

BALKAN DIALOGUES

ASYMMETRIC AUTONOMY AS A MODEL FOR POWER SHARING IN KOSOVO



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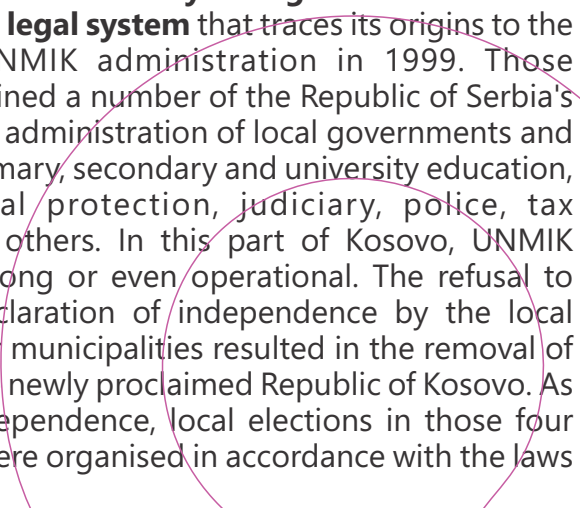
Dragisa Mijacic, Director, Institute for Territorial Economic Development (InTER)

Power sharing has proven to be the most successful instrument for conflict resolution, especially in Europe. All successful cases of resolving inter-ethnic conflicts on European soil are based on power sharing mechanisms of the devolution of jurisdictions, including South Tyrol and the Åland Islands. The key element of such peace-making instrument is empowering minority groups not to seek secession while keeping the political system at the central level functional and efficient. There are also examples where the political systems of entire countries are based on power sharing mechanisms, such as Belgium, Canada, Spain, the United Kingdom and many others.

The April 2013 Brussels Agreement contains elements of power sharing since it introduced the Association/Community of Serb-Majority Municipalities (hereinafter: the Association) as the key instrument for the protection of collective rights of ethnic Serbs in Kosovo. The Association was further elaborated in the agreement reached in late August 2015, whereby both parties confirmed their commitment to establishing the Association. Nevertheless, the agreement on the Association has never been welcomed in Pristina. Certain ethnic-Albanian political parties in Kosovo (i.e. Lëvizja Vetëvendosje, yet others too) have been against the Association from the very beginning, advocating in public that giving more concessions to the ethnic Serb community in Kosovo will jeopardize the functionality of the political system and governance mechanisms in Kosovo.

It is important to note **the evident difference in reality between the four Serb-majority municipalities located in north Kosovo and the six Serb-majority municipalities scattered in central, east and south Kosovo**. The latter have been established as a part of a decentralisation package foreseen by the Ahtisaari Plan, with the intention to integrate the Serb community into Kosovo's political system. This integration policy was (to some extent) successful even before the Brussels dialogue, hence, there was no urgent need to discuss further integration of those six municipalities into Kosovo's political system since they were already operational and, to some extent, functional. Nonetheless, it is still important to mention that the quality of implementation of constitutional and legal provisions for protecting the Serb community living in these municipalities remains low. Besides, education, healthcare and social protection have never been integrated in the Kosovo system and continue to function within the legal system of the Republic of Serbia.

The reality in the four northern Serb-majority municipalities is rather different than in those from the south. **There is a long history of resistance from the Serb-community living in the north to integrate into the Kosovo legal system** that traces its origins to the establishment of the UNMIK administration in 1999. Those municipalities have maintained a number of the Republic of Serbia's pre-1999 institutions, from administration of local governments and its institutions, through primary, secondary and university education, to healthcare and social protection, judiciary, police, tax administration and many others. In this part of Kosovo, UNMIK institutions were never strong or even operational. The refusal to accept February 2008 declaration of independence by the local authorities from those four municipalities resulted in the removal of all institutional ties with the newly proclaimed Republic of Kosovo. As a response to Kosovo independence, local elections in those four respective municipalities were organised in accordance with the laws of the Republic of Serbia.



Therefore, it could be said that **the primary goal of the Brussels technical and political dialogue has been largely focused on integrating the four Serb majority municipalities located in north Kosovo into the political system and legal framework of the Republic of Kosovo**. This could be recognised in the nature of the agreements focused on organising local elections in these municipalities, the integration of the local judiciary and police, the dismantling of the local civil protection unit, the regulation of customs fees for businesses operating in this area, the reconstruction and traffic regulation of the main bridge in Mitrovica.

These agreements brought forth a new reality to the municipalities of north Kosovo, **establishing a sort of an “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 used)**. The public institutions of the Republic of Serbia remain operational and crucially important for the Serb community in north Kosovo, both in terms of providing access to public services as well as regarding public employment. Some analyses of these institutions estimated that more than 80% of families living in north Kosovo benefit from employment in those institutions.

Any prospective solution for comprehensive normalisation of relations between Serbia and Kosovo **must take into consideration a duality in institutional framework of north Kosovo**. Therefore, the legally binding agreement must seek to accommodate the existing public institutions operating in the north into a new political system which will guarantee equal access to public services (if not better) to citizens of the respective four municipalities. Any other solution will cause social and economic disturbances, including lack of jobs and poor social welfare, which will lead to political instability and resistance of the local population to accept the prospective agreement.

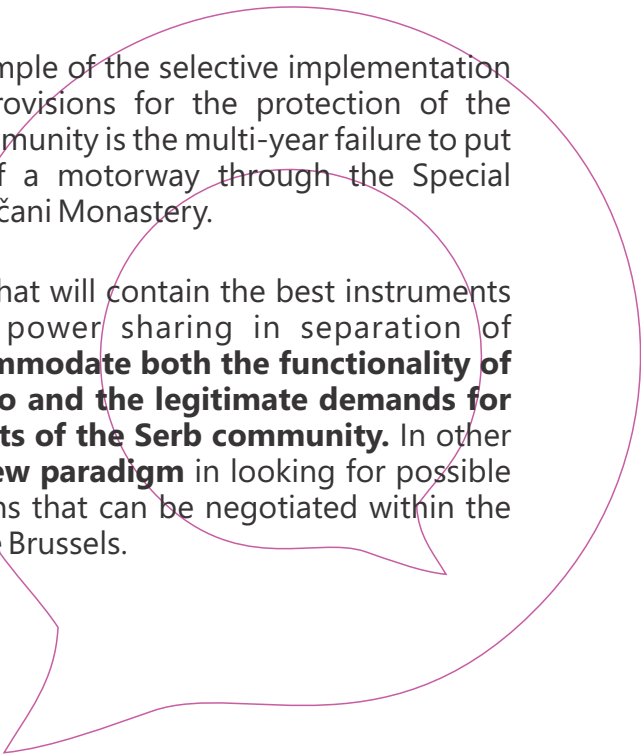
New Paradigm in negotiating the Association

It is clear that there will be no agreement on normalization between Pristina and Belgrade without making institutional provisions for the protection of the collective rights of the Serb community in Kosovo. Although quite advanced, the current legal provisions that are included in the Constitution of the Republic of Kosovo have proven to be insufficient, and their implementation has been inconsistent at best. Justifications offered for the poor application of the legal provisions designed to protect various rights of the Serb community is often explained by Kosovar politicians and the international community as a result of premature democracy, weak and young institutions, lack of rule of law, as well as a consequence of Belgrade's interference in Kosovo's internal affairs.

On the other hand, there is a lot of justifiable mistrust from the Serb community with regards to their further integration in Kosovo society. Cases of ethnically-based violence toward Serbs in Kosovo remain frequent since 1999, and usually remain unsolved by the police and unpunished by the judiciary.

Probably the most striking example of the selective implementation of constitutional and legal provisions for the protection of the collective rights of the Serb community is the multi-year failure to put a stop to the construction of a motorway through the Special Protective Zone of the Visoki Dečani Monastery.

There is a need for a solution that will contain the best instruments and European practices of power sharing in separation of jurisdictions, **in a way to accommodate both the functionality of the political system in Kosovo and the legitimate demands for protecting the collective rights of the Serb community.** In other words, there is **a need for a new paradigm** in looking for possible functional and feasible solutions that can be negotiated within the scope of political dialogue in the Brussels.



First of all, there is a key question whether the Association should be endowed with executive powers in exercising its competencies in designated areas like economic development, education, health, urban and rural planning, or whether its role should be more consultative vis-à-vis the local level institutions (municipalities)? Most of the six Serb-majority municipalities in central, east and south Kosovo are located near big cities, primarily near Pristina and Gjilan/Gnjilane but others too, as well as on or near international transit roads towards Skopje, Tirana and the Presevo Valley. These municipalities are not territorially connected, but scattered across Kosovo. Thus, it is not likely that the political elite in Kosovo will ever accept different jurisdictions with respect to these territories as doing so might negatively affect the efficiency of the central government to implement legislation across Kosovo.

On the other hand, the four Serb-majority municipalities in the north are territorially connected and located on road corridors that are less important for the Kosovo Albanian community. Central level institutions are weak, as is their influence on political and socio-economic segments of life. Although the Brussels Agreement crafted conditions for the integration of those municipalities into the Kosovo legal system, in practice an institutional hybrid was reinforced: the institutions of the Republic of Serbia existed in parallel with those of the Republic of Kosovo. This area has also been a subject of speculations regarding the controversial idea of engendering a "border correction" between Serbia and Kosovo.

The new approach would look for different institutional solutions for the protection of the collective rights of the Serb community, combining territorial autonomy for people living in the north and cultural autonomy for the ones in the south. To some extent, this proposal has similarities to the political system in Belgium, which contains three autonomous regions (Flanders, Wallonia and the Brussels-Capital Region) and cultural autonomy for three communities (Flemish, French and German).

Territorial autonomy of Northern Kosovo

- 1) **Competencies.** Four Serb-majority municipalities located in north Kosovo should form an Autonomous region (hereinafter: the Autonomy) with executive competencies in education (all levels), healthcare (all levels), social protection, culture and 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 organized in accordance with Kosovo laws and international conventions. However, educational institutions will use the curriculum of the Republic of Serbia, adjusted to the requirements of the curriculum that is prescribed by the the relevant ministry of Kosovo.

In the field of education, healthcare and social protection, the competencies and institutions of the Autonomy should be extended exterritorialy, covering other Serb communities living in other parts of Kosovo. This solution will have elements of non-territorial cultural autonomy in which members of a certain ethnic group (in this case, the Serb community) will have access to public institutions in those sectors.

These competencies are in line with the Brussels Agreement and the Agreement on the Association/Community of Serb-Majority Municipalities in Kosovo – general principles/main elements, extended with the ones that are crucial for the preservation of 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 will have a right to establish public institutions that will support implementation of its own competencies. In accordance with the Energy Agreement, the Autonomy might establish electricity trading and transport companies, which could include the management of facilities of the substation in Valac, as well as the hydro-and energy system related to the Gazivode Lake.

The central government will keep competencies in monetary and fiscal policy, border crossing management and a border control, capital infrastructure investment and management, criminal police and the fight against organized crime, and second instance judiciary. Shared competencies between the central government and the Autonomy will 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 will take over all 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 institutions of the Republic of Serbia will be disassembled.

If the political resistance in Pristina is too strong for such proposal, as an intermediate solution, the Autonomy might be formed for a period of ten years under the supervision of the European Union. After this period, a decision would be made whether the same status would be prolonged, with or without the supervision of the European Union, or whether there would be a change in the constitutional and legal position of the Autonomy.

2) ***Institutions.*** The Autonomy will be formed by a Statute that is agreed in Brussels and that is an integral part of the comprehensive agreement signed between Pristina and Belgrade. **The Autonomy would have an Assembly and an Executive Government headed by a President.**

The Assembly will consist of the representatives directly elected by the constituency from the four respective municipalities. The Assembly will have the right to adopt bylaws that will further regulate the core and delegated competencies of the Autonomy. **At least one vice-chair post in the Assembly will be reserved for a member identifying as belonging to a non-majority community** (preferably Albanian, but also Bosniak, Gorani, Roma or other). The Assembly will have a Committee of Communities that will also be chaired by a member of a non-majority community.

The Executive Government will be chaired by the President and it will be tasked with implementing the bylaws and regulations of the Autonomy. The Government would have a fixed number of ministries (or secretariats), where at least two will be led by non-majority communities (at least one for a member of the Albanian community and one from others – Bosniak, Gorani, Roma, etc.) The Executive Government would also manage the public institutions of the Autonomy. The work of the Executive Government would be accountable to the Assembly and the President would submit an annual report to the Assembly for approval.

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

- 3) **Financing.** The Autonomy would be financed **by rearranging current financial instruments that are already available for the four municipalities in north Kosovo**. The Autonomy would have the right to levy taxes and generate revenues on the territory under its jurisdiction. In addition, it will receive clearly defined annual transfers from the Government of Kosovo for the purpose of implementing its delegated competencies. Moreover, the Autonomy **would be able to receive grants from the Government of Serbia, which would go through a designated account in the Central Bank of Kosovo, as envisioned by the Ahtisaari Plan** (Articles 10 and 11). Financing will also be sustained by grants received from the European Union, other international organizations and bilateral donors. The Autonomy would also have the right to secure loans from international and commercial banks, all in line with the instructions given by the Central Bank of Kosovo. The Autonomy should be granted the right to collect revenues from selling water and electricity generated from the Gazivode/Ujmani water accumulation. The profit from this revenue should be used for socio-economic development projects in municipalities that continue to be affected by the construction of the Gazivode reservoir, namely Zubin Potok and Tutin (Republic of Serbia).

The Government of Kosovo should guarantee an amount of 60+ million EUR per year, which is close to the allocations that are currently being given to the four municipalities. Out of this amount, 30+ million EUR should be allocated for the functioning of the four municipalities and their institutions. An additional 10+ million EUR should be allocated for the implementation of strategic infrastructure and connectivity projects in this territory. Lastly, 20+ million EUR should come from the Fund for the Development of North Kosovo (the Customs Fund), which must be permanently institutionalized as a financial mechanism for socio-economic development in this territory.

The Government of Serbia should also guarantee an amount of 60+ million EUR per year, out of which 50+ million EUR will be used for financing healthcare, education and social protection institutions. This is close to the amount that is presently being spent by the Republic of Serbia for running these institutions in Kosovo. An additional 10+ million EUR will be allocated for financing programs in the field of culture, protection of cultural and religious heritage, humanitarian work, the Serbian Orthodox Church, civil society development and similar projects. All those allocations will be transparently spent through the aforementioned account of the Autonomy in the Central Bank of Kosovo, according to well-defined programs with clear objectives and priorities. The Government of Serbia will not finance any institution in Kosovo outside of financial allocations determined by this Agreement.

From its pre-accession funds, **the European Union should guarantee the amount of 10+ million EUR per year.** This amount should be used as technical assistance for strengthening the administrative capacities of the Autonomy and municipalities in north Kosovo (at least 1 million EUR/year), as well as on infrastructure, socio-economic development and environmental protection projects (at least 6 million EUR/year), private sector development (at least 2 million EUR/year) and the Civil Society and Media Development Program (at least 1 million EUR/year).

- 4) **Monitoring.** The European Union should establish a special mission, which would monitor the work of the Autonomy and support the implementation of all its provisions. This EU Mission would have an overall control of the work of the Autonomy, yet it will also deal with capacity building of the Autonomy's institutions, improving transparency of their work, strengthening democracy and pluralism, ensuring the effective implementation of its rule of law provisions, etc. Once a year the EU Mission would publish a monitoring report on the Autonomy and submit it to the Parliament of Kosovo and the European Commission. This report will also be shared with the Government of Serbia, which will be granted observer status in this control mechanism.
- 5) **Security.** The Autonomy would be a demilitarized zone under the protection of KFOR, without the possibility of the presence of the Kosovo Security Force or other military formations from Kosovo or other countries for at least ten years. Nevertheless, in the case of natural disaster or other kind of external threat, the Assembly of the Autonomy can invite the Kosovo Security Force to assist. Special police assignments for war crimes or organized crime would be performed by the police forces of the EU Mission.

Cultural Autonomy for The Serb Community living in Kosovo

- 1) The Serb community living in Kosovo will continue to exercise positive provisions of the cultural autonomy that are envisioned by the Ahtisaari Plan and the Kosovo Constitution. This will include ten reserved seats in the Parliament of Kosovo (Article 64), a number of ministers and deputy ministers in the Government of Kosovo (Article 96), use of Serbian as an official language in Kosovo (Article 5), provisions for protecting vital interests of the community (Article 81), and other provisions that preserve the cultural autonomy and collective rights of the Serb community in Kosovo.

- 2> As already mentioned, the **cultural autonomy for the Serb community should also include access to public institutions of the Autonomy of North Kosovo in the field of education, healthcare and social protection**. In other words, the Autonomy will be able to establish and run those public institutions in Serb communities throughout Kosovo.
- 3> The Serb-majority municipalities south of the Ibar River would retain their right to establish an Association in accordance with the Law on Local Self Government (Article 31), the Law on Inter-Municipal Cooperation and the provisions of the European Charter of Local Self-Government, but this Association would not have executive competences. These municipalities might also become beneficiaries of technical assistance and knowledge-sharing from municipalities and institutions that are part of the Autonomy of North Kosovo, or from the Autonomy itself.



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