

## **EFFORTS FOR CREATING THE COMMUNITY OF SERBIAN MUNICIPALITIES ARE A VIOLATION OF CONSTITUTIONAL AND LEGAL ORDER OF KOSOVO**

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### **ABSTRACT**

The concept of creating an association of Serb-majority municipalities, allegedly as a mechanism to provide protection exclusively for the Serbian community in Kosovo, is in contradiction with the spirit of a society proclaimed by the Constitution and laws of Kosovo as a multiethnic society. Instead of this, the establishment of the Serb-majority municipalities community in Kosovo should be justified focusing on how municipal cooperation would enable the said municipalities to be more functional, i.e. to perform their functions easier and more efficiently in terms of providing public services to their citizens in the most quickly and efficiently way, in accordance with the principle of subsidiarity and the constitutional principles on local autonomy, good governance, transparency and efficiency in providing public services. After all, the inter-municipal cooperation should be based on mutual interest, in joint work and joint activities among municipalities, on the freely expressed will of the municipalities signing the cooperation, on dividing roles and responsibilities, joining means and their resources, all this in order to increase the efficiency of municipal services on behalf of citizens.

**Keywords:** Community, association, ethnic, municipalities, institutions.

### **INTRODUCTION**

On the occasion of the signing of the first Agreement<sup>2</sup> between the Republic of Kosovo and Serbia to normalize relations between the two countries in 2013, with the mediation of the negotiations by the European Union, the Association or the Community of Serb-majority Municipalities has become almost the hottest point both in Kosovo politics and also in the political negotiations taking place between representatives of the Government and the Government of Serbia. This topic has been for the past few years the bone of contention in the already strained relations within the Government of Kosovo between coalition representatives consisted of the Albanian political parties and the representatives of the Serbian List, which as it is known, is openly under the direction directives of Belgrade Government. In this sense, the Government of Serbia, through the representatives of this list, has continuously conditioned including this list in the Kosovo government by meeting the terms of the coalition agreement reached between them and the Albanian political parties represented in the government, including here by all means also establishment of the community of Serb-majority municipalities.

Representatives of the Government of the Republic of Kosovo in turn, oppose such a claim arguing that then it would be unreasonable to proceed with further negotiations in Brussels over the discussions related to the association of municipalities, while the Serbian government is not committed more seriously to the implementation of the agreements that have been reached so far, especially in the implementation of agreements related to the

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<sup>2</sup> Agreement Kosovo- Serbia, Brussels 19 April 2013

integration of the judiciary in northern part of Kosovo, does not engage in disintegration of Serbian parallel structures, including active civil protection mainly in the north of the country, their integration into the institutional structures of the Republic of Kosovo, freedom of movement for all citizens without discrimination as well as the removal of barricades which have become a serious obstacle to the free movement of citizens and goods.

It is a common stand of all Albanian political parties, regardless whether in power or opposition, not to allow the association of Serb-majority municipalities harm the constitutional order of the Republic of Kosovo, so that it would become a subject outside the constitution and beyond control of the central institutions of the country, which would block the state and society in general, as it happened in Bosnia and Herzegovina.

Under the law in force on administrative municipality boundaries, the community of Serb-majority municipalities is planned to include six municipalities that are established during the decentralization process: Gracanica, Ranillug, North Mitrovica, Novo Brdo, Partes and Klokot, along with four other municipalities that already existed: Zvecan, Leposavic, Zubin Potok and Strpce. Based on the first agreement reached in 2013 between representatives of the governments of both countries, under its first point, it is proclaimed the possibility that the membership in the association of municipalities will be open to any other municipality, under the assumption that the participating municipalities in this community do agree on such a new membership. Setting out such a condition that the unanimous consent of those municipalities mentioned above is needed in order to join the association means that the membership will remain exclusively to the Serbian majority and no real likelihood is seen that any of the Albanian-majority municipalities will one day join the community, so the chances are that such association of municipalities would be consisted of ten mentioned municipalities all of which being Serb-majority municipalities.

### **Legal Framework on the possibility of establishment of new municipalities**

Based on the legal framework, the establishment of new municipalities in Kosovo is possible to be realized under certain conditions at any time, moreover, the Law on Administrative Municipal Boundaries determines that the establishment of new municipalities, merger, separation, alteration of boundaries, and delineation of current name and residency of the municipality can be effected through the amendment of this law, but the administrative boundaries shall not be altered without prior consultation with citizens of municipalities or parts of municipalities affected by such alteration. Furthermore, it is pointed out that the Government shall engage in consultations with non-majority communities when such communities make up 75% of the population of one concentrated settlement in one or more cadastral zones with a minimum total population of 5,000 citizens with a view to establishing new municipalities.

In the light of above, it is clear that such a, let say, ethnic concept of the establishment of the Association of Serb-majority municipalities, allegedly as a mechanism to provide protection exclusively to the Serb community in Kosovo, is in contradiction with the spirit of the society proclaimed by the Constitution and laws of Kosovo as a multiethnic society. Instead of this, the establishment of the community of Serb-majority municipalities in Kosovo should be justified focusing on how municipal cooperation would enable the said municipalities to be more functional, i.e. to perform their functions easier and more efficiently in terms of providing public services to their citizens in the most quickly and efficiently way, in accordance with the principle of subsidiarity and the constitutional principles on local

autonomy, good governance, transparency and efficiency in providing public services. After all, the inter-municipal cooperation should be based on mutual interest, in joint work and joint activities among municipalities, on the freely expressed will of the municipalities signing the cooperation, on dividing roles and responsibilities, joining means and their resources, all this in order to increase the efficiency of municipal services on behalf of citizens.

As far as education, health and culture, inter-municipal cooperation between municipalities with Serb majority is concerned; it will enable the creation of better conditions for providing services to citizens, because these in due course, are responsibilities that are closely related to language, culture and even the history of the Serb population in Kosovo. Whereas, concerning the urban planning and economic development, additional responsibilities mentioned in the first Agreement are less evident because these are areas that are not directly related to national identity, but rather are related to various geographical factors on both regional and municipal levels, while the Serb-majority municipalities geographically do not constitute a compact entirety. This is because, if we take into account the geographical factor, it is difficult to justify why should, let say, the municipality of Partes cooperate in terms of urban and regional planning and economic development with the municipality of Strpce, where it could achieve this cooperation with the municipality of Gjilan or Viti.

According to the legislation in force on local government finances, the amount of the total grant is 10% of the total revenue available to state government, excluding, in this case, the revenue from the sale of assets, extraordinary revenues, dedicated income and revenues the state could benefit from borrowing. Once the fixed sum in the amount of 140,000 euros is allocated to each municipality, minus 1 euro per capita, the rest is distributed to municipalities in proportion to the factors mentioned above, the number of population, the number of minority population, etc.

Finally, concerning the financial implications, considering this formula, as explained above, of the allocation of the overall grant of the Central Government for the municipalities, according to which formula, 10% of the state budget from regular revenues is dedicated to municipalities, then, the increase of the number of municipalities has an impact on reducing the amount of grants to all municipalities involved both those newly established and the existing ones.

If we approach the issue of establishment of new municipalities in terms of the number of civil servants that each municipal administration in Kosovo should have, we will see that the decision of the Government adopted in 2008<sup>3</sup>, there were established two basic criteria on the size that the municipal administrations in the territory of Kosovo will have, where, according to the first criterion, all the municipal administrations regardless of the size of their municipality, in order to fulfill the set legal obligations, need to have at least 55 civil servants. While the second criterion set in this case, all the municipalities in Kosovo having 100,000 inhabitants, one civil servant shall serve for every 620 citizens, and, in those municipalities where the number of residents is under 100,000, one civil servant shall be needed for every 780 citizens.

According to this logic, all new municipalities established should have at least 55 civil servants employed to be able to perform its legal obligations as municipality and the said

decision specifies that the number of civil servants in the existing municipalities from which new municipalities are established should be reduced, although this rule has almost never been respected by those municipalities that were affected by the change of boundaries, which can be illustrated by the case of municipalities of Gjilani, Prizren, Pristina, Kamenica, Vitia etc. . from which territory there were established several new municipalities such as Gracanica, Ranilug, Partes, Klokot etc. where, although there is contraction of territory and reduction of population, it is not noticed any reduction of civil servants in proportion to the changes occurred, in contrary, in some municipalities their number even increased, which, taking into account these facts , the municipal budgets will be exacerbated to the extent of disregarding these rules and to the extent of the increase in the number of employees.

### **Establishment of communities of the municipalities on ethnic grounds**

The concept of establishment of the community of municipalities on ethnic grounds is also challenging related to the legal and constitutional character of a multi-ethnic state in Kosovo, because the Constitution of Kosovo proclaims the idea that local government in Kosovo should pay particular attention to specific needs and interests of communities that are not majority in Kosovo and also to the their members. In this case, in all the municipalities mentioned above, which constitute the Serbian majority, live also the non-Serb communities, and in some municipalities with a significant percentage of them. Therefore, the establishment of any entity or institution on an ethnic basis excluding other communities is in contradiction the constitutional and legal principles on the existence of a multi-ethnic society and a state as is the case with Kosovo.

Despite what has been stated so far, although more than two years elapsed from the time when the first agreement was reached, the issue of community of Kosovo Serb-majority municipalities remains unsolved, not only because of the lack of political will to push the issue ahead, but also because by the reached agreement it was not clarified how actually would such a community of Serb-majority municipalities look like, and what would its responsibilities and functions be. The Government of Serbia, through the Kosovo Serb political representatives, continues by political pressure to condition the Government of the Republic of Kosovo with the establishment of the community of Serb-majority municipalities as a precondition for the remaining Serb community in Kosovo, arguing that the fact that the establishment of such a community will provide the community constant financial support from the Government of the Republic of Serbia, especially in those sectors of more importance such as health, education, economic development, urban planning, etc. and also, according to their claims , the municipal community will provide the Serb community living in Kosovo, protection, security, stability and autonomy to decide on issues of vital interest, without the intervention of the central government. On the other hand, Kosovo state institutions support the stance that the community of Serb-majority municipalities does not offer any political and territorial autonomy or have as such any executive decision-making character, but simply provides a consultative inter-municipal cooperation established on the grounds of the free will of participating municipalities as foreseen by the laws applicable in Kosovo. Through such a promotion, Kosovo institutions intend to minimize the concerns of the citizens of Kosovo, according to which the community of such municipalities with Serbian majority can turn into a community that will work under direct Belgrade's directives, governing thus a part of the territory of Kosovo in an autonomous manner and thus threatening to block Kosovo central level decision making, leading to the conclusion that

Kosovo cannot function as an independent state, a similar practice followed also in the case of Bosnia and Herzegovina.

In relation with the establishment of the community of Serb-majority municipalities, based in Brussels Agreement, the parties have agreed to establish a joint management team whose task would be to draft a charter for the community of Serb-majority municipalities clarifying in it all issues relevant to the establishment of this community such as purpose, administrative structure, decision-making procedures and competences of the community. According to the agreement, the team would be established by May 2013, and his work would be finalized by the end of that year, when the municipal elections in Kosovo were planned, and after those elections there would be established the community of Serb-majority municipalities and until that time the role of representing that community would be carried out by the management team itself. In this regard, the team was responsible to write a comprehensive report on the activities that are in the general interest of the citizens, especially in the area of economic development, education, health care and urban planning. In particular, the responsible team was engaged in facilitating the cooperation between the four municipalities in northern Kosovo in order for them to exercise their responsibilities in accordance with the laws of Kosovo and the European Charter on Local Self-Government.

Notwithstanding the foregoing, after two years of the establishment of the management team consisting of representatives of four municipalities in northern Kosovo, and despite the fact that the local elections were held in Kosovo at the end of 2013, where the "Srpska" list won nine out of ten Serb municipalities, the community of Serb-majority municipalities has not yet been established and also the statute on the establishment of this community, has not yet been drafted by the management team, which according to the plan for the implementation of the reached agreement had the responsibility to prepare such a document. There are several reasons why this delay has occurred: the difficulties in organizing the municipal elections for the mayor in North Mitrovica, where there were needed four rounds of the election until he was elected and also the organization of the premature elections for the Assembly of Kosovo and the political stalemate following the electoral process for about six months until the new institutions were established, are factors that have contributed to the establishment of the community of Serb-majority municipalities. After the establishment of the Government of Kosovo reached through the coalition between the two largest Albanian parties and the lista srpska, the latter still conditioned its entry into government with the establishment of the Community of Serb-majority Municipalities, however, so far there is nothing concrete yet in this regard, as there are not only external political factors that have blocked the process, but there are internal weaknesses in the implementation process of the plan for establishing such a community.

Firstly, differences in interpreting the agreement reached by the two state governments, resulted in an absolute lack in connection with substantive discussions on competences and structure of this community, because it rarely had so many actions in play and that such community of Serb-majority municipalities can not only change the entire system of protection of communities, but it also affects the overall functioning of Kosovo's constitutional order.

Secondly, what has influenced this process be procrastinated is the fact that the responsible team relied heavily on the Serbian government authorities consistently circumventing relations with central authorities in Kosovo. This was reflected in several cases, for example when this team has not represented as it has been provided in the Consultative Council for

Communities, then refusing at the beginning to cooperate in this matter with the Ministry of Local Government, although this team has been formed by the ministry itself; these were factors that led to a situation that this community is not operational to this very day.

## **CONCLUSION**

All created circumstances lead to the conclusion that the process regarding the establishment of the community of Serb-majority municipalities, needs a new beginning, through negotiations mediated by the European Union between the governments of Kosovo and Serbia, on which occasion there will be reached a clear agreement on the structure, competences and functions, and the method of financing of this community of municipalities, issues which, by so far agreements, are not fully defined, leaving the possibility to have such divergences in the their interpretation and implementation at practice. Moreover, this process should be characterized by transparency in order to eliminate concerns and uncertainty of the majority Serb population in these municipalities in relation to the impacts that the establishment of such an association might have in their daily life and on the other hand, there would be taken into account also the concerns of the Albanian population and other non-Serb communities regarding the impact of this association in the normal functioning of the constitutional and legal order in Kosovo.

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