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## THE ASSOCIATION/COMMUNITY OF SERB MAJORITY MUNICIPALITIES: OBLIGATION OR OPPORTUNITY?

The Association/Community of Serb Majority Municipalities is generally presented and justified as an international obligation. Government representatives refer to the Association as part of the process of normalisation of relations with Serbia. As such, it is a requirement for Kosovo's integration in the European Union, as recently stated in the Stabilisation and Association Agreement between Kosovo and the EU.<sup>1</sup> Another often heard justification is that the Agreement of 25 August is the outcome of the Parliament's obligation to establish the Association after ratifying the First Agreement on Normalisation of Relations between Kosovo and Serbia of 19 April 2013.<sup>2</sup>

Such statements place responsibility for the concrete functioning of the Association with external actors or previous commitments. Unfortunately, they discard the need for any substantial discussion on the elaboration of earlier principal agreements on the Association and impede an inclusive and thorough debate on how and for which purpose the Association should function.

In a recent statement, Veton Surroi, one of the key negotiators for minority rights during the 2006 Kosovo status negotiations, reminded that Kosovo does not have any obligation from the Ahtisaari Plan to form an Association/Community of Serb Majority Municipalities.<sup>3</sup> The Comprehensive Proposal for the Kosovo Status Settlement foresees the possibilities of inter-municipal cooperation "to earn out functions of mutual interest". According to the Plan, municipal partnership may exercise municipal responsibilities in the areas of own and extended own competencies through the establishment of decision making bodies of representatives appointed by the assemblies of participating municipalities, decisions on funding and other operational needs, and the hiring of administrative or advisory personnel.<sup>4</sup> The provisions of the Ahtisaari Plan on inter-municipal cooperation have been elaborated on in Kosovo legislation,

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<sup>1</sup> ECMI Kosovo. '[The Suspension of the Agreement on the Association/Community of Serb Majority Municipalities](#)' (15 November 2015).

<sup>2</sup> [http://www.kryeministri-ks.net/repository/docs/Perfitimet\\_shtetere\\_te\\_Kosoves\\_nga\\_Pakoja\\_e\\_marrveshjeve\\_ne\\_Bruksel\\_270815.pdf](http://www.kryeministri-ks.net/repository/docs/Perfitimet_shtetere_te_Kosoves_nga_Pakoja_e_marrveshjeve_ne_Bruksel_270815.pdf).

<sup>3</sup> <http://koha.net/?id=27&l=87743>.

<sup>4</sup> [Comprehensive Proposal for the Kosovo Status Settlement](#) (2 February 2007), Annex III, Art. 9.

most importantly the Law on Local Self-Government and the Law on Inter-Municipal Cooperation, as ECMI Kosovo has analysed in detail in a previous report.<sup>5</sup>

The Ahtisaari Plan and subsequent Kosovo legislation, however, do not prescribe any concrete form of inter-municipal cooperation, including between Serb-majority municipalities. Similar arguments can be used against the government's justification of the Association as an international obligation. Normalisation of relations is a requirement for EU-integration for both Kosovo – as stated in the SAA – and Serbia – through Chapter 35 of its negotiations for EU membership. Which concrete decisions are taken to normalise relations are, however, not predetermined by obligations to the European Union. The European Charter of Local Self Government, to which the First Agreement of 19 April 2013 refers, does foresee that municipalities may form associations or other forms of collective cooperation, but does not specify the exact nature of any such cooperation. The Association of Serb Majority Municipalities, thus, is not an obligation determined in full detail in the Ahtisaari Plan, the Kosovo legal framework, or the EU-integration process, but an opportunity that is being negotiated within that framework.

As the Association is an opportunity rather than an obligation from the legal framework, it follows that not all answers to the functioning and organisation of the Association can be found in the existing legal framework and that its establishment within the Kosovo legal system should be made with caution and through an inclusive discussion. ECMI Kosovo has argued time and again for an inclusive and constructive discussion process that will include all stakeholders, most importantly the Assembly of Kosovo, as the highest decision making body.<sup>6</sup> The fundamentals for the Association have been laid in Brussels, and the principles of its establishment have been ratified by the Parliament back in 2013, but its final statute should be carefully drafted and evaluated. The constitutional court decision coming at the request of President Jahjaga could provide the occasion to establish a more inclusive and constructive process in 2016.

Within the existing legal framework, the statute should provide clear legal guidelines on elements that have not been clarified in either the First Agreement on the Normalisation of Relations of 19 April 2013 or the 25 August Agreement on general principles/main elements. Previous reports by ECMI Kosovo have identified the following outstanding issues:

- the relation between the Association and participating municipalities and the legal capacity of the Association, bearing in mind that the final legal responsibility remains with the municipalities;
- what “overview” means and how it will be organised, considering that Kosovo's legal framework does not allow for a third layer of government;
- the asymmetric competences for Mitrovica/ë North (higher education and secondary healthcare) and Gračanica/Graçanicë and Štrpce/Shtërpçë (secondary healthcare);
- the seemingly mono-ethnic character of the Association and how this fits in with the multi-ethnic character of the Kosovo Constitution; how to guarantee the promotion and protection of all communities within the Association;

<sup>5</sup> ECMI Kosovo, [‘The Association/Community of Serb-Majority Municipalities: What Is \(Im\)Possible Within the Legal Framework?’](#) (16 April 2015).

<sup>6</sup> ECMI Kosovo. [‘The New Agreement on the Association/Community of Serb Majority Municipalities: An Important Step Forward, But Not the Final Word’](#) (7 September 2015).

- mechanisms to solve any potential disputes between the Association and participating municipalities as well as central-level authorities;
- the representative role of the Association and its correlation with the already existing series of measures for positive representation of minority communities at all levels of the central government.<sup>7</sup>

A constructive approach to clarifying these issues would be to shift the discussion to the question whether the Association will contribute to the establishment of a stable and inclusive multi-ethnic society in Kosovo and whether it is opportune—and if so, to what degree—to make use of the possibilities for inter-municipal cooperation provided for in the Ahtisaari Plan and subsequent Kosovo legislation. The parties that have signed the agreements on the Association thus far have not provided detailed answers to this question, hiding behind the argument that it is an international obligation and as such beyond their control.

This question can only be answered by assessing how services in the fields of own or enhanced competencies in Serb-majority municipalities could be carried out in a more efficient and transparent manner, including financial support from the Republic of Serbia (which is allowed for and regulated by the Ahtisaari Plan and Kosovo legislation), by establishing inter-municipal cooperation. This especially applies for the northern municipalities, where the performance of municipal services suffers from institutional ambiguity and the slow integration process. In this regard, the Association can serve as a useful platform for the pooling of resources and skills on areas of mutual concern such as language, education, culture, and cultural heritage. Nevertheless, there is also a risk that the Association will simply add another layer of bureaucracy to municipal services that will needlessly complicate the delivery of municipality-specific services such as local economic development or urban planning; issues of this nature must be clarified in its statute.

In addition, much will depend on the political maturity and will of all partners to cooperate constructively and to use the Association as a means to improve municipal services provided to the citizenry. An association of municipalities may be more efficient at coordination and overseeing municipal services than certain municipalities, if all of its members agree and hold the work of the Association to a high standard. Therefore a compromising spirit will be crucial for the effective functioning of the Association within the Kosovo framework. We have reiterated that this should be reflected in the preamble of the Statute of the Association with bold and unambiguous statement.

*Through the **Kosovo Communities Issues Monitor**, ECMI Kosovo monitors, analyses, and provides recommendations on developments and concerns related to the position of minority communities in Kosovo, within the framework of international and domestic minority rights legislation. The analyses presented in the Monitor rely on close monitoring of media and interviews with relative stakeholders. While ECMI Kosovo strives at all times to provide accurate and nuanced information and to present the views and perceptions of all sides, the objective of the Monitor is not to provide journalist or factual coverage, but to offer an additional analytical element to the debate, reflecting ECMI Kosovo's longstanding experience with communities issues in Kosovo and the domestic and international legal framework in place.*

<sup>7</sup> ECMI Kosovo: 'The New Agreement'; ECMI Kosovo. ['The Association/Community of Serb Majority Municipalities: An Exclusive Club Based on Ethnicity?'](#) (31 March 2015).

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## About ECMI Kosovo

ECMI Kosovo is the principal non-governmental organisation engaged with minority issues in Kosovo, with the overarching aim to develop inclusive, representative, community-sensitive institutions that support a stable multi-ethnic Kosovo. ECMI Kosovo contributes to the developing, strengthening and implementation of relevant legislation, supports the institutionalisation of communities-related governmental bodies, and enhances the capacity of civil society actors and the government to engage with one another in a constructive and sustainable way.