the “Hapur” program, publicizing corruption cases among eminent politicians is a case in point.
143 OSCE, 2004, Final.
As a result, the electronic media in Albania is judged to have provided comprehensive coverage of the 2003 local elections, their political background, information on the candidates, and the work of the election administration. The tone and quality of coverage has substantially improved in comparison with previous campaigns. The coverage of elections by the print media is not regulated by law. In its coverage of the 2003 local elections, it was more aggressive and negative compared to the electronic media. In comparison with previous elections, however, coverage was more moderate and balanced, providing more room for substantive debate.\textsuperscript{144}

The pluralism of the media is undermined by the financial hardship of Albania’s citizens – many people cannot afford to buy even one daily newspaper.\textsuperscript{145}

3. The Procedural Functioning of Local Democracy

3.1 Administration, Effectiveness and Fairness of Elections Held, Voter Participation

The election administration in Albania has three levels:
1. Central Election Commission.
2. 384 Local Government Election Commissions in each Commune or Municipality.
3. 4668 Voting Centre Commissions in each polling station.

For further details on the composition and decision-making procedures of the Election Commissions, see the discussion on the Electoral Code amendments above, pt. 2.3.

A survey of election officials after the 2001 local elections shows that the most serious outstanding problem of administration was the voter lists, followed by a lack of understanding of the voting process by voters.\textsuperscript{146} Other significant problems were posed by the lack of communication between the CEC and the other election commissions, party interference in the electoral process, and police interference in the voting process.\textsuperscript{147}

During the 2003 elections, the effectiveness of the election commissions was compromised by delays in the decision-making process of the CEC. There seemed to

\textsuperscript{144} OSCE, 2004, Ibid.
\textsuperscript{145} IREX, 2005, p. 10
\textsuperscript{147} Ibid.
be a lack of balance in the prerogatives of transparency and efficiency of electoral commission decisions – the granting of the right of audience to all non-voting representatives increased transparency, but led to prolonged political discussions at the commission meetings, often on topics outside the adopted agenda.148

In 2003 police were asked to stay away from voting centres, which marks a desired and major departure from the past. Observers of voting gave positive assessments in 88% of the observed centres.149 Voting procedures were generally followed correctly. 9% reported tension and unrest due to the confused and incomplete voting registers. A small number of violent incidents occurred in Himara, and in Vau I Dejes (Shkodra) and Lure (Diber) voting did not take place due to political deadlock in the Local Election Commissions.150

Serious problems were reported during counting of the votes in 38% of observed centres and in 43% there were significant procedural errors and omissions. There were disputes over the validity of ballot papers in almost half of the voting centres and a high proportion of votes (15%) were declared invalid.

Various instances of result falsification were noted in 10% of observed centres. Some delays and confusion were evident in the tabulation of results, mostly due to the lack of clear administrative provisions. OSCE’s 2003 election observation mission did not find the election registers had been manipulated for political purposes, but noted the perseverance of serious administrative problems.

As a result of the 2003 local elections, there is a decrease in the political polarization of Albania between north and south.151

Overall, as recent observations of the local elections in Albania testify, the electoral process is ‘protracted and litigious’, in the capital Tirana in particular.152 In 2003 elections had to be repeated in 130 precincts because of reported irregularities. Turnout was around 50%.

The system for complaints and appeals, outlined by the 2003 Electoral Code works well, when used. A problem is posed by the general lack of desire of political groups

149 Ibid., p. 19
150 Ibid.
151 Ibid., p. 23
152 Ibid.
or citizens to use the new system, who prefer to settle grievances in a private manner. The complaints, which were made (a total of 455) for the 2003 round of local election, were handled by the CEC in a fair and transparent manner.153

3.2 Degree of Openness of Local Authorities

In principle, all meetings and discussions of local government authorities, commissions, etc. should be held in public after they have been publicly announced. In practice, local government officials have used excuses to not announce the date/venue of meetings in order to limit public participation. Councils are required to notify the public regarding the agenda, time and venue of the meetings. Although legal provisions for public involvement exist, local communities rarely take advantage. Participation is very low. Local Councils also often do not meet their obligations to involve the public, citing lack of means of communication as an excuse.154

Local authorities in Albania asked for the involvement of a wide range of civil society groups and independent experts in the formulation and implementation of the National Strategy for Decentralization. The strategy was drafted in a process of consultation with all political parties and interest groups, local communities, NGOs, international donors, independent Albanian and international experts.155 This move was important in securing the initial legitimacy of decentralization reforms, guaranteeing wide acceptance and cooperation, and thus increasing the chance of success of adopted measures.

3.3 Fairness (Policies Guaranteeing Wide Inclusion, Minority Rights Implementation)

The rights of minorities in Albania are guaranteed by the Constitution and are generally well respected. Albania is an ethnically homogenous country. There are two national minorities (Greek and Slav-Macedonian) and three cultural minorities (Montenegrin, Vlach and Roma). Together they amount to about 5% of the Albanian population.156 Experiences with multi-ethnic governance are thus very localized.

153 Ibid., p. 16
154 Hoxha, 2001, p. 55
There are normally four to five Communes, mostly in southern districts, with a Greek majority of local Council representatives. Multiethnic governance in these areas functions normally. Still, in the town of Himara, where there is a significant Greek minority, there were “serious irregularities” during the second round of the 2000 local elections, including intimidation of election commission members and fraud.

The Council of Europe Convention for the Protection of National Minorities was ratified in September 1999. Compliance is good, but further efforts to complete the legislative framework are necessary. For example, the concept of “minority zones” needs to be abolished, as it is contrary to international conventions.

A State Committee for Minorities was established in 2004 and was given the task to make recommendations regarding the observation of rights and improved political representation of minorities. Some minorities are judged to have advanced their position, mainly due to their own advocacy efforts. Obstacles were noted in the participation of Roma and Egyptian communities in the voting, not least because of lack of voter registration. The Roma in particular are often subject to prejudice and racial discrimination.

The Movement of Human Rights and Freedoms was the only political formation, including calls for increased minority rights in its campaign in the 2005 parliamentary elections, showing a general neglect to rights of minorities at the state level. The media also generally disregarded the participation of minorities in the elections. Muslim leaders were prevented from establishing a party called ‘Motherland’ in 2004 because religious or ethnical parties are illegal in the country.

The Albanian Constitution establishes a national Ombudsman – “the people’s advocate” who is given the role of defending “the rights, freedoms, and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration” (Article 60) and specifically charged with enforcing the public’s right to information. (Law No. 8503, Article 18). The Ombudsman’s

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157 Hoxha, 2001, p. 55
159 In current legislation, only minorities, living in designated ‘Minority Zones’ receive due minority treatment.
161 Human Rights Watch, Ibid.
162 Ibid.
office was further structured by a special law in February 1999. The office has yet to develop its full capacities.163

Human Rights Watch report serious violations of the rights of women – domestic violence and human trafficking were among the country’s major concerns.164 Serious problems are posed by the persistence of traditional patriarchal social morals, according to which women are of a lower social standing. Men in the northeast part of the country in particular follow the kanun (traditional code), according to which women are considered to be chattel and should serve and be subordinate to their husbands in all matters.165

The percentage of women in government (including local government) is small, although there are no legal impediments for their participation. No specific gender equality laws were in place until recently.166 A law on gender equality society came into force in September 2004, establishing a Committee for Gender Equality charged with proposing and implementing gender policy and answering to a Council for Equal Opportunities under the auspices of the Council of Ministers.167 Tangible results from the Committee’s work are still to be seen.

3.4 Transparency (Availability of Local Documents to the Wider Public)

The Law on Access to Information in Albania gives the right to every citizen to access all public documents, which have not been classified as secret. However, awareness remains low, there is no culture of requiring feedback, and in certain cases officials have refused to provide journalists in particular with the desired information.168

3.5 Provisions for ‘Citizens’ Outreach’ – the Right of Citizens to Influence Local Decision-making (Referenda, Ballots, Petitions, etc.).

Local communities in Albania are given the right to local referenda on issues such as merger and divisions of certain units, local taxation, etc. According to the Election

164 Human Rights Watch, World Report 2001, Albania
168 IREX, Media Sustainability Index 2005, Albania, p. 6

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Code of the Republic of Albania, 10% of registered voters or 20,000 people, whichever is lower, have the right to a referendum on local issues. This right has not been utilized due to the lack of provisions as to who may call a referendum, which authority should oversee it, etc. Local communities have also expressed indifference to the existence of this right in general. No community has ever submitted a request pertaining to the holding or organization of a referendum.

There is widespread passiveness and pessimism regarding cooperation with elected officials. Public reporting as to the activities and responsibilities of these officials would help improve information, but it is generally negatively perceived due to the abuse of such practices during communism. Local bodies are often seen as over-politicized and better connected to the political parties at the government level than to their constituencies.

4. State Weakness in Albania

The stability of State institutions in Albania has varied dramatically over the short period since the overhaul of Communism. First, in 1991-1992 and due to its repressive past, the Albanian State failed to meet its obligations, administrative institutions stopped functioning almost completely and the State lost all of its legitimacy. Then, after a short respite, the same happened in 1997-1998.

Social and economic reforms were severely effected by the 1997 crisis when a series of pyramidal schemes collapsed taking the entire administrative state order down with them. Riots engulfed the entire country, in many instances rioters broke into armories of the police and the army and seized large amounts of weapons. The Albanian State structure collapsed entirely. Order was restored in the country after a multinational force under Italian leadership was dispatched in April 1997. It provided security and oversaw the 1997 election campaign.

With the assistance of several European states, the police and law enforcement structures were gradually reconstructed in 1997-1998. Local Mayors, usually hostile to the central government, controlled the police, which further undermined efforts at

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169 Rroji, A. and Budds, J., Ibid., p. 8
state-building. The Albanian state was gradually able to regain some of its controlling functions but until 1999 its control over the country remained extremely limited. Criminal gangs were abundant in the South and the Kosovo Liberation Army (KLA) enjoyed as much support in the North as the Central government.173 The inability of the state to function after the 1997 crisis deterred foreign investors. An IMF stabilisation programme was put in place in March 1998, which led to gradual stabilisation of the economic indicators.

Albania’s problems were further aggravated by the armed conflict in Kosovo starting in 1998. Close to 500,000 refugees from Kosovo poured in Albanian in 1999, putting the weak state administration to a further test. The KLA was given a source of small weapons during the looting following the collapse of the pyramidal schemes. The armed group maintained training camps in the North of Albania. In 1998 Pascal Milo, the then foreign minister, denied that the Albanian state supported the KLA and declared support for the leadership of Ibrahim Rugova in Kosovo, committed to peaceful struggle for independence.174 Nevertheless, there were suspected links between the KLA and politicians from the Democratic Party.175

The political situation had gradually stabilized by mid-2001. A restrictive monetary policy in line with IMF requirements, together with increased productivity, contributed to curbing inflation.176 A series of economic reforms, including price and trade liberalization, privatization of SMEs, improvement of tax and fiscal services contributed to a high annual economic growth rate.177 Nevertheless, the economy remained plagued by structural weaknesses and GDP per capita was one of the lowest in Europe. The unrest of 1997-1998 demonstrated the weakness of state structure and foundations of economic growth.178 It testified to the importance of a functioning state structure and economic base for the viability of international funding.

Due to Phare and other support for democratic development179, security in Albania improved dramatically after the 1997 break-down. Direct pressure from the EU and

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173 Ibid.
174 Ibid., p. 4
175 Ibid., p. 2
177 Ibid., p. 13
179 The Phare programme is one of the three pre-accession instruments financed by the European Union to assist the applicant countries of Central and Eastern Europe in their preparations for joining the European Union.
other international donors have helped to keep the democratization process largely on track.

Despite significant improvements in recent years, institutions in Albania remain weak and non-transparent.\textsuperscript{180} Freedom House also points towards serious institutional weakness in the north of the country, leading to resurgence of traditional tribal law and blood feuds between different families and clans.\textsuperscript{181} Freedom House’s most recent survey brands the country as “partly free”, giving it a freedom index of 3 out of 5, mainly due to political infighting and lack of serious progress in economic reform or the fight against organized crime.\textsuperscript{182}

Institutional weakness at the central level has resulted in delays in the adoption of decentralization measures in Albania, disillusionment of citizens with the political process, and erosion of trust in all formal structures of government. It also has a debilitating effect on service provision at the local level.

The strengthening of institutions for governance provision is now recognised as key to successful transition, economic and social development. Viability of the central institutions is necessary for the effective devolution of powers and responsibilities to the local level in Albania, where decentralization is part of the overall process of political and economic transition. Local institutions are crucial for the restoration of trust in the political process and ensuring stability of the governance system. Hence, their strengthening is also key to guaranteeing governance stability and transparency.

5. International Involvement in Albania

Albania is often given as an example of the democratization influence of the European Union on transition countries with very little tradition and experience of democratic governance and processes.\textsuperscript{183}

At the start of the country’s transition towards a pluralistic society, Albanians turned to Europe as a role model and the only viable alternative to the decades of devastating isolation. Quick integration in all Western politico-economic structures was sought

\textsuperscript{182} Ibid.
and the EU quickly became “the only game in town”. The EU was given wide margin of discretion in shaping the country’s domestic politics and administration.

Timetable of Albanian Relations with the EU:

1992 Trade and cooperation agreement.
1999 Stability and Association Process launched (Cologne, 1999). Negative report on the feasibility of a Stabilisation and Association Agreement (SAA) with Albania issued. Albania offered Autonomous Trade Preferences with the EU, followed by duty-free access to EU markets for Albanian products. CARDS assistance introduced.
2001 Negotiations of a SAA with Albania deemed appropriate.
2003, February Negotiations of a SAA formally begin.
2005, November Conclusion of SAA negotiations recommended by the EU’s Enlargement Strategy Paper.
2006, June SAA signed.

The rhetorical significance of “the return to Europe” was instrumental in the early stages of post-Communist transition and led to wide support for Berisha’s democratic opposition. Politicians from both sides of the political spectrum have used a pro-European platform to gain electoral support since.

The formal institutions of democratization, required by the EU were adopted fast – a new law setting the constitutional provisions for the division of power and safeguarding basic human rights and freedoms within the country was approved in 1993, the new constitution adopted in 1998 was praised for conforming with international standards, the Electoral Code was modified on numerous occasions following international recommendations and is now largely regarded as viable, the Council of Europe Charter on Local Government was signed in 1998.

The initial EC strategy for Albania was judged unable to achieve its targets of ensuring stability and economic growth mainly due to a poor assessment of the

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184 Ibid. p. 17
185 Results from a Central and Eastern Eurobarometer survey, quoted in Elbasani, Ibid., p. 17.
186 Source: European Commission, 2006, DG Enlargement, europa.eu/comm..
187 Elbasani, Ibid., p. 21
structural weakness of Albanian State and economic authority. The 1997 crisis provoked a great deal of “soul-searching” among international donors and a lot of emphasis was placed on governance. Programming was criticised for not being based on realities on the ground. An ambitious programme for adopting EU structures and laws had been proposed for a country lacking a functional public administration. The shift in priorities resulting from the Stabilisation and Association Process resulted in various uncoordinated and scattered activities, not informed by a wider reform strategy. It was recognized that functioning public institutions were key for sustainable economic growth and social development. A major lesson, emerging from EU involvement in Albania, is that a successful reform strategy has to take into account and target the significant state weakness of the supported country.

The 2000 and 2001 national strategic policy documents registered a major shift of focus towards European integration, but there was inappropriate reform sequencing and over-emphasising of the formal requirements for the completion of a Stabilisation and Association Agreement, rather than the adoption of badly needed structural reforms. The sequencing of administration reforms prioritized the sectors required for a SAA only and approximation to EU legal and other standards and no essential improvements of the institutional framework was undertaken. Phare programming cycles were not informed by popular consent, few efforts were made at political consolidation among democratic parties, and support for legislative development and civil society development was extremely weak. Strengthening civil society is now seen as a major component in a strategy for institutional building and ensuring stable democratization and stability.

The EU is acting as a major reform setter in the field of local democracy and is active in fostering reform momentum in the country. The advancement of the decentralization and democratization process formed a key part of the Policy Agenda for Socio-Economic Development, adopted by the Albanian Government in February 2001. This strategy was concurring with conditionality, imposed by international

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189 Ibid.
190 Ibid., pp 12-13
191 For example, the EU provided funding to the Directorate of Approximation to EU Legislation in the Ministry of Justice, but not other initiatives for strengthening the judicial system. Even this assistance is deemed to have been unsuccessful due to problems with disbursement and the fragmented nature of the project.
193 Elbasani, Ibid., p. 22
donors – the IMF, the World Bank, and the EU, as anchored in the Stabilisation and Association Process. Support for decentralization and strengthening of local authorities is strong among government and municipal authorities. This is one of the priority areas of fund allocation by international donors.\textsuperscript{194} International leverage in this case has yielded largely positive and tangible results. It has created support for the development and strengthening of local democracy and has provided extensive funding to support it.

At the local level, positive results have been reported by the Albanian Development Fund, set up through the World Bank’s Poverty Alleviation Programme, and providing funding for the development of rural infrastructure.\textsuperscript{195} Local Community Development is a priority area for support under the CARDS system and the EU has vowed to “improve overall infrastructure and living conditions, to support the decentralization process and to create employment in often poor and remote areas”.\textsuperscript{196}

Challenges are now posed by the low degrees of implementation of commitments undertaken and building trust of constituencies in the local authorities. The low levels of trust in local authorities in Albania seem not to be attributable to a democratic deficit, created by the EU’s imposition of rules and norms, but are rather a vestige of Communist times, when the administration was largely regarded as corrupt and inefficient. Hence a successful strategy of democratization for Albania would point towards a development of democratic culture of participation, strengthening local civil society groups and encouraging the development of a local system of monitoring the observation of rights and obligations, so that commitments go beyond mere rhetoric.

6. Economic Transition and Consolidation in Albania

In the 1980s, Albania was the least economically-developed country in Europe, its GDP putting it in a group with African low-income countries.\textsuperscript{197} The reform process was severely hampered by the socio-economic crisis of 1997, which led to a complete collapse of the institutional order and overall chaos.

Reforms since then have been positive and have led to stabilization and robust economic growth. For the years 1998-2000 annual economic growth averaged around
In 2003 GDP growth was 6% and 2004 – 5.9%. Significant progress has been made in trade liberalization, price liberalization, SME privatization, improvement of fiscal sustainability through better customs and tax services. Public sector governance remains weak and further reform efforts are needed.

Despite recent economic recovery, living standards are among the lowest in Europe. Albania’s dependence on external aid and migrants’ remittances is very high (about 14% of GDP). About a quarter of the Albanian population lives below the national poverty line and five percent cannot meet the minimum calorie intake requirements. Weak institutions are seen as a major impediment to economic growth. There have been significant delays in the privatization of small and medium-sized enterprises, largely due to political uncertainty and the ensuing low levels of interest from private investors. Progress in broader institutional and political reforms has been slow. Growth has been dependent mainly on external finances and migrant remittances, export driven economic expansion has not yet taken place.

There are stark regional divisions in the rates of poverty and economic growth. Tirana and the other urban areas have benefited disproportionately from the economic growth of recent years. The highest rates of poverty are found in rural areas – the Mountain districts are home of 45% of Albania’s poor. Rural areas fall behind in basic welfare indicators, such as consumption per capita, education attainment, health provision, access to basic public services. They depend largely on their own production to meet their own consumption needs. 77% of the poor rural households do not have adequate sanitary facilities, which is the case for only 8% of the households in cities. The substantial disparities in income and expenditure between Regions and Municipalities could lead to social unrest and political instability over the medium to long run.

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198 IMF data, 2005.
199 CARDS, 2002-2006, Albania, p. 13
201 uage=EN&guiLanguage=en
202 Remittances amount to 14% of GDP on average for the years 1992-2003, World Bank, 2005
203 IMF: Albania, Selected Issues and Statistical Appendix, March 2005
204 Ibid.
206 47
207 Ibid.
208 IMF, Ibid.
209 IMF, Ibid.

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Unemployment is high. In comparison with other transition countries, Albania ranks low in terms of human development and living standards indicators. The 2004 Human Development Index ranking places it at 95th place, significantly below Macedonia’s 60th and Croatia’s 46th place.199 There is pervasive lack of access to basic services, such as health care, electric supply and sanitation.

Poverty is one of the major impediments to the democratization efforts at the local level in the country. It affects negatively all the determinants of local democracy. Reforms remain incomplete due to lack of funds, fiscal transfers to local governments are delayed and insufficient, citizens are concerned about lack of jobs and low pay, rather than participation in democratic processes or minority and gender rights, NGOs are financially weak, media penetration and impact is low. The poor state of the economy, coupled with institutional weakness, opens the door to direct economic pressure on NGOs and the media, and provides a ripe ground for the rise in corruption and organized crime.

7. Corruption and Organized Crime in Albania

Albania has often been ranked among the countries with the highest corruption levels in Europe, above other transitional economies.210 Corruption has permeated all levels of government in Albania, including local government, since the beginning of transition. Half of Albania’s citizens admitted offering bribes to public sector officials since 1999.211 Citizens also name corruption as the major problem faced by the country, above unemployment and political instability.212 The OSCE has pointed to corruption as the major impediment for an effective judicial system.213 Senior police officers and high-level politicians are suspected to be involved in the escalation of drug trafficking in Albania, which has increased corruption.214

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Transparency International gives Albania a rating of 2.5 in 2005, where 10 is the lowest level of corruption.\textsuperscript{215} The Albanian High State Audit stated in its annual report for 2004 that more than 200 million Euro (24.4 billion lek) had been wasted.\textsuperscript{216}

The newly-elected Democratic Party government of 2005 has made the fight against corruption and organized crime its top priority.\textsuperscript{217} Corruption and organized crime formed a major part of the election platform of Sali Berisha’s Democratic Party to which they owe their return to power.\textsuperscript{218} The successful handling of corruption and organized crime is one of the major areas of conditionality under the Stabilisation and Association Process.

A considerable volume of anti-corruption legislation is in place, but implementation is insufficient.\textsuperscript{219} Albania was in 108\textsuperscript{th} place in 2004 out of 146 surveyed countries in perceived levels of corruption, partly due to a number of highly-publicized corruption scandals and measures in recent years.\textsuperscript{220} 65\% of Albanians blamed corruption for slow job growth in the country in 2005.\textsuperscript{221} The increased attention given to the problem of corruption in recent years is a welcome development and signals willingness and political will of the central administration to deal with the issue. The danger is that corruption measures become somewhat of a witch-hunt and are perceived as an end in themselves and used for political means, rather than a way to improve governance and democratic accountability. Also, the high levels of perceived corruption have shown to have negative effects on trust in institutions, especially at the local level, where confidence in municipal government is already particularly low.\textsuperscript{222}

Ethnic Albanian crime groups specialize in drug trafficking and people trafficking. Albania is a main country of origin and a significant country of transit for trafficking of women and children.\textsuperscript{223} Official corruption is seen as a major factor allowing the

The Albanian interior minister admitted in 2003 that authorities knew of police and political leaders who were directly involved or maintain links with organized crime groups.

The high levels of corruption and alleged government involvement with organized crime in the country make institutional reform and strengthening more pertinent. High levels of perceived corruption serve to further undermine and de-legitimize both central and local governments. Anti-corruption coalitions and other civil society actors are seen as being too close to the distrusted governments. Largely due to widespread mistrust and apathy towards anti-corruption measures, such projects failed to strengthen democracy in the Balkans in the past.

The lack of a serious and coherent civil society movement capable of applying constant pressure and overseeing the implementation of the numerous anti-corruption strategies puts the latter at risk of being left only on paper. Hence, a successful anti-corruption strategy in the country should aim to encourage civil oversight mechanisms at both the national and local level.

8. Conclusion: The State of Local Democracy in Albania – Summary of Main Findings

A lot has been done for the strengthening of the institutional framework of local democracy in Albania in recent years. A significant number of rights and responsibilities have been transferred to the local level and work continues on providing the fiscal base for the increased local government autonomy.

International institutions (the EU in particular) have been successful in fostering a greater degree of democratization in Albania and building support for the policies adopted.

Minority rights are generally well-respected at the local level in Albania and there have been positive developments in the civil society sector.

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226 Ibid., p. 37
Challenges to democratization are now posed by unclear legal provisions for local institutions, the great fragmentation of local government units, poor administrative capacity and lack of professionalism of staff. The political process is still weakened by the polarization of Albanian society (between north and south), although positive developments have been noted in recent years. The electoral process also leaves a lot to be desired, the independence of the media is at times victim to direct political pressure, and gender equality in Albania is the worst in South-East Europe.

Poverty, corruption, and weakness of the central state are the other major impediments to democracy at the local level and affect all institutional and participatory determinants. The low levels of citizens’ trust in local institutions date back to Communist times and are compounded by state weakness and perceptions of pervasive corruption. A culture of active participation of citizens in local decision-making is still to be developed.

The EU has filled the legitimacy gap opened by the weakness of Albanian institutions and has become the final institutional arbiter in the country. This position should be used for consolidating the democratization processes at the local level by clearly communicating their benefits to the public and encouraging active involvement and citizens’ feedback.
Chapter II

LOCAL DEMOCRACY IN BOSNIA AND HERZEGOVINA

Country Data:

- **Capital:** Sarajevo
- **Population:** 3.8 million
- **GDP per capita:** EUR 1,654 (European Commission, 2004)
- **GDP real growth rate:** 6.2% (World Bank, 2004)
- **Ethnic Composition:** Bosniak: 48%, Serb: 37.1%, Croat 14.3%, other 0.6%

Brief Historical Timeline:

1878  Berlin Treaty, ending the 1877-1878 Russo-Turkish War – Bosnia and Herzegovina ceded by the Ottomans to administration by Austria-Hungary.

1908  Austria-Hungary formerly annexes Bosnia and Herzegovina.

1918  After the demise of Austria-Hungary, Bosnia and Herzegovina becomes part of the State of Slovenes, Croats and Serbs.

1929  State of Slovenes, Croats and Serbs becomes Kingdom of Yugoslavia, and Bosnia and Herzegovina becomes a territorial Entity of very little autonomy.

1943, November  Founding conference of the Anti-Fascist Council of National Liberation of Yugoslavia held. Bosnia and Herzegovina re-established as a Republic within the Yugoslav Federation in its Ottoman borders.

1945  Yugoslavia reorganized as a Federal Communist State and Bosnia and Herzegovina confirmed as one of the six Constituent Republics.

1990  Elections held across Yugoslavia, Communist parties win power only in Serbia and Montenegro.

1991  Beginning of Yugoslav dissolution.

1992, February and March  Referendum on independence in Bosnia and Herzegovina.

1992, April 5  Bosnia and Herzegovina declares independence.
1994, March  Signature of the Washington Agreement, creating a framework for a Federation between the Croat and Bosniak majority areas, de facto establishing the Federation of Bosnia and Herzegovina (one of the constituent Entities of Bosnia and Herzegovina).
1995, November-December  Dayton Peace Accords negotiated in Dayton, Ohio, ending the Bosnian civil war and outlining the Constitutional Framework of the multi-ethnic state.
2002, April  Bosnia and Herzegovina becomes full member of the Council of Europe.
2005, November  Negotiations opened for a Stabilisation and Association Agreement between Bosnia and Herzegovina and the EU.

1. Progress Towards Decentralization

Bosnia and Herzegovina’s entire administrative structure disintegrated during the war, municipal buildings and other property were destroyed and municipal employees were deported or forced to flee.227 The territorial-administrative structure of the country was reorganised with the drawing of the Inter Entity Border Line at Dayton and some 30 new units of local self-government were added to the former 109 Municipalities.228

Regulation of local self-government in Bosnia and Herzegovina started after the war. The following steps have been taken so far:

- 2001 – Election Law of Bosnia and Herzegovina adopted, establishing the framework for local elections.
- 2004, May – Amendments of the Election Law of the Federation of Bosnia and Herzegovina enter into force.


2. The Institutional Framework for Local Democracy

2.1 Legal and Fiscal Autonomy of Local Government

**Legal Autonomy of Local Governments in Bosnia and Herzegovina**

The Constitution of Bosnia and Herzegovina leaves the responsibility of regulating local self-government to the Entities (the Federation of Bosnia and Herzegovina, and the Republika Srpska). The local government system in Bosnia therefore functions under two separate Entity-based systems – the Republika Srpska, and the Federation of Bosnia and Herzegovina (Figure 5, see also Annex 2).

**Figure 5: Local Government Levels in Bosnia and Herzegovina**

Local Government in the Federation of Bosnia and Herzegovina

- ENTITY LEVEL
- 10 CANTONS
- 80 MUNICIPALITIES

Local Government in the Republika Srpska

- ENTITY LEVEL
- 63 MUNICIPALITIES
There are three levels to the administrative structure in the Federation of Bosnia and Herzegovina: Entity, Cantons, and Municipalities (Law on Local Self Government of 1999). The 10 Cantons were created in 1994 as part of the Washington Agreement, ending the Muslim-Croat war. There is a wide variation in the number of inhabitants of the Cantons (from 41,000 in Bosnia-Podrinje to 609,000 in Tuzla).\textsuperscript{229}

In the Republika Srpska (RS) the administrative structure levels are only two: Entity and Municipalities, the latter being preserved in their pre-war borders and structure.

Municipalities in Bosnia and Herzegovina tend to be large by local standards, which is a legacy of the Former Yugoslavia. In the FBiH only 6 have less than 10,000 inhabitants, while in the RS 21 have less than 10,000 inhabitants, and 3 – less than 1,000.\textsuperscript{230}

Cities are units of local government, formed by the territorial, economic, social and cultural linking of two or more Municipalities in both Entities.\textsuperscript{231} There are two cities in the Federation – Mostar (104,000 citizens) and Sarajevo (270,000 citizens), composed of 4 autonomous Municipalities. In the RS there is only 1 city – Banja Luka (208,000 inhabitants). Apart from Municipalities, of which they are composed, Cities also have City governments.\textsuperscript{232} The city level is dependent on financial transfers from the Municipalities and is thus quite weak. Sarajevo is a notable exception, as it owns residential and commercial properties and controls key historical and business districts.

The District of Brcko was created following the Dayton Peace Accord and placed under international supervision. It is a single administrative unit of local self-government under the sovereignty of Bosnia and Herzegovina. It has a Government, an Assembly, and a Mayor (see Box 1).

\textsuperscript{229} SIGMA (Support for Improvement in Governance and Management), “Bosnia and Herzegovina: Balkans Public Administration Reform Assessment”, June 2004, p. 31
\textsuperscript{230} Ibid., pp 31-32.
\textsuperscript{231} FBiH Constitution, Article VI A, Local Government Law of RS, Art. 3.
\textsuperscript{232} Jokay, \textit{Ibid.}, p. 98
Box 1: Brcko.

**BRCKO**

The Brcko District is the narrow geographical link between the eastern and western part of the Republika Srpska, as well as the link between the Tuzla industrial centre in the Federation of Bosnia and Herzegovina with the Sava river and Croatia (see maps below).

During the war, the Croats and Bosniaks had control over 2/3 of the district’s area, and the Serbs held the rest, including the entire town of Brcko, effectively dividing the Municipality in two. The question of Brcko’s status was left unresolved by the Dayton Peace Agreement. The decision was left to a specifically-created tribunal, which was supposed to have reached a decision on the district’s status by the end of 1996. The decision was postponed for three years and interim measures were put in place.

Finally, in March 2000 the region of Brcko was granted special status within Bosnia and Herzegovina, making it de facto independent from either of the two Entities and constituting its own autonomous, multi-ethnic directly-elected government, within the jurisdiction of the State of Bosnia and Herzegovina. Brcko is often given as an example of successful multi-ethnic consolidation within a war-torn region with a history of ethnic conflict.

The Brcko district government emerged from three separate, ethnically-based systems, as an effective and progressive municipal administration, able to provide effective service to its citizens. The internationally-sponsored District Management Team project is widely credited for this success. It was set up in late 1999 with the objectives of consolidating and rationalizing the district government, improving personnel management and performance, developing more effective budgeting procedures, planning economic development, and enhancing government accountability and transparency.

All the problems in the rest of the country were present in the Brcko district: there had been heavy fighting during the war, followed by physical and economic devastation, ethnic resentment, a culture of corruption and nepotism. The DMT worked closely with the district supervisor for Brcko (who is part of the Office of the High Representative) and relied heavily on his authority to persuade or compel local officials to follow the Team’s recommendations.

All the basic laws and institutional structure of the present Brcko government were developed by the DMT in close cooperation with the district supervisor, based on a best practices approach from the US experience and adapted to the local environment. Officials’ salaries were made competitive to private sector pay, an effective human resource management programme was put in place, an effective budgetary process was developed and implemented. Efforts were made by the DMT to improve government accountability and transparency as well. These included the establishment of a public information office, a district government newspaper, making assembly meetings open to everyone, encouragement of municipal officials to establish connections with the media and local community, and a general culture of participation on the part of the population.

Presently, there is a well organized district government in place, with 2400 employees allocated to 11 separate departments and selected on the basis of their qualifications and experience while aiming to preserve the ethnic balance.

In practice, there are eleven systems of local self-government in the state of Bosnia and Herzegovina, ten of which (in the Federation of Bosnia and Herzegovina) exhibit considerable differences in the redistribution of authority and municipal tasks. Municipalities in Bosnia and its Entities have varying degrees of power, responsibility or jurisdiction. As a result, although they perform largely similar tasks, there are significant disparities among Municipalities in the two Entities, mainly in the provision of their key services – education, social provision, housing, etc.

The Dayton Peace Accord, which established the Constitution of Bosnia and Herzegovina, essentially devolved all matters related to local self-government to the Entities. This was done with the objective to provide as much ethnic self-rule as possible. In areas with multi-ethnic population, Cantons and Municipalities have to balance the interests of various ethnic groups and Mayors, deputy Mayors, City Councillors, etc. are appointed in duplicate to guarantee compliance.

The ten Cantons in the Federation of Bosnia and Herzegovina have their own legislatures, their own constitutions, governors and ministries. All Cantons have passed local government laws by the end of 1999 and are free to organize their constituent Municipalities’ administrative structure as they see fit. Cantons are given exclusive taxation and regulatory powers to govern the Municipalities of the Federation.

Some parallels can be drawn between the Cantons (the middle tier of local government in the Federation) and the Entity level in the Republika Srpska.

Federation Cantons and the Entity of Republika Srpska are responsible for:

- Canton public administration
- Public order
- Executive offices
- Local and Canton courts
- Protection of human rights and fundamental freedoms
- Health care
- Education and culture
- Social services

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233 Ibid. p. 95
234 SIGMA, Ibid., p. 33
235 Jokay, Ibid., p. 96
236 De facto veto powers is given to each ethnic group.
237 Part V, Point 2, Article 4 of the Constitution of the Federation of Bosnia and Herzegovina.
- Local television and radio support
- Land use planning
- Local economic and business development
- Assigning rights and responsibilities to the Municipalities through the Cantonal legislation.
- Organisation of police work and the appointment of judges at the Cantonal level
- All other tasks not assigned to the Federation in the Federation Constitution.

Municipalities in both the Federation and the Republika Srpska are the basic units of local self-government. The difference is that in the Republika Srpska there is no intermediate (Canton) level.

In the Republika Srpska, if the municipal ethnic composition is different to the predominant one at Cantonal level, then all basic functions and responsibilities should be transferred to the municipal level to protect the minority. In practice, as we will see below, this is not always the case.

In both Entities, Municipalities are only in charge of delegated functions, there are no functions they execute fully and completely by themselves.

Tasks of Municipalities in the Republika Srpska (similar to the tasks expected from Municipalities in various Federation Cantons, according to the Cantonal laws) include:

- Adoption and implementation of a municipal development programme
- Agreement on a municipal budget and municipal annual financial statement
- Performance of public functions on the municipal level
- Land use and town reconstruction programmes
- Local roads and other public facilities
- Culture, education, sport
- Health care and social services
- Law enforcement
- Establishment of bodies and administrative structures, needed for the running of the Municipality.  

Although the Federation Constitution endorsed the principle of decentralisation and Municipalities were given authority in local matters, they are dependent on the Cantons for financial support. The Cantons take about 80% of the tax collected by each

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238 Jokay, Ibid., p. 95
Municipality, leaving 20% to municipal authorities (see the discussion of fiscal autonomy below).

Municipalities in both Entities operate in a very complex web of inter-institutional relations. There is a large amount of overlap between functions exercised at the Cantonal/Entity level and functions exercised at the local level. Local authorities are often not more than implementing agencies of the Cantons (in the Federation) or the Entity level government (in Republika Srpska).

Local autonomy is very limited, Cantonal governments often interfere in municipal business, violate Municipalities’ property rights and fail to provide adequate financing for their functions. In both Entities there are disagreements between Municipalities and Cantons/Entity level regarding ownership of real estate and physical infrastructure, assets of nationally-owned utilities, such as water, gas, electricity, etc. There are also no legal provisions, enabling local governments to influence decisions taken at the higher level. There is very little coordination and cooperation among municipal local governments.

In the RS there is a centralized administrative structure and a Ministry of Local Government, established to conduct dialogue among the 63 Municipalities.

No institutional structures and procedures exist for cooperation between the Cantons and the Federation. The Association of Municipalities is rather weak as a lobbying and policy-formulating tool. Cantonal parliaments can set revenue allocation, in many Cantons municipal ordinances can be challenged and struck down, and Mayors can be removed. No procedures and institutions for direct municipal lobbying at a higher state level exist, nor is there a procedure for municipal grievances against Cantonal or Entity authorities. Collective action given this institutional set-up is seen as futile.

The new Law on Local Government in the Republika Srpska (in force since Jan 2005) is regarded as a step in the right direction. There is clearer delineation of Municipality competences, revenue sources, etc. The success of the law is still to be seen and will

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239 This function is exercised by some Municipalities in the Federation only, depending on the discretion of the relevant Cantonal laws.
241 Jokay, Ibid., p. 107
242 Ibid., p. 95
244 UNDP, Ibid., p. 47
be dependent on a legislative support framework of rules and regulations, as well as further fiscal reforms, which are currently being developed.

Overall, it can be observed that the present delineation of local governments’ rights and responsibilities in Bosnia and Herzegovina is too vague and allows a rather wide discreional margin to the Entity/Cantonal governments. The legal treatment of Municipalities does not meet the requirements of the Council of Europe’s Charter on Local Self-Government as municipal autonomy is very low and their functions are poorly defined. This leads to unpredictability and discourages accountability.

**Fiscal Autonomy of Local Governments in Bosnia and Herzegovina**

In the Federation (FBiH), the Cantons have the authority to set and collect sales taxes and distribute the takings across Municipalities, which they do in a very uneven manner. There are significant conflicts between the Municipalities and Cantons regarding fiscal transfers. A major source of contempt is the allocation of tax revenues, the appointments of staff to local and municipal administrations, and shared and transferred revenues.

Essentially, Municipalities are required to solve serious problems with limited funds. The problem of “expenditure assignment creep” emerges, where, for example, theatres and schools are part of the Cantonal (or Srpska Entity) budget and are operated with Entity funds, but Mayors are pressured by citizens to supplement the funds available for these establishments. Hence the assignment of capital improvements to the municipal level is a heavy burden on the small municipal budgets.

According to the Law on the Allocation of Public Revenues of the Federation of Bosnia and Herzegovina (FBiH), the following public revenues are allocated to the Cantonal level:

- sales tax on goods and services
- enterprises’ profit taxes (with some small exceptions)
- payroll taxes
- fines, collected under Canton regulations

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245 Milicevic, N., “State and Problems of Local Self-Government in Bosnia and Herzegovina”, United Nations Thessaloniki Centre (UNTC), 2001, pp 105-127, p. 113
249 Ibid., p. 99
- donations
- various other revenues, not allocated at the national or Entity level, such as Canton fees (courts, parking, etc.).

The Cantons’ legislative bodies have the authority to pass laws on taxation and Canton fees and to determine the way the revenues are divided among the various Federation Municipalities.\(^{250}\) At times, this is changed halfway throughout the budgetary year, making the budgetary planning task of Municipalities very difficult.\(^{251}\)

In the Republika Srpska, there are (1) revenues, which are shared between the Entity government and municipal authorities in pre-determined proportions varying according to the level of development of the respective Municipality (such as sales tax on goods and services, road fees on registration of new vehicles, oil derivation excises, compensation for roads, tax on citizens’ income, confiscations and compensations for improper use of property), and (2) revenues, belonging exclusively to the municipal budget\(^{252}\):

- Tax on property
- Tax on citizens’ income from agriculture and forestry
- Fines for criminal offences
- Municipal administrative fees
- Utility fees
- Municipal compensations for use of natural and other resources belonging to the Municipality
- Tax on lottery
- Other municipal revenues, not specified as shared with the Entity government.

Municipalities have practically no influence over fiscal policy in both Entities. Revenues, allocated to them change arbitrarily every year, subject to Cantonal or Entity discretion. This puts Municipalities in a very difficult position. They lack the fiscal autonomy to adequately fund their delegated functions, cannot reject the delegation of more and more functions by the Cantons or the Entity government, and cannot set the procedures for executing these functions independently.\(^{253}\) Mayors complain that revenue sharing formulae are arbitrary and do not reflect the funding needs of

\(^{250}\) OSCE, Budget and Finance Guide for Municipalities in BiH, p. 23


\(^{252}\) Based on the Law on Budget System in the Republika Srpska of 13 September 2002.

Municipalities. A high level of mistrust exists between the Cantonal and municipal government level in the Federation and between the Municipalities and the Entity level in the RS. This mistrust is pervasive across the country and is independent of ethnic or political affiliation.

A major reform of the budget system for local authorities in BiH, which would guarantee more transparency, citizen involvement, and equity is deemed necessary.

2.2 Provisions and Frequency of Local Elections

Elected officials at the local level in the Federation of Bosnia and Herzegovina are the members of the Cantonal Parliaments, Members of the Municipal Councils, and Mayors of Municipalities. Elected officials in the Republika Srpska are the members of the Municipal Assemblies and Mayors.

The election law of Bosnia and Herzegovina and other Entity laws form the basis of the electoral process in the country. As of 2000, Municipal authorities have a term of 4 years in office, with elections held on the same day every four years. In 2004 the RS and the Federation of Bosnia and Herzegovina adopted laws on the direct election of Mayors. The Brcko District Assembly formulated its own law for election procedures in the Brcko District, according to which each of the three ethnic constituencies must hold at least 3 seats in the district assembly.

The electoral regime for Mostar was imposed by the High Representative as part of the strategy for unification of the city. There, at least 4 Councillors from each Constituent People and at least 1 from the group of “others” should be appointed. The Mayor in Mostar is elected by the Mostar Assembly in accordance with the BiH constitution.

2.3 Electoral System Design and Performance

The initial design of the electoral system, prior to the 2004 local elections, is seen as having cemented the ethnic division in Bosnia and Herzegovina. Article VI of Annex 3 of the Dayton Peace agreement, regulating local elections in 1997 held that “A citizen who no longer lives in the Municipality in which he or she resided in 1991 shall, as a general rule, be expected to vote, in person or by absentee ballot in that Municipality... Such a citizen may, however, apply to cast his or her ballot elsewhere”.

254 Ibid., p. 11
255 Ibid., p. 3
256 OSCE, 2003, Ibid., pp 5-16.
257 Jokay, Ibid., p. 103
Contrary to expectations at the time, most displaced Bosnians did not return to vote in their home Municipalities. The authorities of Republika Srpska were capable of engineering a vote of displaced Serbs in the Municipalities, to which they had fled, thus guaranteeing a Serb majority in the Entity. Parties across the country ran on an ethnicity-based platform and sought the vote of their respective ethnic constituencies. Once in power, ethnic parties continued to defend the interests of their ethnically-homogeneous electorate at all cost, making successful minority return and integration a near impossibility.258 The ethnic homogeneity of BiH regions, established after the 1997 local elections, was further accentuated in 2000.259 Members of the local government administration were given two or three deputies to ensure ethnic representation, giving routine administrative tasks an ethnic dimension as well.

A new Election Law was adopted in Bosnia and Herzegovina in 2000, according to which a citizen of BiH who is 18 or over can vote based on his residency and registration into the Central Voters Register.260

Voters elect municipal representatives (Council Members in the Federation and Assemblies in Srpska) from a list, with seats allocated on a proportional representation basis. The number of representatives depends on the number of registered voters in the Municipality:

Less than 8000 voters – 11-17 members
8000 – 20000 voters – 17-25 members
Over 20 000 voters – 25-31 members

At the Canton level in the Federation:
Less than 75000 voters – 20-25 Assembly members
75 000 – 200 000 voters – 25-31 Assembly members
Over 250 000 voters – 31-35 Assembly members.

Open lists were also introduced for the first time in 2000. They allow voters to choose individuals within the given party lists and were designed to establish a direct link between voters and candidates.261

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261 Ibid., p. 6
A Rule on Incompatibility Applicable to Financial, Court and Border Service was adopted, forbidding officials from sitting on board of directors of public companies, and another rule forbade persons illegally occupying apartments or homes of refugees or displaced people to apply for a political post.

The 2004 municipal elections were the first to be held under the new election framework and also the first, in which Mayors were elected directly. In sum, six different electoral systems were in place throughout Bosnia and Herzegovina for the 2004 elections:

1. A proportional election system for Municipal Councils in the Federation and the Assemblies in Republika Srpska (RS).
2. A plurality system for the direct election of Mayors in the RS.
3. A 2-round system for direct election of Mayors in the Federation, according to which only the two leading candidates in each contest proceed to a second round of counting based on the second and subsequent preferences in the ballots cast.
4. Brcko: a proportional system for electing Assembly members, with a set minimum representation for BiH’s three ethnic groups and a subsequent indirect election of a Mayor by the Assembly.
5. Mostar: a proportional system with constituency and “at large” seats, set minimum and maximum representation for the three constituent ethnic groups of BiH and others, and an indirect election of the Mayor.
6. Sarajevo: indirect Mayor election by a city-wide Municipal Council, elected by four municipal councils, directly elected by constituents.\(^{262}\)

The 2001 Election Law added a clause on the representation of minorities (other than the Constituent Peoples, see discussion of minorities, pt 3.3 below)\(^{263}\). It was done in order to ensure that members of all national minorities have the right to elect their own representatives in local councils. Municipal council seats are guaranteed to all national minorities, constituting 3% of the total population of a Municipality. It was adopted too late to enter into force before the 2004 municipal elections. The implementation of this amendment is considered problematic due to its generality and lack of detail.\(^{264}\)


\(^{264}\) OSCE 2005, Ibid., p. 6
Also, a lottery system was set up for appointments to the Polling Station Commissions in order to guarantee greater transparency, diversity and fairness of the appointments. It is judged to have succeeded in this general role.  

2.4 Number and Membership of Parties Active at the Local Level

According to the 2001 Election Law, only political parties, party coalitions, independent candidates, and lists of independent candidates certified by the BiH Electoral Commission may run for a post in local government.

70 political parties were registered for the 2004 municipal elections, 18 coalitions and 180 independents. Despite the vast plurality of political parties and coalitions, the majority of Municipalities were won by the ruling nationalist ethnically-based parties – the Muslim Party of Democratic Action (SDA), the Serbian Democratic Party (SDS) and the Croatian Democratic Community (HDZ).

In many smaller Municipalities, in areas far from the big cities, local leaderships have not changed since the war. Municipal control is in the hands of ethnic power-groups, often centred around private economic interests. Municipal Assembly members throughout the country are found to break all communication with citizens after the elections and, once in office, base their decisions on party affiliation.

As already stated, political parties in Bosnia and Herzegovina are ethnically based and politicians seek the support of only one ethnic group to win office. This leads to ethnic insecurity and further deepens the ethnic divisions within the country – in the words of an influential report “everyone wishes to live under their own ethnic authorities, but fears the ethnic rule of any other community”.

At the local level, there is homogeneity in ethnic composition, but at the national level an ethnically-based party feels no obligation to represent the interest of all ethnic groups. And parties are not encouraged to evolve to an all-inclusive platform as they win elections by robustly defending the interests of their ethnic constituents. Hence,
local ethnic divisions lead to insecurity at the national level and threaten to destabilise the entire system of government.

This poses problems for the return of refugees, as it would be close to impossible for returning residents to reintegrate in their home Municipalities, whose ethnic composition has changed completely. No provisions for minority rights can be successfully implemented in Bosnia’s ethnically-homogenous regions.

Local leaders (with the notable exception of Mayors) are elected through party lists along ethnicity lines leading to a serious accountability problem as the link between the voters and the politicians is very weak. The changes in the electoral law to allow the direct election of Mayors from 2004 are a welcome departure and bridge the democratic deficit at least to an extent. The danger here is that since the Mayoral authority is regulated by the various Municipality statutes, these can be manipulated to undermine the Mayoral position.

The effects of single ethnic-based party domination on local politics are highly negative. Politics becomes complacent, one-sided and drifts away from the voters, as power is effectively guaranteed by the central party apparatus. Divergent opinions are unwelcome, transparency is flanked and opposition is marginalized.

**2.5 Structure of Council Powers and Decision-Making Procedures**

All Cantons in the Federation, as well as the RS Entity, are given the power to establish their own operative structure. Canton Parliaments legislate, regulate, formulate policy and control the Municipalities. They are free to create ministries or departments for the execution of all these functions and can review ordinances of local Municipalities, judge on their legality and overrule them.

Each Canton has a bicameral Cantonal parliament, and a Cantonal government with ministries put in charge of overseeing certain functions. Each Municipality within the Cantons and the RS has an Assembly and a Mayor. And finally, Brcko has its own Assembly, a Government and a Mayor. The internal procedures for the functioning of all these administrative structures are the prerogative of Cantons and the RS themselves.

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273 Ibid., p. 18  
Hence, there is no standard structure of council powers and decision-making procedures across BiH.

As a result of this extremely complicated institutional arrangement, there are 13 separate ministries (at the State, Entity and Cantonal level) essentially dealing with the same sector of responsibility. The BiH of less than 4 million people has 14 governments (the State, Entities, Cantons, and Brcko), 150 ministries and 146 local governments.\textsuperscript{276} The country thus has the highest number of administrative workers per capita in the Western Balkans, which compromises the effectiveness and service provision to citizens.\textsuperscript{277}

Studies of this very complicated local government system in Bosnia and Herzegovina nevertheless draw some general principles applicable to the division between legislative and executive authority at the Municipal level.\textsuperscript{278}

The organization of municipal authority in the Republika Srpska is regulated by a ‘Book of Rules’ unique for the Entity.\textsuperscript{279} The organs of RS Municipalities are the Mayor, the Assembly, and the Municipal Administration. Legislative authority in the RS is concentrated at the Entity level and the Municipal Assembly has virtually no power to determine the legal regulations determining its functions, it can only regulate on the implementation of existing provisions. The RS Parliament has the authority to dissolve the Municipal Assemblies if the latter fail to perform their duties for a long period.

Executive power in the Republika Srpska is vested with the Mayor. He/she is responsible for implementing Assembly decisions and heads the Municipal Administration, which is itself divided into a number of Departments (as regulated by the ‘Book of Rules’). These are: Department for Economy and Social Activities, Department for General Administration, Department for Urbanism, Department for Finance, Department for Housing and Public Utility Service, and a Department for Protection of War Veterans and Invalids.\textsuperscript{280}

\textsuperscript{276} UNDP, \textit{Ibid.}, p. 19
\textsuperscript{277} Ibid.
\textsuperscript{278} Miljevic, D., “Local Government and Citizens Reaching Development Together, Experiences from Bosnia and Herzegovina”, United Nations Thessaloniki Centre (UNTC), 2001, pp 61-75
\textsuperscript{279} Ibid., p. 63
\textsuperscript{280} Ibid., p. 67
RS Municipalities have no authority in organising their own structure and delineation of functions, which is seen as a major obstacle to the functioning of local self-government in the Entity.281

The jurisdiction of Municipalities in the Federation of Bosnia and Herzegovina is prescribed by the laws of their respective Canton. Municipal bodies are, as in the RS, the Municipal Council, Mayor, and Administration.

Legislative power in the FBiH is concentrated at the Cantonal level and Cantons often violate municipal rights, endangering the autonomy of the latter.282 They can dissolve local Councils and appoint administrators in their place. The office of the Mayor is the executive of Municipalities in the Federation. The Mayor is in charge of the execution of the tasks, given to the Municipality, heads the Municipal Administration and appoints its heads of units.

The wide discretion of Cantons in establishing municipal functional frameworks and competences is seen as an obstacle to effective governance at the local level in the FBiH.283 The problem is most evident when ethnic majorities at the municipal level are minorities at the Cantonal level, as is the case of the majority Serb Municipalities in Drvar and Grahovo in the Croat Western Bosnia Canton.284

Employments at the local level across Bosnia and Herzegovina are also often based on ethnic affiliation and political patronage, rather than merit.285 Local government administrations are captured by political and other interests and municipal decisions are often based on party affiliation rather than citizens’ interests.286

The average citizen is puzzled by the complexity of the local government system in Bosnia and Herzegovina, and not encouraged to evaluate its political performance. The inefficiency of the local bureaucracy, as well as its dependence on ethnic, party, nationalist, etc. alliances further undermine trust in local governments.287

281 Ibid., p. 64
282 Ibid., p. 65
283 Ibid., p. 65
284 Who have been put under financial pressure by the Cantonal authorities, see Freedom House, 2006, Nations in Transit: Bosnia and Herzegovina, Local Democratic Governance Section.
286 UNDP, Ibid., p. 71
287 Ibid., p. 63
2.6 Civil Society (Number and Principal Sphere of Activity of NGOs, Citizen Groups, etc.)

International donors and NGOs, the OSCE and the OHR have worked since the end of the war to build a civil society network in Bosnia. An indigenous NGO sector is now in place, including the prominent Coalition for Return – an association of displaced persons’ organisations.

There are 7874 civil society organisations and 55 foundations in BiH, and it is estimated that about half of them are active. They operate in a wide variety of activity areas: an estimated 17% in training and education, 14% in civic services, 14% target children/youth, 10% - women, and 9% - health concerns. The sector is becoming more stable, cooperation with government is growing, and so is public trust in NGO activities, as NGOs are no longer seen as being anti-government.

The Centre for Civic Initiatives (CCI) is an example of successful advocacy at the local government level. It has worked with over 20 Municipalities to improve budgetary processes and to increase citizens’ participation. It has also been successful in lobbying the central government for the change of the election laws, allowing for the direct election of Mayors.

**Box 2: The Mjesne Zajednice (MZs).**

A unique civil society grouping in BiH is that of the Mjesne Zajednice (MZs). They are a remnant of the Yugoslavian system and are voluntary semi-official community associations. Most Municipalities have preserved the MZs and use them as a means for citizens’ participation. They are most important in rural areas, where the MZ model has long been recognised as an effective problem-solving mechanism.

The MZs have proved useful in mobilising citizens to participate in the decision-making process and are widely seen as a good potential source for democratic pressure for change.

Source: UNDP, 2005, p. 64

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288 ICG Balkans Report, No 42, 1998, p. 8
289 USAID: The 2004 NGO Sustainability Index: Bosnia and Herzegovina, p. 86
290 Ibid., p. 86
The greatest concern about the sector’s development remains the lack of finances and the over-dependence of the entire sector on foreign funds.\textsuperscript{291} Other challenges are posed by: the inconsistent implementation of adopted legislation, lack of organizational capacity and the low levels of understanding of the wider public as to NGO potential involvement and activities. It must also be noted that the most successful NGO campaigns and advocacy efforts take place in the larger urban centres, while the activities and influence of NGOs in the rural areas are far more limited.\textsuperscript{292}

### 2.7 Local Media (Structure, Editorial Independence and Arrangements)

Currently there is a wide range of media in BiH, especially at the local level.\textsuperscript{293} There are about 190 electronic media in the country, most of which local radio and TV stations, making BiH one of the highest per capita broadcast markets in the world.\textsuperscript{294} There are seven daily newspapers, and about five weekly or fortnightly magazines, with a combined circulation of about 80,000.\textsuperscript{295} The most influential broadcasters are the two public television stations – Federation TV (FTV) and Radio-Television Republika Srpska (RT TS).\textsuperscript{296}

The print media is hampered by lack of finances, limited circulation, and a small advertising market. Print media journalists have adopted European standards on journalistic practice, pledging to editorial responsibility, accuracy and fair reporting, which have been put in a voluntary Press Code.\textsuperscript{297} Still, reports produced are generally based on limited research and unconfirmed information sources, rely on press conferences and official sources, and are focused on the politics of the largest cities – Sarajevo, Banja Luka and Mostar.\textsuperscript{298}

The media was often abused by the ruling political parties in the past. During the 1997 municipal Elections campaign, local media broadcast extreme propaganda and hate campaigns. The SRT in Pale and HTV in Mostar were particularly active in this regard. In an effort to curb this abuse, the international community undertook a basic restructuring of the media sector in Bosnia and Herzegovina.\textsuperscript{299} International supervisors have been placed in the key state-owned television, and an Independent

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\textsuperscript{291} Ibid., p. 87
\textsuperscript{292} Ibid.
\textsuperscript{293} OSCE 2005, p. 12
\textsuperscript{294} IREX Media Sustainability Index 2005, “Bosnia and Herzegovina”, pp 15-27, p. 22
\textsuperscript{295} Ibid., p. 22
\textsuperscript{296} OSCE 2005, p. 13
\textsuperscript{297} OSCE 2005, p. 13
\textsuperscript{298} IREX Media Sustainability Index 2001, “Bosnia and Herzegovina”, pp 67-76, p. 68
\textsuperscript{299} ICG Balkans Report No. 42, 1998, p. 7
Media Commission was established and put in charge of overseeing a new regulatory framework for the media. An internationally-funded television station, the Open Broadcast Network, was set up in September 1996 and has now become highly popular and influential.300

One of the requirements for the opening of negotiations on a Stabilisation and Association Agreement with the EU was the passing of a Law on the Public Broadcasting System, which would establish three separate public televisions in Croatian, Bosnian and Serbian languages.301 The law was passed in October 2004, despite intense political opposition from Bosnian and Croat parties, and is still pending implementation.

The legal framework guaranteeing free speech is in place, as most BiH laws are adopted under direct international pressure. A new defamation law was also passed, decriminalising libel into a civil issue.302 The problem, as in other countries in the Western Balkans, is again the lack of political will in the implementation of the adopted laws. Public apathy also leads to freedom of speech violations remaining unpunished.303

The legislation regarding media ownership is also in place, but in practice it is very hard to access. Limited transparency regarding media ownership is also due to the public’s lack of interest in the issue.304

The main obstacles to media development in BiH are the underdeveloped market due to the population’s lack of financial resources, the fragmentation along ethnic lines, the lack of interest of foreign investors, and the limited donor funding.305 There are high distribution costs and printing difficulties for the print media and foreign media have saturated the market.

The print media market is also highly ethnically fragmented. Most newspapers cover the Entity they are based in and do not provide information on the wider picture or of a wider interest.306

300 Ibid., p. 7
301 IREX, 2005, p. 17
302 IREX 2005, p. 19
303 IREX 2001, p. 69
304 IREX 2001, p. 73
305 IREX 2005, p. 19
306 IREX 2005, p. 22
There is still direct political pressure on the media, with local media being much more susceptible.\textsuperscript{307} The independent Prizma agency in May 2005 found that 75\% of respondents across the country think that journalists’ work is under the influence of various parties and politicians.\textsuperscript{308} At the local and Cantonal level it is easiest to exert pressure on the media, as media outlets are usually funded from the municipal or Cantonal budgets.\textsuperscript{309} In 2005 the Mayor of Gacko declared a RTRS journalist – Biljana Bokic a \textit{persona non grata} because he did not like her coverage of the town scandals.\textsuperscript{310} Another journalist writing for a local newspaper was beaten by the police in Mostar, while covering riots of football fans. Even at the state level, media is judged to \textbf{not} be reflecting the views of the entire political spectrum, their goal being “to protect the interest of their founders, supporting political parties, or influential politicians, instead of providing a wide variety of objective information to its citizens”.\textsuperscript{311}

Internet access is very limited, the penetration figure is less than 2\%.\textsuperscript{312}

3. The Procedural Functioning of Local Democracy

3.1 Administration, Effectiveness and Fairness of Elections Held, Voter Participation

Municipal elections in Bosnia and Herzegovina were delayed several times during the late 1990s due to the major displacement of the population and the slow return of refugees and were very hard to certify due to the impossibility of drawing adequate voting lists.\textsuperscript{313}

The 1997 and 2000 local elections were overseen by the Provisional Election Commission, an OSCE body, composed of 4 international members, and 3 BiH citizens, one from each constituent ethnic group.

1997 Municipal Elections

The Electoral Rules and Regulations, allowing voters to cast their votes outside their Municipalities of residence, were revised and reduced the possibility for manipulation

\textsuperscript{307} IREX 2005, p. 20, also see IREX 2001, p. 68
\textsuperscript{308} Ibid, p. 21
\textsuperscript{309} Ibid, p. 24
\textsuperscript{310} Ibid, p. 21
\textsuperscript{311} Ibid, p. 72
\textsuperscript{312} Ibid, p. 23
\textsuperscript{313} Jokay, \textit{Ibid.}, p. 93
of voter lists. However, there still were organised campaigns to intimidate voters to register in various Municipalities for strategic purposes and electoral fraud occurred in large enough degree to affect the composition of population at the local level (see the discussion of electoral framework above, pt. 2.3). Voter turn-out was very high (estimated at around 70%) and there were few violent incidents. The counting process was seen as too complex and cumbersome and there were administrative difficulties, related to late openings of polling stations, insufficient ballot papers, lack of ink, etc.

Overall, the holding of the 1997 municipal elections in Bosnia and Herzegovina was a considerable achievement in the democratization processes in the country, given that they were organised in the context of the peace-building process.

The 2000 Municipal Elections
The political campaign in 2000 was less acrimonious than the one in 1997, largely due to OSCE’s media campaign, forcing local media to follow strict rules for covering parties’ campaigns and watch out for extreme sentiments. Parties were warned that nationalist rhetoric or provocations could lead to them being banned from the elections. A number of candidates were removed from the ballot and the Bosnian Serb branch of Vojislav Seselj’s Serbian Radical Party (SRS) was banned by the OSCE from proposing candidates in the Republika Srpska (RS).

The elections were free and fair, 70% of the electorate voted in 145 Municipalities. There was a problem with voter lists, many voters being unable to find their polling station due to the fact that 1000 new polling stations had to be opened to meet the OSCE’s desire of completing the voting in one day only.

The 2004 Municipal Elections
The 2004 elections were the first to be organised by the BiH authorities and the first in which Mayors were elected directly by a majority system. An Electoral Commission of Bosnia and Herzegovina (ECBiH) was created and put in charge of administering the local elections. It included four national members – one from each predominant ethnic group and one “other” and three internationals. The election administration

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314 Municipal elections in 1996 had been postponed due to such mass manipulations. Republika Srpska officials in particular had attempted to commit massive electoral fraud and validate the results of ethnic cleansing.
316 ICG Balkans Report No. 91, 2000, p. 6
317 Ibid.
318 Ibid.
319 Ibid.
320 Sandvik, Ibid.
consisted of the ECBiH, 142 Municipal Election Commissions, and 4064 polling stations. In 2004 it demonstrated a good level of openness and transparency in its work and enjoyed a high level of confidence from most political parties. Voter turnout dropped to 45.5% (Figure 6).

Figure 6: Average Turnout Rates in BiH Elections.

Funding posed a significant problem as Municipalities were expected to contribute to the costs of the ECBiH. This led to unavailability of information, and even polling stations being set up in private houses.

The vast majority of polling stations were staffed according to the regulations and opened on time and voting proceeded with no major irregularities. Three types of voting were allowed: in person, by an absentee vote (for displaced persons) and by mail (for citizens living abroad).

The voting system also foresaw separate types of polling stations for different categories of voters, different ballots for persons registered to vote abroad but having returned to the BiH before elections and after the end of the voter registration process, and mobile ballot boxes. Although these measures were adopted to improve the inclusiveness of the voting process, they further complicated the already complex voting system and did not lead to an increase of the absolute number of voters (as evident from figure 6 above).

321 OSCE 2005, p. 8
322 Sandvik, Ibid., p. 6
323 Freedom House 2005, Freedom in the World, Bosnia and Herzegovina
324 Sandvik, Ibid., p. 8
325 OSCE 2005, p. 4
Voting was assessed positively in 93% of the polling stations observed. The voting count was deemed “weak” or “very weak” in 20% of observed stations, mainly due to poor administrative procedures.\footnote{Ibid.}

The 2004 election campaign marked a ‘significant improvement’ and it was generally open and peaceful. Only few cases of intimidation, obstructionism, and hate speech were reported. Ethnicity and nationalism remained major campaign issues and most parties focused on national problems, such as unemployment, economic reform, etc. Television advertisement openly asked for the vote of a single ethnic group.\footnote{Ibid., p. 12} Overall, the political campaign contributed to the general atmosphere of ethnic identification.

There are currently some concerns regarding the complaints and appeals procedure, which is too complex and generally misunderstood.\footnote{Ibid., p. 16} The complainant has no right to a hearing, it is only held if deemed necessary by the adjudicating body. The target of the complaint has the right to appeal, but not to a hearing.\footnote{Ibid.}

\section*{3.2 Degree of Openness of Local Authorities}

The legal framework encouraging openness in both Entities is adequate and gives room for improvement of relations with the public. It is the responsibilities of Mayors to hold public hearings on the budget formulation and implementation process.

Some Municipalities organise public debates on important issues. The Rights Based Municipal Assessment and Planning Project is run jointly by UN agencies, the State Ministry for Human Rights and Refugees and selected local authorities and aims to increase citizen participation in local politics. It has designed a process for participation, which avoids over-politicization or ethnic divisions.\footnote{For example, the setting up of Municipal Partnership Groups, bringing together municipal staff, the business community, NGOs, citizens and vulnerable groups.}

However, transparency and communication with citizens are not part of the culture of local authorities and the procedures for such public hearings should be improved and publicized.\footnote{OSCE, 2003, “Budget and Finance Guide for Municipalities in Bosnia and Herzegovina”, pp 50-52.} Some Municipalities have made important steps in this regard – Prijedor and Bogojno have established information centres, Sanski Most and Sarajevo publish...
guides for citizens and in Trebinje citizens are encouraged to attend assembly meetings and even given speaking rights.332

3.3 Fairness (Policies Guaranteeing Wide inclusion, Minority Rights Implementation)

The BiH Constitution gives priority of the European Convention on Human Rights over all other law. Both Entity Constitutions also guarantee the protection of human rights, equality before the law and no discrimination based on gender, age, ethnicity, etc.

In the case of Bosnia and Herzegovina, it is useful to distinguish between the ‘constituent peoples’ – the Serbs, Croats and Bosniaks and the other ‘minorities’, as defined by the State constitution.

The Constitutional frameworks of the two Entities have led to the following paradox: the Bosnia and Herzegovina Federation recognises Bosniaks and Croats as ‘constituent peoples’, but not Serbs; the Republika Srpska recognises Serbs as ‘constituent peoples’, but not Bosniaks and Croats. Hence, although all three are supposed to be equal throughout Bosnia and Herzegovina (according to the BiH Constitution), technically nowhere in its territory do they enjoy equal rights. The members of the ‘constituent minority’ (Serbs in the Federation of Bosnia and Herzegovina and Bosniaks and Croats in RS) are subject to serious and pervasive discrimination.333

Safeguarding the rights and freedoms of these people at the local level then becomes more difficult due to the interplay of such factors as political arrangements, ethnicity, etc. The major issue for these ‘constituent minorities’ since the signing of the Dayton Agreement has been the return to their pre-war homes.334 Efforts for return have been thwarted by government corruption, economic hardship and not least by the unwillingness of local authorities to cooperate.335 The latter have failed to evict illegal occupants, delayed the finding of other accommodation, provided inadequate office for

332 UNDP, Ibid., p. 67
333 Milicevic, N., Ibid., p. 106
334 Half of the population of Bosnia and Herzegovina (over 2 million people) were displaced during the war.

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staffing local housing offices, and allowed attacks at returnees, or have been away while displaced people have tried to receive papers crucial for their return.336

Successful constituent minority return has happened in very few areas of the country337 and has depended a lot on the good will of separate local authorities. Moreover, this process depends on political commitments on two sides – the Municipalities host to the displaced populations and the Municipalities of origin of these populations.338 Often, displaced people have returned to their places of origin just to sell their property and move permanently to areas in which they are members of the local ethnic majority.339

Some positive examples of minority return initiatives at the local level have nevertheless been noted, testifying to the potential of local communities and grassroots initiatives for successful integration at the local level.340

Constituent minority groups enjoy the freedom of religious belief and practice in areas where their ethnic group is dominant, but if they happen to be in a local minority, there are numerous instances of discrimination and harassment.341.

The Constitutional Court of BiH in an attempted to deal with this matter pronounced in a landmark ruling in July 2001 that all three Constituent Peoples have equal rights throughout the territory of Bosnia and Herzegovina. This ruling resulted in a number of changes in both Entities: power sharing provisions, including the right to a vital interest veto342, and rules allocating crucial functions equally among the three constituent peoples were introduced in the respective Entity Constitutions.343 Once the process of

336 Ibid., p. 6
337 Sarajevo and Zvornik are some of the examples.
339 Freedom House, Ibid.
340 The citizen initiative “Association of Citizens for Human Rights Protection” in Mostar aims to bring the three constituent peoples together by encouraging cooperation in local matters and establishing mutual tolerance and trust.
341 Freedom House, Ibid.
342 The following issues are deemed of ‘vital interest’ to the Constituent Peoples of BiH: adequate representation in judicial, executive and legislative authorities, identity, constitutional amendments, public authorities’ organisation, equal rights in decision making processes, education, religion, language, culture, territorial organisation, public information and others, established by a 2/3 majority of the constituent peoples’ representatives at any given government level. When decisions are made and concern the above-listed vital interests, they can only be adopted if the majority of representatives from all three constituent groups vote in favour. A special panel within the Constitutional Court was established to judge whether a proposed legislative act concerns a vital interest or not.
343 Following the Sarajevo Agreement of March 2002, which was made possible once again by the involvement of the High Representative.
constitution change and implementation is complete, all citizens of BiH should enjoy the same rights, wherever they reside. Reforms required by the Court ruling should also extend to all municipal and Cantonal laws, acts, and structures, which currently privilege one ethnic group over another. This poses a particular challenge in view of the high levels of ethnic homogeneity at the local level.344

Another anomaly of the state structure in Bosnia and Herzegovina, is that various mechanisms aim for the protection of constituent peoples, occasionally against the interest of its citizens. First, the interest of minorities, not belonging to the constituent peoples, are often neglected. Second, there is a strong push for people to identify with one of the constituent groups, although they might be of mixed origin. Third, issues will always be viewed through an ethnicity prism, thus discouraging genuine civic-oriented search for solutions.345

Apart from the “constituent minorities”, Bosnia and Herzegovina is home to 16 recognised national minority groups – termed “others”. There are Albanian, Hungarian, Macedonian, Montenegrin, Russian minorities at the territory of BiH. The largest one is the Roma minority, estimated to be around 80 000 – 100 000. The Roma vote was actively sought only in the Tuzla Municipality during the 2004 local elections. Minorities have played a negligible role in the local elections in general.346

Bosnia and Herzegovina ratified the Framework Convention on the Protection of National Minorities and adopted a Law on Protection of Members of National Minorities in April 2003.347 Some specifications were added to the law in June and October 2005, including increased state-level support for national minorities, promoting positive discrimination in employment. The establishment of a Council of National Minorities in BiH to oversee the implementation of the law was foreseen within 60 days of passing the October 2005 amendments.348

The first Roma political party was registered in 2003 and the OSCE pressed for the establishment of the Roma Council within the Ministry of Human Rights and Refugees of Bosnia and Herzegovina.

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346 OSCE, 2005, pp 16-17.
348 Ibid.
The Office of the Ombudsmen was established as a separate administrative unit at the Entity level and was given the task of protecting “human dignity, rights, and liberties as provided in the Constitution” and acting “to reverse the consequences of the violations of these rights and liberties and especially of ethnic cleansing”.\(^{349}\)

Some positive results have been noted, but a lot depends on the political will for implementation of the commitments undertaken. In a political climate permeated by ethnic considerations, minority concerns are often not addressed with due urgency.

Rights of women are recognised and protected by the State Constitution, as well as the laws of the two Entities. A Gender Equality Law was adopted by the State parliament in May 2003. It stipulated that there should be equal representation of the two sexes in government bodies in all levels. There is a clash between this law and the Entity laws for the direct election of Mayors - in 2004 among the 809 registered candidates for Mayors, only 32 were women.\(^{350}\) Across the board, there are very few women, who hold key government or party positions.

Overall, discrimination based on gender, age, ethnicity, religion and even social status are widespread in the country.\(^{351}\) Discrimination is blamed on the constitutional framework, inadequate laws, lack of implementation, lack of finances or unjust allocation of financial resources, unawareness of citizens as to their rights, lack of accountability of authorities and general insensitivity to human rights issues.\(^{352}\)

Legislation has been adopted in order to comply with EU requirements, but the authorities lack the capacity or understanding to implement it. This aspect has been targeted by international donors and technical and financial support has been provided to local authorities to promote women’s political and economic leadership.\(^{353}\)

### 3.4 Transparency (Availability of Local Documents to the Wider Public)

Both Entities of the State of Bosnia and Herzegovina have passed freedom of access to information legislation.\(^{354}\) According to the Freedom of Access to Information Acts, all

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\(^{349}\) Constitution of the Federation of Bosnia and Herzegovina, Part 1, Article 2.

\(^{350}\) OSCE, 2005, p. 17


\(^{352}\) Ibid.

\(^{353}\) For example the USAID-sponsored Bosnia-Herzegovina Women’s Economic Network Project, which finished in September 2004 and enabled women in selected regions to obtain credit, start businesses and establish business connections.

“public authorities”, including municipal, city, or Cantonal administrations are required to disclose to private individuals all information under their control (unless confidential, or deemed contrary to the wider public interest) after the submission of a written request for information.

The Freedom of Information acts are still not broadly applied in the country.\textsuperscript{355} Most Municipalities do provide some information about their activities via an official publication. However, there are still many which neglect existing regulations on access to information.\textsuperscript{356}

The transparency of local government in BiH is hampered by the unclear delineation of roles and responsibilities between the various levels and lack of knowledge regarding existing legal channels.\textsuperscript{357} Citizens, as well as journalists, are ignorant as to how the law should be implemented and access to information is often hampered by the “arrogant” conduct of officials.\textsuperscript{358}

\textbf{3.5 Provisions for ‘Citizen’s Outreach’ – the Right of Citizens to Influence Local Decision-making (Referenda, Ballots, Petitions, etc.)}

These depend on Cantonal and Entity provisions and vary across the country, due to the authority of Cantonal Assemblies to establish the structure and delegate functions to local Municipalities. Some Mayors hold surgeries, during which citizens can meet and submit a petition directly.\textsuperscript{359}

Overall, the OSCE has noted that there are no effective mechanisms to encourage citizens to participate in local decision-making in the country.\textsuperscript{360}

International actors have attempted to encourage citizens’ participation in the local governance process.\textsuperscript{361} In doing this, they have had to face two sets of problems: on the one hand, local government officials feel that ordinary people should not deal with government matters and on the other, citizens perceive these matters as highly

\textsuperscript{355} IREX, 2005, p. 20
\textsuperscript{356} UNDP, \textit{Ibid.}, p. 69
\textsuperscript{357} Krylova-Mueller, \textit{Ibid.}, p. 27
\textsuperscript{358} IREX, 2005, p. 20
\textsuperscript{359} UNDP, \textit{Ibid.}, p. 69
\textsuperscript{360} Krylova-Mueller, \textit{Ibid.}, p. 27
\textsuperscript{361} For example, the MIFI program of the OSCE, see above 3.3, Minorities. The positive impacts of this programme are mostly felt in the Municipality of Gorazde, where a number of trainings in local governance took place in 1999-2002. Transparency in municipal dealings was introduced and local officials launched a citizens’ education campaign with the help of the OSCE.
technical and unworthy of attention and often have more pressing concerns. The political will of local authorities has been identified as crucial in the fight to overcome these difficulties.

4. State Weakness in Bosnia and Herzegovina

The Central State of Bosnia and Herzegovina is weak and ineffective and is not capable of fulfilling its basic functions. It has failed to establish common social standards, social protection, access to basic services, or set common regulatory principles.

Like other States in the Western Balkans, Bosnia and Herzegovina is struggling with public administration and judicial reform, privatisation, economic reconstruction, etc. Other factors, specific to the case of Bosnia and Herzegovina, and further aggravating state weakness are: the governance legacy of the Dayton Peace Accords, the many layers of government coupled with poorly defined responsibilities among the various levels, persisting ethnic schisms, high rates of actual and perceived corruption.

The paradoxes of the Constitutional framework of the State of Bosnia and Herzegovina established at Dayton are discussed in numerous parts of this study. They are connected to the ethnicity factor and affect negatively the legal autonomy of local government units, minority rights implementation, and complicate the electoral system at the local level.

One more influence of the constitutional framework on the democratization processes in Bosnia and Herzegovina can now be added: This Constitution was not informed by popular consent, it was drafted without involving citizens. It is a unique case of a constitutional agreement never officially published in the languages of the people involved, but agreed and written in English. This lack of legitimacy is especially harmful in a conflict-ridden country, in which the constitutional arrangement was part of the peace agreement and was put in place to guarantee equality and promote co-habitation. Citizens see no incentive to start building a common existence with all others under the externally-imposed framework, but prefer to remain in their ethnically-defined power houses - the Federation Cantons and the Republika Srpska. This cements existing ethnic divisions and undermines the inclusiveness of the democratization process at both national and local level.

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362 Krylova-Mueller, Ibid., p. 35
363 UNDP, Ibid., p. 19.
364 See point 2.1, 2.5, 3.3, and 6 below.
365 Venice Commission, 2005, p. 2
State weakness is also one of the major obstacles for successful decentralization in the country. A weak central state is incapable of regulating, harmonizing, or coordinating the activities of its constituent parts. This is one reason for the numerous differences in local levels, structures and competencies throughout the territory of Bosnia and Herzegovina.

The 2003 Commission Feasibility Study set substantial reforms aimed at strengthening the central state as preconditions for the opening of negotiations on a Stabilisation and Association Agreement with Bosnia and Herzegovina. It was stated that “only coherent, functioning states can successfully negotiate an agreement with the EU”. Bosnia’s Republika Srpska has been opposing a strengthening of the state government at the expense of weakened Entity powers and has created obstacles to reforms.

The governance problems of the state of Bosnia and Herzegovina lead to low comparative ranking of all indicators for assessing levels of democratization, used by international donors, such as political processes, civil society, media, corruption. The country is branded as “partly free” by the Freedom House methodology for assessing state strength and civil and political liberties.

5. International Involvement in Bosnia and Herzegovina

The International Community has played a prominent role in Bosnia and Herzegovina since the end of the war in 1994. The Dayton Accords, putting an end to the fighting and forming the basis of BiH’s Constitution, are supplemented and strengthened by a number of binding United Nations Security Council Resolutions and Peace Implementation Council decisions. This legal structure grants a high degree of power in the involvement of the international community in the country.

The Office of the High Representative, established under Annex 10 of the Dayton Peace Agreement, has overriding authority in Bosnia and Herzegovina. In order to speed up the process of adoption of new legislation, the Bonn 1997 meeting of the Peace Implementation Council increased his powers. In result, the High

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368 European Forum, Bosnia and Herzegovina Update, 05 January 2005
369 USAID, Bosnia and Herzegovina, Annual Report, June 16 2006
370 Subsequently known as the “Bonn Powers”.
Representative has the authority to dismiss all officials (including elected ones) who oppose the peace process, as well as propose solutions to serious disputes.

The High Representative has forced a number of measures, aimed to bring communities together in Bosnia and Herzegovina. These include a common vehicle licence plate, a new Bosnian flag and even passport, and recently the unification of the police forces of the two Entities, which was necessary for the starting of talks on a Stabilisation and Association Agreement with the EU. He has dismissed officials, deemed ‘obstructionist’, including the Mayor of Stolac and the deputy Mayor of Drvar. He has also employed special envoys in various parts of the country: there is an international supervisor in Brcko, a special envoy in Drvar, and an international chairman of Srebrenica’s interim municipal board. The High Representative has had people indicted at the Hague’s Criminal Court arrested, has modified parties’ electoral lists due to violations of electoral rules and procedures and undertaken a systematic restructuring of the media (see 2.7 above).

Since Dayton, more than 470 pieces of legislation have been imposed on BiH authorities in an effort to overcome the deadlock in institutions. As a consequence of these policies, together with the removal from power of elected politicians (in the Republika Srpska especially), the BiH electorate has lost interest in the election process. Turnout in post-war elections has dropped from 71% in 1998 to under 45% in the October 2004 municipal elections. Dayton has been blamed for the country’s poor human rights records as the high level of decentralization led to inequality in laws and policies related to economic, social and cultural rights.

Over the years, the International Community grew increasingly frustrated with the lack of progress in the democratization process, which caused the change of focus to programmes designed to improve the system of governance. Emphasis was put on institutional building on all levels.

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371 See the Centre for SouthEast European Studies, Country Analyses, ‘Europe’s Mixed Messages to the Balkans’, October 8, 2005. www.csees.net;
372 ICG Europe Report, 42, September, 1998, p. 6
375 OHCHR, Ibid., p. 5
376 Krylova-Mueller, Ibid. 2004, p. 27
377 The Municipal Infrastructure and Finance Implementation Program (MIFI) of the OSCE was one of the examples in this regard. Launched in late 1998, it helped Municipalities improve their budget and financial performance and acquired the role of fostering accountable public management and participatory governance.
The positive impacts from the involvement of the international community in the early post-war years in BiH are numerous and clear. Recently, however, analysts and policy-makers have asked for a reform and re-thinking of international involvement in the country, and the Office of the High Representative in particular, as there is significant risk of alienating citizens, discouraging local politicians’ accountability and thus undermining the democratization process. The OHR is currently seen as contradicting the democratic principle of the sovereignty of the people and thus as being “fundamentally incompatible with the democratic character of the state and sovereignty of BiH”.

The EU and NATO have been instrumental in guaranteeing stability in Bosnia and Herzegovina. After the conclusion of SFOR’s NATO mission in 2004, the EU launched Operation ALTHEA, together with the deployment of a significant military force (6,300 troops), aimed at securing a safe environment in BiH, assisting the OHR, and helping BiH in making further progress towards European integration.

The EU has also included BiH in the Stabilisation and Association Process and recently recognised it as a potential candidate country for accession.

**Timeline of EU Relations with Bosnia and Herzegovina (excluding police missions):**

- 1998, June: EU/Bosnia and Herzegovina Consultative Task Force established.
- 1999: Bosnia and Herzegovina included in the newly-created Stabilisation and Association Process for South-Eastern Europe.
- 2003, November: Feasibility Study on the capacity of Bosnia and Herzegovina to implement a future Stabilisation and Association Agreement.
- 2004, June: European Partnership with Bosnia and Herzegovina established.
- 2005, October: The European Commission recommends the start of negotiations on Stabilisation and Association Agreement.
- 2005, November: The Council authorises the Commission to start negotiations on a Stabilisation and Association Agreement with Bosnia and Herzegovina.

The EU’s 2003 Feasibility Study for Bosnia and Herzegovina outlined 16 requirements, necessary for the opening of negotiations for a Stabilisation and

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378 They include assistance for reconstruction, economic stabilisation, facilitating the return and re-integration of refugees and Internally Displaced Persons (IDPs), institutional strengthening, etc.
379 See UNDP 2005, SIGMA 2004, also the 2005 report by the Venice Commission of the CoE criticising the role of the HR among others.
380 Venice Commission, 2005, p. 17
Association Agreement between BiH and the Union. These included the unification of the City of Mostar and the strengthening of the central level institutions’ policy-making powers.

The inclusion of Bosnia and Herzegovina in the enlargement process has encouraged the authorities to adopt the legal amendments, favoured by the Union. The perspective of membership has provided a strong incentive for locally-driven reform. The EU’s ‘soft’ leverage has also been propped up by substantial financial assistance with attached conditionality.\(^\text{382}\) The EU is the main trading partner of Bosnia and Herzegovina, accounting for more than 50% of its total trade.\(^\text{383}\)

Progress made in addressing the identified priorities was deemed satisfactory and the Commission recommended opening of negotiations for a Stabilisation and Association Agreement (SAA) in October 2005. Negotiations were formally opened in November the same year.

The EU is providing an important impetus for democratization and reform, as well as much needed funding and expertise. Public approval ratings of the EU are high across the country and the inclusion of BiH in the Stabilisation and Association Process has sent a positive signal regarding the EU’s commitment to integrating the state in its structures. For the processes of democratization to continue, it is crucial that people are kept informed about the objectives of the EU and the progress in SAA negotiations, and that various methods of conditionality be properly explained, not simply imposed. This would help to avoid creating a democratic deficit, and perceiving EU integration as an elite-driven practice, and would strengthen the legitimacy and authority of the institutions established in the process.

6. Ethnicity in Bosnia and Herzegovina

Ethnicity is the one overriding factor in Bosnia and Herzegovina. It permeates all levels and structures of local self-government in the country and hinders and distorts the functions of these governments.

The war completely changed the country’s ethnic demography. (See figures 7 and 8 below).

\(^\text{381}\) EU Military Operation in Bosnia and Herzegovina, online factsheet, Source: www.euforbih.org.
\(^\text{382}\) The EU has provided more than EUR 2 billion of assistance to BiH through the ECHO, PHARE, and OBNOVA programmes between 1991 and 2000 and 312 Million of CARDS assistance between 2001 and 2004, and 100 Million has been allocated for 2005 and 2006.
Figure 7. Ethnic Composition of Bosnia and Herzegovina before the War (1991).

Ethnic composition before the war in BiH (1991)


An autonomous preferential trade regime was adopted by the EU in 2000, allowing BiH exports to
None of the predominant ethnic groups managed to establish dominance at the state level, so they have aimed at establishing relative dominance at the Cantonal/Entity level. The Federation Cantons were largely drawn along ethnic lines. (see figure 9 below).

IEBL – Inter-Entity Border Line – the Line drawn at Dayton and separating the Republika Srpska from the Federation of Bosnia and Herzegovina.

Figure 9. Territorial Division and Predominant Ethnic Groups in Bosnia and Herzegovina after the War (1998)

IEBL – Inter-Entity Border Line – the Line drawn at Dayton and separating the Republika Srpska from the Federation of Bosnia and Herzegovina.


Thus, the Republika Srpska Entity and the 10 Federation Cantons have turned into bastions of so-called “national interests” which are nothing more than the interest of the predominant ethnic group at the local level.
The devolution process in Bosnia and Herzegovina has led to the high concentration of powers to the Entity level of Republika Srpska on the one hand, and the Cantons of the Federation of Bosnia and Herzegovina on the other. This has aided the power-holders at these two levels, who are defined and function largely along ethnic lines, to use the decentralization process as a tool to further divide the country according to ethnicity, rather than worry about democratization.384

Ten years after the signing of the Dayton Peace agreement, interethnic divisions have been further radicalized and tensions and mistrust persist among the major ethnic groups in the country.385 Entity politics, institutions, and decision-making remain divided along ethnic lines. In such an atmosphere, concerns about minority rights, citizens’ involvement in local decision-making and gender equality have secondary importance. The BiH Constitutional Court ruled in 2001 that all constituent peoples should be equal throughout the territory of Bosnia and Herzegovina (see discussion of minorities, pt. 3.3 above) but no significant improvements are evident. Municipal level politics is also ethnically based. Municipalities are largely considered as governing bases of the predominant ethnic group.386 The ethnic minorities at the local level are denied equal access to social and economic services and are victims of human rights abuse.387

The ethnic divisions in Bosnia and Herzegovina have a number of adverse consequences for the process of democratization. Objective and meritocratic election of officials is not ensured, democratic accountability is not encouraged, the link between constituents and electees is weak, decision-making in institutions is prone to deadlock due to the various procedures for guaranteeing equal representation, the policy scope is limited to issues of interest to the ethnic group in power, minority rights are not adequately overseen. Moreover, ethnic cleavages entrenched in the political system are a major source of potential instability. They undermine the strength and authority of the Central State as the Cantons and the RS Entity are reluctant to see an extension of Central State powers, which would diminish their own autonomy.

7. Economic Transition and Consolidation in Bosnia and Herzegovina

BiH faces another major challenge in moving towards a modern European democracy - the facilitation of economic transition. The BiH economy is still very uncompetitive,
and privatization has moved very slowly. Foreign Direct Investment is one of the lowest in Europe and the export/import ratio is about 1/3, putting a great strain on the current account.

Bosnia and Herzegovina relies a great deal on donor funds, remittances from abroad and the expenditure of foreigners working in the country to bridge its current account gaps. In economic terms, the Country is among the weakest performers in South-East Europe. The legacy of the war and the post-Communist transition undoubtedly plays a major role for the economic weakness and structural inefficiencies of the country.

Progress since the war has also been limited, due to governance weaknesses, heavy international involvement and strained local community relations. Initial annual growth averaged 25%, but since 1998 it has been trailing at 5%. The current GDP level is at about 60% of its pre-war level. There is a good degree of price stability (inflation is less than 1%) due to the currency board and strict monetary discipline, enforced by the Central Bank of Bosnia and Herzegovina.

Positive change has taken place, but at a much slower speed than the rest of South-East Europe. The benefits of economic reform have also been very unevenly distributed across the country. There are variations between the Entities – the Republika Srpska’s GDP per capita is lower than that of the Federation, but there are also significant disparities within the Entities themselves. This fact, coupled with the lack of efficient state regulation and the political entrenchment of ethnic divisions, will lead to deepening of regional economic irregularities, opening the way for potential destabilisation of parts of the country. Unemployment rates are as high as 40% in some Municipalities and 80% of the country’s poor live in rural, small communities.

There are big differences in economic structure, social and welfare indicators between rural and urban communities. As with all other aspect of BiH society, ethnicity permeates the economic system as well. The UNDP in collaboration with BiH authorities has found a correlation between levels of household income and the ethnic structure of parts of the country. There is a growing gap in the economic

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389 UNDP, Ibid., p. 27
390 Ibid.
391 All data from UNDP, Ibid., p. 27
393 Ibid, p. 22
394 Early Warning System Quarterly Report April – June 2002, UNDP and Bosnia and Herzegovina Authorities, pp 16-17
development among regions in BiH – poverty levels are highest in Serb-majority areas (40-43% of the country’s poor) and lower in Croat-majority areas (6.9% of the country’s poor). The problem extends to ethnic minorities as well – more than half of ethnic minority households in the RS are poor, and in Croat majority areas 16% are poor.\textsuperscript{395}

Analysts list the following causes of poverty in BiH: the catastrophic results of the war; slow reform implementation; high unemployment; human rights violations; unviable social assistance systems; poor quality of education; corruption; inability to influence institutional system and processes.\textsuperscript{396}

The high levels of poverty and low economic development have a number of adverse effects on the democratization process. Concerns about economic conditions, lack of jobs, etc. among the population take attention away from the establishment of democracy at the local level. The slow rate of reforms increase frustration among citizens and the uneven distribution of benefits leads to further inequalities. All these combined with a politically-entrenched ethnic schism provide a potential source of destabilisation. The economic underdevelopment undermines the strength of the state and important reforms and measures (such as minority rights implementation, decentralization, etc.) are postponed due to the lack of sufficient funds.

8. Corruption and Organized Crime in Bosnia and Herzegovina

Corruption is a wide-spread and tangible problem in BiH. It has permeated all levels and areas of social life during the state-building, economic transition and privatization efforts.\textsuperscript{397}

Corruption in BiH is characterised by: a high level of public concern with corruption, lack of trust in all levels of government, conflict of interest and state capture\textsuperscript{398}, inefficiencies of the public administration, compromised business environment and exacerbated poverty and inequality.\textsuperscript{399} High corruption levels lead to insecurity across the country and increase organised crime. Levels of perceived corruption are also extremely high: nearly 100% of the respondents in a survey, conducted by the World

\textsuperscript{395} Ibid.  
\textsuperscript{396} IMF, Ibid.  
\textsuperscript{397} Ibid., p. 97  
\textsuperscript{398} State capture is defined as “the actions of individuals, groups, or firms both in the public and private sectors to influence the formation of laws, regulations, government actions, etc. to their advantage as a result of the illicit and non-transparent provision of private benefits for public officials”, see World Bank, “Bosnia and Herzegovina: Diagnostic Surveys of Corruption”, World Bank Publications, 2001  
\textsuperscript{399} Ibid.
Bank, confirmed the existence of corruption and more than half thought it was very wide-spread.\textsuperscript{400}

In its 2003 survey, Transparency International ranks BiH at 70\textsuperscript{th} place according to corruption levels out of 133 countries. Corruption in BiH is augmented by the inadequate judicial system, the complicated political and administrative system, poverty, as well as the inadequate influence of the private sector and civil society on the work of the government.\textsuperscript{401} High levels of perceived corruption in BiH also undermine the confidence and trust of citizens in the public authorities.\textsuperscript{402} In many Municipalities high actual and perceived levels of corruption lead to deep disillusionment with local authorities and the democratization process in general.\textsuperscript{403} Corruption has an indirect effect in the increase of poverty, it chases foreign investors away and undermines private sector strength.

Cantonal governments are perceived as most corrupt by BiH citizens, levels of trust in them are lower than the ones for the State or Entity governments. Municipal authorities are however generally considered more trustworthy than the rest of the government levels.\textsuperscript{404}

The negative effects of corruption on the democratization process are numerous and interlinked. First, the high perceived levels of corruption undermine trust in local authorities, sapping the credibility and impetus of the democratization process. Constituents are not encouraged to seek their rights or actively participate in the decision-making process. Corruption undermines the stability of the government system and provides fertile ground for the rise of organised crime. The culture of offering bribes and gifts hits the poorest households the hardest, exacerbating inequality and providing a potential source of instability. It undermines economic growth by setting additional obstacles for new market entries. There is a clear link between corruption and inefficiencies and lack of accountability of the public administration.\textsuperscript{405} Illicit financing to political parties is also wide-spread and constitutes the political aspect of state capture.

In sum, corruption poses a serious problem for the democratic and socio-economic development of the country.

\textsuperscript{400} Ibid., p. 2
\textsuperscript{401} IMF, \textit{Ibid.}, p. 98
\textsuperscript{403} UNDP, \textit{Ibid.}, p. 63
\textsuperscript{404} World Bank, \textit{Ibid.}, p. 15
9. Conclusion: The State of Local Democracy in Bosnia and Herzegovina – Summary of Main Findings

A decade after Dayton, Bosnia and Herzegovina remains a divided, poverty-ridden country practically under the command of the High Representative of the Secretary General. A system of local government has been established and a number of generally free and fair local elections have been held, but a lot remains to be desired.

Ethnicity and the weakness of the Central State are among the major obstacles to local democratic consolidation in Bosnia and Herzegovina. The Federation Cantons and the Republika Srpska Entity have turned into ethnically-based enclaves, which claim to represent the ‘national’ interest of their ethnic majorities and refuse to cede any of their authority to the Central State or to the lower levels of local government.

As a review of institutional provisions demonstrated, the system of local government in the country is extremely puzzling and complicated, there are numerous inconsistencies in the delineation of responsibilities between the local and Cantonal/Entity levels of government, and the legal and fiscal autonomy of local self-government units is very low.

The structure of powers and decision-making procedures at the local level in Bosnia and Herzegovina is not optimal, administrations are often incompetent and inefficient. Ethnically-based political parties exercise high levels of control on decision-making and the media at the local level. The rights of minorities are often violated and there is no culture of encouraging citizen participation in decision-making.

The international presence in Bosnia and Herzegovina has been crucial for ensuring stability, but has aggravated the democratic deficit of the institutions and measures imposed by not informing the latter by popular debate and consent. This is evident by the dropping of turn-out rates in elections held and the catastrophic levels of citizens’ trust in institutions, including ones at the local level.

One of the main challenges the International Community now faces in Bosnia and Herzegovina is to bridge the gap between the people and the institutions for civil representation, and to ensure real local ownership of the institution-building initiatives. The municipal level is in this sense a good starting point, as municipal authorities are by nature closest to their constituents. NGOs and local civil society groups could be partners in this process as they have proven to have positive impact on the

\[\text{405 Ibid., p. 5}\]
democratization processes at the local level in recent years and enjoy growing levels of citizens’ trust.
Chapter III

LOCAL DEMOCRACY IN THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Country Data:

Capital: Skopje
Population: 2,045 million (July 2005 estimate).
Ethnic Composition: Macedonians: 64.2%, Albanians: 25.2%, Turks: 4%, Roma: 2.7%, Serb: 1.8%, Others: 2.2%. (2002 census).
GDP Per Capita: 2,170 EURO (European Commission, 2004)
GDP Growth Rate: 4.1% (2004).

Brief Historical Timeline:

1946 The “People’s Republic of Macedonia” given federal status as an Autonomous Republic within Yugoslavia.
1991, September 17 Referendum held in the Socialist Republic of Macedonia, establishing its independence from Yugoslavia under the name “Republic of Macedonia”.
1993 The UN recognizes the Republic under the provisional name ‘Former Yugoslav Republic of Macedonia’ following Greek protests that the Republic uses the name of one of the Greek regions.
1999 340 000 Kosovo refugees flee within the country to escape the Kosovo crisis, leading to destabilization and threatening to destroy the fragile ethnic balance between Macedonians and Albanians.
2001, March Start of ethnic conflict between Albanians and Macedonians - the Albanian National Liberation Army occupies a number of villages in the west of the country. Macedonian army raids follow.
2001, April Macedonia signs a Stabilisation and Association Agreement with the EU.
2001, August 13 Framework Agreement for Peace signed in Ohrid with the help of international mediators, ending the conflict between ethnic Macedonians and ethnic Albanians and providing a time-line for important Constitutional changes, aimed at increasing the rights and participation of the Albanian ethnic group in Macedonian public life.

2001, August NATO conducts operation “Essential Harvest” to obtain the weapons of the National Liberation Army. The latter dissolves itself shortly after.

2003, April Macedonia becomes a member of the World Trade Organisation.

2004, March Macedonia submits a membership application to the European Union.

2004, April Stabilization and Association Agreement between the European Union and Macedonia enters into force.

2005, December Macedonia officially recognized as an ‘Accession State’ by the European Union.

1. Progress towards Decentralization

In the years between 1974 and 1991, Macedonian local government units enjoyed a high degree of legal and fiscal autonomy.\(^\text{407}\) After the disintegration of Yugoslavia, Macedonian authorities embarked on a process of centralization of functions at the government level in their desire for state strengthening and consolidation.\(^\text{408}\)

Functional decentralization in Macedonia started in the late 1990s with Macedonia’s ratification of the European Charter of Local Government as part of the transition of the country towards democracy and market economy and driven by the desire for integration in European structures. The process received further momentum in 2001 when decentralization became the corner-stone of the Ohrid peace deal between ethnic Macedonians and Albanians, which halted the country’s slide into civil war.

\(^{406}\) The use of the name ‘Macedonia’ instead of ‘FYROM’ is done in this report for reasons of brevity and simplicity and does not reflect the attitude of the author, or the Committee of the Regions, towards the name issue.


\(^{408}\) Ibid.

104
The major benchmarks in the decentralization process in Macedonia are given below:

- 1991, November - The Constitution of the Republic of Macedonia provides the basis for local self-government by proclaiming it as a citizens’ right and designating Municipalities as the basic units of local self-government. It also determines the ways in which citizens can participate in local decision-making.

- 1996, January – Laws on Local Self-Government of the Republic of Macedonia and on Territorial Division enter into force, creating 123 Municipalities and the City of Skopje with 7 constituent Municipalities. It has to be noted that this Law constitutes a de facto centralization as it reduces the number of rights and responsibilities of the former Municipalities.


- 2001, August, - Ohrid Framework Agreement for Peace signed, ending hostilities between ethnic Albanian armed groups and Macedonian forces. The Agreement makes various constitutional changes and sets a deadline for the adoption of revised laws of local government, local finance, and regulations regarding police in Municipalities.


- 2004, August – Law on the Territorial Organization of the Republic of Macedonia adopted, reorganizing the former 123 Municipalities into 84 new ones and increasing Skopje’s constituent Municipalities from 7 to 10.

• 2005, July 1st – Official Start of the transfer of 489 institutions, 27,000 employees, 4,000 sq. ms of buildings from central to local government.

2. The Institutional Framework for Local Democracy

2.1 Legal and Fiscal Autonomy of Local Government

Legal Autonomy of Macedonian Local Governments

Before 1996 there were 34 Municipalities in the Republic of Macedonia. The 1996 Law on Territorial Organisation of the Republic created 123 Municipalities and the city of Skopje, causing a great degree of fragmentation of local self-government units in the country (46 of the 123 Municipalities had less than 5,000 citizens).

Reform of the local government system in the Republic, increasing the degree of legal and fiscal autonomy, was part of the public policy debate in the late 1990s. With the signing of the Ohrid Peace Agreement in August 2001, Macedonia’s two main ethnic groups committed to decentralization and increasing local government autonomy. The agreement provides for constitutional amendments, a new territorial-administrative division of the country, significant transfer of responsibilities from the central to local level, and increased fiscal sustainability of local authorities. Since the signature of the Agreement, 36 laws of particular relevance to the decentralization process have been developed and enacted.

Decentralization in Macedonia has progressed significantly over the past few years. A large number of responsibilities have been transferred to Municipalities and their autonomy in decision-making has been strengthened by the new Law on Local Self-Government of 2002, particularly in the field of town planning, education and welfare provision.

Functions and Responsibilities of Municipalities in Macedonia

There are currently 84 Municipalities in Macedonia and the City of Skopje, which has 10 constituent Municipalities (According to the Law on Territorial-

Administrative Division of the Republic of Macedonia of 2004). Macedonian Municipalities vary significantly in size (Prilep has an area of 1194 km², and Chair – 3.5 km²) and population (the largest Municipality, Kumanovo, has 105,000 inhabitants and the smallest – Vranestetiza – 1,322 inhabitants).411

There are two types of functions of Municipalities in Macedonia: own functions and delegated functions.412

Macedonian Municipalities are responsible for the following spheres of activity (own functions, according to Article 22 of the 2002 Law on Local Self-Government):

- Urban structure and planning
- Protection of the environment
- Local economic development (planning, prioritizing and implementing local development policy)
- Communal activities (water supply, public transport, street lighting, heating, cleaning of public areas, regulation of markets, maintenance of transport infrastructure, parks, recreation, etc.)
- Culture – institutional and financial upkeep of local cultural landmarks, museums, etc. in accordance with the national programme for culture;
- Sport and recreation
- Social and child protection, care for the elderly and the disabled
- Primary and secondary education
- Health care – primary health care and management of public health institutions
- Protection of citizens and material goods in case of war, natural disasters and other accidents;
- Fire safety.

It has to be noted that the above responsibilities are given to Macedonian Municipalities by the 2002 law, but the process of devolution from the central to local level is not yet complete. A number of the above functions remain at the level of the central government and are executed by the respective line ministries.413 The speed of the devolution process depends on the progress of these ministries in

413 UNDP, Ibid., p. 135.
developing the secondary legislation necessary to transfer the above-mentioned tasks.

State authorities can delegate a number of responsibilities to municipal authorities. This can be done on an ad hoc basis and can involve one or several municipal governments. The Law requires that in such cases the central authorities should ensure the transfer of financial resources necessary for the implementation of the delegated tasks.

The government has developed and began the adoption of 44 pieces of secondary legislation, necessary for the successful implementation of the decentralization package. These include tax collection, health care, education, financial and budgetary allocations. A second phase of the decentralization process will begin in 2007 when the central government will give local authorities primary responsibility for their allocated parts of the State budget, but on condition that local authorities have shown to be capable of handling finances adequately.

The central government has been criticised for lacking a clear decentralization strategy. Central administrators have also been reluctant in resigning functions and responsibilities to local authorities, no clear dissection has been made of what the process of decentralization actually involves and what its practical implication would be. The numerous parts of decentralization legislation were passed somewhat hastily without due consideration and deliberation.

Local officials complain that few real steps have been made to implement the changes to date. Implementation has been hampered by lack of collaboration between government levels, unrealistic deadlines, lack of transparency and information, bureaucratic delays, competition among line ministries. The legal framework for decentralization is also at times incoherent. There are inconsistencies within the various adopted laws which, if compared, will be found to be contradictory. Legislative fixes will probably be required, but in the meantime local service provision will likely be thwarted and constituencies...
confused. There are also concerns about how well Mayors will be able to cope with the increased amount of functions and responsibilities, delegated to them by the new law, given that some have failed to cope with less in the past.420

Fiscal Autonomy of Macedonian Local Governments

The local finance system was one of the major weaknesses of Municipalities in Macedonia in the past, Municipalities lacked a stable and adequate financial basis. Since 2002, the country has been following one of the most active decentralization reform agendas in the Western Balkans. The adoption of the Law on Financing of Local Self-Government Units in September 2004 has been hailed as a ‘turning point’ in Macedonia’s local government reform.421

Two stages in the process of fiscal decentralization are foreseen:

1. Beginning from January 2005, the government would transfer funds to the new Municipalities retaining the size of the former subsidies, but distributing them to fewer units. These funds would be in support of education, health care, and social protection at the local level.
2. At a later stage, and when Municipalities are deemed ready (see below), they will be allowed to collect and manage a part of own taxes. This greater fiscal autonomy is expected to raise the revenues of local governments significantly.422

According to the Law on Financing of Local Self-Government Units of September 2004, the Municipalities are to be financed from own resources and central budget transfers.423 Own resources of Macedonian Municipalities are: property tax, inheritance tax, property transfer tax, income from the ownership of property, fines, local fees and charges, donations, fund-raising done by the Municipality, percentage of income tax and value-added tax. Central budget transfers (in the form of targeted subsidies) are foreseen in general for the execution of a specific delegated task.

419 Ibid.
420 Newly-elected Mayors have expressed concerns about their abilities to come to terms with what is required of them. RFE/RL Balkan Report: Aftershocks of Macedonia’s Local Elections Still to Come, April 09, 2005.
422 Ibid.
The central government nevertheless retains a certain degree of control over the redistribution of Municipalities’ own taxes. Four stages in the redistribution process (point 1 above) are foreseen:

1/ The Parliament determines the average per capita expenditure need for the country as a whole;
2/ This average is multiplied by the number of inhabitants for each Municipality (adjustments are foreseen for the figure in Municipalities with a high proportion of young people or old people, large territory, and high concentration of roads);
3/ The revenue potential for each Municipality is calculated as a sum of the constituents of own resources listed above, and
4/ Municipalities in which the projected expenditure exceeds the potential revenues are entitled to a ‘general grant’, which would cover the difference.424

As regards government transfers, a State Commission is specifically-established to judge the capability of Municipalities to handle direct budgetary transfers. Only after adequate capability is established will the full budgetary transfers be received. The laws do not specifically give local governments the authority to set the rates for any of their own taxes, but does leave the possibility open.425

Significant problems are expected by the decentralization of the financial system.426 Mayors have complained of lack of funding for new administrative capacities, especially the ones related to the salaries of former government employees transferred to local governments.427 The central government has initially provided limited finances in an effort to curb misuses. Municipalities have also been banned from raising funds independently for up to two years.

Another problem is Municipalities’ significant debt. Some Municipalities have debts 10 times larger than their budgets, mostly in inherited arrears to construction companies.428 The servicing of these debts must be done from the local budgets as the central government is unlikely to provide loans and international representatives do not support the holding of a donor conference.429

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425 Ibid., p. 18
426 Kenan Aliu, Mayor of Zelino, quoted in RFE/RL Balkan Report: Aftershocks of Macedonia’s Local Elections Still to Come, April 09, 2005.
428 Taleski, Ibid. p. 6
429 Ibid.
Some analysts believe that the government may have acted too hastily in ceding such a vast amount of financial responsibility to Municipalities. The size of the Local Government sector is expected to double by 2007.430 The government has counteracted by claiming they have developed a comprehensive plan of the sequence of administrative and fiscal responsibility transfer, foreseeing extensive training for local government officials.431

The decentralization process in Macedonia has been used to achieve primarily political objectives (see the discussion of the Ohrid Peace deal below, points 5 and 6). The danger is that the lack of coordination and efficiency at the central level will be replicated to local self-government units and that employment in local administrations will be based on political affiliation, ethnicity, business interests, etc.432

Another criticism voiced by international donors is the apparent lack of realistic understanding on the part of policy-makers as to the real effort needed, cost, and impact of decentralization reforms.433 The key challenges to decentralization, identified by international analysts in 2005, were the calculation of the funds in support of education, health care, and social protection, and the disbursement of the equalization fund.434

The successful implementation of the fiscal decentralization reforms will be a significant test to the Macedonian central authorities in the coming years, given that the financial management administrative capacity is particularly low, and financial control of the Municipalities has to be created from scratch.435

2.2 Provisions and Frequency of Local Elections

The elected officials at local level are the municipal Councillors and the Mayors. Mayors are elected directly and Councillors from party or coalition lists. Local elections in Macedonia are held every four years.

430 UNDP, Ibid., p. 144
432 UNDP, Ibid., p. 150.
433 Ibid., p. 127.
2.3 Electoral System Design and Performance

The electoral system provides for election of municipal Councillors according to a proportional representation system with closed lists, and no voting threshold. There are two rounds in Mayoral elections – a Mayor is elected in the first round if he/she secures 50% + 1 vote of the total votes cast. If there is no winner in the first round, a second round of voting is held between the candidates with highest number of votes.

A number of changes were made in the Election law, including mandatory use of minority official languages in Municipalities where minorities amount to 20% or over of the total population, and provisions that at least 30% of the higher and lower parts of voter lists be filled by women.436

Although marking an improvement on previous stipulations, these electoral provisions are deemed unable to guarantee a transparent and coherent framework for observers’ rights to view documents, attend meetings, monitor administration activities, etc. and do not include an explicit prohibition of unauthorised persons to be present in polling stations during the voting.437

Also, undue privileges are granted to the four leading political parties in the appointment of the election administration, which have occasionally been used by election administration members to defend party interest.438

Some aspects of the local electoral framework need further clarification and elaboration – in particular regarding the establishment of a coherent and transparent framework for campaign funding.439

2.4 Local Politics in Macedonia: Number and Membership of Parties Active at the Local Level

Political parties in Macedonia are divided along ethnic lines. The main ethnic Macedonian party is VMRO-DPMNE, whose natural constituency are right-wing voters. Among the other large ethnic Macedonian parties are the Liberal Party, the

437 Ibid., pp 5-6.
438 Ibid.
439 Ibid.
Social Democratic Alliance of Macedonia (SDSM, which grew out of the former Communist Party), and the Democratic Alternative (DA).

The Democratic Party of Albanians (DPA) is the largest ethnic Albanian party and the second largest party in the country. The Party for Democratic Prosperity (PDP) used to be the major ethnic Albanian political party, but has recently moved towards a more extreme nationalistic position. Another large ethnic Albanian party is the National Democratic Party (NDP), formed in March 2001, and in favour of a federal solution for the country.440

Local elections are another stage in which the two large blocs of political parties test their strength.

The two largest ethnic Albanian parties – the DPA and the PDP – field candidates for Mayors in places where ethnic Albanians are a majority and refrain from contesting elections in ethnically mixed districts.441

Some developments pointing towards an emerging cooperative behaviour of parties on both sides of the ethnic divide in Macedonia were noted during the 2005 local election campaign. The parties belonging to the Coalition Together for Macedonia (including the Macedonian SDSM and LDP, and the Albanian Democratic Union for Integration) came up with common candidates for Mayors at the local elections – the SDSM vowed to support candidates of the Albanian Democratic Union for Integration in Albanian-majority Municipalities. The BDI in turn promised to support the LDP candidate, Risto Penov, in his bid for Skopje.442 The second largest Albanian party, the PDSH, also cooperated with their former coalition partners of VMRO-DPMNE.443

Local election campaigns in Macedonia are characterised by a lack of substantive debate on issues of significance to the local population. The 1996 and 2000 local elections were simply a means to validate the central government at the time.444 Campaigning before the 2005 local elections remained divided along ethnic lines,

440 Source: ICG “The Macedonian Question: Reform or Rebellion”, Balkans Report 109, April 2001, Appendix A
441 ICG, “Macedonian Government Expects Setback in Local Elections”, Balkans Briefing, 4 September 2000, p. 3
443 Ibid.
444 ICG, “Macedonian Government Expects Setback in Local Elections”, Balkans Briefing, 4 September 2000, p. 1
and parties continued to compete for votes within their own ethnic communities.\textsuperscript{445} Themes from the 2001 armed conflict emerged on both sides of the ethnic divide. The Democratic Albanian Party used it to gain ground on its rival (the BDI) by alleging that the latter had turned Albanian fighters into ‘beggars’ by advancing in office; and Ljubco Georgievski of VMRO-Narodna accused the ruling SDSM of giving up vital national interests protected by the previous VMRO government.\textsuperscript{446} Generally, Macedonian parties are seen as a ‘weak link’ in the democratic system.\textsuperscript{447} Their internal selection procedures are not transparent and election campaigns lack serious debate on substantive issues. They lack internal democratic accountability to their members and their internal statutes give overriding political power to their presidents.\textsuperscript{448} All four major political parties have experienced recurrent internal instability in the recent past.

There has been a continuous shift in power from the State’s legal and administrative structures to political party leadership in Macedonia.\textsuperscript{449} This process restricts the development of democracy and democratic institutions both at national and local level. In 2005 there were some warning signs pointing towards general acceptance that ‘this is the way things are done’.\textsuperscript{450} This shift results in the inability of the State to respond to clear violations of the administrative order, as well as basic citizens’ rights, and the development of a culture of impunity and lack of accountability on the part of State and local authorities.

2.5 Structure of Council Powers and Decision-Making Procedures

Council powers at the local level in Macedonia are modelled on Western practices and provide for a parallel structure, in which authority and responsibility is shared between a Mayor and a Municipal Council (Figure 10).

\textsuperscript{445} OSCE, \textit{Ibid}.  
\textsuperscript{446} \textit{Transition Online: Fair Elections for Faster Integration}, 14 March 2005.  
\textsuperscript{447} ICG, “Macedonia: Make or Break”, Europe Briefing, August 2004, p. 1.  
\textsuperscript{448} For example, the VMRO statute allows the party president to cancel the implementation of any decisions taken by the Executive Committee or other bodies within the party.  
\textsuperscript{449} See the Helsinki Committee of Human Rights Annual Reports for Macedonia of 2004 and 2005.  
\textsuperscript{450} \textit{Ibid}.  

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Figure 10. Structure of Municipal Decision-Making in Macedonia

**Figure Description:**
- **Municipal Council:** Main legislative and representative body. Composed of 9 – 33 Councillors, depending on the size of the Municipality, and elected directly for 4 years. Has some executive functions, adopts the budget and Municipal regulations, recommends heads of Administrative bodies.
- **Mayor:** Main executive body, has representative functions as well. Elected directly for a period of 4 years. Oversees the work of and reports to the Municipal Council, proposes and implements the annual budget, selects the heads of Municipal Administrative bodies.
- **Municipal Administration:** Facilitates the work of the Council and Mayor, falls under the regulation of the Municipal Council, is headed by the Mayor.

- Denotes directly-elected bodies of local self-government.

The Municipal Council is the legislative body of Macedonian Municipalities, it adopts the municipal charter and ordinances, the municipal budget, appoints managers and administrators upon proposal of the Mayor, can establish legislative sub-organs, public institutions, etc.

The Mayor’s office implements Council decisions, manages the administration and property, appoints the municipal architect, etc. The Mayor is the head of the municipal administration, including all administrative bodies, decision-making commissions and offices.

There is an inherent danger of conflict between the two branches in this government structure. This conflict is political in nature and is most evident when the Mayor and the majority of Councillors are not from the same political formation. The Council is then practically able to block the executive functions of

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the Mayor, including the ones related to the budget and urban planning. The possibility of conflict and decision-making impasse is also compounded by the lack of clarity of regulations and division of responsibilities between the two bodies. With the significant increase of local government powers since 2002, the stake in such conflict is even higher.

Macedonians express deep dissatisfaction with the quality of services, provided by local governments. Lack of skills, low accountability, and poor motivation are seen as major weaknesses. The pace of devolution of a great number of responsibilities from the central to the local level has opened a gap between the human resource skills and capacities at the local level and the requirements for the implementation of the new tasks.

2.6 Civil Society (Number and Principal Sphere of Activity of NGOs, Citizen Groups, etc.)

Recent reports place the number of NGOs in Macedonia at about 3,000, covering most spheres of activity. The government does have a policy of seeking NGO advice on a multitude of issues and requiring NGO involvement, particularly at the local level. Major NGO donors have supported activities in the areas of decentralization, reform of the private sector, education, development of small and medium-sized enterprises. It has been noted that NGOs and local government associations have been included in the deliberations on the decentralization process strategies, which has contributed to increasing their transparency.

NGO involvement in local activities has increased with the start of the decentralization process in July 2005. Cooperation between NGOs and local governments has improved in recent years. Newly-elected Mayors have created mechanisms for communicating with NGOs since the 2005 local elections. Local communities, for example in Veles, Resen, Stip, Delcevo, Negotino, Prilep, Strumica, have signed cooperation agreements with NGOs. NGOs often work with Municipalities on local issues and receive funding from municipal budgets. The new local administrations in the country have shown great enthusiasm in involving NGOs in their work, which is also a result of the improved public image of the

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452 Ibid., p. 132
454 Freedom House 2005, p. 7
455 Ibid.
456 Ibid., p. 10
458 Ibid., p. 139
latter. A USAID survey reports that 50% of the Macedonian population trusts NGOs and believes they are effective in solving problems.459

A major problem, which the sector faces, is the lack of financial sustainability, with most NGOs being dependant on foreign support to survive. The poor economic development of the country is a major impediment to NGO development.460 Further efforts are also deemed necessary to improve NGOs’ advocacy skills and their organizational capacity. The legal framework is also inadequate at present, with NGOs being taxed as for-profit organizations. Another major obstacle to civil society development in Macedonia is the lack of access to information legislation.461

Overall, however, there have been numerous positive developments in the sector, providing much hope for the capacity of NGOs to contribute to local democratic development and consolidation in Macedonia.

2.7 Local Media (Structure, Editorial Independence and Arrangements)

The media in Macedonia is diverse and varied. A high number of private media have emerged and consolidated in the last decade. There are 161 radio and television stations in Macedonia at present, and approximately 600 print publications.462 The leading country publications are Nova Makedonja, Dnevnik, and Vecer. The number of local broadcasters is 29, and 115 commercial broadcasters have licenses for local area coverage.463

Overall, the information sources are multiple and easily-accessible. Most of them are small municipal radio and television stations with limited coverage. Local private media cover minority issues adequately. There are a number of independent media outlets in minority languages.464

The media, as most of Macedonian society, is divided along ethnic lines. There are two private Albanian-language television stations in Skopje (TV Era and TV Toska).

459 Ibid., p. 141
460 Ibid., p. 138
461 Freedom House, 2006, p. 12
462 IREX, Media Sustainability Index, 2005: Macedonia, p. 75
463 Ibid.
464 Ibid.
A basic criticism to media coverage in Macedonia is political bias and various forms of indirect censorship.\textsuperscript{465} It has nevertheless been noted that the diversity of the media allows citizens to gain a broader and more balanced view of events. There is also increasing pressure on the media from business, which leads to skewed coverage of certain events. There is no law on free access to information yet, which limits the quality of journalists’ reports, and defamation and libel are criminal offences.\textsuperscript{466} Licensing is still dependent on the central government and a number of unlicensed media put further pressure on the already over-crowded media market.

Attacks and threats against journalists were noted in the past, but there was an encouraging halt in this tendency in 2005.\textsuperscript{467} Hate speech, unethical presentation of information have been noted in the past\textsuperscript{468}, but there has been gradual improvement, particularly since the establishment of the Council of Honour within the Association of Journalists of Macedonia to deal with journalists’ mistakes and omissions in 2002.

Professionalism of journalists remains somewhat dubious, with a tendency to sensationalism and tabloidization of publications. The continued criminalization of libel is problematic and has received criticism from local and foreign organisations.\textsuperscript{469}

The media landscape changed days before the 2005 local elections due to the disappearance from the market of two out of the three Albanian newspapers – the daily \textit{Flaka} and the weekly \textit{Lobi}.\textsuperscript{470} The two went bankrupt due to alleged boycott by the advertising companies, leaving the daily \textit{Fakti} as the only publication in Albanian in the country.

During the local elections the media is deemed to have provided diverse information to voters and complied with the electoral law. A certain degree of bias was observed by the OSCE on the part of the State TV channels MTV1 and MTV3 in favour of the governing coalition.

\textsuperscript{465} Ibid., p. 72
\textsuperscript{466} Ibid., p. 69
\textsuperscript{467} Ibid.
\textsuperscript{469} Freedom House 2005, p. 7
\textsuperscript{470} OSCE, 2005, p. 13
Internet penetration is very low – between 6-10% of Macedonians use the Internet daily.\textsuperscript{471}

3. The procedural Functioning of Local Democracy

3.1 Administration, Effectiveness and Fairness of Elections Held, Voter Participation

There is a three-tiered system of election administration in Macedonia, composed of a State Election Commission (SEC), 84 Municipal Election Commissions (1 in each Municipality), and 2976 Electoral Boards in each polling station.

The 2000 local elections were held under the 1996 Electoral Law, stipulating a proportional model for drawing up City Council lists and a majority model for Mayors. The 2000 local elections were conducted shortly after the November 1999 presidential elections. The latter were characterised by serious irregularities – there was large-scale proxy voting, ballot stuffing, and the voter turn-out was unbelievably high.\textsuperscript{472} This led to fatigue and even embarrassment among Macedonians about the wide-spread cheating during the presidential elections, seriously undermining trust in the electoral process in general.\textsuperscript{473}

The OSCE noted pressure by ruling parties on a number of media critical to the government, opposition party members, and parliamentary deputies.\textsuperscript{474} There were serious security incidents in some Municipalities in the western part of the country on the dates of election, as well as reports of intimidation and other irregularities.\textsuperscript{475} Serious shortcoming of the legislation regulating the administration of local elections were noted\textsuperscript{476} and reported irregularities during the local elections threatened to lead to resurgence in ethnic violence and undermine the political stability of the central State.

The 2005 local elections were the first to be held since the start of the comprehensive local administrative reform and thus an important test for the

\textsuperscript{471} Freedom House, 2006, p. 13
\textsuperscript{472} ICG, “Macedonian Government Expects Setback in Local Elections”, Balkans Briefing, September 2000, p. 6
\textsuperscript{473} Ibid.
\textsuperscript{474} OSCE, “ Former Yugoslav Republic of Macedonia, Municipal Elections 10 September 2000, Final Report”, p. 11
\textsuperscript{475} Ibid., p. 13.
\textsuperscript{476} For example, unclear role and responsibility of the State Electoral Commission, some factual mistakes and inconsistencies, too strict definition of valid or invalid votes.
success of this reform, as well as for opening EU accession talks with Macedonia. In a rather harsh report, the OSCE Election Observation Mission described serious irregularities in a large number of Municipalities and failure to live up to key standards for free and fair elections, such as universal and equal suffrage and the secrecy of ballots cast.477

The SEC was criticised by the OSCE for being insufficiently accountable and lacking administrative capacity to perform its functions adequately. Its handling of complaints and appeals, as well as the ones by the MECs, were also seen as inequitable and incoherent. Members of election commissions often saw their position as an opportunity to protect party interests, which influenced the decision-making process and compromised the fairness of the vote.478

The OSCE reported cases of intimidation of election officials, some violent attacks on party members, proxy-voting, ballot box stuffing, and a number of other significant irregularities.479 The election results in Skopje were contested and the DPA-DPP coalition boycotted the second round of voting in Tetovo and Gostivar because of alleged irregularities during the first round.

The election process failed to guarantee equitable participation of the smaller minorities in the country as well: the Turk minority party boycotted the election in Vrapciste in protest to the loss of local influence due to the merger of the Municipality into a larger one, and the Roma were subject to numerous threats and voter-buying schemes.480

All of the above contributed to a significant decrease of public confidence in the electoral process. This led to the drop in turn-out rates – 52.66% on 13 March, 52.66% on 27 March and 35.67% on 10 April.481

3.2 Degree of Openness of Local Authorities

The 2002 Law on Local Self-Government obliges Municipal Councils to declare the date, venue and agenda of its meetings seven days in advance (Article 39, pt.

477 OSCE, 2005 Final, p. 1
478 Ibid., p. 6
479 Ibid.
480 Ibid., p. 17
481 Ibid., p. 22
4). The Council meetings are open to citizens\textsuperscript{482} and decisions are taken by an open vote. There is, however, very little culture of citizen involvement in local decision-making in Macedonia. This, together with the low levels of trust in local government (discussed in more detail below) prevents citizens from even being aware of the opportunities for feedback and demanding democratic accountability.

In a few cases, Municipalities with the support of international donors have encouraged citizens to become part of policy-making and development, but the wide-spread perception among Macedonians is that government officials are ‘untouchable’.\textsuperscript{483} The policy-making process in the country is usually done behind closed doors, without wide information and consultation. The decision about the new territorial division of Municipalities in the country is a typical example in this regard.

3.3 Fairness (Policies Guaranteeing Wide inclusion, Minority Rights Implementation)

The Framework Peace Agreement of August 2001 guarantees greater minority rights to ethnic Albanians. These include: the making of Albanian an official language throughout the country, the creation of a new parliamentary mechanism for approval of legislation pertaining to cultural or linguistic issues, and the appointment of judges to the Constitutional Court and the High Judicial Council requiring the consent of one half of minority votes.

Since 2001, the Macedonian government has adopted over 70 laws in keeping with the Ohrid Framework Agreement, all of them increasing the rights of minorities.\textsuperscript{484} Public administration jobs (including with local government) will be allocated to minorities based on their percentage of the population according to the most recent census. The Albanian presence in police forces is increased significantly, and local authorities gain some say in the selection of police heads in their respective communities.

The 2004 Local Government Law also allows for a second official language beside Macedonian in Municipalities, in which minorities constitute more than 20% of the

\textsuperscript{482} The Council can nevertheless decide to hold a closed doors meeting on certain issues by a majority vote. It is noteworthy that the Law prohibits that the budget and urban planning be discussed behind closed doors (Article 42 pt. 4 of the Law on Local Self-Government, 2002).

\textsuperscript{483} Freedom House, 2006, p. 16

\textsuperscript{484} Birn: Macedonia: New Language Law too Hot to Handle, November 26, 2005
population. In practice, this means that Albanian becomes official in 25 Municipalities, Turkish in three and Serbian in one. And last but not least, the Council on Inter-ethnic relations is revamped to include seven ethnic Macedonians, seven Albanians and five members of other nationalities, to be appointed by a two-thirds Parliament vote.

While the new territorial-administrative division of the country increased the influence of the Albanian minority in a number of Municipalities, there was a lot of discontent among members of smaller minorities. These minorities (the Turks, Serbs, etc.) were relatively numerous in the previous smaller Municipalities, but after the territorial-administrative restructuring they found themselves in much larger Municipalities, where their role was diminished. They have expressed concerns about being neglected on numerous occasions. The Roma are particularly marginalized and there have been reports of occasional violence and harassment against them. There is also governmental, societal and cultural discrimination against ethnic Turks.

The two most recent reports of the Helsinki Committee for Human Rights for the Republic of Macedonia (for 2004 and 2005) point towards significant lapses in the protection of minority rights and freedoms in the country. Serious violations of the voting rights during local elections were noted in communities with predominant Albanian population. In general, a trend has been noted towards a deepening of the division along ethnic lines in the country, and decreased number of places for contact between the ethnic communities.

The institution of the Ombudsmen in the country has also come under serious criticism. A new law enhancing the institution’s role was adopted in September 2004 in compliance with the Ohrid Peace Deal and Constitutional Amendment XI. However, there is lack of awareness as to the institution’s function, and the process for the Ombudsman’s selection is placed under party control. The Ombudsman did not react to cases of voting rights violations during the 2005 local elections and his objectivity towards activities of the party which appointed him (the Albanian

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485 Which was a reform required by the Ohrid Agreement (Sections 6.5 and 6.6).
486 ICG, “Macedonia: Make or Break”, Europe Briefing, August 2004, p. 5
487 OSCE, 2005, p. 17
489 Ibid., p. 15
490 Ibid., p. 23.
DUI) has been questioned. He is also accused of having acted inappropriately in cases regarding freedom of conviction.493

The Government has adopted a National Action Plan for Gender Equality and introduced the principle of equal salaries, employment treatment, training, career advancement and working conditions. A specifically-established unit for the promotion of gender equality within the Ministry of Labour and Social Policy has been in charge for the coordination of work done to improve gender equality at the local and national level.494 Some other broader initiatives have been undertaken to improve women’s socio-economic position in society.495 However, domestic violence and discrimination against women remains a wide-spread problem, particularly among the ethnic Albanian and Roma communities.496 Vestiges of patriarchal social attitudes also limit women’s participation in local democracy in the country. In Muslim areas women are de facto not exercising their right to vote due to wide-spread proxy-voting by male relatives.497

The amended election law of 2004 introduced a 30% gender quota for Councillors’ lists. In 2005 women entries often exceeded this quota, but in some cases participation was below this minimum, in the first half of the lists in particular.498 Representation in the electoral administration varied in 2005 – some MECs had all women members, while some had none.499

3.4 Transparency (availability of local documents to the wider public)

The Constitution of the Republic of Macedonia provides for freedom of speech and free access to information for all citizens of the country. However, the government has failed to adopt a new law on access to public information, the proposed legislation remains at draft level and discussions are ongoing.500 A 2004 survey by Transparency International showed that 41% of Macedonians do not know of their constitutional right to access information.501

493 He failed to oppose human rights violations by State bodies regarding the initiative for the establishment of a separate Ohrid Archbishopsic Church, for details see Helsinki Human Rights Report, 2005, p. 19.
495 COM (2004) 204 final, p. 11
496 US Government Bureau for Democracy, Human Rights, And Labour, Ibid., p. 11
497 Freedom House, 2005, p. 5
498 OSCE, 2005, p. 18
499 Ibid.
500 Freedom House 2005, p. 8
3.5 Provisions for ‘Citizens’ Outreach’ – the Right of Citizens to Influence Local Decision-making (Referenda, Ballots, Petitions, etc.)

A binding referendum must be held in the country if 150,000 signatures are gathered in its support. This was the case for the 2004 Referendum on the territorial-administrative division in Macedonia, which was instigated by a citizens’ organisation by collecting the required number of signatures (discussed in more detail below, point 6).

Local referenda are also foreseen in Macedonia. Some 40 Municipalities held local referenda in 2004 to keep their old Municipal boundaries. The results of the referenda were not taken into account, however, as they are not binding and the Municipal boundaries were redrawn in keeping with the new territorial-administrative division in the country.

No referenda were conducted in the country in 2005. Significant legislative changes actually led to a limitation of the right of citizens to call referenda. A new Law on the Referendum and Citizens’ Initiative was adopted, which abolished obligatory referenda if the referendum is related to an issue of interest to ethnic communities.

The new Law on Local Self-Government of 2002 provides for a right of citizens to submit suggestions about the work of municipal decision-making bodies. The Mayor is given the task of establishing the structure for the submission of such suggestions and is required to respond to them within 60 days. A citizens’ assembly can also be summoned by the Mayor on request of 10% of the municipal population. The municipal organs are required to take into account and respond to any proposals made by the assembly in a period of 90 days.

The Macedonian public appears to be uninformed and largely sceptical regarding the ongoing decentralization process, as well as the framework and functioning of the local election system. According to an opinion poll of the Forum Center for Strategic Studies and Documentation of February 2005, 61% of Macedonians feel

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insufficiently informed about decentralization. 41% believe that the reform will not change anything at the local level, and 8% think that things will even get worse.\textsuperscript{506}

This scepticism and pessimism hinders citizens’ involvement in local decision-making, despite the existence of legal provisions, which allow for participation. The rationale and benefits of centralization need to be better communicated to the wider public and citizens need to be educated about the various possibilities for involvement in local decision-making. Local government authorities, on the other hand, should be encouraged to seek citizens’ advice and participation.

4. State Weakness in Macedonia

Freedom House brands Macedonia as ‘partly free’ due to the exaggerated control of political parties on every-day life, the wide-spread corruption and lack of stability of the country’s institutions.\textsuperscript{507}

Like in other countries in the Western Balkans, state weakness in Macedonia is aggravated by the low capacity of its institutions to guarantee the rule of law and ensure basic public services and the lack of trust of citizens in these institutions.\textsuperscript{508}

The State has on occasion failed to ensure the functioning of basic services at the local level – water, electricity, roads, which has lead to a sharp decline in trust in local authorities. This has undermined the credibility of the newly-established institutions guaranteeing multi-ethnic democracy in recent years and has led to renewed calls for a federal system.\textsuperscript{509} The dysfunction of the central State administration and its inability to guarantee basic civil rights leads to constant violations of citizens’ rights.

Decentralization in Macedonia is actually a way to consolidate the central State structure and increase the legitimacy and strength of the State.\textsuperscript{510} Implementing the required measures for successful decentralization would be the final requirement of the Ohrid Framework Agreement, which would settle the legacy of the 2001 ethnic conflict. If the measures adopted prove to be viable, the country would be

\textsuperscript{506} Forum, 3 February 2005.
\textsuperscript{507} Freedom House, 2005
\textsuperscript{508} ICG, “Macedonia: Make or Break”, Europe Briefing, August 2004, p. 11
\textsuperscript{509} ICG, “Macedonian Government Expects Setback in Local Elections”, Balkans Briefing, September 2000, p. 4
\textsuperscript{510} As Argued by the ICG in ‘Macedonia: Make or Break’, August 2004
stronger to sustain future shocks, particularly as regards the resolution of Kosovo’s final status.

5. International Involvement in Macedonia

The International Community has been actively involved in Macedonia since its declaration of independence in 1991. The European Commission has provided millions of Euro in support of the Euro-integration and democratization processes in the country in the form of CARDS, Phare and other assistance since 1992.511

Timeline of EU Relations with Macedonia (excluding EU police missions):

1997, April  Trade and Cooperation Agreement signed between Macedonia and the EU.
1999  Macedonia (FYROM) becomes part of the newly-launched Stabilization and Association Process for South-East Europe.
2001, April  Stabilization and Association Agreement signed.
2004, March  Macedonia submits a formal application for membership in the EU.
2005, November  Favourable Opinion by the European Commission on Macedonia’s application for membership.
2005, December  Macedonia granted candidate status by the European Council.512

The initial strategy of EU involvement and assistance in Macedonia was criticized for lack of a clear long-term vision, a piecemeal approach, and an over-estimation of the country’s absorption capacity for EU funds.513 The March 2001 ethnically-motivated violence prompted a serious rethinking of the basics of EU assistance and led to a focus on institutional building and strengthening, of which functional decentralization formed an integral part. The Stabilisation and Association Process was to remain the main framework of relations between Macedonia and the EU, but assistance would be streamlined towards measures for maintaining peace and stability, alleviating ethnic tensions and enhancing the strength of the central State.514

514 Ibid.
Through their initial policy of limited focus and non-consultation with stakeholders, the EU and the International Community in general have unwillingly contributed to the erosion of trust in the political system in Macedonia, as well as between the two ethnic communities. International actors have also approved a number of elections since 1994, which were characterised by violence, killings and widespread irregularities. The 1999 presidential and the 2000 parliamentary and local elections were particularly troublesome and led to widespread cynicism among Macedonians regarding the electoral process. In their view, electoral cheating was allowed, as long as it achieved the outcome expected by the International Community.

NATO has been instrumental in maintaining security in the country after the 2001 conflict and pressing for the disarmament of the ethnic Albanian National Liberation Army. Following the signing of the Ohrid Peace Agreement in August 2001, 3,500 NATO troops were deployed in the country. NATO presence continued until December 2003, when NATO stepped away to make room for EU peace-keepers.

The EU Concordia took over from NATO missions from March to December 2003. The EU Police mission, EUPOL Proxima, was deployed in the country from December 2003 to December 2005. The European Union Monitoring Mission has also been in Macedonia since September 2001.

The EU and the US also played a crucial role in the negotiation of the Framework Agreement for Peace (the Ohrid Agreement). A 'civic' agreement, based on minority rights implementation and the granting of certain civic privileges to the Albanian minority, has been the resolution favoured by the International Community. To ethnic Macedonians, however, the use of Albanian throughout the Republic, the granting of educational rights to Albanians, etc. is seen as a threat to their national identity. Democracy in Macedonia is weak and multi-ethnicity is seen by Macedonians as a 'necessary evil', imposed by the West. Ethnic

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515 ICG, "The Macedonian Question: Reform or Rebellion", Balkans Report 109, April 2001, p. 11
516 Ibid.
518 The 185-strong police mission was given an advisory role - it assisted the police in former conflict areas and oversaw reforms undertaken by the Macedonian Ministry of the Interior.
519 COM (2005) 562, p. 3
Albanians, on the other hand, are mistrustful about the extend of reforms in their favour and the implementation of these reforms.\textsuperscript{521}

The danger here is that instead of fostering co-habitation and respect for minority rights, the Ohrid Peace deal leads to friction among Macedonian regions along ethnic lines, much like the Dayton Peace Deal did in Bosnia. There is widespread disbelief among citizens in the country that the two ethnic groups can live together successfully. Over 7\% of the total population (more than 150 000 people) left their homes during the 2001 crisis to settle in places, where their ethnic group is the majority.\textsuperscript{522}

The USAID and the EU have been closely involved with the decentralization efforts in Macedonia since 1997. The USAID has established and funded a Local Government Reform Project, the EU has supported reform through the PHARE programme from 1997 to 1999 and through CARDS and EAR (European Agency for Reconstruction) assistance since 2001.\textsuperscript{523} Several IMF missions have also provided support to the decentralization process in the country.

The European Union and the US were instrumental in ensuring that the November 2004 referendum on abolishing the new territorial-administrative division of the Republic did not succeed.\textsuperscript{524} In the words of the Minister for Local Self-Government, Rizvan Sulejmani, “the attitude of the International Community is that the decentralization process has to succeed if we want to come close to the EU and NATO. The functioning of the local government is part of the Ohrid Framework Agreement (OFA) and precondition for membership in the EU and NATO”\textsuperscript{525}.

Decentralization has been imposed in the country as a form of high politics, necessary for successful integration with the EU and NATO. Hence, in the eyes of ordinary citizens, the process is connected with political issues, rather than aimed at enhancing their rights of participation and democratic representation. Transparency has also been compromised. The top-down pressure for decentralization risks to overestimate the readiness for reform implementation on

\textsuperscript{521} Ibid., p. 10
\textsuperscript{522} Ibid., p. 2
\textsuperscript{523} Taleski, D., Ibid., p. 6
\textsuperscript{524} International activities included the recognition of the name ‘Macedonia’, announced by the US on the eve of the referendum, Statements by high-ranking EU and European politicians that abolishing the new Municipalities would constitute a step back on the way to European integration, etc.
\textsuperscript{525} Dnevnik, 06.08.2005.
the local level. Implementation is crucial at this stage in Macedonia, when most of the legal framework for reform is already in place.

There have been many positive results from the activities of the International Community. Involvement by the EU, US and NATO was crucial for the dissipation of the 2001 crisis and stopping it from evolving into a full-scale civil war. The first ever European military deployment has provided a necessary stabilising influence in the country. The EU special representatives for Macedonia have also been seen as ‘effective’.526 The prospect of European Integration is a major incentive for politicians to pursue reform policies and ensure minority rights implementation.527 Macedonia’s desire for Euro-Atlantic integration has led to a consensus among political groups and citizens on democracy as the only possible basis for the political system of the country. The Ohrid Agreement is seen to have achieved its goal in stabilising the country and leading to citizens’ recognition of the legitimacy of the institutional changes agreed.528

The challenge before the International Community in Macedonia now is to increase public trust in these institutions, bridge the democratic deficit initially created, and encourage citizen involvement in local decision-making.

6. Ethnicity

The co-existence of the two largest ethnic groups in Macedonia (the Macedonians and the Albanians) was ‘uneasy’ both before and after the country’s declaration of independence in September 1991.529 The reform of Macedonia’s public administration, including the strengthening of local authority were halted by the political and military crisis in March 2001.530

The crisis had been precipitated by rising ethnic tensions between ethnic Macedonians and extreme ethnic Albanian militants. The Albanian revolt, which started the crisis, resulted from a multitude of factors. These include: high unemployment among ethnic Albanians, low participation in State institutions,  

526 ICG, “Macedonia: Make or Break”, Europe Briefing, August 2004, p. 12
527 Ibid., p. 1
530 Violence was reported in predominantly Albanian village in the north of Macedonia in February 2001. Some loosely-coordinated cells of Albanian rebel fighters from Macedonia, Kosovo and abroad occupied a number of villages and claimed to be defending Albanian national rights in Macedonia. By mid-March the rebels numbered around 2 000 and violence had spread to Tetovo, Macedonia’s second largest city. Macedonia’s government began a full-scale offensive against the rebels on March 25th.
inadequate welfare provision, increase in the number of Albanians due to immigration from Kosovo and insecurity due to the Province’s uncertain final status, deep-seated mistrust between the two communities, constitutional complaints, and issues of Albanian identity and statehood, which had been brought to the fore by the NATO military intervention in Kosovo.\textsuperscript{531}

It is now considered that the government’s policy of ‘half-hearted ethnic cohabitation’, in which no substantial rights were granted to the Albanian minority in Macedonia led to the 2001 crisis.\textsuperscript{532} Macedonia’s security forces proved incapable of handling the situation and the country was under a threat of civil war. The conflict was ended due to the intervention of the United States and the European Union, who insisted on the signature of the Ohrid Framework Agreement for Peace in August 2001.

The pervasive ethnic divisions have influenced the decentralization reform as well – Albanians pushed for a higher degree of devolution of certain activities to local authorities.\textsuperscript{533} Hence decentralization in Macedonia is not simply an administrative-organisational matter, it is actually closely-linked to the prospects of security and European integration of the country.

The question of the municipal borders was a most sensitive issue as the grouping together of the previous 123 Municipalities changed the ethnic balance and made several Macedonian Municipalities mostly Albanian.\textsuperscript{534} As could be expected, Macedonian public reaction to the re-drawing of municipal boundaries was openly hostile. Opposition Macedonian parties accused the government of betraying national interests. Daily protests were held in Skopje and several other Municipalities, sometimes digressing into violent clashes between citizens and the police.\textsuperscript{535}

The World Macedonian Congress (an ultra nationalist political formation) with the support of VMRO-DPMNE gathered 150 000 signatures against the proposed measures, which was the required minimum for holding a binding referendum on the issue. The nation-wide referendum, held on November 7th 2004 failed due to

\textsuperscript{532} ICG, “The Macedonian Question: Reform or Rebellion”, Balkans Report 109, April, 2001, p. ii
\textsuperscript{533} ICG, “Macedonia: Make or Break”, Europe Briefing, August 2004, p. 4
\textsuperscript{534} The most contentious ones were the Skopje Municipalities and Struga and Kicevo in the South-west of the country. Under the new territorial-administrative division Skopje becomes 20% Albanian and hence bilingual.
\textsuperscript{535} ICG, “Macedonia: Make or Break”, Europe Briefing, August 2004, p. 6
the lack of quorum (turnout was only 26% and 50% is necessary for a valid referendum), but a number of Municipalities held local referenda in support of maintaining their boundaries. The results of these local referenda were ignored and thus the new administrative territorial division of the country started with a deficit of legitimacy.536

Ethnic tensions remain palpable in the country and there is a perception among Macedonians that their government has ceded too much ground to the Albanians by agreeing to increase their minority rights. Tension and disagreement related to the implementation of the Ohrid agreement and subsequent minority rights provision led to friction in the governing coalition in 2004 and the resignation of Prime Minister Hari Kostov in November that year.537

The danger is that ultra-nationalist political parties may emerge feeding on this dissatisfaction. A number of ethnic Macedonian political fractions have appeared in 2005, including the Party for Democratic Regeneration (DOM) whose leader, Liljana Popovska, has criticized the government’s policy towards Albanians and accused them of making too many concession.538

63% of Macedonians and 28% of Albanians agreed that pressure to relocate based on ethnicity still exists in early 2005.539 It has also been noted that Macedonian society in general propagates loyalty to one’s own ethnic group, undermining the foundations of commitments to the development of a multicultural pluralistic civil society, in which all ethnic groups live side by side.540

7. Economic Transition and Consolidation in Macedonia

Macedonia was the least developed of the Yugoslav Republics. Growth was comparatively low between 1991 and 2001 compared to growth in the rest of the Former Yugoslav Republics, as well as all of south-east Europe, the armed conflict in 2001 providing a significant set-back.

536 Ibid.
537 RFE/RL Newsline: Macedonian Prime Minister’s Resignation Highlights Weakness in Political System, 16 November 2004.
539 As demonstrated by a Forum opinion poll of 3 February 2005.
540 Helsinki Committee on Human Rights in Macedonia, 2005, p. 24
About 22% of the population of Macedonia now live below the country’s poverty line.\textsuperscript{541} Inequality is also deep – in rural areas the proportion of the poor is 22.3%, while in Skopje it is 20.4%.\textsuperscript{542} The rates of poverty have remained unchanged despite moderate economic growth of about 3% per annum since 2002. The economy remains very fragile due to corruption, internal political uncertainty, as well as certain external factors.\textsuperscript{543}

There has been steady economic growth in Macedonia since 1996 (except for 2001, due to the hostilities). GDP growth was 3% in 2003 and 2004.\textsuperscript{544} Unemployment, however, remains very high (36.7% in 2003) – a large proportion of the working population is employed in occasional or low productivity work.\textsuperscript{545} The Macedonian economy is not strong enough to generate enough jobs in order to tackle the high unemployment by itself. There are serious infrastructural problems – rural underdevelopment, industrial decline, etc. which can be addressed only by targeted foreign assistance. Although the privatisation process of small and medium-sized enterprises is almost complete, the manner in which it has been done (under the table and favouring insiders) has not led to gains in efficiency and productivity.\textsuperscript{546}

Ethnic Macedonians and Albanians have been affected differently by the economic restructuring.\textsuperscript{547} Macedonians are hit the hardest as they have traditionally been employed in publicly owned enterprises or the State administration and are left jobless by privatization. Ethnic Albanians, on the other hand, have been unable to take employment in the government sector, which has made them reliant on private enterprise and immigrant transfers.

The government has failed to undertake real measures in the fight against poverty and its commitments are mainly rhetorical.\textsuperscript{548} Social and child allowances, and disability benefits were reduced in percentage terms in 2005, and the list of subsidised prescription drugs was shortened.\textsuperscript{549} The period of payment of employment benefits was also shortened in 2005 by a legal amendment. The social groups, who are particularly affected by the dire economic situation are the elderly,

\textsuperscript{541} The poverty line for Macedonia stands at 2.15 dollars per capita per day (World Bank, FYR Macedonia Poverty Assessment for 2002-2003, October 2005).
\textsuperscript{542} World Bank, Macedonia: Poverty Assessment for 2002-2003, October 2005, p. xii
\textsuperscript{543} Such as the unresolved status of Kosovo. European Forum, Macedonia Update, January 2005.
\textsuperscript{544} National Bank of Macedonia, State Statistical Office and Ministry of Finance.
\textsuperscript{545} ICG, “Macedonia: Make or Break”, Europe Briefing, August 2004.
\textsuperscript{546} European Commission, “Western Balkans in Transition”, 2004, p. 63
\textsuperscript{547} ICG, “Macedonia: Make or Break”, Europe Briefing, August 2004, p. 8
\textsuperscript{548} Helsinki Committee on Human Rights in Macedonia, 2005, p. 5
\textsuperscript{549} Ibid.
children, sick and disabled people, minorities. This further undermines the inclusiveness of the democratic processes in the country.

The ongoing process of decentralization is expected to cause a further rise in poverty in the country as the transfer of employees from central to local governments will be accompanied by a cut in programs. These problems will likely be compounded by legal uncertainties giving both Mayors and the State competences over local administration appointments. Most Municipalities will also be unable to start programmes on economic development and reconstruction because of their huge debts and inefficient resource allocations. Citizens will also slowly start to feel the burden of decentralization, as Councils have tried to introduce creative new ways of taxation to increase their revenues.

Poverty in the country is of serious concern. It undermines the ability of a vast proportion of citizens to exercise their rights of democratic governance, and contributes to dis-interedness and apathy regarding the democratization processes at the central and local level.

8. Corruption and Organized Crime in Macedonia

Corruption in Macedonia flourished after the imposition of sanctions on the former Yugoslavia in 1992. During the embargo, Macedonia became the channel through which goods were smuggled into Serbia. Macedonian firms, involved in production of oil, steel, chemicals, alcohol and cigarettes were reported to have had close connection with the Milosevic regime and been involved in money-laundering. Corruption has now permeated the everyday life of citizens – more and more bribes are needed to ensure simple tasks, such as the installation of a telephone line, acquiring a car permit, etc. International think-tanks point towards pervasive corruption in all social levels and walks of life – education, health care, the police, the judiciary.

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551 Examples in this regard include the introduction of a tax on the music played in all establishments serving food and alcohol in Ohrid, and the 45% increase in the price of water supply in Kicevo.
552 ICG, “Macedonian Government Expects Setback in Local Elections” Balkans Briefing, 4 September 2000, p. 2
554 Prime Minister Georgievski in *Dnevnik*, 23 February 2001, p. 1
555 World Audit, Freedom House, Helsinki Committee on Human Rights.
A report issued by the independent International Crisis Group argues that corruption threatens the country’s very existence. The high corruption levels are damaging to the economy, increase the potential for social instability and open the possibility for collusion between ethnic leaders, which could further heighten ethnic tension.

There are equal levels of alienation among Albanian and Macedonian citizens from their political leaders. Public trust in government in Macedonia in 2002 was the lowest in the Western Balkans – 12%. Corruption has also been linked to the economy’s bad state – studies demonstrate that it directly contributes to poverty in the country. Widespread disgust with high-level fraud is a major factor behind the lack of faith in institutions and politicians in Macedonia and the low turn-out rates at both local and national elections. 88.6% of the population believe that the government is in the centre of corruption in the country.

The apparent links between politics and criminality in the country contribute to the sapping of public trust in governments and institutions. The ‘sugar scandal’ of 2001 confirmed the presence of high government corruption. Corruption rates increased sharply after the Kosovo crisis when smuggling cigarettes, petrol, weapons, drugs and people through the border between Kosovo and Macedonia became highly profitable. This increased the sense of pervasive insecurity and decreased trust in politicians even further – only 1% of people surveyed in February 2000 believed politicians were not corrupt.

Another corruption scandal shook the country in January 2001. The leader of the opposition party (the SDSM), Branko Crvenkovski, accused the government of wire-tapping the telephone lines of about 100 public figures. Journalists and members of Government were taped shortly before the 2000 local elections. 85% of respondents in a 2003 survey on attitudes towards corruption said there were

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557 Ibid, p. 1
558 Ibid, p. 5
559 Ibid.
560 European Forum, Macedonia Update, January 2005, p. 8
561 The privatisation of the country’s only sugar factory in Bitola led to shortage of refined sugar in the country, halting the operation of the confectionery and soft-drink industry. The government then allowed the duty-free import of limited amounts of white sugar into the country. All twelve companies, which won the tender to import sugar were all located in Skopje and Tetovo and were reported to have close connections with the DPA and the VMRO-DPMNE.
people who were above the law in Macedonia and 83% doubted the capacity of the State to enforce the rule of law.\textsuperscript{564}

According to an independent survey, conducted in 2005, 73% of Macedonians believe the government is corrupt.\textsuperscript{565} As resolved cases of corruption are very rare, it appears that the public has somewhat “internalised” official corruption and that it views it as normal. Widespread corruption, perceptions of undue concessions being made to the other ethnic group, as well as fears of the future, have resulted in a deep political crisis and crisis of legitimacy in Macedonia.\textsuperscript{566} Worryingly, a significant proportion of Macedonians think that the decentralization process in the country will increase the levels of corruption.\textsuperscript{567}

The high levels of political corruption (both actual and perceived) have led to the radicalization of political parties. A ultra nationalist wing of VMRO-DPMNE (called VMRO-VMRO) emerged shortly after the 2001 scandals promising a return to Macedonia’s nationalist foundations. A number of new ethnic Albanian political parties have also emerged, pledging to a return to traditional values and a fight towards corruption.\textsuperscript{568}

The widespread corruption in Macedonia is one of the major obstacles to successful democratization. Its effects are manifold: it has the potential to increase ethnic tensions and destabilise the country, provides a fertile ground for the emergence of extreme nationalist political parties, undermines trust in government institutions, and fosters deep-seated pessimism and cynicism among citizens regarding the possibility of development of genuine democratic processes.

9. Conclusion: the State of Local Democracy in Macedonia – Summary of Main Findings

An ambitious decentralization process is under way in Macedonia, which foresees the transferral of a significant number of powers and responsibilities from the central to local level. As the legislative framework is now in place, the success of

\textsuperscript{564} Survey conducted by BRIMA, the local branch of Gallup International in November 2003.
\textsuperscript{565} Freedom House, 2006, p. 18
\textsuperscript{566} Holliday, G, “From Ethnic Privileging to Power-Sharing: Ethnic Dominance and Democracy in Macedonia”, in Smooha, S and Jarke, P. eds. The Fate of Ethnic Democracy in Post-Communist Europe, Open Society Institute, Budapest, 2005
\textsuperscript{567} Opinion Poll Conducted by the Forum Centre for Strategic Studies and Documentation, Forum, 3 February 2005;
\textsuperscript{568} ICG, “The Macedonian Question: Reform or Rebellion”, Balkans Report 109, April 2001, p. 14
this process will depend on authorities’ ability and will to implement agreed reforms.

There has been strong international pressure for decentralization in the country, at times compromising legitimacy and transparency. As decentralization has been pursued as a solution to ethnic divisions in Macedonia, care should be taken to avoid the alienation of local communities from the institutions thus created as this could undermine not only local democracy, but security in the country. Overall, EU integration provides an important incentive for reform and international organisations have been instrumental in supporting Macedonia’s transition and preventing it from sliding into civil war in 2001.

A deep crisis of the political process in the country is evident, characterised by serious voting irregularities, catastrophic confidence levels and turn-out rates at both national and local government elections, and citizens’ cynicism regarding political developments. The very strong influence of political parties is a significant obstacle to the development of local democracy in the country. Political parties are unaccountable to their constituencies and have been found to exert pressure on the media both at the local and government level.

The rights of smaller minorities (Turks, Serbs, Roma, etc.) are often violated. Wide-spread corruption at all levels of government undermines the State structures and democratization processes in the country, which are already suffering from low administrative capacity and lack of professionalism of staff.

The participatory side of local democracy has been weakened in Macedonia, as in the rest of the Western Balkans, by the low level of transparency in the activities of local authorities, the lack of culture and adequate mechanisms for citizens’ involvement in local decision-making, the low skills of local government staff.

On a positive note, developments in the NGO sector and growing trust towards NGOs and citizens’ groups point towards their potential in fostering democratic accountability and the development of a genuine civil society in the country.
Chapter IV

LOCAL DEMOCRACY IN SERBIA AND MONTENEGRO

Country Data

Capital: Serbia: Belgrade
Montenegro: Cetinje, Podgorica is the main political and administrative centre.

Montenegro: EUR 2,648 (2005)

GDP Growth Rate: Serbia: 6.5% (2005)
Montenegro: 4.1% (2005)

Montenegro: 0.67 million

Ethnic Composition: Serb: 82.8 %, Montenegrins: 0.92%, Hungarians: 3.9%, Bosniak: 2.48%, Albanians: 1.1%, Roma: 1.45%, Other: 7.35%. (2002 Census).

Brief Historical Timeline:

1878 Treaty of Berlin - Serbia gains full independence from Ottoman occupation and some territorial advancements, including the City of Nis (currently Serbia’s second largest city).

1882 Serbian Kingdom proclaimed under King Milan Obrenovic IV.

1914, July 28th Austria-Hungary declares war on Serbia following the assassination of Arch-Duke Franz Ferdinand in Sarajevo.

1914-1918 Serbia is part of the Allied Forces in the First World War, the entire country is temporarily occupied in 1915.

1918, November Occupied Serb territories liberated after a successful Allied Forces offensive.

1918, November 25 The Assemblies of Serb Bunjevci and Vojvodina vote to join Serbia.

1918, November 29 National Assembly of Montenegro votes for a Union with Serbia.
1918, December 1  Kingdom of Serbs, Croats and Slovenes proclaimed.
1929, January 6th  Kingdom of Serbs, Croats and Slovenes renamed Kingdom of Yugoslavia.
1941  Kingdom of Yugoslavia invaded by the Axis powers and seizes to exist on April 17th.
1963, April 7  Federation renamed into Socialist Federal Republic of Yugoslavia and Josip Broz Tito elected President.
1974, February 21st  New Constitution of SFRY adopted, giving significant powers to the Constituent Republics, Tito proclaimed president for life.
1980  Death of Tito.
1988, February  Slobodan Milosevic becomes head of the Yugoslav Communist Party.
1989, March  Serbian National Assembly led by Milosevic greatly reduces the autonomy of the two Provinces (Vojvodina and Kossovo).
1990, September  New Serbian Constitution adopted, increasing presidential powers.
1990, December  Milosevic elected President of the Serbian Republic in direct elections.
1991, June  Slovenia and Croatia secede from the Yugoslav federation.
1991, September  Macedonia secedes from Yugoslavia.
1992, March  Bosnia and Herzegovina secedes from Yugoslavia.
1991 – 1996  Wars of Yugoslav secession, in which Serbia and Montenegro fight against Slovenia, Croatia, Bosnia and Herzegovina amidst ethnic cleansing, displacement of populations, economic collapse, and NATO air-strikes.
1992, October  Montenegrin Constitution adopted, re-establishing Montenegro as a Republic of the Federal Republic of Yugoslavia, which by this point comprises Serbia and Montenegro only.
1997, July  Milosevic elected President of Yugoslavia.
1999  Kosovo war, ended by NATO Operation Allied Force, economic sanctions against Yugoslavia.
2000, October
Vojislav Kostunica elected President of Yugoslavia, putting the Milosevic era to an end.

2003, February 4
Constitutional Charter of the State Union of Serbia and Montenegro adopted.

2006, May 21st
Referendum on independence held in Montenegro, 55.4% vote in favour, turnout is 86.3%.

2006, June 3rd
Montenegro issues a Declaration of Independence, State Union of Serbia and Montenegro effectively dissolved.

1. Progress towards Decentralization

Unlike other countries in post-Communist transition, Serbia and Montenegro went through a phase of high centralization of governmental power in the early 1990s, when many municipal competences were transferred to the State level. The process of functional decentralization started relatively late – after the overthrow of Milosevic in 2000 and was driven by the desire of Serbia and Montenegro for closer integration into European structures. A number of legal acts were adopted in 2002 and 2003, aiming to harmonize local government provisions with the European Charter on Local Government.

Major benchmarks in local government reform in Serbia and Montenegro are the following:

- 1992 - Montenegro’s newly adopted Constitution refers to the principle of local self-government and to citizens’ right to manage local affairs independently.
- 1992 - Government decree, establishing 29 districts in Serbia and crating a district state administration taking over some tasks previously carried out by Municipalities, constituting a de facto centralization.
- 1995, July - Municipal Law of Montenegro, establishing Podgorica as the Administrative Center, Cetinje as the Capital, and dividing the territory of the country into 21 Municipalities.

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• 2002, April – Law on Local Elections in Serbia approved.
• 2003, July – Law on Election of Mayors in Montenegro adopted.

2. The Institutional Framework for Local Democracy

2.1 Legal and Fiscal Autonomy of Local Government

Legal Autonomy of Local Government in Serbia and Montenegro

Serbia

The basic unit of local self-government in the Republic of Serbia is the Municipality. The functions and structure of Serbian Municipalities are regulated by the 2002 Law on Local Self-Government. There are 167 Municipalities, of which 46 are in Vojvodina and 4 Cities (Belgrade, Nis, Novi Sad, Kragujevac). Municipalities are large by local standards with an average population of 40 000 residents.\(^{570}\) They differ significantly in territory.

The 2002 Law on Local Self-Government in Serbia distinguishes between ‘original’ and ‘delegated’ responsibilities of Municipalities.

Main Responsibilities of Municipalities in the Republic of Serbia (Original Responsibilities):

- Development plans and programmes
- Housing
- Local public utilities
- Town planning
- Elementary education, as well as building maintenance and running costs of primary and secondary schools
- Local roads and streets
- Culture and sports infrastructure
- Primary health care
- Local economic development and budget
- Tourism, hotel and restaurant management, crafts and trade
- Municipal business management, construction, rehabilitation
- Public information.
- Environment

Delegated responsibilities of Serbian Municipalities may be given to all or certain Municipalities by the central government and are regulated by specific agreements between the Republican and municipal authorities. Such functions may include inspection in the fields of trade, agriculture, water supply, forestry, etc.\(^{571}\)

The Law on Local Self-Government also foresees the establishment of lower local government structures in Serbia in order to better respond to the needs and interests of the local population. The formal institutionalisation of *Mjesna zajednica*\(^{572}\), for example, is seen as particularly beneficial to adequate representation of village population. It is up to Municipal Assemblies to decide to establish such sub-municipal structures and to give them formal recognition, administrative status and give them delegated functions.\(^{573}\)


\(^{572}\) Lowest recognised level of local self-government in Serbia, exists as a semi-formal organisation in town neighbourhoods or villages.

\(^{573}\) Article 71 of the Law on LSG, February, 2002.
The 2002 Law is unclear about the status of the 29 Districts in Serbia. The Districts were a vestige of the Socialist centralized system of government. The 1999 Local Government Law assumed that all rights and authority belong to the Republic and Municipalities are only given certain tasks. The new law, which devolves a significant number of responsibilities to Municipalities and establishes them as the basic unit of local self-government, is silent on the status and functions of Districts, as well as their link to Municipalities. There is an ongoing debate on the regionalization of Serbia, which is part of the discussions on the adoption of a new Constitution for the Republic. Resolution of the status and functions of Districts is expected with the new Constitutional framework.

There are two Autonomous Provinces within the territory of Serbia according to the 1990 Constitution – Vojvodina and Kosovo and Metohija.

574 The Districts were the middle-tier government in the Republic of Serbia. Their personnel was dispatched by the Central Government and given the task to oversee the work of Municipalities. Currently they are purely administrative structures and do not have substantial competences or directly-elected bodies.
Competences of the Autonomous Province of Vojvodina are regulated by the 2002 Law on Particular Competencies of the Autonomous Province of Vojvodina. This law details and extends the responsibilities of the Autonomous Province and its right to regulate them by issuing ordinances. The Province has a directly-elected Assembly (consisting of 120 representatives) and an Executive Council, appointed by the Assembly and responsible to it.

Vojvodina is given substantial autonomy in the following tasks:

- protection of cultural goods
- establishing its own administrative self-government structure
- approval of the establishment of endowments, foundations, and funds in its territory
- primary, secondary and university education
- local media and public information
- health care provision
- social welfare and pensions
- environmental protection
- urban planning and construction
- housing
- employment
- economy and privatisation
- agriculture, fishery and forestry, water management
- tourism and sport;

Also, importantly, the Assembly of Vojvodina has been admitted to the Assembly of European Regions.

The Serbian government is allowed to suspend regulations and statutes, passed by the Vojvodina assembly or Municipalities. The Province has no authority over the organisation of local government, but it has the right to be consulted before any changes can be made. The Vojvodina Provincial Assembly is currently preparing a new statute, called a “basic law”, claiming a further extension of responsibilities and authority in self-government. Under the draft law, the Assembly of the Province will have legislative power, will set the operational framework for the judiciary and have authority over all domestic affairs, including local government.

The transfer of responsibilities after the adoption of the 2002 Law on the Particular Competences of the Autonomous Province led to additional financial transfers. 30 million euro more were transferred in 2003 by the Serb budget to meet the financial needs of the Province. The role of the districts in the Province is reduced to a minimum by the 2002 Law, and it is widely expected that they will be phased out.

Kosovo is currently a *de facto* international protectorate under Security Council Resolution 1244/99. For a discussion of its institutions and local democracy developments, see point 10 below.

Overall, it can be observed that the legal autonomy of local government in Serbia has increased considerably in the past few years. In numerical terms, original competences of Municipalities have increased from 13 in 1999 to 35 in 2002. The current provisions for local government are largely in line with the European Charter on Local Self-Government. It has, however, been noted that the extent of changes is relatively low and further major overhaul of current provisions will be necessary.\(^5^7^5\) Also, some of the new tasks, such as the establishment of institutions in the field of primary health care and education, are dependent on harmonization of the Local Government Law with legislation at the central state level.

Implementation of the new Local Government Law has also been hindered by certain factors. Among these are: lack of changes in relevant sectoral laws in areas where local authorities were granted autonomy, incomplete fiscal decentralization (see below), poor organisational capacity and lack of human resources.\(^5^7^6\) Further steps towards decentralization in the country have been postponed until the adoption of a new state Constitution in the country.

**Montenegro**

Article 66 of the Constitution of the Republic of Montenegro promulgates the right to local self-government and stipulates that it shall be exercised in the Municipality and the capital. The Municipality is the central unit of local self-government.

There are 19 Municipalities in Montenegro, one has the status of Residence (Cetinje) and one has the status of Capital (Podgorica). Their borders have remained largely unchanged since the 1990 law dividing the Republic into Municipalities.

Municipalities in Montenegro are large in comparison with Western European ones, which is a legacy of the Yugoslav local government structure. Municipalities

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\(^5^7^6\) EXCHANGE, About Serbia: Political, Legal and Administrative Environment, [www.exchange.org.yu](http://www.exchange.org.yu), last accessed 05.06.2006.
exhibit a significant degree of variation in territory (from 46 to 2065 sq. kms) and population (from 3200 in Savnik to 166 000 to Podgorica).577


Municipalities in Montenegro adopt and implement (Article 31):

- Development plans and programmes
- Town plans
- Budget and budget balance sheets
- Capital improvement plans and investment policy

They are given primary regulatory and implementation authority in the following spheres (Article 32):

- Development of community affairs;
- Entrepreneurial development;
- Settling, using and protecting construction land;
- Use of business and other premises;
- Social and child welfare (as regards social and nursery homes and care for the disabled);
- Hospitals;
- Public transport;
- Establishment, control and collection of local public revenues;
- Housing and construction;
- Information provision to local communities and publishing;
- Sport, culture, recreation, tourism, education, technology;
- Ecological preservation;
- Data collection and records keeping;
- Law provision to citizens;

The Law on Local Self-Government also provides for affairs falling under the jurisdiction of the State Administration to be devolved to Municipalities. These include activities in the field of education, primary health care, social and child

welfare, employment. The precise conditions of the devolution of these responsibilities should be regulated by a specific law in agreement with the Municipality in question.

Overall, the 2003 Law on Local Self-Government provides a sound administrative framework for the decentralization of a significant number of activities. It is a serious advancement on the 1995 Law on Local Self-Government. Still, lack of clarity has been noted between own, delegated, and devolved responsibilities of the Montenegrin Municipalities.\textsuperscript{578} Implementation of the new legislation is uneven, as a lot depends on the will and capacity of Municipalities themselves to adopt and implement the required secondary legislation. Some Municipalities have adopted all of the required ordinances, while others have not.\textsuperscript{579} The central government has also at times been reluctant to cede power to local authorities and have used vague legal provisions regarding the delineation of responsibilities as a way to retain a degree of control.\textsuperscript{580}

\textbf{Fiscal Autonomy of Local Government in Serbia and Montenegro}

\textbf{Serbia}

There are three types of expenditures in the Serbian budgetary system: expenditures of the Republic, expenditures of the Autonomous Province (Vojvodina) and expenditures of local government units.

The Republic expenditures are by far the largest. The state administers and finances national defence, public order and security, criminal and civil law, education, health care, social care, social security, labour law, economic policy and international economic relations, internal market structure and regulation, environmental protection, culture, public information.\textsuperscript{581}

It has been noted that Serbia’s system of fiscal decentralization is characterised by ‘reverse sequencing’.\textsuperscript{582} Reform of expenditure assignment actually followed reform of revenue assignment and intergovernmental transfers in the country. The reverse sequencing of fiscal decentralization in Serbia led to the existence of

\textsuperscript{579} Freedom House, 2006, Nations in Transit, Montenegro section, p. 12
\textsuperscript{580} Center for Development of NGOs, “Decentralization Process in Montenegro: Possibilities of Cooperation between Local Government and NGOs”, 2005, p. 4
\textsuperscript{582} \textit{Ibid.}, p. 171}
Municipalities with high revenues, which exceeded expenditure between 2000 and 2002. This changed with the adoption of the 2002 Law on Local Self-Government, which started the reform of the expenditure assignment.

The 2002 Law introduced own and shared expenditures of local government units. Among the first are: adoption of local development programmes and urban plans, adoption of budget and financial statements, regulation and provision of communal services, housing, environmental protection, primary education institutions establishment and upkeep, primary health care, sport, social care, tourism.\(^{583}\) The city of Belgrade is under a special regime of expenditure assignment. There are differences between responsibilities of the city self-government and those of its constituent Municipalities.\(^{584}\) The city administration is given responsibility for the expenditure in the following fields: urban planning, communal activity, use of building plots and premises for business activity, local infrastructure, use of public spaces, education, culture, sport, tourism and trade, environmental protection, agriculture, etc.

**Shared expenditures** of Serbian Municipalities include: education, health care, social care, environmental protection, tourism, sport. There are also shared revenues between municipal authorities and the Republic. These include property tax, tax on the transfer of property rights, inheritance and gift tax, as well as charges for using public resources (such as mineral springs, water, forests, agricultural land).\(^{585}\)

The introduction of the VAT tax for the first time in January 2005 altered the ways local self-government was financed significantly.\(^{586}\) Local government units were given the right to establish various forms of own revenues. These can be tax and non-tax revenues and include: administrative fees, local communal fees, tourism fees, charges for building plots and protection and improvement of the environment, rent from republic property at the territory of the Municipality, interest on local government funds in banks, fines, revenues from activities of local authorities, donations and others.\(^{587}\)

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\(^{583}\) Ibid., p. 176  
\(^{586}\) Until then the basic source of budgetary revenue of local governments was a share of retail sales tax, which was abolished with the introduction of VAT.  
There is unclear assignment of expenditures between the Republic and the Autonomous Province. The 2002 Law Establishing Particular Competences of the Autonomous Province, which gave significant autonomy to Vojvodina in a number of areas (see Box 3 above) failed to clarify if these should be funded by the Republican or Province budget. The only devolved responsibility, which is clearly the prerogative of the Republican budget is social security. Own revenues of the Autonomous Province include: administrative fees, various non-fiscal revenues (interest on province funds in banks, sales of property used by province authorities, rent from republic property in the territory of the Province, donations, revenues from sale of the shares of the Province).

Overall, it can be observed that the fiscal autonomy of local government units in Serbia has changed significantly since 2000. The fiscal decentralization reform is, however, not complete and further efforts are deemed necessary. The fiscal autonomy of local governments has improved, but remains insufficient, with the Republic level exercising a great amount of control. Municipalities and the Autonomous Province are still largely dependent on the Republic for their revenues. Own revenues are not sufficient to cover the costs of newly-assigned responsibilities (the area of utilities is a case in point). The property of local governments should further be regulated, as currently all local government property belongs to the state. Because Municipalities have no property ownership, they lack collateral to leverage in the acquisition of credit for upgrading and improving certain public services.

Transfers from the Republic to lower government levels are de facto a way to exercise control over the municipal and Province authorities. Until the central government agrees to guarantee for loans taken out by Municipalities, the latter have very little room for improving the quality of services they provide.

Montenegro

Since 2004, the basic competences of Municipalities in Montenegro are funded through the following main sources: own tax revenues, tax shares, and an equalisation grant. Own taxes are: surtax on personal income tax, real estate tax, local taxes, land use fees, land development and road building, and some other

588 Ibid., pp 174-175
589 Ibid., p. 181
590 Ibid., p. 187
591 Ibid.
smaller taxes. The equalisation fund (for under-developed Municipalities) receives 10% of the total personal income tax and provides grants for economic equalisation and development of Municipalities (90%) and ‘stimulation’ of Municipalities (10%). Municipalities in Montenegro can levy and determine a number of taxes from 2004 and are also entitled to direct budgetary transfers for tasks delegated to them by the Republic.

Despite the considerable fiscal autonomy granted to Montenegrin Municipalities, a number of separate laws regulate the joint taxes and the ways funds are divided between the central and local governments and give the central government a disproportional share of the collected revenues. The central government has also been accused of refusing to let go of revenues belonging to Municipalities by law.

The Republic also manages to collect revenues and taxes belonging to Municipalities due to the lack of adoption of secondary legislation to regulate their distribution. For example, the responsibility for real estate taxes implementation was devolved to the local level, but the central government failed to provide technical and financial assistance to Municipalities, which compromised revenue autonomy in the short term. And, occasionally, fund transfers are delayed to Municipalities, controlled by the opposition.

2.2 Provisions and Frequency of Local Elections

Serbia

The 2002 Law on Local Elections in Serbia established Municipalities as single constituencies. Serbian citizens over the age of 18 are allowed to vote at the territory of the Municipality, in which they are registered. The elected officials at the local level are the Presidents of Municipalities (Mayors) and the Members of the Municipal Assembly (Councillors). Councillors are elected on a proportional basis from party/coalition lists and Mayors are elected directly, both for a term of four years. Independent candidates are allowed to stand for Mayors as long as they can gather the signatures of 3% of the Municipalities’ voters.

593 For example, 80% of fees paid in support of tourist organisations go to the central government and only 20% to the collecting Municipality.
595 Government of Montenegro, “Economic Reform Agenda for Montenegro”, 2003, p. 64
Montenegro

The 2003 Law on the Elections of Mayors in Montenegro stipulates that Mayors are elected directly by a universal vote and secret ballot at the territory of the Municipality for a term of five years. Municipal Councillors are elected from party/coalition lists according to a proportional representation system for a term of four years. As in Serbia, in order to stand for election, Mayors are required to collect 3% of the signatures of voters in the respective Municipality.

2.3 Electoral system design and performance

Serbia

The 2002 Electoral Law introduced for the first time the proportional election system at the local level and direct election of Mayors. Each Municipality constitutes a single electoral unit and there is a 3% census requirement for winning a mandate. The Law also requires that nominees for Mayors collect the signatures of 3% of the number of voters registered in the City or Municipality. As a result, in larger Municipalities, such as the City of Belgrade, a candidate for the Mayor has to show the support of no less than 43,000 voters. This led to the following aberration: the number of signatures in support of all 9 candidates for Mayor of the City of Belgrade was almost equal to the total number of votes cast in the first electoral round.597 Also, the process of signature collection is open to abuse – during the 2004 municipal elections there were thousands of registered irregularities in the presentation of signatures.598

The new Electoral Law requires electoral lists to consist of at least 30% women and 25% of seats won by an electoral list need to be allocated to women. A July 18 2002 parliament amendment stipulates that Mayors are elected by an absolute majority (they need to secure 50% + 1 of the total votes cast).599

Overall, the new Serbian system of local elections is improved, but several shortcomings remain. For example, political parties and coalitions have undue degree of control over Councillors’ mandates. The Electoral Law requires parties

598 Ibid.
and coalitions to allocate only 30% of all seats won according to electoral lists. Hence, voters may not necessarily know whom they are electing. Also, a Councillor who loses party membership is automatically replaced by another, severing the link between citizens and their elect representative.  

**Montenegro**

Each Montenegrin Municipality is a single electoral unit and voters elect Mayors directly and Councillors on the basis of electoral lists. The system of distribution of electoral mandates is problematic, not conducive to fostering democratization, and has been subject to intense international criticism in recent years.

There are two major flaws: First, the Montenegrin election law provides that only one half of the seats won by a party or coalition are allocated according to electoral lists’ order of candidates. The other half are filled according to party/coalition discretion and hence voters do not always know which candidate they are voting for. The electoral mandate de facto belongs to the party and not the elected Councillor, which severs the link of direct representation. And second, independent candidates are not allowed to stand for Councillors. This de facto restricts the constitutional right of individuals to stand for public office.

**2.4 Local Politics in Serbia and Montenegro: Number and Membership of Parties Active at the Local Level**

**Serbia**

The main Serb parties are the Democratic Party (DS, the first opposition party historically), the Democratic Party of Serbia (DSS, which formed when the late Zoran Djindjic split from the Democratic party in 1992), and the Socialist Party of Serbia (SPS, the Milosevic-founded political force, encompassing the former League of Communists in Serbia and the League of Socialist Working People of Serbia). New-comers on the Serbian political scene include the G17, which started as a pro-reform economy-oriented civil society organisation, but has been part of Serbia’s governing coalition since 2004, and the populist Serbian Renewal Movement (SPO) and New Serbia (NS). They are all active at the local level.

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600 Ibid., p. 5  
Divisions along ethnic lines are reflected in political party membership and affiliation in a number of Municipalities in Serbia. A number of ethnic Albanian parties are active on the local level, including the non-parliamentary Party for Democratic Action and Party for Democratic Union of Albanians. Membership of these parties is dependent on ethnic affiliation and voting usually follows these divisions, rather than campaign considerations. Some ethnic Hungarian and ethnic Bosniak parties are influential at the local level in Vojvodina and Sandzak respectively. During the 2002 municipal elections, the three veteran Serbian political parties compiled a joint list in Bujanovac and Presevo, but ran separately in Medvedja.602

Support for the Serbian Radical Party (SRS, a ultra-nationalist political party, headed by imprisoned Vojislav Seselj and promulgating a return to Serbia’s ‘heroic past’) has been rising in recent years due to widespread social discontent.603 The radical SRS emerged as the largest party after the 2004 local elections. It has formed coalitions with the G17, the DS, and some other moderate parties and is in power in 63 Municipalities at present.604 The 2004 elections saw a number of ultra-nationalist Mayors and assembly members gain power in a large number of Municipalities, which led to freezing of contact between some international donors (for example USAID) with the ultra-nationalist local authorities. The SRS has strong support among Serbs in ethnically mixed areas, such as the predominantly-Serb enclaves in Kosovo, Presevo, parts of Vojvodina and Sandzak.605

**Montenegro**

Political parties have plenty of influence in the small Republic and around 60% of the population holds a political party membership card. Party affiliation influences social standing and job prospects. Political parties in Montenegro have been divided mainly by their stance on independence and their relations to Belgrade.

Parties active at the local level are the strongly anti-Milosevic and pro-independence Social Democratic Party (SDP), the Democratic Party of Socialists (DPS – the former Communists), the pro-Belgrade Socialist People’s Party (SNP), the ethnic Serbian People’s Party (SNS), the People’s Party (again pro-Serbian), the Liberal Alliance of Montenegro (LSCG), which is pro-independence, and the

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603 ICG Europe Briefing, “Serbia’s Changing Political Landscape”, 22 July 2004, p. 11
605 ICG Europe Briefing, “Serbia’s Changing Political Landscape”, 22 July 2004, p. 11
recently-founded liberal Citizens Party of Montenegro (GPCG) and G-17 inspired Group for Change (GZP).606

Eleven coalitions and over sixty-four parties participated at the 2002 local elections in Montenegro. Eleven parties and three coalitions represented national minorities and participated at the 2002 elections.607

The economy, privatization, social policy, and the future status of Montenegro were among the major campaign themes. Most parties preferred door-to-door campaigning and small meetings.

In 2005 the DPS-SDP coalition ousted the local coalitions of opposition parties from municipal government in each election. In Budva, for example, the DPS-SDP candidate received 62% of the vote in comparison to 38% for the SNP-SNS-NS-NSS coalition candidate.608

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608 Freedom House, Nations in Transit, 2006, Montenegro Section, p. 9
2.5 Structure of Council Powers and Decision-making Procedures

Serbia

Figure 11. Structure of Municipal Government in Serbia (Including Vojvodina).

The 2002 Law on Local Government regulates the organisation and functioning of local government bodies in Serbia.

The Municipal Assembly is the main legislative body in Serbian Municipalities. It adopts the municipal statute and rules of procedure, the budget and the annual accounts, development programs of the Municipality, and other ordinances and general acts, sets municipal fees and charges. It is in charge of establishing municipal bodies and commissions, appoints and dismisses supervisory boards, directors of utility companies, institutions and organisations under municipal jurisdiction. (Article 30). The Municipal Assembly also nominates the members of

A directly-elected Mayor (President of the Municipality) is a newly-established institution at the local level and the main executive in Serbian Municipalities. He/she appoints the city manager (in charge of developing proposals for economic development of the Municipality), the chief architect, and proposes the chief of the municipal administration. The President proposes legislative acts to be adopted by the Assembly and ensures the implementation of approved legislation (Article 41).

The municipal Assembly also elects the Municipal Council, creating a further competing executive. The Council is chaired by the Mayor and is in charge of coordinating the functions of the President and Assembly, oversees the work of the municipal administration, and drafts the municipal budget (Articles 43 and 44).

The City has similar institutions and decision-making structure. The administrative structure of local government in the City of Belgrade is regulated by a special law. Belgrade has an Assembly consisting of 90 members, directly elected for four years, which has representative functions, a Mayor elected among the Assembly members for a term of four years, who has largely executive functions, and a City Council, which coordinates the functions of the former two bodies and oversees the work of the City administration. Belgrade is sub-divided into 17 Municipalities whose structure is the same as outlined in Figure 11 above.

The newly-created ‘dual executive’ at the municipal level (the office of the President/Mayor and the executive Council elected by the Assembly) is seen as problematic. The relationship between the two bodies remains unclear. The Council was introduced as a counter-balance to the President and was given some executive and oversight functions, which could clash with the powers of the President, especially in cases where the President and the majority in the Assembly are from different political parties, as the Council is elected by the Assembly. Some conflicts were already noted between the directly-elected Presidents and the Assembly-appointed Councils after the 2004 elections. Significant power struggles ensued in a number of Municipalities, leading to acrimony, decision-making.

609 Article 45 of the Law on Local Self-Government establishes a City Assembly, Mayor, and City Council.
610 Charter on Local Self-Government of the City of Belgrade, see http://www.beograd.org.
611 UNDP, 2005 Ibid., p. 170.
deadlock, and even calls for new Mayoral elections. Some of the secondary legal acts and by-laws also confuse the relationship between the President and the Council, undermining the effective governance.

Municipal administrations are also very inefficient, lack adequate qualifications and use outdated working methods. This also affects negatively the quality of service provision and democratic governance.

Montenegro

The structure and division of powers in Municipalities in Montenegro is regulated by the 2003 Law on Local Self-Government of the Republic of Montenegro. The municipal authorities are the Assembly and the Mayor (Part V, Article 41), both elected directly by citizens (Figure 12).

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613 Freedom House, 2006, Nations in Transit, Serbia section, p. 3
Figure 12. Structure of Municipal Government in Montenegro

The Assembly is the main legislative organ of the Municipality. It adopts the municipal statute and other regulations and general acts, plans and programmes for economic and urban development, the municipal budget, establishes the level of municipal charges, fees and taxes, manages municipal property, etc. It has the authority to set up units, boards and committees for the performance of affairs under its jurisdiction.

The Mayor is the main executive body of Montenegrin Municipalities. He/she has the right to propose acts and regulations to be adopted by the Assembly and is in charge of the implementation of adopted decisions. The Mayor establishes the organization and operational methods of the municipal Administration and supervises its activity. He can also decide to establish specialized expert agencies for the performance of any of the functions under his jurisdiction. The Mayor is accountable to the Assembly and is obliged to submit a report on his work at least once a year (Part V, Article 57, pt. 8)
The Assembly can instigate a vote of no confidence in the Mayor and remove him from office in cases the Mayor fails to submit an annual report on his activities or execute his tasks in a satisfactory manner (Articles 62 and 63).

Eight out of the twenty-one Municipalities in Montenegro currently function under a directly-elected Mayor. The rest of the Municipalities will hold elections in 2006.

Local governments in Montenegro are somewhat over-politicised and burdened by excessive bureaucracy. Limited financial resources are also an obstacle to the effective provision of services by local authorities.

The political system at the national level tends to get replicated at the local level and power distribution at the local level follows the changes at the national level. In the 2005 local elections, for example, key leadership posts were taken by the governing coalition. In small Municipalities in particular, the selection of candidates based on party affiliation overlooks merit and hence compromises the functioning of the decision-making structure. And in cases where the Mayor and Council are from different political parties, decision-making becomes completely stalled.

2.6 Civil Society (Number and Principal Sphere of Action of NGOs, Citizen Groups, etc.)

Serbia

The current legislation on NGOs in Serbia is restrictive and does not foster the development of the sector. The Serbian government has been expected to adopt new legislation but has failed to do that to date.

After the increased cooperation between the government and the civil sector in 2001, the impact of Serbian NGOs had once again vanished by 2004. Without effective regulation, the size of the NGO sector is difficult to determine. Some NGOs are reluctant to register under the current Serbian law, which requires a police check, but opt for the Federal law (of the Former Yugoslavia, which no

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615 Freedom House, 2006, Nations in Transit, Montenegro section, p. 2
616 Ibid., p. 13
617 NGOs were not allowed to form or operate unless registered with the police, they were forbidden to engage in independent economic activity and had to pay tax.
618 Freedom House, 2005, Nations in Transit, Serbia Section p. 5
longer exists), which creates a de facto legal vacuum.\textsuperscript{619} Existing NGOs in Serbia have failed to build cooperation with the government and have on some occasions faced open hostility by officials.

NGOs in the capital, Belgrade, do better in terms of advocacy skills and organisational capacity. They tend to focus more on human rights issues and problems of economic transition. It is noteworthy, however, that NGOs outside Belgrade have better relations with local businesses and media.\textsuperscript{620} Relations with local governments, on the other hand, are strained. In recent years there has been an increase in the number of local governments controlled by anti-reformist and extreme nationalist political parties, who are hostile to NGOs.

Serbian NGOs are extremely dependent on external funding for their existence. The non-transparent public procurement procedures prevent them from effectively utilising government funds. There are persistent public statements by the government against NGOs, which undermines private financial contributions.\textsuperscript{621}

It has been said of Serbian NGOs that their public image is “so poor that NGOs do not even look favourably upon the overall NGO sector”\textsuperscript{622}. This has been the result of a persistent campaign, undertaken by the central government and the media and is a rather unfortunate development bearing in mind the standing and support for NGOs during the first months after the collapse of the Milosevic regime. Serbian NGOs were at the centre of the transition and played a crucial role in highlighting cases of human rights abuse, increasing voter turnout and building a responsive civil society.\textsuperscript{623}

New legislation to regulate the work of NGOs was proposed by the government in 2005. The proposed law takes away some of the restrictions on the sector. It reduces the number of required founders from 10 to 3 and civil society associations would no longer be required to register with the policy. However, the draft law foresees the introduction of Value Added Tax on NGO activity, which would create a significant financial burden.\textsuperscript{624} It has been criticised by the Helsinki

\textsuperscript{619} USAID, NGO Sustainability Index 2005, Serbia, p. 177  
\textsuperscript{620} Ibid., p. 176  
\textsuperscript{621} Ibid., p. 178  
\textsuperscript{622} Ibid., p. 180  
\textsuperscript{623} Ibid., p. 176  
\textsuperscript{624} Freedom House, 2006, Nations in Transit, Serbia section, p. 2
Committee on Human Rights for being too vague and not resolving current problematic areas.\textsuperscript{625}

Serbian NGOs, especially the ones active in the fields of human rights, are targeted by nationalist and extremist political parties. The central government and members of parliament have also attacked NGOs.\textsuperscript{626} The Serbian Intelligence Agency, BIA, has declared to be monitoring their activity.\textsuperscript{627}

**Montenegro**

There are close to 3000 registered NGOs in Montenegro, approximately 100 of which are active.\textsuperscript{628} Montenegrin NGOs are far more active, positively-received and sustainable than their Serbian counterparts. The NGO law in Montenegro permits easy registration and allows them to operate outside state control.\textsuperscript{629} Further self-regulation is deemed necessary and NGOs have come together to form a coalition to develop a national strategy, including a Code of Conduct for NGOs.

Civil society organizations, which have benefited from substantial donor funding, are better organized, governed, possess better advocacy skills, and are hence more capable of having an impact on decision-making. The Government in Montenegro has awarded 289 500 Euro in grants to over 100 local NGOs in recent years.\textsuperscript{630} The funds were, however, mismanaged by the responsible local authorities because of political bias of the selection committees.\textsuperscript{631}

NGOs can propose legislation or discussion papers to Parliament either by collecting 6 000 signatures or nominating a political party to be present on their behalf. Montenegrin NGOs are accustomed to lobbying and have managed to influence, amend and propose legislation at both the government and local levels.\textsuperscript{632} They are also looking to extend their influence beyond the legislation drafting process into implementation oversight. For example, three regional


\textsuperscript{626} Freedom House, 2006, Nations in Transit, Serbia section, p. 8

\textsuperscript{627} The Head of BIA, Rade Bulatovic, quoted in Humanitarian Law Centre, “Serbian Government Reinforces Campaign Against NGOs Dealing with the Past”, press release, July 29, 2005.

\textsuperscript{628} USAID, NGO Sustainability Index 2005, Montenegro, p. 148

\textsuperscript{629} Freedom House quote the Montenegrin Ministry of Justice register for NGOs and political parties.

\textsuperscript{630} Freedom House quote the Montenegrin Ministry of Justice register for NGOs.

\textsuperscript{631} Ibid.

\textsuperscript{632} Ibid., p. 151
Coalitions of NGOs are carrying out advocacy and oversight initiatives in Ulcinj, Niksic, and Herceg Novi under the auspices of the USAID/ORT Local Watchdog.

The majority of NGOs in Montenegro remain small, inadequately staffed and unable to secure and manage donor funding. NGOs outside the capital do not have the same access to donor resources and information. As a result, NGOs in urban centres have achieved a much more advanced level of competence and quality of service provision, than their village counterparts.633

Public perception of NGOs in Montenegro and their activities is very positive. 74% of all citizens see them as apolitical and not interested only in profit, which is a remarkable increase to 2000’s 45% approval.634

The Montenegrin Law on Local Self-Government of 2003 has specific provisions, obliging local authorities to cooperate with NGOs for the purpose of developing a democratic society at the local level (Part X, Article 116), which were adopted as a direct result of the advocacy efforts of the leading Montenegrin organization of NGOs. Local authorities are required to involve NGOs in the drafting of municipal development programs, regulations and ordinances, and finance projects, presented by NGOs. Municipalities are also required to establish a Council for the Protection and Development of the Local Community, providing a further route for NGO influence on local decision-making. These legal provisions have not yet been adopted in any of the Montenegrin Municipalities.635 Once they are in place, the legal framework for civil society involvement in the country would be adequate to encourage and take advantage of NGO input.

The potential for the positive influence of NGOs on the consolidation of local democracy in Montenegro is significant, given their high approval ratings and the demonstrated positive link between civil society density and citizen involvement in local decision-making in the country.

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633 Ibid.
634 Ibid., p. 153
2.7 Local Media (Structure, Editorial Independence and Arrangements)

Serbia

Freedom of speech and access to information is guaranteed by law in Serbia. The broadcaster sector remains unregulated and hundreds of news-providing broadcasters exist. There are numerous private stations at the local, regional, and national level. They compete with Municipally owned media (currently more than 150 outlets). There are local and regional daily and weekly newspapers.

However, quantity does not mean quality. State and municipal broadcasters are pressurised to follow the majority opinion in their coverage of major issues and events. Many of the municipal media were a source of professional news during the Milosevic era when Municipalities were controlled by the opposition. However, a growing trend is now emerging for direct interference and restrictions of their reporting. Municipal politicians often feel use local media as own public relations platforms.

Another general trend across the country is to view public broadcasting as something which should follow public opinion, rather than provide independent and impartial information on a wide spectrum of issues. This leads to lack of public concern with quality and plurality of information. Hence, there is no true presentation of all religious, social, economic and political perspectives in the country. The needs of minorities are almost completely disregarded, as there is no interest in these issues.

Some media organizations, particularly radio B92, were subject to vandalism, bomb threats and intimidation for expressing opinions contrary to the Central Government's. Local officials in the Municipality of Vranje harassed and sent death threats to reporters of a local radio station for a report of the illegal printing of some 2 500 local election bulletins.

The Independent Journalists Association of Serbia is regarded as a weak lobbying tool, privatization of broadcasters was stopped, and frequencies are still not

636 IREX, Media Sustainability Index, 2005, Serbia, p. 104
637 Ibid.
638 Ibid.
639 Ibid.
641 Ibid.
distributed in a fair and impartial manner despite the passing of a number of laws.\textsuperscript{642}

The ‘tabloidization’ of the media in Serbia is seen as the most pressing concern.\textsuperscript{643} There is growth in the use of intolerant and racially abusive reporting. Tabloids produce ‘sensationalist, unfair and unbalanced reporting’ and they are also often fabricating political scandals and starting witch hunts against individuals.\textsuperscript{644}

The print media is unregulated and under major threat of monopolization as distribution networks are owned by local tycoons or foreign investors.\textsuperscript{645} There is a danger that the ownership of distribution networks and the infrastructure of electronic transmitters (by the State owned RTS in the case of the electronic media) can jeopardize the freedom of the media in the future.

The process of privatizing state-owned media has finally begun. Towards the end of 2005, the State owned 150 media, most of which local.\textsuperscript{646} This ownership had been transferred to Municipalities with the process of decentralization. Local media privatization has been regarded positively by international organizations, but there is a risk that non-profitable minority language programming might be cancelled by private investors. In Vojvodina, ownership of minority language media has been transferred to the minority national councils, which could lead to abuse by political parties and jeopardize the independence of the minority councils.\textsuperscript{647}

And finally, it should be noted that the access of citizens to the vast plurality of media available is restricted due to low income levels and the general economic hardship, especially in villages and small towns away from the capital or other urban areas. Local media is also dealing with a decline in the quality of their technical facilities and equipment. This problem is likely to get worse with the gradual withdrawal of external donor funding.

\textsuperscript{642} IREX 2005, Serbia.
\textsuperscript{643} IREX 2005, Serbia, p. 101
\textsuperscript{644} Ibid.
\textsuperscript{645} IREX, 2005, Serbia, p. 107
\textsuperscript{646} Freedom House, 2006, Nations in Transit, Serbia section, p. 11
\textsuperscript{647} Ibid.
Montenegro

There are about 40 private radio stations, 16 television outlets and 4 daily newspapers currently in Montenegro. Given that the population is close to 670,000, the widely-held opinion is that the media market in Montenegro is over-saturated. Moreover, the quantity of media sources does not necessarily produce quality as many of them use the same agency sources and have under-developed correspondents’ networks.

The News agency in Montenegro is only one – the Montenegro Independent News Agency (MINA) and is competing with its Serbian counterparts. The four big newspapers have their own printing and distribution systems. Clear achievements have been noted in the web presentation of newspapers.

Existing media regulations in Montenegro are generally seen as adequate, although there are some problems with implementation. 10% of public subscription fees should go to media outlets. A much awaited Law on Free Access to Information was passed in October 2005, which included all regulations sought by the media community.

The state radio and television system has been transformed into the public broadcaster – RTCG. An independent Council has been established, composed of 11 members from civil society groups and a management board, selected though public competition. The setting up of the RTCG has significantly reduced political bias and government influence on the mass media and has lead to an increase in diversity of opinion and coverage. The transparency of media ownership has also been improved. In another positive development, Montenegrin broadcasters were allocated frequencies through a free, fair and open tender in 2005.

The main problems facing the media sector in Montenegro are the lack of quality and professionalism in journalistic reporting, as well as the lack of a proper journalistic union which would guarantee the protection of journalists’ rights.

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648 IREX, Media Sustainability Index 2005, Montenegro, p. 81
649 Ibid, pp 81-82.
650 Ibid., p. 84
651 For example, the Council of the Broadcasting Agency failed to distribute funds to commercial broadcasters according to existing laws in 2005.
652 IREX, 2005, Montenegro, p. 82.
653 Ibid, p. 79
Broadcasting Agency has also been criticized for “unfair” allocation of finances from subscription fees.\textsuperscript{654}

3. The Procedural Functioning of Local Democracy

3.1 Administration, Effectiveness and Fairness of Elections Held, Voter Participation

\textbf{Serbia}

There is a two-level structure of local electoral administration in the Republic of Serbia. Municipal Electoral Commissions are appointed by the Municipal Assemblies for a term of four years and are responsible for the coordination of elections in the Municipality. The original membership of the MECs is extended during the later stages of the election period to include members of the parties and coalitions whose electoral lists meet the 2/3 threshold of candidates. The MECs then appoint members of polling booths (PBs) who are sent to manage elections in each polling station.\textsuperscript{655}

There is no central body to oversee and coordinate local elections across the country, opening the possibility for lack of uniformity. Municipal courts are established as the highest appellate body for appeals against electoral administration decisions, which can lead to inconsistent interpretation of legal provisions and wide variation across Municipalities.

The current electoral administration structure in Serbia has also been criticised for failing to guarantee political plurality or balanced ethnic representation.\textsuperscript{656} However, the OSCE Election Observation Mission noted in 2002 that the permanent membership of MECs and PBs was in practice multi-ethnic and multi-party.

The 2002 voting process was generally characterised as ‘good’ or ‘excellent’.\textsuperscript{657} Problems on election days in 2002 included overcrowded polling stations in Bujanovac, leading to delays, shortcomings in guaranteeing voter secrecy and privacy, failure of voters to sign voter registers.

\textsuperscript{654} Ibid., p. 84
\textsuperscript{655} International Election Observation Mission, 2002, \textit{Ibid.}, p. 6
\textsuperscript{656} Largely due to the high threshold for extended membership of the MECs. See International Election Observation Mission, 2002, \textit{Ibid.} p. 5
\textsuperscript{657} OSCE, 2002, \textit{Ibid.}, p. 11.
Voter turnout in the 2002 by-elections was low: 57.8% in Bujanovac, 50.4% in Presevo and 44.7% in Medvedja. The inclusiveness of the election process was compromised by the fact that citizens who are unable to attend a polling station (for example, due to a disability), were effectively prevented from voting. Tabulation of results was done in an orderly manner, with the exception of Bujanovac, where there was no transparent processing of the various results from polling boards.

The 2004 municipal elections in Serbia were the first country-wide elections to be based on a proportional system of representation. Since 2004, all local governments are elected and constituted according the 2002 Local government law. Few serious irregularities were noted and there was a significant improvement in the updating of voter registers. Voter turnout was alarmingly low – around 23%, which signifies a progressive trend of low motivation of voters in Serbia.

**Montenegro**

Elections in Montenegro are characterised by high citizen interest and a high voter turn-out. A large portion of the population belongs to one political party or another, and parties engage in vigorous door-to-door campaigning. Elections tend to be ‘winners take all’ affairs, which determine employment opportunities in the following four years.

The election administration in Montenegro is three-tiered. It consists of the Republic Election Commission, Municipal Election Commissions and Polling Boards. The permanent members of the REC and MECs are appointed by the Montenegrin Parliament for four years. Political pluralism of election commissions is guaranteed by the law mainly through the extended membership of MEC for anyone who submits an electoral list. Most political parties and coalitions take advantage of this provision and contribute to a higher degree of transparency of the electoral process.

The main responsibility for the electoral administration is given to MECs, but the REC is required to oversee and supervise their work. However, it can only issue

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658 Ibid.
659 Ibid., p. 12
661 Ibid.
662 Freedom House, 2006, Nations in Transit, Montenegro section, p. 9
non-binding recommendations, which is deemed insufficient for effective regulation.\textsuperscript{664} The rights and duties of members of the electoral administration on all three levels are not clearly defined.\textsuperscript{665}

The law provides for voting outside of polling stations - “mobile voting”, giving the possibility of the elderly and disabled to participate in the electoral process.

Voter registers continue to be a contentious issue in Montenegro’s local elections. Municipal authorities are the only body authorised to amend these on the basis of documentary evidence from Municipal Civil Status Offices or local branches of the Ministry of the Interior. The OSCE’s 2002 election observation mission found that the accuracy of voter registers has improved, but a number of inaccuracies remain, which are not the result of deliberate manipulation.\textsuperscript{666}

The 2002 electoral campaign was generally calm and quiet with some isolated exceptions.\textsuperscript{667} Party campaigns and election coverage generally lacked information of particular interest to women and only 11.88\% of candidates and 5 heads of electoral lists were women.\textsuperscript{668}

Voter turnout in the 2002 municipal elections was very high – 71.89\%, indicating strong voter interest in the elections.\textsuperscript{669} Voting was characterised as ‘good’ or ‘excellent’ in 86\% of observed polling stations. A small number of irregularities were noted with voter secrecy and polling station layout. Tabulation was generally done in a quick and transparent manner.\textsuperscript{670}

There were allegations of irregularities during the four municipal elections and one local vote of no confidence in 2005, which served more as a confirmation to the local tradition of the winners being blamed for fraud and various electoral schemes.\textsuperscript{671} Some election irregularities were noted by domestic election observers in a few polling stations and the electoral administrations were criticised for being

\textsuperscript{663} Ibid.
\textsuperscript{665} Ibid.
\textsuperscript{666} Ibid., pp 9-11
\textsuperscript{667} Ibid., pp 12-13
\textsuperscript{668} Ibid., p. 13
\textsuperscript{669} Ibid., p. 14
\textsuperscript{670} Ibid., pp 15-16
\textsuperscript{671} Freedom House 2006, Nations in Transit, Montenegro section, p. 9
overly politicised, but these irregularities were not on a large enough scale to impact the 2005 election outcomes.\textsuperscript{672}

3.2 Degree of Openness of Local Authorities

\textbf{Serbia}

Article 127 of the Serbian Law on Local Self-Government provides for the establishment of a Committee for promotion and protection of local self-government under the auspices of the Municipal Assembly. This Committee will be entitled to submit proposals to the Assembly, on which the bodies of local self-government are required to express an opinion. However, the establishment of such Committees is optional and at the discretion and under the regulation of the Municipalities.

All sessions of the Municipal Assemblies should be public in principle (According to article 33 of the Law on Local Self-Government), but in practice Serbian local authorities do not regard citizens’ participation as a prerequisite for effective and informed work.\textsuperscript{673}

\textbf{Montenegro}

The Montenegrin law of local Self-Government obliges Municipalities to prepare a plan for citizens’ participation in decision-making and appoint a body to hold public hearings.\textsuperscript{674} Most Municipalities have already adopted the required ordinances.

In recent years, Montenegrin Municipalities increasingly reach out to include citizens in decision-making.\textsuperscript{675} Several of them have signed cooperation agreements with local NGOs and provided the latter with a seat at Municipal Assembly discussions without the right to vote. Assembly discussions are also open to interested citizens. Public consultations are also increasingly held, especially on contentious issues such as urban planning.\textsuperscript{676}

\textsuperscript{673} IMF Country Report No 04/120, “Poverty Reduction Strategy of the Union of Serbia and Montenegro”, 2004, p. 71
\textsuperscript{674} Article 109.
\textsuperscript{675} Freedom House 2006, \textit{Nations in Transit}, Montenegro section, p. 2
\textsuperscript{676} Ibid., p. 13
3.3 Fairness (Policies Guaranteeing Wide Inclusion, Minority Rights Implementation)

Serbia and Montenegro provide an example of the negative effects of state weakness by constitutional design on minority rights implementation. The Act on Protection of Rights and Freedoms of National Minorities was adopted at the State Union level by the Assembly of the State Union of Serbia and Montenegro and a Federal Council of National Minorities was established in 2003. The law stipulates that minorities are entitled to self-government in the domains crucial for the safeguarding of their ethnic identity, such as the use of their language and alphabet, education, culture, freely-available information. It also prohibits any measures on Republic or local level obstructing the implementation of these rights.

The existing political consensus on advancing minority rights in the Republics fell apart after the assassination of Prime Minister Djindjic in 2003. Overall, there has been a lack of political will for the adoption of further legislative acts safeguarding the rights of minorities in the two Republics and the legislation adopted at the State Union level became redundant with the dissolution of the latter in June 2006.

**Serbia**

The Federal Law on Minorities stipulates that the Federal Council of National Minorities, its attached Fund for National Minorities, and some national councils be implanted in the institutional framework of Serbia, including at the municipal level.677

There is, however, no clear strategy towards the regulation of minority rights in the country, sometimes leading to legal controversies, as demonstrated by the discrepancy between the minority law and the local self-government law.678 The weakness and subsequent erosion of the authorities in charge of protecting minority rights at the State Union level has led analysts to fear backtracking and feet-dragging on minority rights implementation by the authorities in the Serbian Republic.

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678 The State Union Ministry of National and Ethnic Communities and the Provincial Secretariat for Administration, Regulation and National Minorities of Vojvodina filed such an appeal questioning the constitutionality of the Act of Local Self-Rule in Serbia, which is not harmonised with the Act on Protection of Rights and Freedoms of National Minorities in its part on the right to use national symbols. See Helsinki Committee for Human Rights in Serbia, 2004, Human Rights and Collective Identity, Serbia.
The Law in Serbia provides for the protection of human and other rights at the local level through the institution of the Ombudsman. Municipal funds for activities to protect minorities are also foreseen. The introduction of the Ombudsman at the Local Level in Serbia, however, is a discretionary right of Municipalities.

The Law on Local Self-Government of 2002 also foresees the establishment of a special Council for inter-ethnic relations in communities where minorities constitute over 5% of the total population. Minorities representing 1% of the communal population have the right to be represented in the Municipal Council. The Council should also always be consulted by the administration whenever an action concerning rights of minorities is implemented.\(^{679}\) Whenever a decision or regulation passed by a Municipal Assembly is found to limit the rights or minorities, the Municipal Minority Councils have the right to appeal before the Constitutional Court. Under the Republican law, national and municipal councils for the protection of minority rights are set up voluntarily and by election, the latter to be regulated by additional laws. These laws have not yet been passed.

The Vojvodina Assembly has adopted a number of important decisions increasing the rights of minorities. Croatian was introduced as an official language alongside Serbian, Slovak, Hungarian, Ruthenian, and Romanian, and minority language publishing houses were established.\(^{680}\) The office of provincial Ombudsman was also introduced, establishing the first ever human rights defender in Serbia. The Vojvodina Ombudsman has five deputies, one of whom is in charge of monitoring the implementation of minority rights and has the authority to instigate criminal and other proceedings against persons and institutions found to be violating these rights.\(^{681}\)

There was an increase in anti-minority incidents in Vojvodina in 2004 following the December 2003 Parliamentary elections. Hungarians, Croats, Roma, Slovaks and Ruthenians were all victims of ethnically-motivated violence.\(^{682}\) The European Parliament adopted a resolution in October 2005 stating that the rights of Hungarians in Vojvodina had been violated and the Serbian government pledged

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\(^{679}\) Article 63.
\(^{681}\) *Ibid.*, p. 549
\(^{682}\) *Ibid.*, p. 25

Gross violations of the rights of Croats in Stem and Bosniaks in Sandzak have been reported and have not been appropriately handled by the authorities.\footnote{Helsinki Committee for Human Rights in Serbia, 2004, \textit{Ibid.}, pp 535-537.}

Some minorities, such as the Hungarians in Vojvodina and the Bosniaks in Sandzak, have been very strong, well organised and have managed to obtain considerable rights and social standing in the Municipalities, in which they are a majority.\footnote{Not without the support and direct pressure on Serb state authorities by Hungary, see Helsinki Committee for Human Rights in Serbia, 2004, \textit{Human Rights and Collective Identity, Serbia}, pp 551-570.} Weaker minorities have not been as successful in fighting for the observance of their own rights, and have been adversely affected by the lack of substantial financial support.

Some nine thousand of the estimated two hundred thousand internally-displaced persons (IDPs) and six thousand refugees in Serbia continue living in emergency shelters, which are unable to provide adequate living conditions.\footnote{US Government, Committee on Democracy, Human Rights, and Labour, \textit{Ibid.}}

Minority rights in Serbia are adversely affected by fear of ethnically-motivated reprisals, the inherited political culture, prejudice, and economic and legislative obstacles of various kinds. Moreover, the weakness of the State Union institutions have led to a marginalization of the Ministry of National Minorities, alongside the rise of ethno-nationalism in Serbia.\footnote{Helsinki Committee for Human Rights in Serbia, 2004, \textit{Human Rights and Collective Identity, Serbia}, p. 539}

The effective representation of women is hindered by traditional views of gender roles in both Serbia and Montenegro, particularly in rural areas. In these areas and in some minority communities it is common that men direct the voting of women.\footnote{US Government, Committee on Democracy, Human Rights, and Labour, \textit{Ibid.}} A Council for Gender Equality was established in Serbia in 2004 and the Vojvodina Assembly has formed a secretariat for Labour, Employment, and Gender Equality. The full capacity of these institutions is still to be developed.

\footnote{Not without the support and direct pressure on Serb state authorities by Hungary, see Helsinki Committee for Human Rights in Serbia, 2004, \textit{Human Rights and Collective Identity, Serbia}, pp 551-570.}
\footnote{US Government, Committee on Democracy, Human Rights, and Labour, \textit{Ibid.}}
\footnote{US Government, Committee on Democracy, Human Rights, and Labour, \textit{Ibid.}}
Montenegro

The rights of national and ethnic groups in Montenegro are protected by the Constitution.\textsuperscript{689} Minorities are given the right to free use of their mother language and alphabet, free association, proportional representation in the public services, state authorities and local self-government. A special Republican Council for Protection of Rights of National and Ethnic Groups is established under the auspices of the President of Montenegro and is charged with preserving and protecting the national, ethnic, cultural, linguistic and religious identity of minorities. Participation of minorities in local government, however, remains very low.\textsuperscript{690}

There are no legal provisions to stimulate the participation of women in politics in Montenegro and gender imbalance is among the worst in the Western Balkans, second only to Albania.\textsuperscript{691}

3.4 Transparency (Availability of Local Documents to the Wider Public)

Serbia

A Freedom of Information Law was passed by the Serbian parliament in November 2004 after a long delay. Implementation, however, has been slow and several international organisations and local NGOs (among which the Centre for Free Elections and Democracy, the OSCE, and Transparency Serbia) have organised public awareness campaigns.\textsuperscript{692} At the local level citizens are seldom given information about the most important local affairs and decision-making transparency is very low.

Montenegro

After a long delay, the Montenegrin parliament adopted the Law on Free Access to Information in 2005. Montenegrin Local Authorities are required by the Law on Local Government to establish a citizen information center and provide citizens with all necessary information, explanation and notification about their activities. Citizens are granted direct access to regulations and other official files, participation in hearings during decision-making procedures, activities for citizens’

\textsuperscript{689} Articles 67 – 76 of the Constitution of the Republic of Montenegro.
\textsuperscript{690} European Forum, Montenegro Update, 9 June 2004.
\textsuperscript{691} European Forum, Montenegro Update, 9 June 2004.
\textsuperscript{692} Freedom House, 2006, Nations in Transit, Serbia section, p. 6
education and other methods at the discretion of municipal statutes. Some Montenegrin Municipalities have recently undertaken to publish data on their activities every six months and a growing number have developed internet sites containing information of general interest.

3.5 Provisions for ‘Citizens’ Outreach’ – the Right of Citizens to Influence Local Decision-making (Referenda, Ballots, Petitions, etc.)

Serbia

Serbia’s Law on Local Self-Government foresees three forms of direct participation of citizens in local self-government: citizens’ initiative, citizens’ meetings, and referendum. Citizens have the right to propose legislative acts to the Municipal Assembly, to which the Assembly is required to respond within 60 days after due consideration. Citizens also have the right to hold a citizens meeting, at which to debate and make proposals regarding issues within the jurisdiction of the Municipalities, and can adopt and submit proposals to the Municipal Assembly or particular administrative bodies and units. The latter bodies are then required to respond to the citizens’ proposal within 60 days of its receipt. And finally, each Municipal or City Assembly can call for a local referendum on issues within its jurisdiction on a request by its constituents.

In fact, citizens’ participation in local decision-making in Serbia is still missing. Municipal officials and administrators have not yet developed a system for encouraging participation in local affairs. Citizens, on their part, do not consider municipal bodies as effective tools for resolving their problems. There is a sense of apathy and distance, which precludes effective participation.

Montenegro

The Law on Local Self-Government in Montenegro of 2003 stipulates a number of methods of direct participation of citizens in local decision-making: citizens’ initiative, an assembly of citizens, referendum. Citizens are entitled to launch an

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693 Article 138 of the Law on Local Self-Government in Montenegro.
696 The Civil Society, Media and Democratization of Serbia, p. 11, seerecon.org/documents, last accessed on 4.06.2006;
698 Article 100 of the Law on Local Self-Government, Republic of Montenegro.
initiative with the competent municipal bodies on issues of interest to local communities. The municipal bodies are required to pronounce themselves on the initiative within 30 days of submission. A ‘civil’ initiative is also foreseen allowing local communities to influence the process of legislation drafting and adoption. An assembly of citizens can adopt proposals and forward them to the competent bodies for consideration. The latter are in turn obliged to issue an opinion within 60 days. Local referenda are also foreseen, the procedures for which are left to individual municipal statutes.

Citizens also have the right to lodge petitions, suggestions and complaints, which are again left to municipal statutes to regulate.

Local referenda are almost unused in the country – some have been initiated in the past, but not conducted. A review of participatory institutions in the country in 2005 concluded that they remained ‘greatly underused’.

4. Unresolved Status Issues in Serbia and Montenegro

The State Union of Serbia and Montenegro was another temporary agreement in the Balkans and contained a number of dormant unresolved status issues: full independence for the Republic of Montenegro, a final solution for Kosovo, and greater autonomy for Serbia’s other province: Vojvodina. These questions have once again resurfaced in 2006 and occupied the complete attention of domestic and international political actors alike.

Due to the primacy of self-determination concerns, other reform processes have been put on hold, including ones of importance to local democracy, such as: further local government and decentralization reform, agreement on a new Republican constitution of Serbia, adoption of minority rights legislation and its implementation. Moreover, the unresolved status issues in Serbia and Montenegro have the potential to destabilise Serbia, deepen the ethnicity rifts in the country and reverse the democratization process at both the central and local level.

The Belgrade Agreement, establishing the State Union of Serbia and Montenegro included a secession clause, according to which any member state had the right to leave the Union after a period of three years (Article 60 of the Constitution of the State Union of Serbia and Montenegro). The text gave an advantage to Serbia – it

699 Center for Development of NGOs in Montenegro, (CRVNO), “Decentralization Process in Montenegro: Possibilities of Cooperation between Local Government and NGOs”, p. 4
stated that if Montenegro leaves the Union, Serbia would maintain the legal personality of the effectively dissolved Union, and Montenegro would have to seek international recognition unilaterally.

The Montenegrin referendum on independence was the one dominant political issue in the country over the past few years. Most reforms, including the implementation of the decentralization legislation, were put on hold until the status issue was resolved. The referendum was held on May 21, 2006. Turnout was high – over 86% and 55.4% of Montenegrins voted in favour of independence. The referendum was held on May 21, 2006. Turnout was high – over 86% and 55.4% of Montenegrins voted in favour of independence.702

The Republic then issued a Declaration of Independence on June 3rd 2006 and submitted letters requesting official recognition by the member states of the EU, the UN Security Council permanent members and others on June 4th 2006.703 The newly-independent state is now faced with the momentous task of receiving international recognition, re-applying to international organisations, building and re-structuring its central state administrative apparatus. Issues of importance to local democracy are likely to be eclipsed by efforts for state-building and consolidation in the new Republic in the near future.

The other major issue, which will effect Serbian politics, government, territorial structure, etc. in the near future, is the status of Kosovo. Security Council Resolution 1244 placed the province temporarily under international supervision in 1999, postponing a final solution.

The resolution of Kosovo’s status question, talks on which are ongoing at present, has the potential to destabilise Serbia, cause a serious setback to reforms, and give rise to further populist and nationalist sentiments in the country. The Serb Radical Party (SRS), which is the major political force at the local level in the country since 2004, has called for occupation of Kosovo and threatened ‘mayhem in the streets’ if the province becomes independent.706

700 Ibid.
701 Freedom House 2006, Nations in Transit, Montenegro section, p. 2
704 Official talks began in Vienna on March 20, 2006 between Belgrade and Pristina, with UN mediation.
705 Freedom House, 2006, Nations in Transit, Serbia section, p. 3
706 Ibid., p. 6
The unresolved status issue has also led to increased uncertainty among the Albanian population in the Province, which is partially a reason for the outbreak of violence in Kosovo in March 2004.\textsuperscript{707} This outbreak was in turn followed by torching of mosques in Belgrade, Nis, and other large Serbian towns in 2004.

The status of Vojvodina, the other Autonomous Serbian Province, has also been subject to controversy in recent years. Several decisions of the Vojvodina Assembly of symbolic importance\textsuperscript{708} have been met with disdain by Serbian nationalists. Members of the Serbian political parties denied the right of Vojvodina to have its own symbols as this would undermine the Serbian state.\textsuperscript{709} There is perceived lack of will among the Serbian authorities to reverse the results of the Milosevic dictatorship and grant more autonomy to the Province, and provincial authorities are often disparaged by the central government. This has led to constant bickering, accusations and recriminations between the pro-centralism and pro-autonomy political forces in the Province.

Vojvodina’s autonomist parties called an All-Vojvodina convention in February 2004, which adopted the ‘Subotica Initiative’ document calling for international help in solving Vojvodina’s status question. On the same day, the nationalist parties held a meeting in Novi Sad and adopted a declaration condemning the ‘Subotica Initiative’, pledged to work towards the annulment of all decisions of the Vojvodina Assembly and early parliamentary elections in the province.\textsuperscript{710}

These developments have been followed by an upsurge of ethnically-motivated violence, and a change of heart of voters.\textsuperscript{711} The Radicals capitalised on the brewing social discontent in the Province – the SRS emerged as the most powerful political party in the Provincial Assembly, winning 36 seats in the 2004 elections, and securing majority in a number of Municipal Assemblies.\textsuperscript{712} This, in turn, has led to even further deterioration of inter-ethnic relations. For example, the Bosnian Municipality of Tuzla severed relations with the Municipality of Novi Sad after the Radicals won 34 seats in the City Assembly.\textsuperscript{713} The two Municipalities had signed an Agreement on Inter-Ethnic Tolerance two years before in a ground-braking

\textsuperscript{707} The Serb population was subject to the attacks, which included burning of shops, looting of Orthodox churches and a number of casualties.
\textsuperscript{708} Such as the decision to have own emblems, flag, and coat of arms.
\textsuperscript{710} Ibid., pp 253-255
\textsuperscript{711} Ibid.
\textsuperscript{712} Ibid., p. 263
\textsuperscript{713} Ibid., pp 263-264.
move to overcome the ethnic schisms caused by the wars of Yugoslavia’s dissolution.

The developments in Vojvodina described above are testimony to the potential of unresolved status issues to spill over into ethnic tensions and undermine democratization processes at the local level. The contagion effect can go even further and lead to worsening of inter-ethnic relations in regions within Serbia itself.

The International Crisis Group has warned that retaliatory violence against ethnic Albanians in Serbia’s southern Presevo valley if Kosovo receives independence.\(^{714}\) The Presevo valley was another hotspot in Serbia in the past. Albanians are the majority in the Municipalities of Presevo and Bujanovac and the biggest minority in Medvedja. An armed Albanian uprising in 2001 was ended with international mediation, but ethnically-motivated incidents in 2003 questioned the sustainability of the peace solution.\(^{715}\) (see also the discussion of ethnicity below, pt. 7).

5. State Weakness in Serbia and Montenegro

The State Union of Serbia and Montenegro has been a very weak state framework by constitutional design and due to the different policy priorities of the two members and the strong support for independence in Montenegro.

The Union of Serbia and Montenegro was rendered almost dysfunctional in 2004 due to the lack of desire of the governments of the two constituent Republics to release decision-making powers to the Union level. Montenegro refused to honour its constitutional obligations and hold direct elections for the State Union assembly in 2005.\(^{716}\) The establishment of a Joint Constitutional Court, which was foreseen in the Constitutional Framework of the State Union was never completed. The joint military lacked democratic oversight\(^{717}\) and politicians were accountable to their Republics rather than the population of the State Union in general. In fact, few of the State Union institutions worked effectively. In 2005 the Parliament met for only 10 sessions in the space of seven days.\(^{718}\) Sessions of the Council were equally rare.

\(^{714}\) RFE/RL Newsline, 28 June 2006, ‘Group Warns of Violence in Southern Serbia
\(^{716}\) Freedom House, Freedom in the World, 2005, Serbia and Montenegro, p. 3
\(^{717}\) The State Union army remained outside of serious parliamentary control due to the weakness of the State Union parliament.
\(^{718}\) Freedom House, 2006, Nations in Transit, Serbia section, p. 1
As a result of the imminent break-up of the State Union of Serbia and Montenegro, Serbia’s constitutional framework is problematic. The current Constitution, dating from 1990 is a vestige from the Milosevic era, has authoritarian undertones, and is deemed inadequate. All major parties in Serbia agree on the need to change the Constitution, but this would be hard to achieve as it would require a majority of two thirds and a subsequent referendum.\textsuperscript{719}

The weakness and subsequent break-up of the State Union level of government in Serbia and Montenegro has had an adverse effect on minority rights implementation in the two Republics, as most of the relative legislation had been adopted at the State Union level (see discussion of minorities above, point 3.3). It has made the question of the adoption of a new Constitution in Serbia more pertinent. The decentralization debate will be part of the constitutional debate in the country as the new Constitution is expected to provide the legislative basis for full functional and territorial reform of local government in Serbia.

The frequent changes of party allegiance of Serbian MPs has also weakened the Serbia parliament, undermining the stability of the system.\textsuperscript{720} The political system at the state level in Serbia has also had to deal with the legacy of intervention against political opponents, massive electoral fraud, and very little freedom of the media during the Milosevic era. State level elections since 2000 have been free and fair, but voter turn-out has been very low, sometimes threatening the functioning of the political system. Serbian citizens failed to elect a president four times between 2002 and 2004 due to low turn-out.\textsuperscript{721}

The inability of the central state institutions in Serbia to secure the trust of their citizens have led to voter apathy and scepticism towards the democratization process, which has trickled down to the local level as well. The extreme nationalist parties have naturally benefited from these processes of erosion of trust and now threaten to undermine the fragile ethnic balance in the country.

6. International Involvement in Serbia and Montenegro

A number of international organisations, agencies, and donors operate in Serbia: UNDP, USAID, OSCE, the World Bank, the European Agency for
Reconstruction, SIDA, the Dutch government. Most of their work is focused on restoring Serbia’s infrastructure and economy and improving living conditions.\footnote{UNDP 2005, \textit{Ibid.}, p. 188}

At the local level, particularly noteworthy is UNDP’s project for the development of transparent and accountable decision-making procedures in 13 Municipalities in southern Serbia.\footnote{The “Municipal Improvement and Revival” Project.} It is also linked to the implementation of the Poverty Reduction Strategy for the country and aims to strengthen municipal capabilities for service delivery, improving participation of citizens and civil society groups in municipal decision-making. Other initiatives include support for the organisational change of the Standing Conference of the Cities and Municipalities in the country, as well as the establishment of a municipal training centre as a unit of the above-mentioned organisation.\footnote{UNDP, 2005, \textit{Ibid.}, pp 188-189}

The International Community has also been instrumental in ensuring the stability and security, administering, and finally brokering the negotiations on the final status of the Kosovo province. In October 2005 the former Finnish President Martti Ahtisaari was appointed by the UN Secretary General as a Special Envoy to commence this process after the UN Envoy Kai Eide wrote a report on Kosovo’s readiness to start such negotiations in late 2005.\footnote{ICG, Europe Report 170, “Kosovo: The Challenge of Transition”, February 2006.}

The international community is now faced with a delicate balancing act, in which it must weigh between elements of rule, necessary for ensuring stability in the Province (such as a police presence, European judges and prosecutors, and a EU special representative with overriding authority), and legitimacy elements, necessary for ensuring citizens’ trust in the institutions established in order to avoid the exploitation of discontent by extremists.\footnote{\textit{Ibid.}, pp 13-15.}

As argued above (point 4), the resolution of Kosovo’s final status has the potential to destabilise first, the Province itself as Kosovo Serbs have threatened to leave the Province or not recognise its institutions if it is given autonomy, and second, Serbia, as Albanians in some southern Municipalities have expressed a desire to join a future independent Kosovo and the Serbian Radical Party has threatened to occupy it if it is given full autonomy.\footnote{See International Crisis Group Europe Report 170 “Kosovo: The Challenge of Transition” of February 2006 and ICG’s “Southern Serbia’s Fragile Peace”, December, 2003} Hence the International Community is faced with the complicated task of ensuring the acceptance and compliance with
the final outcome by all domestic actors involved in the negotiations – the Kosovo Albanians, the Kosovo Serbs, and Serbia.

Since the overthrow of the Milosevic regime in October 2000, Serbia and Montenegro re-established their membership in the major international financial institutions – the IMF (December 2000), the World Bank (May 2001), the European Bank for Reconstruction and Development (January 2001). Entry negotiations with the WTO have also been under way since October 2005.

The June 2003 Thessaloniki Summit recognised Serbia and Montenegro as potential candidate country for EU accession. In April 2005, the Commission concluded that Serbia and Montenegro is ready to start negotiations on a Stabilisation and Association Agreement. Negotiations were formally launched with the two Republics following a ‘twin-track’ approach in October 2005.

**Timeline of EU Relations with Serbia and Montenegro (Excluding Police Missions):**

- **2000, November** Signature of a “Framework Agreement for the Provision of Assistance and Support by the EU to the FRY”, giving Serbia and Montenegro preferences for trade with the EU.
- **2001, July** A Consultative Task Force for Serbia and Montenegro established.
- **2004, June** European Partnership for Serbia and Montenegro endorsed by the Council.
- **2004, October** A ‘twin-track’ approach adopted, separating Serbia from Montenegro in negotiating European Partnerships.
- **2005, April** Commission recommends the start of negotiations on a Stabilisation and Association Agreement with the two Republics.
- **2005, October** Negotiations on a Stabilisation and Association Agreement launched.
2006, May

Negotiations with Serbia put on hold due to failure to hand over suspected war criminal Ratko Mladic to the War Crimes Tribunal in the Hague.728

The European integration process fosters a greater degree of democratization in the two Republics and has been a key factor in securing stability in Serbia. The EU and its members are the major donors in Serbia and Montenegro and have been instrumental in providing assistance for reconstruction after the Yugoslav wars of secession.

Crucially, the EU has influenced Serbia to adopt legislation and measures necessary for the re-integration of refugees and internally displaced persons (IDPs) and has provided funding in their support.729 Opinion polls in Montenegro show a very high level of citizens’ support to the EU, regardless of party affiliation.730

The conditionality of the Stabilisation and Association Agreement negotiation process includes safeguarding human rights and the rights of minorities, cooperation with the Pristina authorities and respect for UNSCR 1244 and Kosovo’s provisional self-government institutions, further efforts in the fight against corruption and organised crime and, crucially, cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Failure to comply with the latter requirement led to suspension of talks with Serbia on the Stabilisation and Association Agreement in May 2006. Talks are currently put on hold until Serbia hands over war crimes suspect Radko Mladic to the Hague.731

Kosovo has also been given a European perspective. The Province was included in the European Partnership talks as part of Serbia and Montenegro in June 2004 and in April 2005 the Commission adopted a Communication entitled “A European Future for Kosovo”732, reinstating the EU commitment to Kosovo and pledging to work towards overcoming the economic isolation and guaranteeing the security of the province.

729 Between 14.5 and 17.5 Million Euro of CARDS assistance were allocated in support of re-integration of IDPs and refugees, as well as implementation of minority rights measures in Serbia alone for 2002-2006.
731 EUobserver, “EU Suspends Talks with Serbia”, 3.05.2006
732 (COM(2005) 156 final)
One of the major lessons, emerging from past EU assistance in Serbia and Montenegro, including Kosovo, is the importance of ensuring the understanding and support of local stakeholders for EU-promoted reforms. Local support gives integrity to international assistance, increasing its impact and ensuring its sustainability. The importance of a clear European perspective and its advantages for democratization over the initial partial integration approach are also obvious. It gives further credibility to EU-promoted reforms, the conditionality instruments of the SAP for ensuring minority rights implementation, adoption of anti-corruption measures, etc are stronger and its rhetorical significance has proven to lead to moderation of domestic politics.

As in the rest of the countries in the Western Balkans, EU assistance in Serbia and Montenegro is now streamlined into support for democratic stabilisation, promoting good governance, strengthening of the institutions, and ensuring stable economic development, including social cohesion within the two Republics.

7. Ethnicity in Serbia and Montenegro

The wars of Yugoslav dissolution implanted ethnic divisions deep within society in Serbia and Montenegro. As a result, most groups prefer to live in ethnically-homogenous areas. In Kosovo, ethnic Serbs are leaving mixed areas to either settle in Serbia, or in the small Serb enclaves in the south of the province, or the Municipality of Strpce. They are also dominant in some of the Municipalities north of the capital of Kosovo (in particular in Mitrovica).

The two ethnicities are deeply divided on the topic of Kosovo’s decentralization. Influenced by Belgrade, Serbs refuse to recognise the PISG authority there and are in favour of the formation of a new city – Serb “North Kosovska Mitrovica”. (For further discussion see pt. 10.2 below). Kosovo Serbs have also complained for not being included in the ongoing talks on the final status of the Province.

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The March 2004 riots in Kosovo were perceived by Serbs as an organised Albanian attempt to force them out of the province. These riots shattered the belief of the international community in Albanian commitment to tolerance and led to increased demands of decentralization of Kosovo by the UN Security Council and the Kosovo Contact Group. Hence, further decentralization was brought back on the agenda as a solution for Kosovo’s ethnic schisms.

Kai Eide’s report (see pt. 6 above) emphasised profound decentralization as a means of guaranteeing the security and safeguarding the rights of the Serbs. This plan is unfavourably-regarded by the Kosovo Albanians, who are yet to present their own decentralization proposals.

All the Kosovo-related status issues have the potential to destabilise South Serbia, the majority Albanian Municipalities of Presevo, Medvedja and Bujanovac in particular. Since the 2001 peace deal, which ended the rebellion of ethnic Albanians in the Presevo valley, there have been a number of ethnically-motivated attacks on Albanians. Albanian members of the new multi-ethnic police, a newly-elected Albanian municipal Councillor were attacked in 2002 and there were a number of bombings, kidnappings and shootings. Incidents continued in 2003. Analysts have blamed Serbia’s stalled reform process and lack of adequate response to incidents against minorities for the failure to adopt the necessary political and economic changes for the successful integration of the two communities in the valley.

There have been statements by Albanian political parties that the Municipalities in their control would join Kosovo if it was to acquire independence. They could also lead to increased calls for autonomy by Muslims in the ethnically-mixed Sandzak region (Box 4).

737 The March 2004 violence left 19 dead and nearly 900 injured and seriously questioned the capability of UNMIK to guarantee stability in the province.
738 ICG Europe Report, 170, February 2006, pp 10-11
739 See Ibid, p. 17
740 ICG Europe Report 152, “Southern Serbia’s Fragile Peace”, December 2003, p. 4
741 Ibid.
742 Ibid.
Box 4: Sandzak

Sandzak is a large region, covering areas within Serbia, Montenegro, and Bosnia and Herzegovina. Six Sandzak Municipalities are on the territory of Serbia, and five are in Montenegro (see map in Annex). A large proportion of the population of Sandzak are Bosniak Muslims, accounting to 80% of the population of Serbian Novi Pazar, 85% in the Sjenica and Rozaje localities, and 45% in Bijelo Polje in Montenegro. Under the Milosevic regime, there was ethnic cleansing of entire villages, murders, kidnappings, arbitrary arrests, significantly increasing tensions in the region. Subsequent governments have been criticised for a ‘half-hearted’ approach to the ethnic problems in Sandzak.

A list of memorandums have been adopted by Bosniak parties urging for a higher degree of autonomy for the Sandzak region, including a near-statehood claim made by the Memorandum Sandzak, but these have been met with a cold stare by both Belgrade and Podgorica.

Most analysts feared Sandzak would become a new crisis area after the end of the Bosnian conflict. Prognoses of large-scale violence did not come true, but sporadic ethnically-motivated incidents have been reported nevertheless. In general, the Islamic feelings of Sandzak Bosniaks have been strengthened by the war in Bosnia, the anti-Islamic campaigns following September 11th, and the US occupation of Iraq.

The year 2004 was particularly worrisome with a number of violent inter-Bosniak political conflicts and escalation of Islamic fundamentalism. Belgrade officials claimed ‘home-grown’ Islamic fundamentalism (the ‘Wahabi’) existed in Sandzak and the topic was given wide coverage in the Serbian press. Dragan Jocic, the Serb interior minister named the Wahabi as the ‘one of the biggest security threats to Serbia’. The media hype was particularly harmful to inter-ethnic relations, particularly in the light of March 2004 Kosovo violence and subsequent torching of mosques in Nis and Belgrade.

On Orthodox Christmas day in January 2004, a number of leaflets appeared with the message ‘Hey, Sjenica, the second Srebrenica’ and ‘Hey, Novi Pazar, the New Vukovar’, deeply disturbing the local population. The action failed to attract attention and was merely condemned by a Municipal branch of one of the political parties and the Sandzak Committee for Protection of Human Rights and Liberties in Novi Pazar.

The lack of readiness of Serb authorities to punish perpetrators led to expression of concern by the Bosniak National Council of Sandzak and gave rise to perceptions of renewed security threats among the population. These developments demonstrate that Sandzak remains a region of high ethnic divisions and tensions within Serbia and Montenegro.

The radicalization of politics and society in Vojvodina (see points 3.3 and 4 above) has also led to an upsurge in ethnically-motivated attacks in the Province in recent years. Vojvodina is the most ethnically-heterogeneous part of Serbia, with minorities constituting 34.95% of the population of the province. The assassination of Prime Minister Djindjic in 2003 has been followed by a restoration of ethno-nationalistic policy, demonstrated by the increased influence of the ultra-nationalist Serb Radical Party in the country. This trend has been present in Vojvodina as well and has been reinforced by calls for increased autonomy of the Province and alleged international pressure in support of certain minorities.

In conclusion, ethnicity remains a factor, which can destabilise Serbia and halt the democratic processes in the country. The various ethnic groups have failed to build a common life at the local level and have preferred to move to regions, where they are the majority. Unresolved status issues, together with weak state institutions and lack of minority rights oversight have contributed to outbreaks of ethnically-motivated incidents even in places which have boasted ethnic tolerance and peaceful co-habitation in the past, such as Sandzak and Vojvodina.

8. Economic Transition and Consolidation in Serbia and Montenegro

The State Union of Serbia and Montenegro was formed at the end of a difficult period of wars, international sanctions and military intervention, which resulted in destroyed infrastructure and severe economic decline. GDP in the two Republics fell by more than 50% between 1990 and 2002, unemployment increased drastically, there were hundreds of thousands of refugees and internally displaced persons, an increase in crime and corruption, and the grey economy. The dramatic fall in GDP, the infrastructural destruction and economic slump in the late 1990s resulted in a dramatic increase in poverty and unemployment in both Serbia and Montenegro.

744 According to the 2002 Census.
746 Hungary has hinted that it would block Serbia’s Euro-integration process if the Hungarian minority in Vojvodina is not granted significant minority rights.
748 Ibid.
Currently the level of poverty is 10.6% for Serbia and 12.2% for Montenegro. There are stark regional differences in poverty – rural regions are a lot poorer than urban centres – poverty rates average 19% in northern Montenegro and 23% in south-eastern Serbia. Poverty rates are also much higher among certain social groups – refugees, the disabled, internally displaced persons, and the Roma.

The two constituent Republics of the State Union of Serbia and Montenegro embarked on quite different transition paths. Serbia adopted a more protectionist policy towards its industry, while Montenegro, which is traditionally dependent on tourism and imports, lowered its customs duties immediately and aligned them with those of the EU.

Privatisation and economic reform in Serbia have been far slower than the ones in Montenegro. As a result, Montenegro attracts far more foreign direct investment, and inflation was 2.3% in 2005 compared to Serbia’s 18%.

GDP grew by 3.8% in Montenegro and 6.1% in Serbia in 2005. Montenegro has also introduced important reforms in the banking sector and adopted a law on the return of nationalised property.

Serbian economic growth picked up in 2005 due to strong gains in trade, construction, financial services and transportation. The strong export-led growth led to narrowing of the current account deficit to 10.2%, but in absolute terms exports account to about half of imports. Unemployment remains a major concern.

Unemployment is also a serious problem in Montenegro, although rates have seen a slight decline in recent years. The Montenegrin course of economic reform is viewed positively by analysts and its refusal to harmonise its economic policies with the ones of Serbia is now regarded as a wise decision.

The divergent economic structures and reform paths of the two State Union members were also recognised and accepted by the EU when it adopted a ‘twin

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749 The poverty line stands at 71 euro per month in Serbia and 116.2 in Montenegro.
track’ approach, establishing parallel negotiations for a Stabilisation and Association Agreement with the two states.

The ongoing process of decentralization is hampered by the economic situation in both Republics as a number of reforms have been postponed due to lack of funds. Poverty and the high unemployment rates in Serbia and Montenegro are a major threat to the democratization processes at the local level. Concerns for democratic participation and minority rights implementation become secondary to ones of employment and ensuring basic sustenance, access to various media sources is hampered. Differences in levels of poverty could lead to social discontent and disturb the fragile ethnic peace, especially in the majority-Albanian poorer Municipalities at the south of Serbia. Frustration with the slow pace of reforms could contribute to the rise of extreme nationalist parties and encourage support for non-democratic forms of governance.

Recent strategies for poverty reduction envisage the strengthening of socio-economic Councils in Municipalities, improving measures against corruption at the local level, and increasing transfers through the Social Innovation Fund, aimed at ensuring social protection at the local level.  

9. Corruption and Organized Crime in Serbia and Montenegro

Serbia

Corruption was wide-spread in Serbia under the Milosevic regime. Democratically-elected governments since 2000 have made only rhetorical commitments to the fight against corruption in the country and, as a result, corruption remains deeply entrenched in all levels of public administration and social life. Transparency International places Serbia in 97th place for levels of corruption of 159 nations surveyed in 2005. 60% of Serbians believe government corruption is a major problem for the country.

Allegations of corruption have been powerful tools in ousting governments in the country and much of the political legitimacy of the current Kostunica government rests on the fight against corruption. Between 2004 and 2006 the Serbian

756 Freedom House, 2006, Nations in Transit, Serbia section, p. 16
government voted on key legislation in the fight against corruption, including new laws on public procurement, conflict of interest, party financing, and a new criminal code. A National Anti-Corruption strategy was adopted in December 2005, which will be followed by a detailed plan of action at all government levels. Crucially, and in a widely-acclaimed development, cases of corruption were made a criminal offence.

Organised crime in Serbia threatens the stability of the country, the ethnically-mixed southern region of Presevo in particular. Cross-border smuggling was ripe in the Kosovo border region, including smuggling of arms, which ended in the hands of both extremist Serb and Albanian forces. The presence of UNMIK at border crossings did not halt the smuggling activity.

The tensions between criminal groups and political elites in Serbia culminated in March 2003 with the assassination of Prime Minister Zoran Djindjic by a network of security forces, paramilitaries and organised crime groups dating back to the Milosevic era. The assassination stalled the democratization processes in the country, triggered a process which saw the return of the radicals to power, and culminated in renewed ethnic tensions (as the discussion of developments in Vojvodina and Sandzak above demonstrated).

While Serbia has had some success in convicting criminals, a lot of the high profile cases remain unsolved, leading to perceptions of a ‘culture of impunity’ among citizens. This in turn seriously undermines public trust in institutions and contributes to a sense of insecurity and despondency in the country.

Montenegro

Corruption in Montenegro has been identified as a “serious concern” by the EU’s Serbia and Montenegro 2005 Progress Report. Corruption in the country functions mainly as patronage and penetrates deep into the public sector at both the central and local level.

759 Freedom House, 2006, Nations in Transit, Serbia section, p. 17
760 Danas, September 20, 2005, “Transparency Serbia is Satisfied with the Adoption of the New Criminal Law”.
763 Freedom House, 2006, Nations in Transit, Montenegro section, p. 16
Corruption increased during the international sanctions against Yugoslavia in the late 1990s, with the smuggling of oil, cigarettes, stolen vehicles leading the way.764 Belgrade used Montenegro as a point of smuggling continuously during the sanctions. Even the army was involved in smuggling weapons to Iraq and other countries placed under UN embargo.765

The Milo Đukanović government was put under considerable pressure in 2003 over alleged cases of cigarette smuggling and human trafficking, and several high level government officials were forced to resign.766

A number of privatization scandals have also shaken the country since.767 High public officials signed privatization contracts, which were later deemed contrary to public interest.768 Prime Minister Đukanović himself has been investigated for smuggling and some of his close aides have been indicted.769

A survey done by a Podgorica-based NGO shows that Montenegrins view corruption as a major social problem, political instability heading the list.770 Levels of actual and perceived corruption at the local level in Montenegro appear to be high: 21% of survey participants confirmed they had been asked for favours or gifts by municipal officials in 2002, which is second only to police and customs officers.771 45% of respondents believe municipal officials to be corrupt, signalling lower levels of trust than the ones for central government institutions.772 There is also a worrying practice of local government jobs being distributed according to party affiliation, rather than merit.773

766 European Forum, Montenegro Update, p. 5, June 4 2004
768 Examples include the privatisation of the Aluminium factory in Podgorica and various tourism facilities, hotels, etc.
771 Vitosha Research, Corruption Indexes, 2002, “Regional Corruption Monitoring in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania, and Yugoslavia”.
772 Ibid., p. 17
773 Center for Development of NGOs, “Decentralization Process in Montenegro: Possibilities of Cooperation between Local Government and NGOs”, 2005, p. 4
An anti-corruption strategy is currently being elaborated in Montenegro with the help of international donors, such as the UNDP, and the Montenegrin government appears to have taken EU warnings about corruption seriously.\textsuperscript{774}

10. Local Democracy in Kosovo

\begin{description}
\item \textit{Population of Kosovo:} 1.9 million
\item \textit{Ethnic composition:} 88\% Albanian, 7\% Serb, 5\% Other (Roma, Ashkali, Egyptian, Turk, Gorani, Bosniak).\textsuperscript{775}
\end{description}

On the basis of Security Council Resolution 99/1244, the United Nations Interim Administration in Kosovo (UNMIK) provides transitional government in the Province and oversees the development of democratic self-government. The UNMIK undertook to establish local self-government in the province in 2000. The local government structure of Kosovo is stipulated by Special Representative of the Secretary General (SRSG, the head of the UNMIK) Regulations 2000/43 and 2000/45.

There are two levels of transitional government in the Province: Municipalities and the Provisional Institution for Self-Government (PISG) (Figure 13).

\textsuperscript{774} ICG Europe Report 169, “Montenegro’s Independence Drive”, December 2005, p. 16
**Figure 13. Local Government in Kosovo**

**Province Level of Government in Kosovo: Kosovo Provisional Institutions for Self-Government (PISG)**

- **Kosovo Assembly**: 120 Seats (100 elected on a proportional basis, 20 reserved for minorities: 10 Serbs, 4 Ashkali and Egyptian, 3 Bosniaks, 2 Turks, 1 Gorani).
  - elects
  - appoints

- **President**: 3-year mandate.
  - proposes

- **Prime Minister**: Government, main executive body

**Municipal Level of Government in Kosovo (30 Municipalities)**

- **Municipal Assembly**: Main representative and legislative body. Elected directly for a period of 2 years.
  - elects
  - appoints

- **President**: Main executive body.

- **Board of Directors**: Second executive body, assists the work of the President and Municipal Assembly.

- Directly-elected institutions of local self-government.

The Special Representative of the Secretary General (SRSG) has overriding authority over all levels of government in Kosovo according to Security Council Resolution 1244 of June 1999. He determines Kosovo’s foreign policy, oversees the development of the PISG, maintains civil law and order, protects and promotes human rights and facilitates the return of refugees.
Kosovo Municipalities

Kosovo is formally divided into 30 Municipalities done on the basis of their component cadastral zones, rather than the pre-war local government units, which were associated with the oppressive Serb regime. Municipalities are very large, with more than 65,000 inhabitants on average.\textsuperscript{776} Each Municipality constitutes a separate legal entity, and has the right to “own and manage property, the capacity to sue and be sued in the courts, the right to enter into contracts and the right to engage staff”.\textsuperscript{777}

Exclusive functions of Municipalities in Kosovo include:

- Providing basic local conditions for sustainable economic development;
- Urban and rural planning and land use;
- Licensing of building and other development;
- Local environmental protection;
- The implementation of building regulations and building control standards;
- Service provision in relation to local public utilities and infrastructure including water supply, sewers and drains, sewage treatment, waste management, local roads, local transport, and local heating schemes;
- Public services including fire and emergency services;
- Management of Municipal property;
- Pre-primary, primary and secondary education;
- Primary health care;
- Social services and housing;
- Consumer protection and public health;
- Licensing of services and facilities, including entertainment, food, markets, street vendors, local public transport and taxis, hunting and fishing and restaurants and hotels;
- Fairs and markets;
- Naming and renaming of roads, streets and other public places;
- The provision and maintenance of public parks and open spaces and cemeteries;
- Such other activities as are necessary for the proper administration of the Municipality and which are not assigned elsewhere by law.

\textsuperscript{776} OECD, “2004 Assessment Report, Kosovo Decentralization Process”, p. 3
\textsuperscript{777} UNMIK Regulation 2000/45 of August 2000.
Municipalities also carry out certain tasks on behalf of UNMIK, such as maintaining civil registries and various other records. The UNMIK is in turn required to provide funding for these tasks.

Each Municipality is governed by a municipal Assembly, elected directly by universal suffrage. The number of Assembly members is stipulated by Regulation 2000/45 varying from 51 for the Pristina Municipality Assembly to 17 for the Municipalities of Zvecan, Novo Brdo, Leposavic, Zubin Potok and Strpce. The Assembly is the legislative authority of the Municipality and it elects the President, who serves as the executive authority. Minority communities are entitled to a deputy President.

**The Provisional Institution for Self-Government (PISG)**

Apart from Kosovo’s municipal structure, the SRSG established a constitutional framework for Kosovo. Provisional Institutions for Self-Government (PISG) were put in place, including a Kosovo Assembly and the offices of President and Prime Minister.

The Assembly has 120 seats. 100 are distributed on a proportional basis among the parties, coalitions, etc. depending on election results, and 20 are reserved for minority representatives. 10 of these 20 seats go to Serbs, 4 to Roma, Ashkali and Egyptian, 3 to Bosniaks, 2 to Turks, and 1 to the Gorani. The President is appointed by the Assembly and he in turn proposes the candidate for a Prime Minister, who must also be endorsed by the Assembly.

Competences of the Provisional Institutions for Self-Government (PISG) include:

- Economic and financial policy;
- Fiscal and budgetary issues;
- Administrative and operational customs activities;
- Domestic and foreign trade, industry and investments;
- Education, science and technology; Youth and sport; Culture;
- Health; Environmental protection;
- Labour and social welfare; Family, gender and minors;
- Transport, post, telecommunications and information technologies;
- Public administration services; Agriculture, forestry and rural development;

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778 UNMIK Regulation 2001/9.
- Statistics; Spatial planning;
- Tourism; Good governance, human rights and equal opportunity; and Non-resident affairs.

In the field of local administration the PISG is also responsible for:

- Supporting inter-municipal cooperation;
- Promoting professional municipal civil service;
- Assisting the municipalities in budgets and financial management systems;
- Monitoring the quality of municipal services;
- Identifying training activities for the municipalities;
- Assisting the municipalities in making their activities transparent to the public;
- Providing legal guidance and advice to the municipalities;
- Coordinating the activities of international agencies and non-governmental organizations pertaining to municipalities;
- Overseeing compliance with responsibilities and powers delegated to municipalities.

Municipalities are funded mainly by budgetary transfers from the Central Authority.\textsuperscript{780} The budget transfers are based on needs assessment, and on a calculation of expected resources and expenditures. Some transfers may be made specifically for a certain function, while others are un-designated.

The ‘own resources’ of Kosovo Municipalities are income from licenses and fees, municipal assets and fines, and the recently introduced property tax.\textsuperscript{781} Kosovo Municipalities are not allowed to borrow.

10.1 Kosovo Local Government Elections and Electoral System.

UNMIK Regulation 2000/39 established the electoral system rules and procedures for the October 2000 Kosovo municipal elections. A proportional representation system was put in place, allowing smaller parties to share power with the larger ones at the local level. Open voter lists were foreseen, allowing voters to choose an entire party or coalition list, a single candidate, or an independent.

\textsuperscript{780} OECD, 2004, \textit{Ibid.}, p. 4
\textsuperscript{781} UNMIK Regulation 2003/29
Assembly seats are allocated first on the basis of the total number of votes received by individual candidates, and then the remaining seats are distributed according to candidates’ ranking in party or coalition lists. This system is seen as adequate to fostering democratic representation by establishing a direct link between voters and their elected representatives.\(^{782}\)

The first municipal elections in Kosovo after the end of the war were held in October 2000. They were largely seen as successful, despite the boycott by Serb parties. Voter turnout was 79% and election victory went to moderate Albanian parties.\(^{783}\)

The 2002 municipal Elections were held under a significantly altered electoral system. UNMIK Regulation 2002/11 changed the voting system from an open list to a closed list one, allowing voters to select a party or coalition, but not giving them the right to vote for individuals.

These election were less successful, voter turn-out dropped to 54%, Serbs voted only in the Municipalities, in which they were a majority. A significant disillusionment with the political process was noted.\(^{784}\)

Kosovo’s first Assembly was elected in November 2001. The electoral system was the same as the one for the 2000 municipal elections. Turnout was 64%, the Serbs did not boycott the election and their Povratak (Return) Coalition won 11% of the vote.\(^{785}\)

The UNMIK’s Standards for Kosovo of December 2003 set important goals before the PISG before Kosovo’s final status can be resolved. These include: the establishment of functional democratic institutions, ensuring minority and property rights, and guaranteeing the successful return of refugees.\(^{786}\) The Standards have encouraged Albanian politicians to support decentralization as a way to a faster resolution of the status issue.

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\(^{783}\) Ibrahim Rugova’s Democratic League for Kosovo won 58% of the vote, and Hashim Thaci’s Democratic Party for Kosovo secured 27%.

\(^{784}\) Burke, Ibid., p. 16

\(^{785}\) Burke, Ibid., p. 15. The 2001 election resulted in a coalition government between the two major Albanian parties, with Ibrahim Rugova as President and Bajram Rexhepi as Prime Minister.

\(^{786}\) UNMIK Standards for Kosovo, December 2003, available from www.unmikonline.org
10.2 Minority Rights and Gender

Regulation 2000/45 establishing the municipal structure and functions for Kosovo also includes provisions for minority rights protection. It prohibits all discrimination, including on ethnic level and requires that municipal proceedings be published both in Serbian and Albanian and other minority languages and meetings be conducted in both Albanian and Serbian.

Each Municipal Assembly must also have a Communities Committee and a Mediation Committee. The first Committee has to include at least one member from each minority present in the Municipality and is given the task of ensuring that “no person undertaking public duties or holding public office shall discriminate against any person on any ground such as language, religion, ethnic origin or association with a community”, and that “all persons enjoy, on an equal basis, civil, political, economic, social and cultural rights, and fair and equal employment opportunities in Municipality service at all levels”.\textsuperscript{787} The Communities Committee has the right to refer any suspected violation of minority rights to the Mediation Committee, which also includes members from the various ethnic groups.

Inter-ethnic relations remain strained in the Province. Ethnic tensions were the cause of two-day riots in March 2004, when Albanians attacked Serbs and foreigners. There were 19 dead, 4 000 Serbs were displaced, 550 Serb homes and 27 Orthodox churches and monasteries were burnt.\textsuperscript{788} The tensions caused an anti-Albanian backlash in Serbia and led to the destabilisation of relations in a number of mixed regions (Sandzak, Vojvodina and the southern Municipalities of Medvedja and Bujanovac).

The Municipality of Mitrovica (approximately 40 kilometres north of Pristina) is divided in two: the southern part is ethnically Albanian and under the authority of the PISG, the northern part is predominantly Serbian and has refused to recognise the authority of the PISG and the elected Municipal Assembly. The northern part is governed by a self-elected Serb National Council (SNC), which refuses to cooperate with the UNMIK. Some of the worst violence of the March 2004 riots took place in Mitrovica and the damage done to the reconciliation process in the divided city is ‘very significant’.\textsuperscript{789}

\textsuperscript{787} UNMIK Regulation 2000/45, Section 23.
\textsuperscript{788} Burke, \textit{Ibid.}, p. 18
Faced with intense criticism for allowing the renewed violence in Kosovo, the International Community was forced to reconsider its strategy towards the Province. The UN Security Council called for more effective local government through increased decentralization and asked for proposals for local government reform. Several such proposals followed, including the Pristina Plan790, the Belgrade Plan791, and a Council of Europe Report. A number of ways to reform Kosovo’s local government framework are currently being discussed, but final decisions will be taken alongside the resolution of Kosovo’s final status.

The percentage of women in government in Kosovo is relatively high. 35% of the members of the PISG Assembly and 28% of local Councillors are women.792 The Kosovo Assembly adopted a draft Law on Gender Equality in February 2004, which has recently been promulgated by the SRSG (UNMIK Regulation 2004/18).

10.3 Transparency and Availability of Official Documents

Section 7 of UNMIK Regulation 2000/45 on Local Self-Government in Kosovo stipulates that all assembly meetings shall be open to the public. Any person has access to the documents held by the Municipality, as well as the minutes from the municipal meetings. Public meetings are also foreseen at least twice a year and any person is given the right to present a petition to the Municipal Assembly, which is in turn obliged to deal with it in a transparent and timely fashion.

Participation remains very low. For example, only 6% of Kosovars participated in a public hearing or signed a petition regarding local self-government in 2003 or filed a complaint.

789 OSCE, Mission in Kosovo, Municipal Profile: Mitrovica, November 2005, p. 2
790 Devised by a UNMIK-convened international Working Group on Local Government Reform in Kosovo and allowing for greater autonomy of existing Municipalities.
791 Serbian Government’s plan for local self-government in Kosovo, which includes a proposal for an autonomous Serb region within the province.
10.4 The Media and Civil Society in Kosovo

There are 23 television stations in Kosovo, 95 radio stations, seven daily and two weekly newspapers.\(^793\)

Free speech is guaranteed by law in the Province, but some intimidation and violence against journalists by the Government and political leaders, as well as restrictions of access to information have been noted. Free speech is limited particularly regarding ethnic issues.\(^794\) Libel is a criminal offence, which serves to further limit free reporting by journalists.

Media plurality in Kosovo is hampered by poor reporting and lack of professionalism on the part of journalists, especially at the local level. Most local stations and print media outlets are also poorly equipped and struggle to be financially sustainable. Circulation figures are very low, reports showing that only 1 in 200 people buys newspapers regularly.\(^795\) About 75% of the population can receive the TV programmes and internet penetration is a mere 6%.\(^796\)

There are more than 2500 NGOs in Kosovo, 150 of which are active and sustainable.\(^797\) They operate in the field of social care and protection, democracy, economic development. The legal framework for the operation of NGOs is adequate, civil society groups at the local level are encouraged to register by the UNMIK administration and the OSCE. NGOs are able to provide alternative views and engage in criticism without official interference.

Increased cooperation has been noted between the central and local governments and NGOs in recent years. Civil society organisations have cooperated with local authorities in a number of activities, refugee return being a notable example. The Kosovo Assembly has also contracted NGOs to help with decentralization efforts. The activities of the Association of Kosovo Businesses (AKB) received positive evaluations in 2005. The organization has been particularly active in advocating the interests of local businesses.\(^798\) There is a generally positive public attitude towards NGOs and their activities in the Province.

\(^793\) IREX, Media Sustainability Index, 2005: Kosovo, p. 65
\(^794\) Panel of local experts before IREX, Ibid.
\(^795\) Ibid., p. 60
\(^796\) Ibid.
\(^797\) USAID, “The 2005 NGO Sustainability Index: Kosovo”, p. 113
\(^798\) Ibid., p. 116
NGOs are hampered by low financial sustainability, inadequate equipment, and lack of fund-raising and advocacy skills among staff.

10.5 Assessment of Local Democracy in Kosovo

Overall, Kosovo Municipalities are seen by analysts as too large to adequately address the needs of their constituents. Each Municipality also constitutes a single electoral unit in local elections. Elected officials are thus expected to represent the entire Municipality, which is problematic in a society like Kosovo, which is highly localized and dependent on family ties. This undermines the link between voters and their representatives, creating a sense of detachment. The closed electoral lists aggravate this problem by asking voters to choose between set party line-ups and not individuals.799

Overall, accountability of elected officials is not encouraged, and politicians are given the incentive to be more active in their respective parties, rather than with voters in order to secure re-election.800 Only 13% of Kosovars feel like they have influence on local decision-making. Confidence in the Kosovo Assembly has fallen by 12% between 2002 and 2004, and voter turnout has plummeted from 79% in 2000 to 51% in 2004.801 Lack of clarity has also been noted in accountability lines between the central and municipal Provisional Self-Government Institutions, as well as between these and the UNMIK. Citizens are confused about who should deliver and be responsible for various services.802

Hence, there is a perception of distance and detachment between leaders and electorates in Kosovo, which could discourage political participation and accountability and undermine the democratization process. Central and municipal capacities are weak, human resources are insufficient, and the link between institutions and the electorates are feeble.803

Unemployment in the province is about 35% and rising, and GDP per capita is the lowest in the Western Balkans – EUR 964.804 Most analysts believe that Kosovo’s economy does not have sustainable future on its own. There are reports of corruption growing at both the central and municipal level.805

799 Burke, Ibid., pp 20-22
800 UNDP Kosovo: Kosovo Human Development Report 2004, p. 59
801 Ibid.
802 UNDP Kosovo Mosaic, 2003
803 ICG, Europe Report 170, February, 2006, p. 3
804 World Bank, Kosovo, 2005.
805 ICG, Europe Report 170, February 2006, p. 5
Another problem is created by the persistent lack of trust between the Kosovo communities. In this sense, the creation of ethnically-based positions within local self-government is seen as ‘a step in the wrong direction’ as it solidifies the ethnic schism and does not foster cooperation between the communities.806

However, it should be noted that Kosovars are more likely to approve and view as legitimate municipal institutions than central ones.807 The UNDP Kosovo Mosaic points toward a “deep reservoir of good will towards local government” and much hope is placed in the potential of the sub-municipal units – villages, communes and the mjesne zajednice. Perceptions of corruption of municipal authorities are also lower in Kosovo compared to the rest of the Western Balkans and most Kosovars believe that their problems can be effectively solved at the local level.808 Regulation 2000/45 allows Municipalities to set sub-municipal bodies and several Municipalities have taken advantage of this option. The situation at present is unsatisfactory as these bodies are given no real autonomy and their functions are not clearly defined. However, their role is crucial in fostering accountability and bridging the gap between constituents and the elected representatives.

The ongoing status talks will undoubtedly have a major influence on all aspects of local democracy in Kosovo – from its administrative-territorial division to the possibility for peaceful ethnic co-habitation and minority rights implementation. The Province could see a significant extension of local community competences, or even the establishment of an autonomous Serb region.

11. Conclusion: the State of Local Democracy in Serbia and Montenegro – Summary of Main Findings

The decentralization process in both Serbia and Montenegro has progressed significantly since 2000. The administrative structure for effective local governance is now in place, but a lot will depend on the clarification and implementation of undertaken reforms. The electoral system in both Republics has been improved, although some shortcomings remain, which undermine the link between elected politicians and their constituencies.

808 Only 48% consider local government as corrupt, compared to around 60% elsewhere in the Western Balkans.
Political parties have too much influence in the two Republics and sometimes exert direct pressure on local media and civil society groups. Local appointments often depend on party patronage, rather than merit and politicians do not feel the need to constantly relate to and require feedback from their constituents. There has also been an increase in the radicalization of Serbian politics in recent years, which has resulted in a serious of minority rights violations in mixed-ethnicity regions in particular.

Positive developments have been noted in the civil sector in Montenegro, NGOs have provided an important contribution to government and service provision at the local level in recent years. The legislative framework in Serbia does not encourage sustainability of the NGO sector and the hostility of politicians and the general public towards NGOs limits their capacity of input to local democratic processes.

The participatory part of local democracy is undermined, as in the rest of the countries in the Western Balkans, by the lack of culture of requiring public involvement, as well as passiveness and dis-interedness on the part of citizens themselves. Local government institutions are found to be non-transparent and plagued by inefficiency and low skills of staff. High levels of perceived corruption further undermine levels of trust in local politicians and institutions.

There have been a number of external factors, influencing processes at the local level in Serbia and Montenegro. The holding of the Montenegrin referendum on independence and the subsequent dissolution of the State Union in June 2006 practically put questions of further decentralization on hold in both Republics for the foreseeable future. The ongoing talks on Kosovo’s final status will influence the design of the new constitutional framework of Serbia, which is in turn expected to provide further regulation of the structure and functions of local government levels in the country. The status talks could also destabilise Serbia’s mixed-ethnicity regions and lead to increased support for ultra-nationalist political forces. In sum, the volatile mix of unresolved status issues, state weakness and ethnicity in Serbia could provide a major setback to achievements in consolidating local democracy.
CONCLUSION: THE STATE OF LOCAL DEMOCRACY IN THE WESTERN BALKANS

Countries in the Western Balkans have come a long way since the wars of Yugoslav dissolution left the region physically devastated and socially deeply divided. A lot of progress has been made in developing local democracy, encouraged by numerous international programmes and initiatives. The institutional framework for effective local government is now largely in place, citizens express their will in generally free and fair elections. In all countries of the region, the ongoing decentralization process has resulted in the transfer of a significant number of authority and responsibilities to the lowest level of local government, in keeping with the European Charter for Local Self-Government.

There have been numerous positive developments in local civil society. NGOs and the media across the region are increasingly proving they are capable of providing substantial input in policy formulation and decision-making at the local level.

Challenges to local democracy in the Western Balkans are now posed by the completion of the decentralization process and the implementation of adopted measures, especially if significant administrative effort and coordination is required, as is the case in Macedonia. Local democratic governance is hampered by unclear delineation of powers and responsibilities, a high fragmentation of local government units, lack of administrative capacity, and low skills of staff across the region.

Other common problems are the lack of democratic accountability of local political parties and the tenuous link between elected politicians and their constituents. There is no culture of requiring feedback and demanding accountability, citizens are not encouraged to participate actively in policy formulation or decision-making at the local level. Thus, although legal provisions for transparency and citizens’ outreach exist in all Countries in the Western Balkans, they remain unused and even unknown.

The issue of minority rights is complex and often linked to the ethnicity factor. Overall, minority rights continue to be unobserved throughout the region, and the situation is aggravated in areas with ethnic difficulties (Bosnia and Herzegovina, Serbia’s Vojvodina and Sandzak regions, Macedonia’s Tetovo, Kosovo). Escalation of violence against minorities in recent years has sent out a warning signal regarding the democratization processes in the Western Balkans.
Decentralization has been sought as a solution to ethnic tensions in both Bosnia and Herzegovina and Macedonia, with very different results. Bosnia’s constitutional framework *de facto* entrenched ethnic divisions in the middle tier of government – the Federation Cantons and the Republika Srpska Entity - and aggravated the situation of minorities and effective representation at the local level by giving the above units very large authority and autonomy. From being part of the foreseen solution to problems of local democracy, the Cantons and the Republika Srpska have now turned into part of the problem in Bosnia and Herzegovina. They refuse to cede autonomy related to self-government matters to Municipalities, interfere in their work, and undermine the central state. The 2001 Ohrid Agreement in Macedonia managed to halt the country’s slide to civil war and, despite initial setbacks, decentralization reforms have proceeded with significant speed and success.

In sum, there has been a lot of progress in consolidating local democracy in the Western Balkans, particularly as regards its institutional determinants (legal and fiscal autonomy of local governments, local electoral frameworks, civil society) but a lot remains to be done until the participatory side reaches its full potential (a high degree of openness of local authorities, effective provisions for citizens’ outreach, etc.).

Another major conclusion, emerging from the analysis, is that there can be no universal solution to problems of local democracy, valid for all countries in the Western Balkans. The countries analysed exhibit a great degree of variation in the components of local democracy. Despite the presence of some general themes, such as economic hardship, administrative weakness, lack of a participatory culture, countries in the Western Balkans face quite different challenges in establishing effective democracy at the local level. The situation in Albania (where problems are of administrative nature, minority rights are generally well-respected, but large areas of the country vacillate in and out of State control) is significantly different to that in Serbia (where the radicalization of politics in recent years has led to increased violations of minority rights and efforts at decentralization and local democracy-building have been overshadowed by Montenegro’s secession and Kosovo’s ongoing status talks).

Indeed, the desire for common solutions for the Balkans, uninformed by analysis of realities on the ground, has been a major mistake on the part of the International Community in the past. Despite geographical proximity, Western Balkan countries have little in common in terms of administrative structure, social composition, political developments. It has been noted that even the term ‘Western Balkans’ is
an externally-coined phrase and does not reflect a true sense of belonging of people in the region.809

These differences are even more evident at the local level, where stark disparities exist between local government structures, politics, capabilities even across the territory of one country.

The strategy of EU involvement in the Western Balkans has evolved significantly from a piecemeal reconstruction-focused approach in the late 1990s, to an unambiguous promise of membership to countries in the region in 2003, supported by funds for institutional building, fight against corruption, etc. The perspective of EU membership is proving to be an important incentive for democratization and reform, public support for the EU is very high across the region, on which the EU must capitalise. To guarantee the sustainability, impact, and non-reversibility of democratic reforms, the EU should gain the support of citizens, clearly communicate the need and costs of reforms, and encourage citizen participation in their formulation.

And to avoid past mistakes, a future strategy of EU involvement in the Western Balkans should take into account each country’s specifics. The full complexity and richness of the Balkan history, society, and culture can probably best be grasped at the local level. A successful local democracy would encourage people to celebrate their differences rather than be threatened by them. To aid this process, further research should be done with a focus on regional differences within a specific Western Balkan country and actively seek the contribution of policy-makers, analysts, and citizens from the region.

809 The term was invented by the European Council in Vienna in 1998. Van Meurs, W. and Yannis, A., “The European Union and the Balkans” Hellenic Foundation for European and Foreign Policy, September, 2002, p. 8
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STATE STRUCTURE OF THE REPUBLIC OF ALBANIA

Parliament - Legislative Power
Unicameral Parliamentary Republic: People's Assembly (Kuvendi Popullor)
140 deputies, elected for a term of 4 years.
- 100 are elected directly by universal suffrage in single-member electoral zones.
- 40 are elected from a party list or party coalition list in their respective order (proportional representation).

President - Executive Power
Proposed by the Parliamentary Assembly (by a group of no less than 20 members), elected by a 3/5 majority.

Council of Ministers (Executive Power)
Consists of the Prime Minister, Deputy Prime Minister, and Ministers. Prime Minister appointed by President on proposal of party or coalition with the majority of seats in Parliament. The Prime Minister proposes the composition of the Council of Ministers, as well as the division of responsibilities.

The High State Control
Head of High State Control (7 years with the right to re-election) proposed by the President. It supervises:
- Economic activity of state institutions
- Use of state funds by central and local government
- The economic activity of state-owned juridical persons.

Constitutional Court (Judicial Power)
Composed of 9 members, appointed by the President and approved by the Assembly for a period of 9 years. One third of the composition of the Court is renewed every three years on a rotational principle. Decides on the compatibility of the law and international agreements with the Constitution, judges on conflicts of competences between powers, as well as between central and local government.

System of Courts (Judicial Power)
Judicial power exercised by the High Court, courts of appeal and courts of first instance. Members of the High Court are appointed by the President with the consent of the Assembly. The High Court has original jurisdiction (pertaining to criminal charges against the President, the Prime Minister, members of the Council of Ministers, deputies, High Court and Constitutional Court judges), and review jurisdiction (on self-selected specific judicial issues). The courts have budget and fiscal autonomy.

People’s Advocate (Judicial Power)
Defends rights and freedoms of citizens from unlawful or improper actions of public administration organs. Elected by Parliament for a period of 5 years, with the right of re-election. Has budgetary and fiscal autonomy and immunity of a judge of the High Court.
Annex 2

Government Structure of the Republic of Bosnia and Herzegovina

**Parliament (Skupstina)**

House of People (Dom Naroda)
- 15 Delegates, 10 from FBiH and 5 from RS

House of Representatives (Predstavnicki Dom)
- 42 Members, 28 from FBiH and 14 from RS

**Presidency Executive Power**

Three-partite Presidency with a rotating chair for an 8-month term within their 4-year term as a member.
- Composed of one Bosniak, one Croat, and one Serb. They are directly elected, the two first from FBiH and the third from RS.

**Council of Ministers Executive Power**

Composed of a Chairman, who nominates Ministers, Deputy Ministers.
- No more than 2/3 of the Council may be from the Federation.

**Constitutional Court**

Judicial Power
- 9 selected members,
  - 4 by the FBiH’s House of Representatives,
  - 2 by the RS’s National Assembly
  - 3 by the President of the European Court of Human Rights

**Entity level**

Federation of Bosnia and Herzegovina
- House of People
  - 65 seats, 17 for each group and 7 for smaller minorities
- House of Representatives
  - 90 Members, Elected for 4 years
- Presidency
- Constitutional Court and High judicial and prosecutorial council
- Council of Ministers

Republika Srpska
- National Assembly
  - 83 Members, Elected for 4 years
- Council of Peoples
  - 28 members, 8 Bosniak, 8 Croat, 8 Serbs and 4 of smaller communities
- Presidency
- Constitutional Court and High judicial and prosecutorial council
- Council of Ministers

**Regional and Local Level**

10 cantons

- 80 Municipalities

- 63 Municipalities
Annex 3

STATE STRUCTURE OF THE REPUBLIC OF MACEDONIA

Assembly (Legislature)
Comprises between 120 and 140 Representatives elected directly for a term of 4 years.

President (Executive)
Elected directly for a term of 5 years. Has representative functions and is Commander-in-Chief of the Army.

Government (Executive)
Prime Minister and Ministers, who are not Assembly Representatives. Main executive body of the Republic, in charge of formulating and implementing state policy.

System of Courts
Supreme Court (Highest Court), Constitutional Court (9 Judges, safeguarding the supremacy of the Constitutional Arrangements), Republican Judicial Council, (composed of 7 members, proposes the election of judges and oversees their work), Municipal Courts.

Public Prosecutor’s Office
Autonomous body in charge of carrying out legal measures against persons who have committed criminal or civil offenses.
Annex 4

GOVERNMENT STRUCTURE OF THE STATE UNION OF SERBIA AND MONTENEGRO

Assembly of Serbia and Montenegro (Legislature)
One Chamber Parliament, 126 deputies (91 from Serbia and 35 from Montenegro), elected from the National Assembly of Serbia and the Assembly of Montenegro during the first 2 years of existence of the State Union and by a universal vote after. The term of office is 4 years.

President (Executive)
Appointed by the Assembly for a term of 4 years. Effectively acts as Prime Minister as well.

Council of Ministers (Executive)
Composed of 5 Ministers: 2 from the same member state as the President, and 3 from the other member state. The Minister for Foreign Affairs and the Minister for Defence must be from different member states.

Court of Serbia and Montenegro (Judiciary)
Has an equal number of judges from both member states. Judges are elected by national parliaments.

PROPOSES

Republic of Serbia

President (Executive)
Elected directly by a secret ballot for a term of 4 years.

Council of Ministers (Executive)
Consists of a Prime Minister, Deputy Prime Minister and Ministers.

System of Courts (Judiciary)
Independent, self-regulating, establish their own organisation, jurisdiction and composition. Constitutional Court has 9 Members with a tenure for life. Supreme Court is the Highest Court in the Republic. The Public Prosecutor's Office is an independent state agency responsible for prosecution of criminal offences and other acts punishable by Law.

Kosovo and Metohija (Autonomous Province)
In practice under international observation

Vojvodina (Autonomous Province)
Own government and Legal Framework

REPUBLIC OF MONTENEGRO

Assembly (Legislature)
Single chamber Parliament. Elected directly for a term of 4 years.

President (Executive)
Elected in direct elections by universal suffrage through a secret vote for 5 years.

Council of Ministers (Executive)
Composed of the Prime Minister, Deputy Prime Minister(s) and Ministers.

System of Courts (Legislature)
Includes the Constitutional Court, being the highest instance court (5 judges having a 9-year term of office), Supreme Court, and the Public Prosecutor Office, performing the tasks of criminal prosecution. 5-year tenure.
Annex 5

Map of Sandzak

Committee of the Regions of the European Union

THE STATE OF LOCAL DEMOCRACY IN THE WESTERN BALKANS

Luxembourg: Office for Official Publications of the European Communities

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