

# BALKAN DIALOGUES

## THE STATUS OF THE KOSOVO SERB COMMUNITY



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# BALKAN DIALOGUES: THE STATUS OF THE KOSOVO SERB COMMUNITY KOSOVO-SERBIA RELATIONS\*

\*With excerpts from contributions by **Milica Andric-Rakic**, **Ramadan Ilazi** (Association of Serb-majority Municipalities); **Dragisa Mijacic** (territorial autonomy for North Kosovo, asymmetric ASM); **Jovan Ratkovic** and **Marko Savkovic** (border correction scenarios, dual sovereignty)

**A full decade after the opening of EU-facilitated negotiations between Serbia (Belgrade) and Kosovo (Pristina) in Brussels, and 15 years since the failed attempt led by Martti Ahtisaari to present a comprehensive solution to the status of Kosovo that would be acceptable to both sides as well as the UN Security Council, it is clear that the future status of the Kosovo Serb community remains a vital element in any potential comprehensive solution for the normalisation of relations between Belgrade and Pristina.**

**In order to achieve an agreement, Serbia insists that there must be a compromise on this and a number of other issues, whereas the authorities in Pristina and the Kosovo Albanian population feel a compromise had already been made by virtue of their acceptance of the Ahtisaari package and the incorporation of most of its elements into the Kosovo constitution.**

Although quite advanced on paper, the current legal provisions for the protection of the collective rights of the Serb community that are included in the Constitution of the Republic of Kosovo have proved to be insufficient. Their implementation has also been inconsistent. The poor application of legal provisions designed to protect the Serb community's rights is often justified by Kosovo Albanian politicians and representatives of the international community as being a result of its young democratic system and weak institutions, a lack of the rule of law, as well as a consequence of Belgrade's interruption and interference in Kosovo's internal affairs.

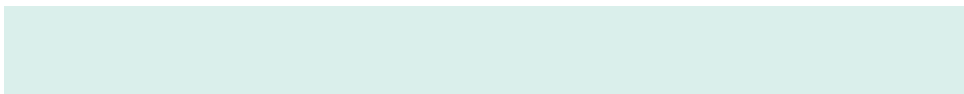
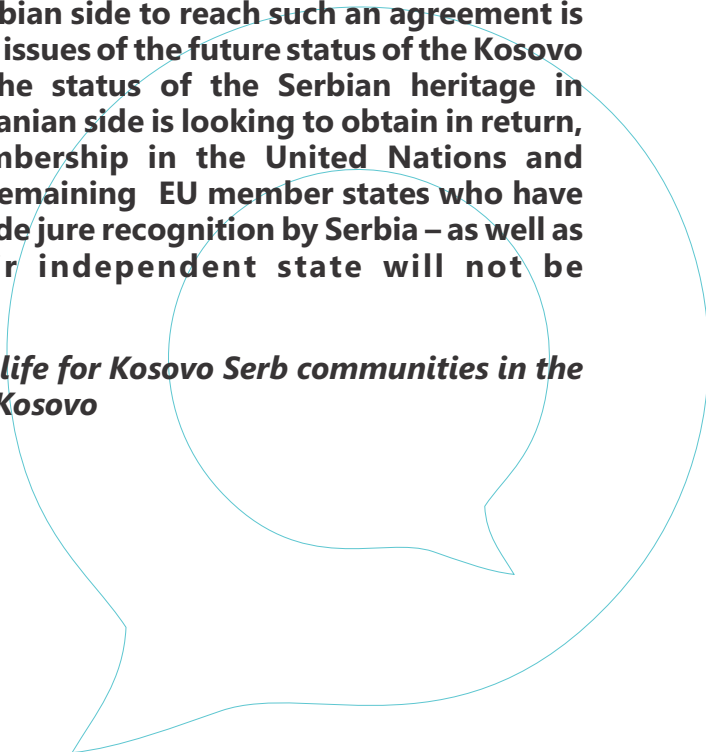
On the other hand, there is a lot of justifiable mistrust felt within the Serb community with regard to their further integration in Kosovo. Ethnic-based incidents directed against Serbs in Kosovo remain frequent and usually remain unsolved by the police and judiciary.

**The positions of the two sides remain light years apart. Even when leaders attempt to narrow that gap, this is done without transparency and with little support by other political elites, let alone the general public on either side.**

Meanwhile, it has become apparent that a *European perspective* (the prospect of full membership in the European Union) has lost most of its appeal across the Western Balkans – the accession process has been painfully slow, due both to the lack of political will of (often autocratic) leaders in the region to implement necessary yet painful reforms in order to join the EU, and enlargement fatigue within the EU itself. Thus, a vague EU perspective is no longer a major incentive for either Belgrade or Pristina to reach a normalisation agreement.

The incentive for the Serbian side to reach such an agreement is to be found mainly in the issues of the future status of the Kosovo Serb community and the status of the Serbian heritage in Kosovo; whereas the Albanian side is looking to obtain in return, at the very least, membership in the United Nations and recognition by the five remaining EU member states who have withheld it so far – if not de jure recognition by Serbia – as well as guarantees that their independent state will not be dysfunctional.

***The different realities of life for Kosovo Serb communities in the north and in the south of Kosovo***



It is important to note the different realities of life existing in the four Serb-majority municipalities<sup>1</sup> located in North Kosovo and the other six municipalities<sup>2</sup> scattered south of the Ibar river. The latter were established as part of a decentralisation package foreseen by the Ahtisaari Plan, with the aim of integrating the Serb community into Kosovo's political system. This integration policy was (to some extent) successful even prior to the commencement of the Brussels dialogue<sup>3</sup>; hence, there was no urgent need to discuss the further integration of those six municipalities into the Kosovo political system, since they were already operational and, to some extent, functional. Nonetheless, it is still important to mention that the quality of the implementation of constitutional and legal provisions for protecting the Serb community living in these municipalities remains low. What is more, education, healthcare and social protection have never been integrated into the Kosovo system, but continue to function within the legal system of the Republic of Serbia.

The reality in the four Serb-majority municipalities in North Kosovo is rather different. There is a long history of political and institutional resistance by these municipalities to integrating into the Kosovo legal system that goes back to the establishment of the UNMIK administration in 1999. For a number of years, these municipalities kept functional all of the pre-war institutions of the Republic of Serbia. These included the administration of local governments and their institutions, as well as primary, secondary and university education, healthcare and social protection, judiciary, police, and tax administration. In North Kosovo, UNMIK institutions were never strong or operational. In February 2008, when a majority of the elected members of Kosovo's parliament declared independence, the local authorities from those four municipalities refused to accept this unilateral decision and cut/rejected all institutional ties with the newly created Republic of Kosovo. As a response to Kosovo's declaration of independence, local elections in those four municipalities were organised according to the laws of the Republic of Serbia, despite the fact that these elected authorities were not recognised by Pristina or the international community.

<sup>1</sup> Leposavić/Leposaviq, Zvečan/Zveçan, Zubin Potok and Severna Mitrovica/Mitrovicë Veriore (Mitrovica North). This area comprises about 11% of Kosovo's territory.

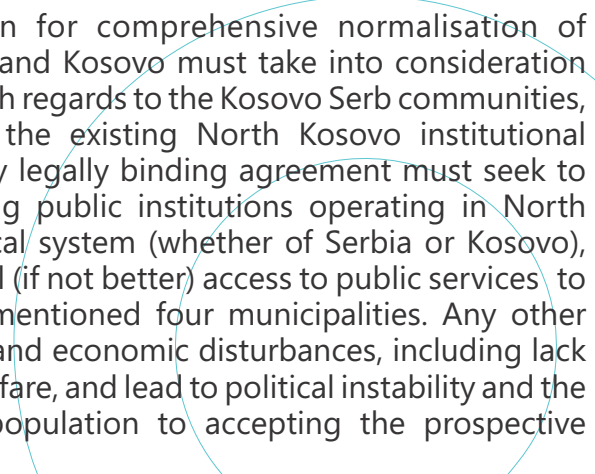
<sup>2</sup> Gračanica/Gračanicë, Klokot/Klllokot, Novo Brdo/Novobërdë, Parteš/Partesh, Ranilug/Ranillug, Štrpce/Shtërpçë.

<sup>3</sup> The Brussels dialogue was launched through a mandate given by the UN General Assembly Resolution A/RES/64/298 from 9 September 2010, available at <https://bit.ly/37KsmJ5>

The agreements reached in Brussels produced a new reality in the municipalities of North Kosovo, with the creation of a sort of “institutional hybrid” in which they operate according to the laws of both the Republic of Serbia and the Republic of Kosovo (in some cases, UNMIK regulations are also applied). The public institutions of the Republic of Serbia remain operational and crucially important for the Serb community, both in terms of access to public services as well as employment. Especially important are the institutions related to the healthcare system (both primary and secondary) and education (primary, secondary and university), as also the institutional framework for social protection, which is much more advanced in comparison to the system operated by the Republic of Kosovo. A majority of the Republic of Serbia's institutions are located in North Mitrovica (e.g., the main hospital, the university rectorate), making this town the most important administrative centre for the Serb community in Kosovo, not only for people living in the municipalities of North Kosovo, but for those living south of the River Ibar.

The private sector in the northern municipalities also functions within the two legal systems.

Any prospective solution for comprehensive normalisation of relations between Serbia and Kosovo must take into consideration these different realities with regards to the Kosovo Serb communities, and also the duality of the existing North Kosovo institutional framework. Therefore, any legally binding agreement must seek to accommodate the existing public institutions operating in North Kosovo into a new political system (whether of Serbia or Kosovo), which will guarantee equal (if not better) access to public services to the citizens of the aforementioned four municipalities. Any other solution will cause social and economic disturbances, including lack of jobs and poor social welfare, and lead to political instability and the resistance of the local population to accepting the prospective agreement.



## Scenarios of Autonomy for The Serbian

### Community Within Kosovo

In all of the following scenarios, the Kosovo Serb community would continue to exercise the positive provisions for cultural autonomy that are contained in the Ahtisaari Plan and partially incorporated into the Kosovo constitution. This includes ten reserved seats in the Kosovo parliament, a number of ministers and deputy ministers in the Government of Kosovo, the use of Serbian as the official language in Kosovo, provisions for protecting the vital interests of the community and other provisions that preserve its cultural autonomy and collective rights. Belgrade would also insist on the introduction of a “soft border” regime between Serbia and Kosovo.

### A.Association of Serb-majority Municipalities (ASM)

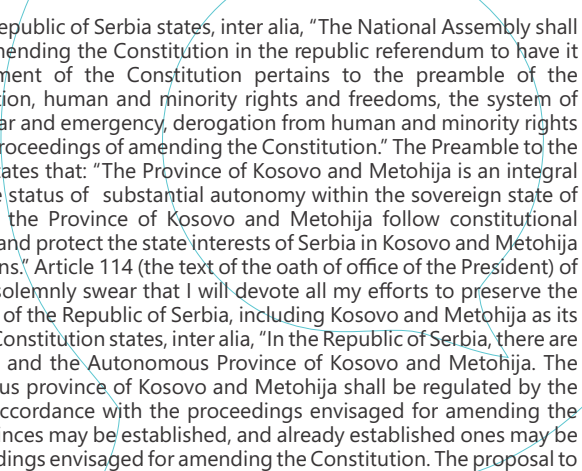
The establishment of the Association of the Serb majority municipalities is an international obligation for Kosovo, stemming from the 2013 and 2015 agreements reached with Serbia in Brussels, and ratified by the votes of two thirds of the members of the Kosovo Assembly in 2013. It is also a legal and, arguably, constitutional obligation founded on a judgment handed down by the Constitutional Court of Kosovo in December 2015 calling for the government to establish the ASM. Therefore, the issue before the Kosovo government is not if it should establish the ASM, but rather the kind of authority and mandate with which the Association of Serb majority municipalities would be vested.

In examining the different options with respect to moving forward with the establishment of the ASM, there seem to be two fundamental criteria that must be adhered to if the general expectations of Albanians and Serbs in Kosovo are to be met. **The ASM has to be an institutionally and politically meaningful power-sharing mechanism for the Serbian community, providing the necessary guarantees for the protection of their interests in areas such as education, healthcare, social welfare, and economy. At the same time, the mandate and responsibilities of the ASM cannot jeopardise the functionality of Kosovo's state institutions or undermine their authority.** Another important issue to note is that the role and competencies of the ASM could potentially be different for participating municipalities from the North of Kosovo and those from other parts of Kosovo.

**In the context of the ASM, the Kosovo Albanian side has insisted on the imperative to respect Kosovo's constitution and the ruling of its Constitutional Court with regard to the 2015 Brussels Agreement; whilst Serbia has pointed out that it would also be required to amend its constitution<sup>4</sup>.**

**The Serbian side has insisted on the need for the ASM to be endowed with executive competencies, whereas the Kosovo side would strongly prefer the ASM to be a mere coordination mechanism between majority-Serb municipalities.**

With respect to the issue of security, the overall goal of the Kosovo side is to receive a green light from the international community to change the mandate of the Kosovo Security Force (KSF) into a full-fledged military (Kosovo Armed Forces). In return, Pristina would be willing to accept, at least for a certain period of time, NATO/KFOR supervision of its military presence in North Kosovo. Serbia insists, on the other hand, that North Kosovo should be demilitarised and that the KSF must not be allowed to enter (as it has never had a presence in North Kosovo).



<sup>4</sup> Article 203 of the Constitution of the Republic of Serbia states, inter alia, "The National Assembly shall be obliged to put forward the act on amending the Constitution in the republic referendum to have it endorsed, in cases when the amendment of the Constitution pertains to the preamble of the Constitution, principles of the Constitution, human and minority rights and freedoms, the system of authority, proclamation of the state of war and emergency, derogation from human and minority rights in the state of emergency or war or the proceedings of amending the Constitution." The Preamble to the Constitution of the Republic of Serbia states that: "The Province of Kosovo and Metohija is an integral part of the territory of Serbia, it has the status of substantial autonomy within the sovereign state of Serbia and that from such a status of the Province of Kosovo and Metohija follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations." Article 114 (the text of the oath of office of the President) of the Constitution states, inter alia, "I do solemnly swear that I will devote all my efforts to preserve the sovereignty and integrity of the territory of the Republic of Serbia, including Kosovo and Metohija as its constituent part." And Article 182 of the Constitution states, inter alia, "In the Republic of Serbia, there are the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija. The substantial autonomy of the Autonomous province of Kosovo and Metohija shall be regulated by the special law which shall be adopted in accordance with the proceedings envisaged for amending the Constitution. [...] New autonomous provinces may be established, and already established ones may be revoked or merged following the proceedings envisaged for amending the Constitution. The proposal to establish new, or revoke or merge the existing autonomous provinces, shall be established by citizens in a referendum, in accordance with the Law. Territory of autonomous provinces and the terms under which borders between autonomous provinces may be altered shall be regulated by the Law. Territory of autonomous provinces may not be altered without the consent of its citizens given in a referendum, in accordance with the Law."



### **A1. ASM in accordance with the 2015 ruling of Kosovo's Constitutional Court.**

While this would be the most effective way to establish the ASM internally, as it should attract minimal resistance from the Kosovo Albanian community, it is expected to be rejected by Belgrade and the Kosovo Serbs, since major changes to the 2015 Brussels Agreement would need to be agreed with Belgrade, including that:

1. The ASM would not replace or undermine the status of the participating municipalities as the basic units of democratic local self-government;
2. The ASM would not circumvent or avoid an administrative review by central authorities;
3. The participating municipalities would be obliged to respect the constitution and laws of Kosovo;
4. Membership in the ASM would not be exclusive to Serb-majority municipalities;
5. Administration of the ASM would not be considered part of the Kosovo civil service per se;
6. The ASM would not be entitled to propose amendments to legislation and other regulations; and
7. The ASM would not replace or undermine the rights of the participating municipalities to receive and decide on the spending of municipal revenues and appropriate funding from the central government.

An ASM established in accordance with the judgment of the Constitutional Court would have the primary responsibility to support and coordinate inter-municipal cooperation, but not have competencies over them or deliver public functions and services. However, in the context of the ASM's operational responsibilities with respect to public services, there is some space for creativity. In this sense, the concept of a "One-Stop-Shop" should be considered as a way to establish a role for the ASM: services offered by participating municipalities in the 12 areas of responsibility defined in the 2015 Brussels Agreement could potentially be offered via such an ASM-managed mechanism. This arrangement would be regulated within the framework of inter-municipal cooperation, which is permitted under the Kosovo Constitution. The full overview responsibilities of the ASM could be upheld as long as they constituted the act of simply informing the ASM on the part of the participating municipalities.

The ASM could also take an expanded role vis-à-vis participating municipalities by establishing a programme for technical assistance for policy development and a funding scheme. On specific areas of responsibility, the ASM could also have a role in overseeing the process of developing long-term strategic frameworks in education, healthcare, local economic development, social welfare, culture, etc.

Education is essential to the Serbian community and its sustainable future in Kosovo. Kosovo's legal framework allows for Serbian schools to use textbooks and curricula from Serbia. The ASM can facilitate inter-municipal cooperation between Serbian language schools in Kosovo, including through funding schemes. With respect to healthcare, Kosovo legislation allows municipalities to regulate both primary and secondary healthcare systems

## **A2. ASM as a hybrid mechanism.**

This option is seen as being quite acceptable to Kosovo Albanians but hardly acceptable to Kosovo Serbs or Belgrade. Under this scenario, the ASM would retain core responsibilities from the 2015 Brussels Agreement, but formulated in a way that does not create legal challenges within Kosovo (meaning, the ASM would be without its own executive competencies).

The ASM would be formed as a public institution/administrative body that has a legal basis in the form of inter-municipal cooperation in accordance with Kosovo's Law on Local Self-Government (No. 03/L-040, art. 19; art. 22 and entire chapter V) and the Law on Inter-Municipal Cooperation (No. 04/I-010, art. 3-5).

To remain in conformity with the 2013 and the 2015 Brussels agreements, the ASM would need to include the bodies listed therein, namely: President, Vice-President, Assembly, Council. No act of the institution, however, could be applicable without final approval by the Legal Office of the line ministry or the Prime Minister's Office.

The administrative body formed by the municipalities themselves, whose competencies and tasks would be clearly defined by an Agreement on Intermunicipal Cooperation, would be very different from those of an association of municipalities. The body, however, would be allowed to draft sub-legal acts in relation to the organisation of the education system and healthcare system. .

The role of the ASM Assembly would be strictly advisory – any acts drafted by the ASM would need to be promulgated by the line ministry. With this set-up, the ASM would be granted competencies that its constituent municipalities currently have in primary, secondary and tertiary healthcare and education, urban planning and infrastructural projects, cross-border cooperation and social services (which constitute about half of the ASM's competencies as envisioned in the 2015 Brussels Agreement). The ASM would also establish public utility companies servicing several neighbouring municipalities, as required.

### **A3. ASM with some executive competencies in accordance with the 2015 Brussels Agreement.**

In order to accommodate this option, Kosovo would be required to change its Constitution. Politically very difficult for whoever is in power in Kosovo, it is most likely the very minimum concession Pristina would need to make in order to persuade Belgrade to agree to a comprehensive, legally binding agreement.

Such constitutional changes would be limited in scope so as to make the 2015 agreement implementable with respect to the capacity to deliver public functions and services, without the need to replace municipalities as basic units of local government. The text of such amendments would need to be written in such a manner as not to impede or interfere with the functionality of the state.

On the basis of the 2015 Brussels Agreement, the ASM is foreseen to deliver public functions and services in 12 areas that are exercised by municipalities<sup>5</sup>.

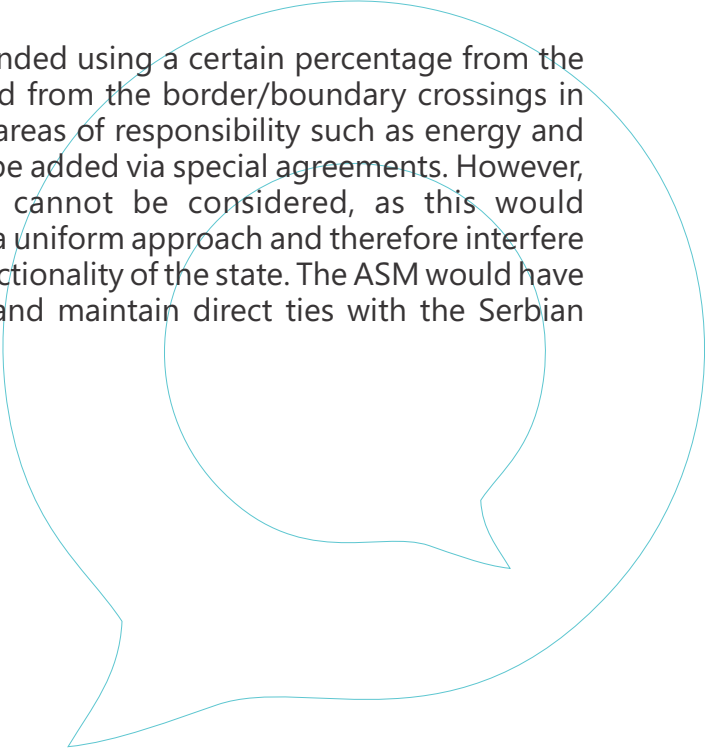
<sup>5</sup> The 12 areas in question are regarding measures to:

- a) strengthen local democracy;
- b) exercise full overview to develop the local economy;
- c) exercise full overview in the area of education;
- d) exercise full overview to improve local primary and secondary health and social care;
- e) exercise full overview to coordinate urban and rural planning;
- g) adopt measures to improve local living conditions for returnees to Kosovo;
- h) conduct, coordinate and facilitate research and development activities;
- i) promote, disseminate and advocate issues of common interest to its members and represent them, including to the central authorities;
- j) provide services to its members in accordance with Kosovo law;
- k) assess the delivery of public services to its members and their residents so as to support the Association in forming positions on common interests for participation in the work of the central authorities;
- l) conduct monitoring as required for the implementation of its objectives;
- m) establish relations and enter into cooperation arrangements with other associations of municipalities, domestic and international.

In this sense, the ASM was designed to be a power-sharing mechanism to ensure that public policies in the 12 mentioned areas with respect to the Serbian community in Kosovo are well protected. To ensure this, the ASM needs to have the power to issue regulations and policies in the aforementioned areas, as well as to be able to monitor their implementation on the part of the participating municipalities. In this sense, the ASM was designed to perform a combination of operational and coordination tasks grounded in the concept of inter-municipal cooperation.

Kosovo's constitution would need to be amended (1) to accommodate the exercise of executive competencies by the ASM in areas such as education and healthcare; (2) to include the right of municipalities to accept the overview over the exercise of their competencies by an Association to which they have freely chosen to belong (membership); (3) to provide for the right of municipalities to require support in implementing some of their responsibilities in a coordinated and organised manner with other municipalities. However, the central government would retain the ultimate authority of administrative review.

The ASM would also be funded using a certain percentage from the customs revenues collected from the border/boundary crossings in North Kosovo. Additional areas of responsibility such as energy and telecommunication could be added via special agreements. However, the police and judiciary cannot be considered, as this would jeopardise the principle of a uniform approach and therefore interfere with the criterion of the functionality of the state. The ASM would have a seat in North Kosovo and maintain direct ties with the Serbian government.



#### **A4. Establishment of ASM with full executive competencies in accordance with the 2015 Brussels Agreement.**

On the basis of the 2015 Brussels Agreement, the ASM would be formed and granted full executive competencies to deliver public functions and services in all 12 areas that are presently exercised by municipalities. Furthermore, the ASM Assembly would have legislative power in the 12 areas that are presently exercised by municipalities.

In order to accommodate this option, Kosovo would be required to amend its Constitution. This would be very difficult politically for the Kosovo Albanian leadership to accept, but would most likely represent the very minimum concession Pristina would need to make in order to persuade Belgrade to agree to a comprehensive, legally-binding agreement. Again, Serbia would also be required to amend its Constitution in order for a compromise solution to be found. As in the previous scenario, the ASM would also be funded using a certain percentage from the customs revenues collected from the border crossings in North Kosovo. Additional areas of responsibilities such as energy and telecommunications could be added via special agreements.

It is instructive to note that the aforementioned four municipalities of North Kosovo have already been granted, by the relevant agreement in Brussels, a crucial role in the selection process of the Regional Police Commander in North Kosovo. Moreover, it has already been agreed (and implemented) that the ethnic composition of the police force in North Kosovo must reflect the composition of the resident population.

The ASM would be headquartered in North Kosovo and maintain direct ties with the Serbian government, which would be involved in the implementation and monitoring of such an agreement through its membership in a **Joint Kosovo-Serbia Council**.

## B. Territorial autonomy for North Kosovo

### B1. Permanent territorial autonomy for North Kosovo.

Four Serb-majority municipalities located in North Kosovo, adjacent to Serbia proper, would form an Autonomous Region of North Kosovo (official name to be defined by the agreement) with executive competencies in education (all levels), healthcare (all levels), social protection, economic development, agriculture and rural development, public transportation, spatial and urban planning (all defined by the Brussels Agreement), and extended to **communal and traffic police, first-instance judiciary, culture, and the protection of cultural and religious heritage** (in line with the subsidiarity principle of the European Charter of Local Self-Government).

The region would have an Assembly and an Executive Council (Government), headed by a President. The Assembly would have the right to adopt **bylaws** which would further regulate the core and delegated competencies of the Autonomous Region.

It is instructive to note that the aforementioned four municipalities of North Kosovo have already been granted, by the relevant agreement in Brussels, a crucial role in the selection process for the Regional Police Commander in North Kosovo, a provision that could be expanded in scope and further strengthened by the agreement. Moreover, it has already been agreed (and implemented) that the ethnic composition of the police force in North Kosovo must reflect the composition of the resident population.

The Autonomous Region would be a permanently demilitarized zone under the protection of KFOR, without the presence of the Kosovo Security Force or other Kosovo military or quasi-military formations.

The Autonomous Region would maintain direct ties with the Serbian government, which would be involved in the implementation and monitoring of such an agreement through its membership in a **Joint Kosovo-Serbia Council**.

***(For more details on territorial autonomy for North Kosovo see the chapter "Power Sharing as a Solution for a Comprehensive Agreement between Serbia and Kosovo")***

**While Belgrade would clearly be in favour of strong territorial autonomy for North Kosovo, Pristina would have a legitimate concern with regard to the potential, down the road, for North Kosovo to secede down (this could certainly be prevented as part of the agreement). Pristina would also have a concern with regard to the impact of the said autonomy on the functionality of Kosovo as a state.** It should be noted, however, that such a concern is mitigated by the fact that the Autonomous Region would not be given the right to block or adversely influence the decision-making process at the level of central government (in Pristina). It is therefore unlikely that such an arrangement would negatively impact the overall functionality of the state, as can be observed with similar territory-based regional autonomy models in EU member states (e.g., the German-speaking Community of Belgium).

## **B2. Time-limited territorial autonomy for North Kosovo followed by a referendum on its final status.**

In this scenario, the final status of North Kosovo (i.e., the determination as to whether it will be part of Kosovo or Serbia) would be decided by a referendum (North Kosovo residents would be eligible to vote), organised after an agreed period of time (10 to 25 years) and supervised by the United Nations and/or the European Union.

## **B3. Asymmetric Association/Community of Serb-majority Municipalities.**

This scenario suggests another alternative to border corrections scenarios – different institutional solutions for protection of the collective rights of the Serb community in Kosovo, combining territorial autonomy for people living in North Kosovo and cultural autonomy for those living south of the River Ibar.

The establishment of territorial autonomy within Kosovo encompassing the four municipalities of North Kosovo would not negatively influence the overall efficiency of Kosovo's political system, whereas it would accommodate the demands of North Kosovo's Serb community for the protection of their collective rights. Such an institutional arrangement would also ensure the integration of the public institutions of the Republic of Serbia that are still operational in Kosovo, and whose continuing operation are crucially important for the Serb community, both in terms of access to public services as well as employment. Especially important are the institutions related to the healthcare system (both primary and secondary) and education (primary, secondary and university), as is the institutional framework for social protection. This territorial autonomy would be guaranteed and monitored by a specially designed mission established by the European Union.

### *Competencies*

The four Serb-majority municipalities located in North Kosovo would form an Autonomous Region (hereinafter: The Autonomy) with executive competencies in education (all levels), health care (all levels), social protection, culture and the protection of cultural and religious heritage, economic development, agriculture and rural development, public transportation, spatial and urban planning, communal and traffic police, first instance judiciary and residual competencies. Competencies in these fields would be organised in accordance with Kosovo laws and international conventions. However, educational institutions would use the curriculum of the Republic of Serbia.

These competencies are in line with the Brussels Agreement and the Agreement on the Association of Serb-majority Municipalities in Kosovo – general principles/main elements, extended in the case of those that are crucial for the **preservation of the cultural and religious heritage, as well as for keeping law and order (traffic and communal policing and first-instance judiciary)**. The competencies are also in line with the subsidiarity principle of the European Charter of Local Self-Government.

The Autonomy would have a right to establish public institutions that support implementation of its own competencies. In accordance with the Energy Agreement between Belgrade and Pristina, the Autonomy might establish electricity trading and transport companies, which could include the management of facilities of the substation in Valač/Vallaq, as well as the hydro and energy systems related to Lake Gazivode/Ujmani.



The central government would retain the competencies in monetary and fiscal policy, border crossing management and border controls, capital infrastructure investment and management, criminal police and the fight against organised crime, and second-instance judiciary. Shared competencies between the central government and the Autonomy would be in the field of local self-government, environmental protection, emergency situations and disaster response, as well as in overall policing and law and order. The central government might also decide to delegate some additional competencies to the Autonomy.

Once it is established, the Autonomy would take over all the public institutions of the Republic of Serbia working in education, healthcare and social protection, as well as in other sectors, if necessary. When the Autonomy is established, all other institutions of the Republic of Serbia would be disassembled.

### *Institutions*

The Autonomy would be formed by a Statute that would be agreed upon between the two sides in Brussels as an integral part of the future comprehensive agreement between Pristina and Belgrade. The Autonomy would have an Assembly and an Executive Council (Government) headed by a President.

The Assembly would consist of representatives directly elected from a single constituency composed of eligible voters residing in the four municipalities. The Assembly would have the right to adopt bylaws that would further regulate the core and delegated competencies of the Autonomy.

The President of the Executive Government would be a member of the Committee of Communities of Kosovo's parliament, and would have the right of veto on laws and regulations adopted by Kosovo's parliament, the Government of Kosovo or other middle level institutions that directly threaten the functioning and competencies of the Autonomy.

### *Monitoring*

In order to help ensure the sustainability of this solution, the European Union would establish a special mission (hereinafter: the EU Mission) that would monitor the work of the Autonomy and support implementation of all its provisions. This EU Mission would publish an annual monitoring report on the Autonomy and submit it to the Parliament of Kosovo and the European Commission. This report would also be shared with the Government of Serbia, which will be granted observer status in this control mechanism.

### *Security*

The Autonomy would be a demilitarised zone under the protection of KFOR, without the possibility of the presence of the Kosovo Security Force or other military (or quasi-military) formations from Kosovo or other countries. Nevertheless, in the case of a natural disaster or other kind of external threat, the Assembly of the Autonomy might invite the Kosovo Security Force to assist. Special police assignments for war crimes or organised crime would be performed by the police forces of the EU Mission.

### *Financing*

The Autonomy would be financed by rearranging current financial instruments that are already available for the respective four municipalities. The Autonomy would have the right to levy taxes and generate revenues on the territory under its jurisdiction. In addition, it would receive clearly defined annual transfers from the Government of Kosovo (including from the Fund for the Development of North Kosovo – the Customs Fund), for the purpose of implementing its delegated competencies. In addition, the Autonomy would be able to receive grants from the Government of Serbia (for healthcare, education and social protection, culture, protection of cultural and religious heritage, humanitarian work, the Serbian Orthodox Church, civil society development), as well as the European Union (administrative capacity, infrastructure, socio-economic development and environmental protection, private sector development, civil society and media), and other international organisations, as well as bilateral donors. The Autonomy would also have the right to secure loans from international and commercial banks. The Autonomy would be granted the right to collect revenues from selling water and electricity generated from the Gazivode/Ujmani water reservoir.

### *Cultural Autonomy for the Serbian community in other parts of Kosovo*

The Serb-majority municipalities south of the River Ibar river would retain their right to establish their own Association, in accordance with Kosovo's Law on Local Self- Government, its Law on Inter-Municipal Cooperation, and the provisions of the European Charter of Local Self-Government, but this Association would not have executive competences. The Serb-majority municipalities south of the River Ibar would have access to the public institutions of the Autonomy of North Kosovo in the fields of education, healthcare and social protection. In other words, the Autonomy would be allowed to establish and run those public institutions in Serb communities throughout Kosovo.

## **C. "Border correction" scenarios**

### **C1. "Partition" of Kosovo<sup>6</sup>**

This scenario means that the Serb-majority in North Kosovo would go back to – or (as some may prefer to phrase it) remain in Serbia. Serbia would in return de jure recognise the remaining territory of Kosovo as an independent state. Serb-majority municipalities in other parts of Kosovo would continue to exercise the positive provisions of municipal self-government and cultural autonomy that are contained in the Ahtisaari Plan and (partially) incorporated into the Kosovo constitution, but nothing more than that. Greater emphasis would need to be placed on implementing these provisions. The reservation of seats for the Serbian community in Kosovo's parliament and Government, as well as provisions protecting the vital interests of that community, would no longer apply.

This solution might also include some sort of special status or even symbolic extra-territoriality for the most important Serbian Orthodox Church holy sites in Kosovo (almost all of them located south of the River Ibar). [See *"Strategic options to safeguard the SOC Heritage in Kosovo"* and *"On the future status of the Serbian Religious and Cultural Heritage in Kosovo"*]

<sup>6</sup> Serbia regards Kosovo's 2008 declaration of independence as a partition of its sovereign territory.

The joint use and management of natural resources in North Kosovo would also have to be resolved.

This option is considered to be a “face-saving” solution for Serbia, as it restores some territory of Kosovo. And for Kosovo it would mean receiving full Serbian and international recognition of its independence. Some see this as a win-win solution, others claim it would lead to everlasting grievances on both sides. Of course, the same question as to outcome would be valid for a scenario in which the Serbs of North Kosovo, strongly opposed to the independence of Kosovo, are stuck within a country they do not recognise.

The most serious internal political impediment to the achievement of such a solution, from the perspective of Kosovo Serbs, is the fact that a majority of the Kosovo Serb population (as well as the location of the vast majority of the holy sites of the Serbian Orthodox Church) are not located in North Kosovo. The most serious external political impediment is the fear expressed by some countries, both within and beyond the region, that it might produce a domino effect with regard to similar ethnic disputes. Others are less pessimistic, pointing out that the secession of Kosovo from Serbia in 2008 has not produced such an effect in the region, and that any mutually-agreed solution between a sovereign country and its breakaway former province would strengthen regional stability rather than jeopardise it. More concretely, with regard to the case of the territorial integrity of Bosnia and Herzegovina, additional guarantees for its preservation could be embedded in the Serbia-Kosovo comprehensive agreement.

## **C2. “Land Swap”**

This scenario would consist of a swap of all or parts of Serb-majority North Kosovo with parts of the Preševo Valley in Central Serbia that have clear ethnic Albanian majorities (i.e. most of the Preševo municipality and parts of Bujanovac and Medvedja municipalities). The large towns of Serb-majority North Mitrovica (in Kosovo) and Albanian-majority Bujanovac (in Serbia) might be granted “special district” status (similar to Brčko in Bosnia), if they are not included in the outright land swap. Mutual recognition between Serbia and Kosovo would be the most likely outcome of such an agreement.

This solution might also include some sort of special status or even symbolic extra-territoriality for the most important Serbian Orthodox Church holy sites in Kosovo. (See the Reports *"Strategic options to safeguard the SOC Heritage in Kosovo"* and *"On the future status of the Serbian Religious and Cultural Heritage in Kosovo"*)

While it is unclear why Serbia would agree to give additional territory to Kosovo, this option has been rumoured to have been the preferred compromise solution of both Aleksandar Vučić (President of Serbia) and Hashim Thaçi (former President of Kosovo).

The same internal and external political impediments to the achievement of this solution apply as those with regards to the "Partition" scenario.

### **D. Dual Sovereignty (Condominium) over North Kosovo**

Belgrade and Pristina would agree to share sovereignty and jurisdiction over North Kosovo (four Serb-majority municipalities), in such a way that Serbia would exercise its sovereignty in practice, while Kosovo would exercise sovereignty only symbolically.

This solution might also include provisions to encompass the most important Serbian Orthodox Church holy sites in Kosovo (almost all of which, as mentioned above, are located south of the River Ibar).

A well-known case of a condominium in the Western Balkans is the internal condominium within Bosnia and Herzegovina, Brčko District, which is a part of two entities (the Federation of Bosnia and Herzegovina and Republika Srpska).

**While in a practical sense this could be the option most challenging to implement, in a political sense it could become acceptable to both sides and thus become part of a durable solution.**



# BALKAN DIALOGUES

THE STATUS OF THE  
KOSOVO SERB COMMUNITY