



22 FEBRUARY 2015

THE ASSOCIATION/COMMUNITY OF SERB MAJORITY MUNICIPALITIES: A LOT OF SPECULATION, LITTLE FACTUAL AGREEMENT AND NO IMPLEMENTATION

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Few of the concepts that have surfaced in the dialogue on the normalization of relations between Kosovo and Serbia have generated as many expectations as the Association/Community of Serb majority Municipalities (hereafter: Association). Almost two years after the initial agreement was reached, however, the Association remains unresolved and the stakeholders have not reached a basic consensus in their speculations and statements. Through a series of research papers, ECMI Kosovo intends to break through the ambiguities and lack of transparency surrounding the Association. This first paper examines the implementation plan and procedure that were agreed upon for the establishment of the Association and analyzes the hindrances that have stalled the implementation up until now. A detailed study of the legal framework pertaining to the Association will be the subject of further research papers.

The Agreement and its interpretation

The following six articles of the 2013 First Agreement of principles governing the normalization of relations refer to the Association:

- (1) The Association will target Serb majority municipalities in Kosovo but will be open to any other municipality provided that the members are in agreement (Art. 1);
- (2) The Association will be created by statute (Art. 2);
- (3) The structures of the Association will be established on the same basis as the existing statute of the Association of Kosovo Municipalities (Art. 3);
- (4) Participating municipalities will be entitled to cooperate in exercising their powers in accordance with competences given by the European Charter of Local Self Government and Kosovo law, and the Association will have full overview of the areas of economic development, education, health and urban and rural planning (Art. 4);
- (5) Other competences may be delegated by the central authorities (Art. 5);
- (6) The Association will have a representative role to the central authorities and a seat in the Consultative Council for Communities with a monitoring function (Art. 6).

These agreements give very few definitive answers on what form the Association will take and what its competences and functions will be. Serbian government officials and Serb political representatives in Kosovo have presented the Association as a prerequisite and guarantee for the sustainability of the Serb community in Kosovo. They have stressed that the Association will guarantee the Kosovo Serb community continued and transparent financial and structural support from the Republic of Serbia in domains that are central to the community's wellbeing and that are currently often provided by parallel

institutions, namely: health, education, economic development and urban and rural planning. Additionally, the Association is represented as an institution that will assure the Kosovo Serb community protection, safety, stability and autonomy to decide on matters of concern, without too much interference from Pristina.¹

The Kosovo representatives have accepted the agreement on the Association rather reluctantly. They have maintained that the Association does not provide any political or territorial autonomy nor will the Association have any executive authority; rather, it is a voluntary and consultative cooperation mechanism between municipalities, as provided by Kosovo law.² This way, Kosovo's government aims to minimize concerns that the Association might turn into an institution under direct control of the Serbian government that will govern an autonomous region within Kosovo which could block central-level Kosovo decision-making in order to prove that Kosovo cannot function as an independent state, in a style similar to Republika Srpska in Bosnia-Herzegovina.³

Implementation according to the plan

The Brussels Agreement included a plan for the implementation of all elements of the agreement. This plan has not been made public, indicating the broader lack of transparency related to the Brussels Dialogue. With regard to the Association, it was agreed that the two parties would create a Management Team which would be tasked with drafting a statute for the Association and clarifying 'all issues relevant to the establishment of the Association'. The Implementation Plan foresaw that the Management Team would be established in May 2013 and would finish its work by the end of October 2013, after the municipal elections were foreseen to have been completed. The Association was to be established immediately after these municipal elections. Until the Association would be established, the Team would take the competences and the representative role of the to-be-established Association (Arts 4 and 6 of the Agreement). The Management Team would consist of representatives of the four northern municipalities, clearly indicating that these four northern municipalities will play the key role in the Association, upon endorsement by the relevant Kosovo authority.

The Terms of Reference for the Management Team elaborated on its tasks in more detail:

- (1) Taking practical measures for the establishment of the Association, especially (a) creating an office infrastructure for the Association; (b) identifying resources needed; and (c) taking necessary administrative initiatives in accordance with the Implementation Plan;
- (2) Compiling a statute which would clarify the aim, administrative structure, decision-making procedures and the competencies of the Association (reflecting the Statute of the Association of Kosovo Municipalities).

Until the establishment of the Association, the Team was charged with taking the Association's representative role and competences to the central authorities:

- (3) Concerning the Team's representative role, one representative of the Management Team would participate in the Consultative Council for Communities to exercise its monitoring function, and the Team would also consult with central authorities on all issues related to local self-government;

¹ As explained by then Deputy Prime Minister Aleskandar Vučić when outlining the main points of the agreement to representatives of northern Kosovo municipalities.

http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=05&dd=12&nav_category=640&nav_id=713119.

² See, for example, statements by President Atifeta Jahjaga (<http://koha.net/arkiva/?page=1,13,167599>) and then Prime Minister Hashim Thaçi (<http://koha.net/arkiva/?page=1,13,168067>) in the wake of the municipal elections of December 2013. At that time, it was considered that the local elections and the subsequent formation of functioning municipal bodies in Serb majority municipalities would bring about the formation of the Association, as foreseen in the implementation plan (cf. below).

³ Agron Bajrami, "Association of Serbian Municipalities: From a Tool of Integration, To a Disaster in the Making" (Group for Legal and Political Studies, 2013). <http://legalpoliticalstudies.org/2013/12/association-of-serbian-municipalities-from-a-tool-of-integration-to-a-disaster-in-the-making/>.

(4) With regard to the exercise of competences, the Team was tasked with compiling an overview of activities for the Association that are in the general public's interest, especially in the domains of economic development, education, health care and urban and rural planning. Moreover, the Team was responsible for facilitating cooperation between the four municipalities in the North in order for them to collectively exercise their competences in accordance with Kosovo law and the European Charter on Local Self-Government (as clarified in Art. 4 of the First Agreement), pending the establishment of the Association.

Implementation in practice

The Management Team was established on 14 June 2013, consisting of representatives of the four northern Kosovo municipalities: Ljubomir Marić, Igor Kalamar, Dragan Jablanović and Dejan Radojković.⁴ After the Civic Initiative 'Srpska', with the support of the Belgrade government, won the local elections of November–December 2013 in nine of the ten Serb majority municipalities, it was envisaged that the Association would be quickly established, as foreseen in the Implementation Plan. At the time of publication, however, it is clear that this timetable has not been followed. Almost two years after the initial agreement was reached, there is no news about a draft statute for the Association and the stakeholders have not reached a basic consensus on the competences and structures of the Association in their statements.

Election cycles and political instability in Kosovo partly explain why the establishment of the Association was stalled in 2014. Continued difficulties surrounded the organization of municipal elections in Mitrovica/Mitrovicë North, where four election rounds had to be held until a mayor was elected in February 2014. Additionally, the delayed inauguration of municipal authorities, especially in the northern municipalities, blocked the establishment of the Association. In the following months, the organization of early general elections in June 2014 and the ensuing political stalemate, lasting until December 2014, once more halted the establishment of the Association.

During the formation of the coalition government of LDK–PDK and Srpska lista, the latter party demanded the formation of the Association as a prerequisite for entering the government. Srpska lista representatives have repeatedly urged that the Association should be established and formed within the coming months. Until now, however, the government coalition has been ineffective due to internal miscommunication, including with regard to the Association. Specifically, Srpska lista representatives state that the Association will have its own budget and that it will enjoy executive powers;⁵ however, Minister without Portfolio and Chief Negotiator of Kosovo in the Technical Dialogue with Serbia, Edita Tahiri, quickly rebuffed these statements as illusionary and in contradiction with the Kosovo legal framework.⁶

In addition to these external political factors, however, there are also internal shortcomings in the implementation process that have blocked the establishment of the Association. First, the widely divergent positions and interpretations of the agreement from the governments of Kosovo and Serbia have resulted in an absolute lack of any substantial discussion on the competences and structure of the Association. Both stakeholders have refrained from going further than the very superficial and broad statements on the competences and structure of the Association, resulting in the discussion focusing on symbols and rhetoric, rather than on substantial matters. The Management Team has remained largely silent about the draft statute. The only statements it did make were that: the Association could be financed from different budgets, including that of the Republics of Serbia and Kosovo;⁷ the draft statute

⁴ <http://www.rts.rs/page/stories/sr/story/9/Politika/1343260/Formiran+upravlja%C4%8Dki+tim+za+Zajednicu+op%C5%A1tina.html>.

⁵ http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=12&dd=19&nav_id=938318.

⁶ <http://koha.net/index.php/inc/moti.html?id=27&l=38786>

⁷ <http://koha.net/arkiva/?page=1,13,166749>.

has taken inspiration from the autonomous province of South Tyrol; they looked into the possibility to include more new municipalities in the Association, such as future municipalities of Gora and Priluzje; and that the Association would be recognized by both Belgrade and Pristina.⁸

Second, the Management Team has relied heavily on the Serbian government, while its relations and communication with the Kosovo authorities have been strained, to say the least. This has been demonstrated on several occasions. For example, the Management Team has not taken up its representative seat in the Consultative Council for Communities, although this was included in its terms of references. Implementation reports by the Kosovo government indicate how little it knows about the work of the Management Team. Moreover, a report of January 2014 stated that, although the Management Team had apparently been endorsed by the Kosovo Ministry of Local Self-Governance and Administration (MLSGA), the Team initially refused to cooperate with the MLSGA, until a first meeting was held in Mitrovica in October 2013. In a joint meeting held in Brussels on 3 December 2013, the Management Team accordingly did not present a draft statute, whereas the MLSGA delegation presented a draft statute based on the statute of the Kosovo Association of Municipalities.⁹ In a follow-up report of 10 October 2014, the Kosovo government stated that relations with the Management Team had improved, although the Team's competences were slightly narrowed from 'preparing a draft statute for the Association and providing logistic/technical support' to just 'providing logistic/technical support'. It was also stated that the establishment of the Association would only take place upon the conclusion of the implementation process in areas of security and justice, leading towards normal conditions for the Association's functioning.¹⁰

The lack of communication, finally, also applies to the public, which has been completely uninformed about the envisaged competences and structures of the Association. This has caused fear and uncertainty among the Kosovo Serb community, and also other non-Albanian communities, about the impact of the Association on their daily lives, especially in those domains where they are currently still depending on the Serbian state for financing and organization. It has also caused uncertainty within the Kosovo Albanian community regarding the impact of the Association on the functioning of the Kosovo state.

Conclusion and recommendations

The widely diverging interpretations of the agreement on the Association demonstrate that its implementation will be challenging and time-consuming. Indeed, there have rarely been so many stakes at play as with the Association. It not only has the power to alter the entire community protection system in Kosovo, but also touches on the overall functioning of the Kosovo constitutional order. In this regard, the agreement on the Association is not just another technical agreement reached in Brussels with Serbia and thus, should be dealt with accordingly, namely with more inclusiveness and transparency. Almost two years after the first agreement was reached, it is clear that the agreement and the implementation plan did not provide incentives for a constructive dialogue, especially considering the large scope for different and even opposing interpretations. Thus, the process is in need of a fresh start.

This is why the renewed EU-facilitated negotiations between Serbia and Kosovo should reach **a clear and conclusive basic agreement on the structure, competences and funding of the Association**. Such a working agreement should eliminate the fundamental ambiguities and thus enable meaningful and

⁸ http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=11&dd=10&nav_id=922041.

⁹⁹ Republic of Kosovo. *Stay of Play in Implementation of the Brussels Agreement. Report submitted to the European Union / European External Action Service by the Government of the Republic of Kosovo* (16 January 2014), p.18. http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_implementation_state_of_play_of_the_Brussels_Agreements_160114-signed.pdf.

¹⁰ Republic of Kosovo. *Brussels Agreement Implementation: State of Play, January–September 2014. Report submitted to the European Union / European External Action Service by the Government of the Republic of Kosovo* (10 October 2014), p.17. http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_Implementation_of_Brussels_Agreements_101014.pdf.

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efficient discussions on the Association that go beyond symbolism and rhetoric. The agreement should also set up clear **working principles and adopt a new implementation plan**, as the 2013 plan is now redundant.

After such a basic agreement is reached, the concrete details should be sorted out and determined through a **process including constructive involvement of all stakeholders**. The last thing that Kosovo needs right now is an agreement which is not recognized by the relevant political actors, both at the central and the local level. Therefore, the working agreement reached in Brussels should foresee an all-involving process in Kosovo to further the discussion on the details and the structure of the Association. The competences and duties of the Management Team should be refocused and made transparent. The Team should retain the responsibility to create a draft statute for the Association, but negotiate that with the Ministry of Local Self-Government and Administration and the Government of Kosovo, who should have the final say. The composition of the Team should be changed so that it not only includes representatives from the four northern municipalities, but representatives of all Serb majority municipalities in Kosovo.

In a third phase, the draft statute for the Association should be approved by the government of Kosovo in the framework of the Brussels negotiations. Depending on the nature of the agreement, that is, whether amendments of laws would be required, the involvement of the Kosovo Assembly will be necessary.

Finally, a meaningful dialogue on the Association should also include **public transparency**, in order to relieve fears and uncertainties among the population of the Serb-majority municipalities about the impact of the Association on their daily lives. Additionally, it would address the legitimate concerns of the Albanian population about the impact of the Association on the functioning of the Kosovo state, which has been at the heart of all negotiations disagreements between Kosovo and Serbia over the past 20 years. This is a complicated process and no quick solution is possible or desirable.

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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.