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POLITICAL ANALYSIS

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THE ASSOCIATION/COMMUNITY OF SERB MAJORITY MUNICIPALITIES: WHAT IS (IM)POSSIBLE WITHIN THE LEGAL FRAMEWORK?

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Although the agreement on the formation of the Association/Community of Serb-majority Municipalities (hereafter: the Association) leaves plenty of room for diverging interpretations, the discussions on the competences and structure of the Association have ignored the few solid legal provisions provided in the Brussels Agreement of 19 April 2013 (hereafter: the Agreement). Article 3 and 4 of the Agreement provide direct reference to the legal frameworks within which the Association should be constructed: "the structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo Municipalities" (Art. 3); "the 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" (Art. 4).

In this analysis, which is the third in a series aiming to add content to the discussion on the Association, we examine the legal framework on inter-municipal cooperation that is referred to in the Agreement. In particular, we look in more detail at the legal provisions related to inter-municipal partnerships and direct cooperation with the Republic of Serbia, and present the legal maximums for the structure and competences of the Association within the Kosovo law.

1. THE BASIC PRINCIPLES OF INTER-MUNICIPAL COOPERATION

Municipalities have the constitutional right to inter-municipal cooperation and cross-border cooperation.[1] Local and international cooperation between municipalities is regulated by the Law on Inter-Municipal Cooperation, which expands on Chapter V of the Law on Local Self-Government. Inter-municipal cooperation was also foreseen in the *Comprehensive Proposal for the Kosovo Status Settlement* (the Ahtisaari Plan) and is guaranteed in the European Charter of Local Self-Government. The basic principles of inter-municipal cooperation are that municipalities have the right to cooperate and form partnerships with other Kosovo municipalities, within their areas of competences, to carry out functions which are in their

[1] *Constitution of the Republic of Kosovo*, Art. 124.4.

mutual interest and to realise joint goals and interests in the field of municipal public services and local development.[2]

However, the hierarchy between the individual municipalities and the eventual inter-municipal body is clear. As determined by the Constitution of the Republic of Kosovo, municipalities are the basic units of local self-government. They have the right to establish forms of inter-municipal cooperation, but they retain all legal responsibility for acts and actions resulting from such cooperation, and the legality of their operations in the area of their competences will be reviewed by the central authorities.[3] In the same spirit, the European Charter of Local Self-Government Charter determines that the "powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law."[4] This implies that municipalities cannot transfer executive competences to any super-municipal authority, and that the final responsibility for decision-making remains with municipal bodies.

The role of central authorities is limited to the review of the legal compatibility of any decisions or acts of the municipalities with the Constitution and legal framework.[5] This applies not only to decisions taken by the municipalities, but also to municipal decisions on the activities of municipal partnerships.[6] If the Ministry of Local Government Administration considers a decision or act of a municipality to be inconsistent with the Constitution and laws, it may request that the municipality re-examine such decision, stating the grounds of the alleged violation. The principle here is that the central authorities will not review the work of the Association directly, but through the participating municipalities, as the municipalities are legally responsible for all acts and actions taken within the framework of domestic and international municipal cooperation.

2. THE ESTABLISHMENT OF INTER-MUNICIPAL COOPERATION

The procedure for the establishment of inter-municipal cooperation begins either with an initiative taken by the mayor of the municipality; 1/3 of the assembly members; at least 5% of the citizens of the municipality who are entitled to vote; or, the Government of the Republic of Kosovo.[7] In theory, thus, the establishment of the Association does not need a special decision by the Kosovo Government: it can be initiated and developed by the participating Municipalities, after the due process described above. The recent initiative to organise regular meetings between the ten Kosovo Serb mayors and the Serbian government as a means to go ahead and "create the events on the ground and think about their formalisation at a later stage" may make use of this legal space.[8] At the first of such meetings, held on 18th March 2015 in Gračanica/Graçanicë, Serb political representatives presented ten key demands and focus points, including "unitary political action, the protection of the rights, and the realisation of the interests of the Serb people through the formation of a strong Association of Serbian Municipalities," and that at a future meeting the final draft of the Statute of the Association

[2] 'Law (Nr. 03/L-040) on Local Self-Government' (20 February 2008), Art. 29.1; 'Law (No. 04/L-010) on Inter-Municipal Cooperation' (21 July 2011), Art. 3.1.1.
[3] 'Law on Inter-Municipal Cooperation', Art. 4.3.
[4] Council of Europe. *European Charter of Local Self-Government* (Strasbourg, 1985), Art. 4.4.
[5] *Constitution of the Republic of Kosovo*, Art. 124.7.
[6] 'Law on Local Self-Government', Arts 29, 76, 79, 82.
[7] 'Law on Inter-Municipal Cooperation', Art. 6.2, 6.3.
[8] http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=03&dd=11&nav_category=640&nav_id=967225. Such statements were also expressed at the roundtable 'Decentralisation and Serbian Community in Kosovo', organized by the Forum for Ethnic Relations in Gračanica/Graçanicë on 3 March 2015.

would be reviewed.[9] However, it is unlikely that a one-sided initiative to establish the Association would yield any legal results, apart from putting political pressure on Pristina and the EU. Due to the sensitivity of the issue and its inclusion in the negotiations between the Governments of Serbia and Kosovo, it would be detrimental if the process of establishing the Association would be initiated without formal approval of the Kosovo Government.

In any case, as clearly stated in the Law on Inter-Municipal Cooperation, the initiative for inter-municipal cooperation should be supported by information on the purpose of the cooperation, competences pertaining to it, the municipalities involved in the cooperation, the form of the cooperation, the expected benefits, the potential financial implications from the cooperation, as well as other issues of importance on the establishment of inter-municipal cooperation.[10]

Based on these details, the respective municipal assemblies then review the initiative for inter-municipal cooperation and take a decision by majority of votes at an open session, within 90 days of the initiative's submission. In the case that the Assembly approves the initiative, it authorises the municipality's Mayor to represent the municipality during the negotiation process on the final agreement for inter-municipal cooperation.[11]

The mayors of the participating municipalities will then negotiate a formal agreement on inter-municipal cooperation, containing the following elements:

- The contracting parties;
- The subject matter of the contract, the scope and the time frame;
- The rights and obligations of each party involved in the agreement;
- The legal form of cooperation and sources of funding and budget;
- The conditions to withdraw from the contract and termination of the agreement;
- The procedure for solution of eventual conflict.

The agreement should be signed by the mayors of all participating municipalities and then approved by the relevant municipal assemblies. The agreement becomes valid after assessment of its legality by the Ministry for Local Government Administration.[12]

3. FUNCTIONING AND COMPETENCES OF INTER-MUNICIPAL COOPERATION: ASSOCIATION OR COMMUNITY?

A main source of misunderstanding in relation to the Association stems from the ambiguity of whether the Association will be a form of municipal partnership or an association of municipalities. Both are rights of cooperation foreseen in the European Charter of Local Self-Government, the Ahtisaari Plan, and the Law on Local Self-Government, but the distinction subsequently got lost in the Law on Inter-Municipal Cooperation. The First Agreement refers to the 'Association/Community' and 'Community/Association' alternately, but it is not clarified what this terminology implies, or whether it is related to the legal distinction between municipal partnerships and associations.[13]

Municipal partnerships

The European Charter of Local Self-Government gives local authorities the right to cooperate and, within the framework of the law, to form consortiums with other local authorities in exercising their powers in order to carry out tasks of common interest.[14] The Law on Local Self-

[9] http://kossev.info/strana/arhiva/razmatranje_nacrta_statuta_zso_a_na_sledecem_zajednickom_sastanku_srpskih_opstina_na_kim_u/4212.
[10] 'Law on Inter-Municipal Cooperation', Art. 6.4.
[11] 'Law on Inter-Municipal Cooperation', Art. 6.
[12] 'Law on Inter-Municipal Cooperation', Arts 4–8.
[13] Balkans Policy Research Group. 'Serb Integration in Kosovo after the Brussels Agreement', unpublished policy report (19 March 2015), p. 31.
[14] Council of Europe. *Charter*, Art. 10.1.

Government prescribes that municipalities can exercise municipal responsibilities in the areas of their own and enhanced competences through municipal partnerships.[15] An exception is made for the following decisions, which fall under the authority of the municipal assemblies and cannot be taken over by inter-municipal partnerships:

- Statutes or rules of procedures and municipal regulations;
- Approval of budget and investment plans;
- Annual work plan and annual report;
- Establishment of committees required by the Law on Local Self-Government;
- Election of the Chairperson and Deputy Chairperson of the Municipal Assembly;
- The level of fees and charges;
- Creation and use of municipal symbols, decorations and honorary titles;
- Naming and renaming of roads, streets and other public places;
- Making of inter-municipal and intra-municipal agreements,
- Joining representative associations of municipalities.[16]

Inter-municipal partnerships may take all actions necessary to *implement and exercise* their functional cooperation through:

- The establishment of a *decision-making body* comprised of representatives appointed by the assemblies of the participating municipalities;
- The hiring and dismissal of administrative and advisory personnel;
- Decision on *funding* and other operational needs of the partnership.[17]

These provisions seem to indicate that municipal partnerships can establish decision-making bodies that decide on areas of competences agreed upon by participating municipalities, including the funding of the partnerships (although budgets and annual work plans are decisions for which the municipalities cannot delegate its responsibilities).

Municipal association

Municipalities also have the right to form an association for the protection and promotion of their common rights. Such associations may offer its members – the individual municipalities – a number of services, including trainings, capacity building, technical assistance, as well as research on municipal competences and policy recommendations.[18]

In line with these provisions, the Association of Kosovo Municipalities (AKM) is a non-profitable organisation and a legal person that represents the interests of local authorities. The objectives of AKM are to enhance the implementation of the regulations from the European Charter of Local Self-Government in Kosovo and to organise and coordinate activities of municipalities in the domains of investment, economic development, improvement of the legal basis, business support, culture, education, science, health care, well-being and social services, conflict-management, and the improvement of services for citizens.[19]

Concretely, AKM:

- Initiates, organises, and promotes cooperation between local authorities;
- Proposes solutions for general problems faced by local authorities in Kosovo;
- Gives opinions and suggestions on law proposals and sub-legal acts that deal with local self-government;
- Provides legal and organisational support to municipalities;

[15] 'Law on Local Self-Government', Art. 29.1.
[16] 'Law on Local Self-Government', Arts 29.1, 40; 'Law on Inter-Municipal Cooperation', Art. 4.2.
[17] 'Law on Local Self-Government', Art. 29.3. This is literally taken over from the *Comprehensive Proposal for the Kosovo Status Settlement* (26 March 2007), Annex III, Art. 9.1.2.
[18] 'Law on Local Self-Government', Arts 31–32; Kosovo Status Settlement, Annex III, Art. 9.2. This is again in line with the European Charter of Local Self-Government, which guarantees local authorities to belong to an association for the protection and promotion of their common interests. Council of Europe. *Charter*, Art. 10.2.
[19] Association of Kosovo Municipalities, *Statute of the Association of Kosovo Municipalities* (Pristina, 2010), Art. 2.

- Represents the general interests of local authorities within Kosovo and international organisations;
- Organises and coordinates professional trainings for municipal political authorities and civil servants;
- Develops and circulates information and publications to its members;
- Creates funds, opens representative bodies and public institutions.[20]

With the exception of the latter point, AKM clearly has a supportive, advocating, and facilitating role and corresponds to a municipal association rather than a municipal partnership. Reducing the role of the Association of Serb-Majority Municipalities to a mere advisory and supportive role similar to that of the AKM seems counterproductive and limiting. It obviously does not concur with the expectations of the Kosovo Serb community, does not exhaust the legal possibilities for inter-municipal cooperation, and seems redundant in addition to the existing Association of Kosovo Municipalities. The reference to the structure of AKM as the basis for the structure of the Association of Serb-Majority Municipalities in the First Agreement (Art. 4) refers rather to the *organisational structure* of AKM than to *its competences*, all the more because the Agreement refers to AKM's bodies (President, Assembly, and Council). In this line of reasoning, the term "Association" ("Asociacioni" in Albanian), which has been codified in English and Albanian to denote the Association/Community of Serb-Majority Municipalities, is infelicitous, as it seems to restrict the role of the Association to the supportive, advocating, and facilitating role of municipal associations mentioned in the Law on Local Self-Government and causes confusion with the existing Association of Kosovo Municipalities.[21]

Types of inter-municipal cooperation

The Law on Inter-Municipal Cooperation elaborates on the joint structures through which inter-municipal cooperation can be realised:

a) Joint *working bodies or committees* for reviewing certain matters determined under the competence of the municipality;[22]

b) Joint *administrative bodies* for performing certain municipal competences and carrying out professional and administrative work within the competences defined by agreement. The participating municipalities assign civil municipal servants to work in the joint administrative body. However, these bodies are not legal entities and the final responsibilities remains with the municipalities.[23] In other words, the Association cannot establish departments that would supersede the authority of the municipal assemblies/municipal departments.

c) Joint *public enterprises* for performing local public services, in compliance with conditions and procedures set forward by the Law on Local Enterprises.[24]

d) Joint *public institutions* for performing certain activities of public interest and of local importance in the fields of education, health, culture, social protection, and others. The mayors of all participating municipalities sign agreements regulating mutual rights and obligations with regard to public institutions. The decision to establish such a public institution has to be approved by a majority of the votes in the municipal assemblies, based on verification of resources provided by founders, permanent sources of funding, rights and obligations of the

[20] Association of Kosovo Municipalities, *Statute*, Art. 3.

[21] The Serbian equivalent for "community" ("zajednica") is already in common use instead of the equivalent for "association" ("asocijacija"). The International Crisis Group and the Balkans Policy Research Group prefer the term "community" over "association", for reasons of efficiency and to avoid confusion with the existing Association of Kosovo Municipalities. Balkans Policy Research Group, 'Serb Integration in Kosovo after the Brussels Agreement', unpublished policy report (19 March 2015), p.28.

[22] 'Law on Inter-Municipal Cooperation', Art. 10.

[23] 'Law on Inter-Municipal Cooperation', Art. 11.

[24] 'Law on Inter-Municipal Cooperation', Art. 12.

founder, mutual rights and obligations of the institution and the founders, duration of the operation, and organisational and management structure of the organisation.[25]
e) Joint *public-private partnerships* for performing local public services and providing public infrastructure, in compliance with the legislation on public-private partnerships.[26]
f) Finally, a municipality may give a mandate, based on the agreement, to another municipality to exercise certain competences, while it remains responsible for all actions and acts taken by the mandated municipality.[27]

The Law on Inter-Municipal Cooperation, thus, provides many possibilities for the joint exercise of competences by municipalities in the field of municipal public services. It does, however, not maintain the distinction between 'partnership' and 'association', and does not elaborate on the decision-making body that is mentioned as a manner of realising municipal partnerships in the Law on Local Self-Government and the Ahtisaari Plan. It, thus, considerably reduces the decision-making competences of any form of inter-municipal cooperation. As this is precisely the role and competence the Serb side foresees for the Association, the legal ambiguities might require clarification and adaptation. However, in the spirit of the Kosovo Constitution and legislation on local self-government and the European Charter of Local Self-Government, the municipality remains the primary unit of local self-governance and retains all legal responsibilities for acts, actions, and eventual decisions taken by the Association.

4. THE ORGANISATIONAL STRUCTURE OF THE ASSOCIATION

As argued above, the reference to the Association of Kosovo Municipalities in the Agreement refers to the organisational structure of the AKM, and not to its competences or activities. The AKM consists of three organisational bodies. The Assembly is the highest organ of the AKM, and it consists of representatives from the ranks of municipal assemblies.[28] Municipal assemblies delegate one representative to the AKM Assembly per ten assembly members, in proportion with the votes each party gained in the municipal local elections. The Assembly convenes at least once a year and takes decisions on the statute, working procedures and regulations, annual work plans and budgets, and strategy of AKM. Furthermore, the Assembly elects a President and Deputy President for the Association, and approves the Association's symbols. Decisions are taken by simple majority, while changes to the statute require approval by 2/3 of the Assembly Members.[29]

The Council of Mayors administrates the AKM and convenes on a three-monthly basis. The Council consists of the mayors of all municipalities and members of the Board (see below). Upon recommendation by the Board, the Council analyses and formulates a decision on acts and draft decisions that have to do with local self-government as well as issues raised by the Board and by the council members.[30]

The Board of the AKM consists of seven elected members of the Assembly of the AKM: its President, Deputy President, and five Assembly Members. Three board members (including the President) represent the party that won in the most municipalities at the local elections, two (including the Deputy President) the second party, one the third party at the local elections, and one the Serb community. The Board convenes on a monthly basis and discusses problems raised by the Assembly or the Council, and issues decisions and makes proposals to improve

[25] 'Law on Inter-Municipal Cooperation', Art. 13.
[26] 'Law on Inter-Municipal Cooperation', Art. 9.
[27] 'Law on Inter-Municipal Cooperation', Art. 14
[28] This assembly structurally corresponds to the decision making organ mentioned in the Law on Local Self Government.
[29] Association of Kosovo Municipalities, *Statute* (Pristina, 2010), Art. 4(1–14).
[30] Association of Kosovo Municipalities, *Statute* (Pristina, 2010), Art. 4(15–17).

local self-government. Additionally, the Board confirms agreements reached by the AKM, defines and determines administrative tasks and structures, monitors the financial activities of the AKM, and examines activity plans and administrative reports.[31]

Daily administration and management are carried out by the President of the Association and its administrative organs. The President of the AKM signs agreements with the authorisation of the Board, organises the work of the Association's management bodies, and represents the AKM.[32] The administrative activities of the AKM are organised by the administration and its management bodies, under the leadership of the Director of Administration. The administration works on the basis of laws and regulations that are approved the Assembly, Council, and Board.[33]

This organisational structure and division of tasks could be easily applied to the Association of Serb-Majority Municipalities. However, the competences of each of the bodies would have to be redefined in line with the competences that the Association will have according to partnership agreement between municipalities, which will be more in line with those of a municipal partnership than that of the AKK.

5. BONDS WITH THE REPUBLIC OF SERBIA

The Association is seen by Serb political representatives and many Serbs as a means to strength and substantiate bonds between the Kosovo Serb population and the Republic of Serbia, without (too much) interference from Pristina. Although it runs counter to the traditional understanding of a sovereign state, the Association could in fact be a useful mechanism for sustainable and transparent support by the Republic of Serbia to the Kosovo Serb community. This is perfectly in line with the Kosovo legal framework, which provides possibilities for cooperation and support from the Republic of Serbia, provided that the central authorities are not circumvented and that the role of the Republic of Serbia remains restricted to financial and technical assistance in the implementation of municipal competences. The Law on Local Self-Government indeed allows for municipalities to cooperate, within the areas of their own competences, with municipalities and institutions, including government agencies, in the Republic of Serbia. Such cooperation may take the form of the provision of financial and technical assistance, including expert personnel and equipment, in the implementation of competences.[34]

Further, municipal partnerships have the right to direct relations with institutions in the Republic of Serbia, but only to the extent necessary to implement practical activities of the partnership.[35] Municipalities shall, however, notify the Ministry of Local Government Administration in advance of any intention to engage in cross-border cooperation, including a draft cooperation agreement providing information on the objectives of the cooperation, practicalities, and modalities for provision of staff and equipment, the level of funding, and the funding processing mechanism. If the Ministry finds the agreement in violations of the law, it can propose amendments or suspend the intended cooperation.[36]

The Law on Inter-Municipal Cooperation further defines that within international municipal cooperation, "municipalities cannot withdraw from their competences set forth by law, to delegate to a municipality or foreign public authority performance of own competencies and

[31] Association of Kosovo Municipalities, *Statute* (Pristina, 2010), Art. 4(18–21).
[32] Association of Kosovo Municipalities, *Statute* (Pristina, 2010), Art. 4(22–23).
[33] Association of Kosovo Municipalities, *Statute* (Pristina, 2010), Art. 4(24–27).
[34] 'Law on Local Self-Government', Art. 30.2. Financial support from the Republic of Serbia to the Association will be treated in a following report.
[35] 'Law on Local Self-Government', Art. 30.7.
[36] 'Law on Local Self-Government', Art. 30.3, 30.4, 30.5.

to allow the foreign municipality or public authority to exercise any executive, administrative, legislative power in the territory of the Republic of Kosovo".[37] In principle, this implies that besides the financial support, which is not tackled in this analysis, the Association can request technical support and assistance from the Republic of Serbia in the implementation of practical activities. The Republic of Serbia cannot, however, exercise any executive, administrative, or legislative power through the Association.

6. CONCLUSION

The right of inter-municipal cooperation is firmly entrenched in Kosovo legislation and the European Charter of Local Self-Government. The legal framework allows municipalities to establish municipal partnerships on their own initiative with the purpose of implementing and exercising functional cooperation in municipal competences of joint interest. Such municipal partnerships can take various forms, ranging from a decision-making body comprising of representatives of the municipal assemblies of the participating municipalities, to joint administrative bodies, public institutions, and public enterprises. Moreover, these partnerships are entitled to direct relations with institutions of the Republic of Serbia for the implementation of the practical activities of the partnership. The Law also foresees municipal associations with a representative and advocacy role.

The Agreement on the Association seems to bundle together the limited representative and advocacy role of an association of municipalities with structures for inter-municipal partnerships for the joint exercise of competences. Also, although there is no direct reference to this in the Agreement, the Association can be the seat of coordination for direct cooperation between municipalities and the Republic of Serbia, as foreseen in the Kosovo law.

However, municipalities remain the basic local government units. They are legal entities and are legally responsible for the competences that they have. Unless the entire Constitutional and legal framework is changed, no supra-municipal body can enjoy the legal competences that right now are within the remit of the Municipality. Moreover, such a supra-municipal structure with legal status would suffer from a democrat deficit, being a non-elected body.

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[37] 'Law on Inter-Municipal Cooperation', Art. 18.3.

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