



15 NOVEMBER 2015

THE SUSPENSION OF THE AGREEMENT ON THE ASSOCIATION/COMMUNITY OF SERB MAJORITY MUNICIPALITIES

President Jahjaga, on 31 October 2015, sent a request for interpretation to the Constitutional Court of the Republic of Kosovo on the compatibility of the 25 August agreement on the Association/Community of Serb Majority Municipalities with the Constitution of the Republic of Kosovo. The President also requested that “each activity and effect produced by the Principles of Association is suspended” and that “the Court places a temporary measure on the issue raised until the final decision [of the Court]”.¹

The reasoning behind the request to review the compatibility of the agreement on the Association with the Constitution is that the agreement touches upon the spirit of the

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Constitution, especially the notion of the multi-ethnic nature of Kosovo, basic rights and freedoms and rights of communities and their members.² There are valid concerns over the mono-ethnic character of the Association, which is “to promote the interests of the Kosovo Serb community in its relation with the central authorities”.³

It is additionally argued that the agreement is not an international agreement but an applicable legislation derived from an international agreement (the First Agreement of 19 April 2013). As such, it does not need to be ratified by the Assembly and cannot be formally submitted to the Constitutional Court. This leaves the President as the only authority to send it for review to the Constitutional Court.⁴

The temporary suspension of all activities and effects produced by the agreement was requested in order to end the blockade of Parliamentary work by the opposition on allegations that the Agreement is not conform to the Constitution. Is in the public interest to avoid further escalation of abnormality and allow the station to function by adding institutional credibility to the requests which have caused the blockade.⁵ Indeed, should the Constitutional Court rule that the

¹ CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO, [Decision on Interim Measure in Case No. K0130/15](#) (10 November 2015), p.2.

² CONSTITUTIONAL COURT: *Decision*, p. 2.

³ Association/Community of Serb majority municipalities in Kosovo – general principles/main elements, art. 9.

⁴ CONSTITUTIONAL COURT: *Decision*, p.5.

⁵ CONSTITUTIONAL COURT: *Decision*, p.6.

agreement on the Association is in line with constitutional principles, it might make it easier for the government and the Assembly to adopt the agreement and legislation required for the establishment of the Association and do so with a strong legal argument.

The agreement is suspended in the public interest: It should lift the parliamentary blockade and avoid further escalation.

On November 10, the Court published its decision wherein it agreed with the request of the President for a temporary measure and promptly issued one lasting until 12 January 2016. The Court also noted that the temporary measure does not prejudice the admissibility or merit of the referral as such, and offered the Government, the Deputies of the Assembly, and the Ombudsperson an opportunity to comment on the

referral.⁶

As anticipated, reactions have varied wildly in Kosovo and Serbia. Prime Minister Mustafa has pledged to support and implement any decision taken by the Constitutional Court and to continue the Government's constructive contribution to the Dialogue with Serbia and has stated that this is a normal procedure, foreseen in the Agreement.⁷ Opposition parties in Kosovo, meanwhile, have called the decision a "victory of the opposition", and have vowed to continue with protests and other activities, adding that they "will not wait for the Court to issue its decisions", and that "the Court is under state capture".⁸

Serbian officials, including Serbia's Foreign Minister Dačić and Head of the Serbian Government's Office for Kosovo Đurić, have accused Kosovo of using tactical maneuvers to delay the establishment of the Association and called on the EU to pressure Kosovo into establishing the Association.⁹ The junior Kosovar government coalition partner Srpska lista (Serbian list) similarly called on Brussels to exert pressure over Kosovo to establish the Association and warned that the decision stalls any work to improve the position of the Serb community in Kosovo.¹⁰

Is the decision a normal procedure? Is it a victory for the opposition, or one more tactical maneuver to delay the establishment of the Association?

The major problem with the decision to send the Agreement for verification to the Constitutional Court is that the Agreement defines the principles and main elements of the Association, but that it does not lay down how exactly the Association will function. This especially applies to the foreseen relations between the Association and participating municipalities and with the Republic of Serbia.¹¹ The mono-ethnic character of the Association is a matter of concern that should be addressed in the final legislation.¹² However, any

⁶ CONSTITUTIONAL COURT: *Decision*. pp. 6–8.

⁷ <http://koha.net/?id=27&l=83755>

⁸ <http://www.gazetaexpress.com/lajme/opozita-e-quantifitore-pezuillimin-e-asociacionit-thone-se-i-kane-1001-arsye-per-te-mos-i-besuar-gjykates-143784/>

⁹ <http://www.rtklive.com/rtk2/?id=2&r=3716>

¹⁰ <http://www.rtklive.com/rtk2/?id=2&r=3723>; <http://www.gazetaexpress.com/lajme/lista-serbe-kerkon-nga-be-ja-t-i-beje-presion-prishtines-per-asociacionin-143954/>; <http://www.rtklive.com/rtk2/?id=2&r=3717>.

¹¹ 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).

¹² ECMI Kosovo. [‘The Association/Community of Serb Majority Municipalities: An Exclusive Club Based on Ethnicity?’](#) (31 March 2015).

evaluation of how the Association will function in the Kosovo framework is premature and inherently speculative at this stage.

Any evaluation at this stage is speculative: The Agreement only defines the principles and main elements.

The Government argued that the procedure is in line with Article 2 of the agreement. This seems to be a very liberal reading of the agreement, which says, “The Kosovo Government will adopt a decree directly applicable, which will be reviewed by the Constitutional Court”.¹³ In other words, the final decree governing the establishment of the Association

will be reviewed by the Constitutional Court and not the Agreement itself. Such a procedure indeed seems to be much more effective, as it will allow the partners to clarify all outstanding issues concerning the functioning of the Association and the Constitutional Court to make a comprehensive decision on the compatibility of the Association with Kosovo’s constitutional framework.

The step is yet another delay in the implementation of the initial agreement on the Association of 19 April 2013. ECMI Kosovo has repeatedly raised the issue of the overoptimistic timelines of the 19 April 2013 Agreement, which foresaw that the Association would be established within six months,¹⁴ and the recent agreement of 25 of August, which again foresaw the establishment of the association by the end of the year. The establishment of the Association should be approached with care and include all relevant actors, including the Assembly of Kosovo. The continuous violation of overoptimistic deadlines only decreases the low level of confidence Kosovo Serbs have in the genuine will of the Kosovo Government to implement the agreements reached in the Brussels Dialogue and thus have a negative impact on the integration of the Serb community in Kosovo.

The step is yet another delay which seriously discredits the Kosovo institutions among the Serb community.

Additionally, it is unknown at this point how the temporary suspension of the agreement on the Association, or indeed the overall suspension in a potential subsequent ruling by the Constitutional Court, might affect the progress Kosovo has been making on its path to European integration. The Stabilisation and Association Agreement between the European Union and Kosovo, signed on 27 October 2015, is a milestone for the EU-Kosovo relationships. However, it is conditioned upon Kosovo’s “continued engagement towards a visible and sustainable improvement in its relations with Serbia”.¹⁵ This implies that Kosovo is obliged to contribute to the process of normalisation of relations with Serbia, which should “ensure that both can continue on their respective European paths, while avoiding that either can block the other in these efforts, and should gradually lead to the comprehensive normalisation of relations between Kosovo and Serbia, in the form of a legally binding agreement, with the prospect of both being able to fully exercise their rights and fulfil their responsibilities”.¹⁶ In the light of the above, Kosovo should implement, in good faith, all agreements reached in the dialogue with

¹³ <http://koha.net/?id=27&l=83755>

¹⁴ ECMI Kosovo. ‘[The Association/Community of Serb Majority Municipalities: A Lot of Speculation, Little Factual Agreement and No Implementation](#)’ (23 February 2015).

¹⁵ ‘[Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, on the one part, and Kosovo*, on the other part](#)’ (27 October 2015), Art. 5.

¹⁶ ‘Stabilisation and Association Agreement’, Art. 13(2).

Serbia.¹⁷ In the case of non-compliance by Kosovo with these commitments, the EU may take measures it deems appropriate, including suspension of the SAA.¹⁸ For its part, the EU has not

It is unclear whether the suspension of the Agreement will have a negative impact on recent progress made on Kosovo's path to EU-integration.

taken a stance on the decision of the Constitutional Court, but has stated that it expects both parties to fulfill their obligations under the Brussels Dialogue process.¹⁹

The temporary suspension, at the very least, should give way to a more relaxed atmosphere between the position – including the representatives of the Kosovo Serb community – and opposition and allow for a renewed debate on the merits of the agreement and Association, and how to best proceed

forward. Though the opposition has already stated that they view the suspension only as a temporary measure and will not back down from their demand that the signature be withdrawn from the agreement, the temporary lull in activity might make it easier for both parties to reach out to one another and see if they can find some common ground when it comes to the Association and the Brussels Dialogue in general.

*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.*

¹⁷ 'Stabilisation and Association Agreement', Art. 13(3.a).

¹⁸ 'Stabilisation and Association Agreement', Art. 5.

¹⁹ <http://www.gazetaexpress.com/lajme/be-nuk-komenton-vendimin-e-gjykates-kushtetuese-pret-themelimin-e-asociacionit-143965/>

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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.