

# THE ASSOCIATION/COMMUNITY OF SERB-MAJORITY MUNICIPALITIES

## Breaking the Impasse



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# TABLE OF CONTENTS

- Introduction.....8**
- 1. Inter-municipal cooperation from an international perspective.....12**
  - 1.1 The rationale behind inter-municipal cooperation..... 12*
  - 1.2 Operational and/or coordination tasks..... 13*
  - 1.3 Inter-municipal cooperation and community rights: the Joint Municipal Council..... 13*
- 2. Inter-municipal cooperation in the Kosovo legal framework and practice.....15**
  - 2.1Municipal partnerships.....16*
  - 2.2 Municipal associations.....17*
- 3. The competences of the Association/Community of Serb-Majority Municipalities: Operational and/or coordination tasks?.....19**
- 4. Institutional autonomy and coordination.....22**
  - 4.1 Education.....23*
    - 4.1.1 Education in Kosovo municipalities.....24*
    - 4.1.2 Inter-municipal cooperation in Serbian-language education.....25*
  - 4.2 Health and social care.....26*
    - 4.2.1 Health and social care in Kosovo municipalities.....26*
    - 4.2.2 Inter-municipal cooperation between Serb-majority municipalities in health and social care.....27*
  - 4.3 Culture.....28*
  - 4.4 Local economic development.....29*
  - 4.5 Rural and urban planning.....29*
- 5. Relations between municipalities and inter-municipal cooperation units.....31**
  - 5.1 The establishment of inter-municipal cooperation.....31*
  - 5.2 The internal organisation of inter-municipal cooperation.....33*
- 6. The Association within Kosovo’s multi-tiered community protection mechanism.....35**
  - 6.1. Guaranteeing the multi-ethnic character of the Association.....35*
  - 6.2 The Association and community representation and protection mechanisms at the central level.....37*
- 7. The Association and the Republic of Serbia.....39**
- Recommendations.....41**

## KEY POINTS

- \* The legal framework for the Association should be formulated through an **inclusive and transparent process**, consisting of two phases. In the first instance, a framework should be formulated, in the form of a by-law defining the legal possibilities and limitations for inter-municipal cooperation between Serb-majority municipalities. In the second instance, representatives of ten Serb-majority municipalities formulate one or more draft Statutes for inter-municipal cooperation within the contours of this framework as defined by a by-law.
- \* The Association should be framed as an exercise in inter-municipal cooperation, in the spirit of Kosovo's governmental set-up, which provides for far-reaching local self-government and inter-municipal cooperation as a mechanism to promote and protect the rights of communities in Kosovo while guaranteeing the functionality of the Kosovan state.
- \* **Participating municipalities remain the basic units of local self-government** and should establish accountability mechanisms to check and follow-up on the work of the Association and have the opportunity to withdraw from the Association at any stage.
- \* Inter-municipal cooperation between Serb-majority municipalities can bring back some degree of institutional order and structure and thus **improve the quality of the provision of services at the local level**, while maintaining financial, technical and symbolic links with the Republic of Serbia.
- \* The Association should be an **inter-municipal body** with the **legal status of an association** according to Kosovo law. It will coordinate the interests of the participating municipalities in the domains of local democracy, local economy, education, primary and secondary health and social care; urban and rural planning, local living conditions for returnees to Kosovo, research and development, and culture.
- \* The participating municipalities should establish **joint public institutions** for jointly exercising competences of the municipalities when it comes to Serbian-language education, health and social care, and culture, in line with relevant provisions of the Law on Inter-Municipal Cooperation. These joint public institutions will be closely related to, but independent of the inter-municipal Association.
- \* The legal framework for the establishment of these joint public institutions should be composed of an administrative instruction defining the possibilities and limits of municipalities to establish associations, a by-law on the implementation of Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia adopted and signed in September of 2013 on the one hand, and a by-law on the implementation of the Law on Inter-Municipal Cooperation of 2011 on the other.
- \* The Association's upward impact on **central level government** should be limited and integrated into existing mechanisms for community representation at the central level, particularly the Consultative Council for Communities.

- \* The Association should uphold the principle of **multi-ethnicity** that is key to Kosovo's foundation. Its name will be neutral and the Deputy Chairpersons for the Communities of each of the participating municipalities will receive a seat in the Association's Council, to guarantee that the Association upholds the principles of multi-ethnicity.
- \* The **Republic of Serbia** will provide financial and technical support to the Association, in a transparent manner and through the participating municipalities, in accordance with existing legislation governing such financial and technical support in Kosovo.

## INTRODUCTION: THE ASSOCIATION AS AN EXERCISE IN INTER-MUNICIPAL COOPERATION

As an important element of the EU-supervised process of normalisation between Kosovo and Serbia, both countries agreed to the establishment of an Association / Community of Serbian Majority Municipalities in Kosovo (hereafter, “the Association”).<sup>1</sup> This proposed institution, as described in the landmark April 2013 First Agreement on the Normalisation of Relations, and an August 2015 follow-up agreement on general principles / main elements, has potentially transformative implications for the future of Serb communities in Kosovo, and Kosovo’s governance more broadly. As foreseen in the relevant agreements, the Association is intended to represent the collective interests of those municipalities in Kosovo with an ethnic Serb majority, especially in the domains of education, healthcare, urban and rural planning and economy.

Many of Kosovo’s Serbs have high expectations for this new entity, investing in it their hopes for institutional autonomy and close links with the Republic of Serbia as prerequisites for a sustainable future in ethnic Albanian-majority Kosovo. In the Albanian community, resistance has been pronounced, especially among opposition parties which perceive the Association as a form of territorial autonomy cementing Serbia’s control over the Kosovo Serb community and contrary to Kosovo’s multi-ethnic character. Many Kosovo analysts have also questioned the need for the Association, arguing that Kosovo’s legislation already provides Serb-majority municipalities with specific and enhanced powers that allow for substantial self-governance.

The implementation plan for the initial agreement of April 2013 foresaw that a Management Team composed of representatives from the four northern Serb-majority municipalities would draft a Statute within six months of the date of the agreement (i.e. October 2013) and that the Association would be formed immediately following the local elections which were held at the end of 2013. The August 2015 agreement stipulated that the Management Team would draft the Statute within four months of the date of the agreement (i.e. by the end of December 2015), and that a Kosovo Government decree would endorse the Statute upon agreement in the high-level Dialogue.

To date, there has been virtually no progress, however, on the development of a draft Statute acceptable to all major stakeholders and minimal informed public debate on the content of the agreements and practical implications for both Serb communities and Kosovo more broadly. Instead, discussion of the Association has been rancorous and polarised, with Serbia and Serb leaders in Kosovo exploiting ambiguous language in the relevant agreements to declare it a vehicle for autonomy, and Kosovo’s leaders relying on the same ambiguity to insist the Association will be modelled after the existing Association of Kosovo Municipalities, which is explicitly mentioned in the Agreements, and which operates as an NGO.

The agreements do not explicitly outline how the Association will operate. This is further complicated by a December 2015 ruling of the Constitutional Court of Kosovo which found that many elements of the August 2015 Agreement were not in accordance with Kosovo’s constitutional framework. Kosovo’s Prime Minister Isa Mustafa was quick to announce that his government would only decree a Statute that is in line with the opinion of the Court.

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<sup>1</sup> In line with the recommendation made in this concept policy paper to change the name of the Association/Community of Serbian Majority Municipalities, we will use the term Association throughout.

This paper seeks to contribute to the development of a draft Statute by offering concrete recommendations. It assesses, to the extent possible given the information at hand and in relation to current developments in Kosovo, the value-added of an association of Serb-majority municipalities, based on sound principles of inter-municipal cooperation: specifically, what it can concretely do to address the needs and concerns of the Serb community in Kosovo. Based on this assessment, it makes a realist clarification of the possible impact the Association might have on the functionality of the Kosovan state and how to minimize negative consequences. The paper also makes concrete recommendations on the procedure to follow for the establishment of a framework—composed of an administrative instruction and by-laws—which should define the possibilities and limits of inter-municipal cooperation between Serb-majority municipalities, elaborate procedures for the establishment of inter-municipal cooperation, and elaborate procedures for implementing the 2013 Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia.

The starting point of this paper is that the Association should be framed as an exercise in inter-municipal cooperation, rather than institutional, territorial or cultural autonomy. This approach abides by the spirit of Kosovo's governmental set-up, which entrenches far-reaching local self-government and opportunities for inter-municipal cooperation as one of the pillars for protecting and promoting the rights of communities in Kosovo. The decentralisation process, a crucial element in the Ahtisaari Plan and subsequently embodied in Kosovo's legal framework, created or expanded six new municipalities with a Serb majority, namely: Novo Brdo/Novobërdë, Mitrovica/Mitrovicë North, Gračanica/Graçanicë, Ranilug/Ranillug, Parteš/Partesh, and Klokot/Kllokot.<sup>2</sup> In addition to the four already existing municipalities with a Serb majority (Leposavić/Leposaviq, Štrpce/Shtërpçë, Zubin Potok, Zvečan/Zveqan), these will form the members of the Association.

Carving out municipalities with a Serb-majority population, in addition to the far-reaching autonomy Kosovo municipalities enjoy and possibilities for support from the Republic of Serbia, is precisely intended to grant the Serb community in Kosovo considerable self-governance at the local level, while not threatening the integrity and functionality of the Kosovan state. This paper develops a model of inter-municipal cooperation between Serb-majority municipalities that uphold these founding principles of the Kosovan state.

The central argument is that inter-municipal cooperation between Serb-majority municipalities can bring back some degree of institutional order and coordination and thus improve the quality of the provision of services at the local level, while maintaining financial, technical and symbolic links with the Republic of Serbia. Thus, the Association can potentially meet the concerns and demands of the Kosovo Serb community, while still operating under the overall framework of inter-municipal cooperation as defined by relevant laws in Kosovo.

The model for the Association presented here is directed downwards, towards the level of local self-government, as a concrete measure to coordinate, rationalise and institutionalise the provision of public services. Its upward impact on central level government is limited and integrated into existing mechanisms for community representation at the central level. In that way, concerns and fears of the Kosovo Albanian majority that the Association will make the Kosovan state dysfunctional are largely addressed.

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2 ['Law \(Nr. 03/L-041\) on Administrative Municipal Boundaries'](#) (20 February 2008), Art. 5.

Concerns about the functionality of the Kosovan state shouldn't be discarded light-heartedly. While each new agreement between Pristina and Belgrade diminishes the presence of Serbian law and state institutions in Kosovo, the Association clearly perpetuates a strong role for Serbia in the affairs of Kosovo's Serb community. If not clearly conceived as an exercise in inter-municipal cooperation, Belgrade's proactive approach to the affairs of Kosovo Serbs, using political and financial clout to ensure obedience, could make the Association into a real hindrance to Kosovo's further institutional development. Against this context, this model for the Association focuses on local self-government, where support from the Republic of Serbia can make a significant difference in the daily lives of the Kosovo Serb community. The role of the Association in representing the Kosovo Serb community at the central level is, however, reduced to an absolute minimum and incorporated into existing mechanisms. In that way, this model mitigates the risks when it comes to the functionality of the Kosovan state. However, let it be clear that for the Association to be effective, a constructive and transparent approach from all stakeholders is required.

The paper begins with a survey of the literature on inter-municipal cooperation in international practice. It clarifies what the actual rationale is behind inter-municipal cooperation, presents a typology, and assesses how it relates to the protection and promotion of the interests of minority communities. The second chapter scrutinises Kosovo's legal framework on local self-government and inter-municipal cooperation. This broader understanding of inter-municipal cooperation is applied in chapter three to shed light on the 2013 and 2015 agreements on the Association and the decision of the Constitutional Court. Chapter four then translates the proposed competences of the Association into concrete policy recommendations for how inter-municipal cooperation between Serb-majority municipalities could be organised, against the existing legislation on municipal competences and inter-municipal cooperation, and against the findings of extensive research on the needs and expectations of the Kosovo Serb community. In chapter five, the paper takes into account the position of non-Serb communities residing in municipalities to be included within the Association, and means to protect and promote the interests of all communities within the Association in line with Kosovo's multi-ethnic spirit. The sixth chapter defines the relations between the Association and the central level of government and presents a model for bringing the Association in harmony with existing mechanisms for community representation and protection at the central level. Chapter seven, finally, scrutinises the role of the Republic of Serbia in providing technical and financial support.

The paper concludes with practical recommendations to policymakers in Kosovo that could serve as the framework for a draft Statute on the Association that strikes a compromise between the needs and expectations of Kosovo's Serb communities (and commitments in the Kosovo–Serbia normalisation agreements) with the protection of Kosovo's governability within the existing constitutional and legal frameworks.

With regard to methodology, the study is based on a close reading of the 2013 and 2015 agreements between Kosovo and Serbia, and the 2015 decision of the Constitutional Court of the Republic of Kosovo. It frames the Association within Kosovo's legal system, especially the laws on municipal competences and inter-municipal cooperation, as well as literature on inter-municipal cooperation in international practice. Besides the legal framework, the paper takes into consideration expectations and concerns of both the Kosovo Serb community as well as the Kosovo Albanian majority. It relies on three years of closely following both inter- and intra-community debates in media, politics and the civil society sector, as well as numer-

ous studies carried out on the topic by civil society organisations. In addition, for the purpose of this paper in-depth semi-structured interviews were carried out with representatives of the Kosovo Serb community from various sectors (politics, economic development, education, health care) and representatives of relevant Kosovo institutions (Ministry of Local Self-Government and Administration, the Association of Kosovo Municipalities). These interviews were carried out in March-April 2016. Interlocutors were selected on the basis of their technical expertise in matters of inter-municipal cooperation and the particular domains where the Association is expected to have competences. Politicised standpoints were avoided.

# 1. INTER-MUNICIPAL COOPERATION FROM AN INTERNATIONAL PERSPECTIVE

## 1.1 The rationale behind inter-municipal cooperation

Forms of inter-municipal cooperation have gained importance in Europe during the past decades as a strategy to address developments that have put increasing pressure on local governments. First of all, the expanding scale of production of public service has made it more difficult for local governments to provide adequate public services that meet the quality demands of the population. In addition, due to urbanisation and emigration, many small and rural municipalities face an outflow of the population, which has put even more pressure on the provision of public services. Secondly, the physical mobility and fragmentation of the social participation of the population means that people often do not stay within their municipalities for public services. The result is that administrative functions performed at the local level got smaller than the activity space of their inhabitants. "The strong interdependencies between large-scale social processes and an ever more complex society and between corresponding interventions of local government require policy making on a scale that exceeds the territorial scale of even the larger communities."<sup>3</sup> Thirdly, there is a growing market pressure on local government in the form of diminished government intervention in provision of public services, which are more and more provided by private institutions (assigned by local government) and the application of market logic for evaluating provision of public services. The European Union provides financial opportunities for local governments, but tough competition with other regions and strict requirements also challenge municipal capacities.<sup>4</sup>

The rationale behind inter-municipal cooperation is that it maintains local self-government while establishing more rational governance that manages to cope with the pressures mentioned above. The chief motive behind inter-municipal cooperation is a desire for greater management effectiveness, more services and better delivery at lower cost. "Inter-municipal cooperation on one hand creates some form of institutionalised governance to address the issues of scale and rising market pressures on local government. It aspires to provide for public service delivery that meets the rising demands of the citizens of the local communities at the lowest costs possible, it seeks to regulate the externalities of local policies to prevent the waste of public resources and to strengthen the capacity of the joint municipalities to cope with the opportunities and threats of an increasingly complex and dynamic environment.

On the other hand, inter-municipal cooperation leaves the policy domain of local government intact. Irrespective of the form it takes, there is no permanent transfer or loss of local tasks or competencies, and somehow local governments keep control over the decisions and services that result from cooperation. As a consequence, inter-municipal cooperation prevents – in theory at least – local democracy, valued for the small distance between the electorate and the administration, from being hollowed out as a result of the pressures on local government."<sup>5</sup>

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3 HULST, Rudie & André VAN MONTFORT. 'Inter-Municipal Cooperation: A Wide-Spread Phenomenon', in: Rudie Hulst & André Van Montfort (eds), *Inter-Municipal Cooperation in Europe* (2007), pp.1–21, p.3.

4 Ibid. pp.3–4.

5 Ibid. pp.8–9, see also COUNCIL OF EUROPE [European Committee on Local and Regional Democracy]. [Good Practices in Inter-Municipal Cooperation in Europe](#) (2007), pp.14–19.

## 1.2 Operational and/or coordination tasks

In practice, inter-municipal cooperation covers a multitude of tasks. A distinction can be made between inter-municipal cooperation with operational and coordination tasks. The first comes down to the joint delivery of public services within the competences of municipalities. Forms of inter-municipal cooperation with coordination tasks serve as consultation platforms for planning externalities of local policies and promoting the common interests of local governments.

This distinction is reflected in the degree of organisational integration. Cooperation can be institutionalised into integrated inter-municipal cooperation. This takes the form of a standing organisation, where specific tasks are transferred to the joint authority. In this case, the decision-making power of the individual municipalities is taken over by a jointly controlled board or council that governs a staff of officials involved in policy making or service delivery: “The establishment of a standing organisation implies the concentration of decision-making powers and the integration of activities formerly carried out by the different municipalities into one organisation.”<sup>6</sup> “The most integrated inter-municipal action is performed by a specific autonomous body, centralising a large number of key competences and enjoying significant resources and wide decision-making powers. The aim is co-operation between local authorities, which are public corporations, within a specific public body wholly designed for the joint management of services that are usually of general benefit. That public body is designed to be able to take decisions itself on behalf of member municipalities via integrated internal mechanisms, which somewhat limits those authorities’ autonomy.”<sup>7</sup>

The other extreme is a loosely coupled policy network that serves as a means for mutual consultation, coordination and joint decision-making, but the actual management of the relevant tasks or policies remains in the hands of the local authorities. “Municipalities work together in specific policy fields but it does not extend to the transfer of the relevant authority or task to a regional cooperation and the municipalities therefore retain the power of decisions.”<sup>8</sup> In the latter case, the inter-municipal cooperation does not implement joint decisions and has no integrated staff.

## 1.3 Inter-municipal cooperation and community rights: the Joint Municipal Council

The distinguishing element of the Association is that it brings together municipalities with a Serb majority. As such, it seems to add an element of community rights protection and promotion to the logic of inter-municipal cooperation. This is made explicit in the name of the Association and the agreement on general principles/main elements of 25 August 2015, which states that the Association will promote the interests of the Kosovo Serb community.<sup>9</sup>

The rationale behind the establishment of inter-municipal cooperation – making the delivery of public services more efficient – seems to not be related to the protection of community rights. Community rights protection mechanisms are typically of a territorial or non-territorial nature. The former links particular community rights to a certain territory and often takes the form of regional autonomy. The latter grants community rights to individuals on a non-territorial basis, often in the form of cultural autonomy. Far-reaching competences for local govern-

6 Hulst & Van Montfort: ‘Inter-Municipal Cooperation’, pp.13–14, quotation on p. 14.

7 Council of Europe: *Good Practices*, pp.9–10.

8 Hulst & Van Montfort: ‘Inter-Municipal Cooperation’, p.14.

9 ‘Association/Community of Serb majority municipalities: General principles/main elements’ (25 August 2015), Art. 9.

ments combined with particular rights for communities at the municipal level – as is the case in Kosovo – in fact presents a middle ground between these two principles. Inter-municipal cooperation, however, is rarely established as a means to promote and protect the rights of particular communities living within those municipalities. One of the sole examples is the Joint Municipal Council (ZVO), which brings together municipalities with a Serb majority in Eastern Slavonia, Baranja and the Srem in Eastern Croatia.<sup>10</sup> The Council is a non-governmental and not-for-profit organisation (Art. 1) with the goal to promote and protect human rights, strengthening of democratic institutions and rule of law and a better life for every person and particularly to realise and protect the rights and interests of the Serb national community (Art. 12).<sup>11</sup>

The competences of the Council are mostly those of a consultative and advisory body. In the domains of media, education, and culture, the ZVO has some operational competences. The Council, among others:

- (a) Takes care of (“voditi brigu”) the realisation of the human, civic and ethnic rights of members of the Serb national community;
- (b) Analyses the situation in the municipalities and gives recommendations to authorised organs in order to improve the situation;
- (c) Establishes and manages media channels for the Serb national community (TV and radio);
- (d) Follows the implementation of full cultural and educational autonomy and provides recommendations for improvement;
- (e) Takes care of the registration of schools that teach in the Serbian language and Cyrillic alphabet;
- (f) Takes care of the appointment of supervisors and advisors for education in Serbian;
- (g) Takes care of the allocation of funds for the renovation of school buildings for teaching in Serbian;
- (h) Cooperates with authorised institutions with regard to textbooks for primary and secondary education in Serbian (Art. 13), etc.

These competences are reflected in the four committees within the Council: media; human rights and health; education, culture and sport; project centre. The Council receives financing from the Croatian government, participating municipalities, the Serbian government, and income for its own possessions (Art. 49).

When it comes to relations with the central level, the Council is a founding member of the Serb National Council, a coordination body of the Serb national minority in Croatia which protects and promotes the national, cultural, linguistic and religious identity of the Serb national minority in Croatia in cultural matters, media, legislation, and public administration.

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<sup>10</sup> GOVERNMENT OF CROATIA. ‘Zajedničko vijeće općina: Organizacija, status, sastav, nadležnost i financiranje’ (23 May 1997), quotation: Art. 2.

<sup>11</sup> ‘Statut Zajedničkog vijeća općina’ (15 September 2006).

## 2. INTER-MUNICIPAL COOPERATION IN THE KOSOVO LEGAL FRAMEWORK AND PRACTICE

Municipalities have the constitutional right to inter-municipal cooperation and cross-border cooperation.<sup>12</sup> 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 interest and to realise joint goals and interests in the field of municipal public services and local development.<sup>13</sup>

The hierarchy between the individual municipalities and an 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.<sup>14</sup> The Kosovo legal framework explicitly adheres to the European Charter of Local Self-Government Charter, which 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.”<sup>15</sup> 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.

Kosovo law makes a distinction between municipal partnerships and associations. 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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup>

12 [Constitution of the Republic of Kosovo](#), Art. 124.4.

13 '[Law \(Nr. 03/L-040\) on Local Self-Government](#)' (20 February 2008), Art. 29.1; '[Law \(Nr. 04/L-010\) on Inter-Municipal Cooperation](#)' (21 July 2011), Art. 3.1.1.

14 'Law on Inter-Municipal Cooperation', Art. 4.3.

15 COUNCIL OF EUROPE, [European Charter of Local Self-Government](#) (Strasbourg 1985), Art. 4.4.

16 '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.

17 'Law on Local Self-Government', Arts 31–32; *Kosovo Status Settlement*, Annex III, Art. 9.2.

18 Council of Europe: *European Charter of Local Self-Government*, Art. 10.2.

According to Kosovo law, various types of inter-municipal cooperation can be established for the delivery of public services:

- a) Joint working bodies or committees for reviewing certain matters determined under the competence of the municipality.
- 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.<sup>19</sup>
- c) Joint public enterprises for performing local public services, in compliance with conditions and procedures set forward by the Law on Local Enterprises.<sup>20</sup>
- 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 founder, mutual rights and obligations of the institution and the founders, duration of the operation, and organisational and management structure of the organisation.<sup>21</sup>
- e) Joint public-private partnerships for performing local public services and providing public infrastructure, in compliance with the legislation on public-private partnerships.<sup>22</sup>

## 2.1 Municipal partnerships

Regardless of the legal possibilities, there are very few agreements between municipalities on the joint exercise of certain competences. The reasons are twofold. First of all, there is a lack of willingness on the part of local power holders to share competences and budget. Generally, it is in the political interest of local governments to present improvements in infrastructure and services as their own making, and not shared with others.

In addition, there is a lack of capacities to design and implement joint projects. When deciding to sign bilateral agreements on common projects or implementing services in common, municipal assemblies must first:

- Approve the overall framework of the Agreement;
- Appoint a person responsible to sign the Agreement (usually the mayor);
- Approve the agreement after is signed;
- Allocate funding for the project/services;
- Deposit the agreement with the Ministry of Local Governance Administration (MLGA).

The MLGA has found that most of the existing inter-municipal cooperation agreements do not fulfil the legal criteria.

The MLGA is actively supporting inter-municipal cooperation. It has three programmes on local economic development, through which it has previously funded infrastructure projects bene-

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<sup>19</sup> 'Law on Inter-Municipal Cooperation', Art. 11.

<sup>20</sup> 'Law on Inter-Municipal Cooperation', Art. 12.

<sup>21</sup> 'Law on Inter-Municipal Cooperation', Art. 13.

<sup>22</sup> 'Law on Inter-Municipal Cooperation', Art. 9.

fitting two or more municipalities. The MLGA is compiling a database of existing inter-municipal cooperation agreements, and has identified three core areas where inter-municipal agreements could be effective:

- Environmental protection;
- Economic development;
- Transport.

The MLGA has suggested to several municipalities to establish joint management bodies for services offered in more than one city (e.g. transport in Pristina), but has not received a positive response.<sup>23</sup>

Among the few cases of concrete inter-municipal cooperation are Local Publicly-Owned Enterprises, which provide important services to citizens in multiple municipalities. These Local POEs are governed by a Board of Directors where all municipalities are represented by a Board Members, and whose voting shares are determined based on the ownership shares of each respective municipality. The Law on Publicly Owned Enterprises allows for the establishment of publicly-owned enterprises (POEs), providing services in supplying water to households and businesses, district heating, waste collection, transportation, etc. These enterprises can be established by a decision of the Government or of the Assembly, in the case of Central POEs, or by one or more municipalities in the case of Local POEs. If one or more municipalities decide to establish a POE in order to provide important services such as water supply or waste collection to the citizens in one or more municipalities, that decision needs to be approved by the Government of the Republic of Kosovo. The Local POEs in turn are owned by the municipality or municipalities which established the POE, and the ownership share of each municipality is based on the percentage of customers served by the Local POE in respective municipalities. The exact number of ownership shares is determined by a decision of the Government. The Law also clarifies the exercise of shareholder rights by municipalities, which are to be exercised by a Municipal Shareholder Committee, entitled to act on behalf of the Municipality in accordance with the Law on Business Organizations.<sup>24</sup>

## 2.2 Municipal associations

The other, associational or cooperative form of inter-municipal cooperation is present in Kosovo in the form of the Association of Kosovo Municipalities (AKM). The 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.<sup>24</sup> 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;
- Represents the general interests of local authorities within Kosovo and international organisations;

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<sup>23</sup> All the above information is taken from an interview with Agron Maxhuni, Head of the Legal and Municipal Monitoring Department at the Ministry of Local Governance Administration, 29 March 2016.

<sup>24</sup> ASSOCIATION OF KOSOVO MUNICIPALITIES, *Statute of the Association of Kosovo Municipalities* (Pristina, 2010), Art. 2.

- Organises and coordinates professional trainings for municipal political authorities and civil servants;
- Develops and circulates information and publications to its members;
- Creates funds and opens representative bodies and public institutions.<sup>25</sup>

The AKM has 12 collegiums, composed of representatives of all municipalities, which work to target specific areas of concern for municipalities (education, health, etc.). Through the collegiums, the AKM acts as a forum for municipalities to discuss issues of common concern. The AKM proposes concrete amendments and ideas for legislation and laws. The AKM is relatively successful in this regard: About 70% of its proposals and ideas are incorporated in laws and policies in one form or another. The AKM finds that smaller municipalities have an active interest in engaging with other municipalities, while larger ones tend to use their own channels of communication (due to having a large influence and reach). Serb-majority municipalities in the south of Kosovo actively participate in the AKM and have benefited from the advocacy efforts of the AKM.<sup>26</sup>

The AKM does not have a core budget, but receives funding from municipalities directly and institutional grants through donors. By not having a budget directly from the Government, the AKM finds that its independence in offering ideas and criticising legislation/policies is stronger and more flexible.<sup>27</sup>

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<sup>25</sup> Association of Kosovo Municipalities: *Statute*, Art. 3.

<sup>26</sup> Interview with an AKM official, 30 March 2016.

<sup>27</sup> Interview with an AKM official, 30 March 2016.

### 3. THE COMPETENCES OF THE ASSOCIATION/COMMUNITY OF SERB-MAJORITY MUNICIPALITIES: OPERATIONAL AND/OR COORDINATION TASKS?

In light of the above, we should clarify whether the Association/Community of Serb-Majority Municipalities will be a form of municipal partnership, an association of municipalities or a combination of both. In other terms, will the Association have operational or coordination tasks? Both agreements on the Association use language hinting at both coordination and operational tasks. According to the 2013 First Agreement of principles governing the normalisation of relations, the Association will entitle participating municipalities to exercise their powers and will have full overview in the areas of economic development, education, health, and urban and rural planning (Art. 4). Whereas “exercise powers” hints at operational tasks; “have full overview” points in the direction of coordination tasks.

The Agreement of 25 August 2015 states that the Association will have the objective to deliver public functions and services to:

- (a) Strengthen local democracy;
- (b) (Exercise) full overview to develop 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;
- (f) Adopt measures to improve local living conditions for returnees to Kosovo;
- (g) Conduct, coordinate and facilitate research and development activities;
- (h) Promote, disseminate and advocate issues of common interest of its members and represent them, including to the central authorities;
- (i) Provide services to its members in accordance with Kosovo law;
- (j) Assess the delivery of public services to its members and their residents as to support the Association in forming positions of common interests for the participation to the work of the central authorities;
- (k) Conduct monitoring as required for the implementation of its objectives;
- (l) Establish relations and enter in to cooperation arrangements with other associations of municipalities, domestic and international.<sup>28</sup>

Again, the references to delivery of public functions and services point at operational tasks, while “full overview” indicates coordination tasks.

As far as the coordinative tasks of the Association are concerned, there is no major disagreement among the partners involved.<sup>29</sup> The Association will allow Serb-majority municipalities to coordinate and plan local policies in the domains of local democracy and public service delivery, education, health and social care, local economy, urban and rural planning, the living conditions of returnees to Kosovo, research and development and culture. For performing these coordinative tasks, the Association should be conceived as an inter-municipal body for the planning and coordination of local policies.<sup>30</sup> It will have the status of an association according to the Kosovo legal framework.

28 ‘Association/Community of Serb majority municipalities: General principles/main elements’ (25 August 2015), Art. 4.

29 With the exception of whose interests the Association should coordinate and represent. For more on this, see part 5.

30 HULST, Rudie & André VAN MONTFORT. ‘Comparative Analysis and Conclusions’, in: Rudie Hulst & André Van Montfort (eds), *Inter-Municipal Cooperation in Europe* (2007), pp.211–238, pp.231–232.

A much more spurious question, however, is whether it is opportune that the Association takes operational tasks. And if it does, should it assume the competences and authority of local governments and decide and take action in its place or operate as an agency of the municipality, servicing governments at their request and with full preservation of the competences of local government.<sup>31</sup>

The Kosovo government, in a subsequent interpretation of the 25 August Agreement, stated that “the Association is not entitled to make decisions for municipalities nor on behalf of its member municipalities”.<sup>32</sup> Serbian Prime Minister Vučić, however, stated that the Association will take decisions on health, education, urban and rural planning and economic development.<sup>33</sup> The key element lies with the interpretation of “full overview”.

In its judgment on the 25 August Agreement, the Constitutional Court judged that the objectives which read that the Association shall “exercise full overview” in the domains of education, health and social care, coordination of rural and urban development and development of local economy breach the competences of municipalities in these areas. The Association cannot take the place or undermine the status of the participating municipalities as basic units of democratic local self-government.<sup>34</sup>

The Constitutional Court criticised the ambiguous language used in the Agreement of 25 August and its versions in three different languages, especially the wording “full overview”. The Court noted that the language used in the final legal act in all three languages should be unambiguous and that it should follow the language of the First Agreement, that is, “have full overview” instead of “exercise full overview” (the former meaning “being informed” according to the Court).<sup>35</sup> Formulated as such, this clearly refers to coordinative tasks. The Court also defined the Association as an organisation to be established by participating municipalities in the form of inter-municipal cooperation for the purpose of advancing certain objectives. The Court further added that, as such, the Statute of the Association and any legal act drafted by the Government in relation to the Association must take into account constitutional provisions related to Article 21.4 on Fundamental Rights and Freedoms, Article 44 on Freedom of Association, and perhaps more crucially, Article 12 on Local Governance in Kosovo, which defines municipalities as the basic unit of local self-governance in Kosovo.<sup>36</sup>

The fact that the legal responsibility for competences remains with the municipalities does not necessarily entail, however, that inter-municipal cooperation bodies cannot take decisions on behalf of the municipalities when it comes to the daily management of operational tasks. In the Kosovo legal framework, municipalities cannot transfer executive competences to any super-municipal authority, and the final responsibility for decision-making remains with municipal bodies.<sup>37</sup> Municipalities can exercise municipal responsibilities in the areas of their own and enhanced competences through municipal partnerships.<sup>38</sup> Such 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

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31 Hulst & Van Montfort: ‘Comparative Analysis’, pp.220–222.

32 GOVERNMENT OF THE REPUBLIC OF KOSOVO, *Brief Summary of the Brussels Agreement Package* (27 August 2015), p. 4.

33 <http://www.rts.rs/page/stories/sr/story/9/Politika/2017461/Vu%C4%8Di%C4%87%3A+Potpisani+sporazumi+u+Briselu%2C+formirana+Zajednica+srpskih+op%C5%A1tina.html>

34 CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO, ‘Judgment in Case KO 130/15’, (23 December 2015), Arts 140–49.

35 Constitutional Court: ‘Judgment KO 130/15’, Arts 120–36.

36 Constitutional Court: ‘Judgment KO 130/15’, Arts 127–36.

37 ‘Law on Inter-Municipal Cooperation’, Art. 4.3.

38 ‘Law on Local Self-Government’, Art. 29.1.

the participating municipalities.<sup>39</sup> 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.<sup>40</sup>

In what follows, we will argue that Serb-majority municipalities should establish an association with cooperative tasks, and, in addition, inter-municipal public institutions for fulfilling operational tasks, in line with relevant provisions of the Law on Inter-Municipal Cooperation and that of Local Self-Governance. We will argue that joint provision of public services in the domains of education, health and social care and culture can potentially improve the quality of public services provided by Serb majority municipalities in these domains. For local economic development and urban and rural planning, joint coordination will suffice.

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39 'Law on Local Self-Government', Art. 29.3. This is literally taken over from the *Comprehensive Proposal for the Kosovo Status Settlement*, Annex III, Art. 9.1.2.

40 '[Law on Inter-Municipal Cooperation](#)', Art. 4.2.

## 4. INSTITUTIONAL AUTONOMY AND COORDINATION

Although obviously imposed as a policy measure from above, the Association quickly became a buzzword addressing all concerns and needs of the Kosovo Serb community, even though most Kosovo Serbs have no clear idea about what the Association should actually do.<sup>41</sup> The provisions for the Association are also not as far removed from the Kosovo legal framework as many Serbs in Kosovo believe or as is presented by Serbian and Kosovo Serb politicians. Education, health and social care, economic development and rural and urban planning fall under the exclusive competences of municipalities and municipalities are allowed to cooperate in these domains. In that regard, “90 per cent of the competences the Association would have, are already covered. . . If somebody carefully reads the Law on Local Self-Government, he will realise that what is pompously announced, already exists. It is a question of finesse and nuances, the words that will be used when defining the statute.”<sup>42</sup>

The primary concern inter-municipal cooperation between Serb-majority municipalities should address, according to the in-depth interviews carried out in the framework of this research, is the perceived lack of safety and security. This does not only include the absence of violence but is also connected to respect for human rights, good governance, access to education and health care, political emancipation and economic development, or rather “an elementary economic minimum for existence”<sup>43</sup>

Another general concern is that of social peace. The Serbian state continues to run a parallel system of public institutions in Kosovo. According to the findings of a parliamentary research commission (for the period 2000–2012) and more recent independent calculations, the Serbian state has an annual budget of approximately €200–350 million for Kosovo parallel institutions, although the exact figure remains a mystery, and the untransparent nature of it has led to speculations that it is being misused.<sup>44</sup> As such, the parallel institutions have a significant social and economic impact on the Serb community in Kosovo. Parallel institutions operating under the Serbian system, it is argued, provide crucial public services to the Kosovo Serb population and are the biggest employer for the Kosovo Serb community. There are expectations that the Association and its institutions will allow for a relatively smooth transition from Serbian parallel institutions – and the corresponding jobs – into Association institutions which will operate in harmony with the Kosovo system.

Inter-municipal cooperation between Serb-majority municipalities should, however, be more than a mere façade in order to maintain what is already in place. The main added value of the Association for representatives of the Serb community in Kosovo is that it can potentially provide for stronger and more efficient local governance. “The basic needs of the Serb community are re-urbanisation and the creation of a system, the creation of a relatively adequate economic ambient, financial and tax facilities for the smallest, small and middle enterprises.”<sup>45</sup>

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41 NGO AKTIV, *Community/Association of Serbian Municipalities: The Sum of All Fears* (June 2015).

42 Interview with Nusret Hodža, Deputy Minister of Justice, 27 March 2016.

43 Interview with prof. dr Aleksandar Ćorac, Professor at the Faculty of Medicine, University of Mitrovica/ë North/“University of Pristina with temporary seat in Kosovska Mitrovica”, 31 March 2016.

44 ASSEMBLY OF THE REPUBLIC OF SERBIA, *Final Report of the Research Commission for Establishing the Facts about the Expenditure of Resources from the Budget of the Republic of Serbia on the Territory of the Autonomous Province of Kosovo and Metohija for the Period 2000–2012* (14 April 2014); BALKANS POLICY RESEARCH GROUP, *Serb Integration in Kosovo After the Brussels Agreement* (2015), pp.17–18.

45 Interview with Nenad Todorović, Director of the “Serb national theater of Pristina temporarily located in Gračanica”, 22 March 2016.

It is argued that with strong institutional support and strong institutional connections to the Serbian state, the Kosovo Serb community can engage with the Kosovo system. “The position of the Serb community should be guaranteed by a model which will guarantee support from Belgrade and Pristina.”<sup>46</sup>

This model can be defined as “institutional autonomy in the domains of education, health, economic development and rural and urban planning. In case Serbs do not have control over these four domains within the framework of the Association, then there is no need for the Association to exist at all. . . . Instead of territorial integrity, the Serbs need institutional integrity.”<sup>47</sup>

“The Association should act as a syndicate in relation to the “company management” in Pristina. Only, and I repeat, only if the Association will be able to establish public institution, a lot can be done. It can centralise activities, form a “mini government” which is not directed against Albanians. In that way the economic and demographic limitations of particular municipalities can be overcome through common investments, easier access to documents, culture and sports, and even science in the end.”<sup>48</sup>

A third, related added value of inter-municipal cooperation between Serb-majority municipalities – in line with international incentives for inter-municipal cooperation – is to overcome the territorial, economic, demographic and human limitations of municipalities. This, in particular, applies to Serb-majority municipalities south of the Ibër/Ibar due to their isolated and scattered position in Kosovo and because of the fact that some of them are extremely small. Many of these municipalities have very limited financial means and do not have qualified staff at their disposal for successful functioning.<sup>49</sup>

Many of the demands of the Kosovo Serb community come down to increased coordination and institutional autonomy in the domains of education, health and social care, economic development, urban and rural planning, and culture. In the following sub-chapters, we will have a detailed look at these five domains and see that through far-reaching local self-government, the Kosovo legal framework in fact allows for institutional autonomy in these domains at the municipal level within the overall legal framework of the Republic of Kosovo. The laws on inter-municipal cooperation further allow for coordination between municipalities (in the form of an inter-municipal association) and the joint exercise of municipal competences (in the form of municipal partnerships). In line with this, we will argue for establishing an inter-municipal association of Serb-majority municipalities with coordinative competences and three additional joint public institutions with operational competences in the domains of education, health and social care and culture. These public institutions will rationalise institutional autonomy in the domains of education, culture and health and social care. They will be closely related to, but independent of the coordinative Association.

## 4.1 Education

The Serb community in Kosovo views education in the Serbian language as a pillar of its long-term sustainability as a community in the country. Currently, the School Directorate of the Serbian Ministry of Education supervises the work of educational institutions in Serbian in

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46 Interview with Miloš Subotić, Officer for International Cooperation at the University of Mitrovica/ë North/“University of Pristina with temporary seat in Kosovska Mitrovica”, 28 March 2016.

47 Interview with Željko Tvrđišić, journalist for TANJUG and B92, 25 March 2016.

48 Interview with Nenad Todorović, Director of the “Serb national theater of Pristina temporarily located in Gračanica”, 22 March 2016.

49 Interview with Nusret Hodža, Deputy Minister of Justice, 27 March 2016.

Kosovo, which operate in parallel to those operated by the Kosovo Ministry of Education, and without accreditation from the latter. The provision of education in the Serbian language is done with curricula and textbooks coming directly from the Republic of Serbia, including the direct management of schools and other facilities. One of the biggest fears some of our interlocutors from the Kosovo Serb community expressed was that education in Serbian will fall under the exclusive authority of the Kosovo Ministry of Education, Science and Technology (MEST), which, according to them, would lead to an absolute boycott from the Serb community.<sup>50</sup>

There are currently no signs or discussions on taking over the education system in Serbian by the Government of the Republic of Kosovo. Kosovo has tolerated the parallel education system in the Serbian language, funded by Serbia, as it did not want to disturb the provision of crucial services in education to Serbian speakers. In addition, the Government of the Republic of Kosovo pays or has paid the salaries of more than 1,000 teachers that provide education in Serbian in the parallel education system. These teachers receive salaries from Kosovo and Serbia.<sup>51</sup> Nevertheless, while the Republic of Kosovo has tacitly allowed the usage of curricula and textbooks from the Republic of Serbia and it has foreseen a legal process for their use whilst first undergoing a review process as foreseen by law, this system is not sustainable in the long-run. Kosovo and Serbia are both following the Bologna Process and related standards and quality of higher education, their individual systems have grown apart over the years, including the division of primary and lower and secondary schools. An inclusive education system, operating under the Kosovo framework and providing education in both Albanian and Serbian language, should be established in the mid-term.

#### 4.1.1 Education in Kosovo municipalities

Kosovo municipalities have full and exclusive powers with respect to the provision of public pre-primary, primary, lower secondary and higher secondary education, though they must exercise those rights in agreement with the MEST.<sup>52</sup> In particular, these competences include:

- a) Construction of educational facilities;<sup>53</sup>
- b) Registration and admission of students;
- c) Employment of teachers and other school personnel in accordance with legal procedures for the recruitment, selection and employment of public employees;
- d) Registration, public health and safety inspection and licensing of educational institutions;<sup>54</sup>
- e) Payment of the managerial staff as well as other employed personnel;
- f) Supervision and inspection of the education process in accordance with guidelines established by the MEST;
- g) Development, approval, and implementation of the rules of procedures and codes of conduct for schools;
- h) Reporting on pre-primary level education;
- i) Monitoring and reporting on students' educational and social progress to parents and other responsible authorities; and
- j) Determination of the parents' participation fee for the admission of children to nurseries and kindergartens.<sup>55</sup>

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50 Interview with Miloš Subotić, Officer for International Cooperation at the University of Mitrovica/ë North/"University of Pristina with temporary seat in Kosovska Mitrovica", 28 March 2016.

51 OSCE MISSION IN KOSOVO: [Parallel Structures in Kosovo](#) (2003), p.36 and Balkans Policy Research Group, *Serb Integration in Kosovo After the Brussels Agreement* (2015).

52 [Law \(Nr. 03/L-068\) on Education in the Municipalities of the Republic of Kosovo'](#) (21 May 2008), Art.4.1

53 'Law on Education in the Municipalities of the Republic of Kosovo'; Art. 8.

54 'Law on Education in the Municipalities of the Republic of Kosovo'; Art. 11.

55 'Law on Education in the Municipalities of the Republic of Kosovo'; Art. 4.

Municipalities provide administrative services to realise these competences.<sup>56</sup> They have the competency to create conditions for providing educational services in the Serbian language.<sup>57</sup> The Ministry provides funding for primary and secondary education, which municipalities then top up depending on their needs, number of schools, the number of their staff and similar factors.<sup>58</sup> Municipalities have the right to cooperate with other municipalities and institutions, including government agencies, in the Republic of Serbia.<sup>59</sup>

The municipality of Mitrovica/ë North has enhanced competences over higher education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators.<sup>60</sup> The municipality has the authority to exercise responsibility for this public Serbian language university and ensure that the university receives adequate premises and funding for its operation from the budget of the Republic of Kosovo and other institutional sources. Funding for the university from the government of the Republic of Serbia must be transparent and made public, in accordance with the laws of Kosovo.<sup>61</sup> The new draft Law on Higher Education treats the University of Mitrovicë/a North, which issues diplomas not accredited by Kosovo, as a special case, and no longer as simply a public university in Mitrovicë/a North.

Kosovo law allows for the application of curricula and textbooks of the Republic of Serbia for Serbian-language education in Kosovo, provided that the Kosovo Ministry of Education is notified and that the material is reviewed for conformity with the Kosovo legal framework by a Commission consisting of representatives of the Ministry of Education and Kosovo Serb assembly members.<sup>62</sup> An earlier exercise in this was undertaken back in 2010, in cooperation with the International Civilian Office, but it was not successful as there was no readiness by Serbia to discuss this issue with Kosovo. Renewed efforts should be made in this direction in order to provide municipalities and institutions of higher-learning with curricula and textbooks in the Serbian language which are in conformity with the laws on education in the Republic of Kosovo as foreseen by relevant legislation.

#### 4.1.2 Inter-municipal cooperation and Serbian-language education

According to our interviews with representatives of the Kosovo Serb community, the Association should assist municipalities in fulfilling their powers and competences in providing education to citizens in the Serbian language. The Association should supervise and advance education in Serbian-language education at all levels. It should guarantee the quality of education and potentially adapt it to the specificities of Serbian language education in Kosovo. The Association should also secure the financing of material costs of institutions and provide expert advanced studies to teaching staff. Finally, the Association could take strategic decisions on education in Serbian language, in consultation with the Serbian Ministry of Education.<sup>63</sup> In other words, the Association should not merely secure the status quo, but give Serbian-language education in Kosovo a quality boost.

The Kosovo legal framework affords municipalities as the basic unit of local governance a wide array of competences and powers in the area of education. By jointly operating these compe-

56 'Law on Education in the Municipalities of the Republic of Kosovo', Art. 5.

57 'Law on Education in the Municipalities of the Republic of Kosovo', Art. 12(1).

58 'Law on Education in the Municipalities of the Republic of Kosovo', Art. 7.

59 'Law on Education in the Municipalities of the Republic of Kosovo', Art. 4.1, 4.2, 4.3.

60 'Law on Local Self-Government', Art. 21.

61 'Law on Education in the Municipalities of the Republic of Kosovo', Art. 12(1).

62 'Law on Education in the Municipalities of the Republic of Kosovo', Arts 12–13.

63 Interview with Predrag Stojčetić, Director of the School Directorate of the Serbian Ministry of Education in Kosovo, 28 March 2016.

tences, the ten Serb-majority municipalities can bring back institutional structure and implement a long-term strategy to improve the quality of education in the Serbian language. For the execution of operational competences, standing organisations involved in service delivery are the most appropriate.<sup>64</sup> Within the types of inter-municipal cooperation allowed for under Kosovo law, a joint public institution seems the most favourable form of inter-municipal cooperation with operational competences.

### **Recommendations**

- \* For education, the ten Serb-majority municipalities should establish a joint public institution in the form of a network of Serbian-language schools operating within the Kosovo education system.
- \* This joint public institution should be independent of the Association (with coordinative competences). However, it will implement long-term policies formulated by the Association.
- \* The network allocates funds for infrastructure and teaching material (from the municipal budgets and the Republic of Serbia, the latter funding made transparent in accordance with Kosovo legislation), oversees the construction of educational facilities, registers and admits students, employs and pays teachers and other school personnel, registers and licenses educational institutions, supervises and inspects the teaching process and students' progress and develops rules of procedures and codes of conduct.
- \* Taking into consideration the competences of the network of Serbian-language schools, it would be beneficial to urge that representatives of the network take part, along with representatives of MEST, in the revision of curricula and teaching material from the Republic of Serbia for use in Kosovo.
- \* The UMN remains an enhanced competence of the municipality of Mitrovica/ë North and cannot fall within the competences of the network of Serbian-language schools.

## **4.2 Health and social care**

Health and social care facilities and services provided by the parallel institutions funded by the Republic of Serbia in Kosovo are integrated in a system of 29 health and social care institutions. They are financed and managed by the Serbian Ministry of Health and are free or require a symbolic sum. As with education, the Kosovo Serb community does not want to lose the privileges in health and social care it currently maintains. There is also a general perception among the Serb population that the Kosovo health and social care system is of lower quality than the Serbian system.<sup>65</sup>

### **4.2.1 Health and social care in Kosovo municipalities**

Health care in Kosovo is regulated by a series of laws and regulations, including the Law on Health, the Law on Health Insurance, and the Law on the Health Inspectorate. According to the Law on Health, municipalities are responsible for public primary healthcare and for the assessment of the health status of population in their territory. The municipalities are obliged to implement priority health promotion and health preventive measures of healthcare. Municipalities provide primary healthcare within a system of Family Medicine Services, established and run by municipalities in accordance with the Law on Health and sub-legal acts issued by

<sup>64</sup> Hulst & Van Montfort: 'Comparative Analysis', pp.227–230.

<sup>65</sup> Interview with prof. dr Aleksandar Ćorac, Professor at the Faculty of Medicine, University of Mitrovica/ë North, "University of Pristina with temporary seat in Kosovska Mitrovica", 31 March 2016.

the Ministry of Health.<sup>66</sup> Licensing of primary health care institutions, however, falls under the competence of the Ministry of Health.<sup>67</sup>

Secondary healthcare includes hospital, outpatient healthcare, diagnostic, therapeutic, rehabilitation, emergency transportation, and public healthcare.<sup>68</sup> It can be exercised and organised by municipalities with a request by the respective Municipal Assembly and after approval by the Ministry in accordance with the Decree Issued by the Ministry. In those municipalities where secondary healthcare is provided by municipalities, they are generally granted the same competences as in primary healthcare; management, funding, staffing, registration and licensing, etc.<sup>69</sup> Secondary health care is an enhanced competence of the municipalities of the Serb-majority municipalities of Mitrovica/ë North, Gračanica/Graçanicë and Štrpce/Shtërpçë, and includes registration and licensing of health care institutions, recruitment, payment of salaries and training of health care personnel and administrators.<sup>70</sup>

Municipalities are responsible for the provision of family and other social welfare services, such as care for the vulnerable, foster care, child care, elderly care, including registration and licensing of these care centres, recruitment, payment of salaries and training of social welfare professionals.<sup>71</sup> Social care at the municipal level is delivered by Centres for Social Work or by providing financial or other assistance to non-government organizations to enable them to do so. Centres for Social Work are public institutions with one or more branch office established and maintained by the municipalities. The centre is staffed by appropriately trained and qualified professionals.<sup>72</sup> Centres for Social Work provide domestic help, personal care, social care, counselling, residential care and in exceptional circumstances, material assistance to children and their families and people in need of social services.<sup>73</sup> Centres for Social Work are also delegated to administer the Social Assistance Scheme (excluding pensions).<sup>74</sup>

#### 4.2.2 Inter-municipal cooperation between Serb-majority municipalities in health and social care

Through the Association, the current level of health care provision could be maintained through financing from Belgrade. Again, however, the view from the Serb side is that the Association should not merely lead to a status-quo, but initiate a critical overview of the current situation in health care provision and define strategic goals to address shortcomings. As such, it should disable duplication of capacities, improve the quality of health care services and guarantee the training of doctors and medical staff through the efficient use of financial means.<sup>75</sup> As with education, a joint public institution for jointly operating municipal competences in the domain of health and social care seems the most favourable form of inter-municipal cooperation, in line with relevant provisions of the Law on Health and municipal competences.

66 [‘Law \(Nr. 04/L-125\) on Health of the Republic of Kosovo’](#) (13 December 2012), Art. 18(3).

67 ‘Law on Health’, Art. 42.

68 ‘Law on Health’, Art. 19.

69 ‘Law on Health’, Art. 20.

70 ‘Law on Local Self-Government’, Art. 20.

71 ‘Law on Local Self-Government’, Art. 17.

72 [‘Law \(Nr. 02/L-17\) on Social and Family Services’](#) (21 April 2005), Art. 7.

73 ‘Law on Social and Family Services’, Arts 6, 9–13.

74 ‘Law on Local Self-Government’, Art. 18; [‘Law \(2003/15\) on the Social Assistance Scheme in Kosovo’](#) (2 July 2003), Art. 3(2); [‘Law \(Nr. 04/L-096\) on Amending and Supplementing the Law no 2003/15 on Social Assistance Scheme in Kosovo’](#) (10 May 2012), Art. 3(2).

75 Interview with prof. dr Aleksandar Ćorac, Professor at the Faculty of Medicine, University of Mitrovica/ë North, “University of Pristina with temporary seat in Kosovska Mitrovica”, March 2016.

### **Recommendations**

- \* The Serb-majority municipalities should establish a joint public institution for jointly exercising municipal competences in primary health care and social care.
- \* This joint public institution should be independent of the Association (with coordinative competences). However, it will implement long-term policies formulated by the Association.
- \* It can be seen as a network of primary health and social care centres in Serb-majority municipalities operating within the Kosovo social and health care system. The network allocates funds for infrastructure and material (from the municipal budgets and the Republic of Serbia, the latter funding made transparent in accordance with Kosovo legislation), organizes quality assurance (supervision) in accordance with standards set by the Kosovo Ministry of Health, and appoints qualified personnel (who should be licensed by the Kosovo Ministry of Health).
- \* The municipalities of Mitrovica/ë North, Gračanica/Graçanicë and Štrpce/Shtërpçë could establish a specific joint public institution for cooperation in secondary health care, including registration and licensing of health care institutions, recruitment, payment of salaries and training of health care personnel and administrators.

## **4.3 Culture**

It is remarkable that cultural affairs are not mentioned in the list of areas the Association will have full overview, according to the First Agreement (Art. 4). Several parallel institutions continue to provide Serbian-language culture in Kosovo, such as the Serb national theatre of Pristina (in Gračanica/Graçanica), the Institute for Serb culture of Pristina (in Leposavić/Leposaviq), the regional office for the protection of cultural monuments Pristina (in Leposavić/Leposaviq), the folklore ensemble Venac, the newspaper Jedinstvo, etc. There are concerns among the Serb community that local governments do not dispose of adequate material and human resources to ensure quality culture.<sup>76</sup>

According to Kosovo law, municipalities have the competence to license local services and facilities, including those related to culture and leisure and to organise cultural and leisure activities. Serb-majority municipalities have enhanced competences to exercise responsibility for cultural affairs, including, protection and promotion of Serb and other religious and cultural heritage within the municipal territory as well as support for local religious communities.<sup>77</sup> A joint public institution bringing together the ten Serb-majority municipalities could potentially stimulate Serb culture in Kosovo by channelling or facilitating the current support from Belgrade and at the same time improve the quality of Serbian-language culture in Kosovo and establish strategic goals in this domain.

### **Recommendations**

- \* The ten Serb-majority municipalities should establish a joint public institution for exercising municipal competences in the domain of culture.
- \* This joint public institution should be independent of the Association (with coordinative competences). However, it will implement long-term policies formulated by the Association.
- \* It should act as a focal point for the organisation of cultural events, promote cultural activities and cooperation, as well as provide a range of practical services on behalf of municipalities.

<sup>76</sup> Interview with Nenad Todorović, Director of the "Serb national theater of Pristina temporarily located in Gračanica", 22 March 2016.

<sup>77</sup> Law on Local Self-Government, Art. 22.

## 4.4 Local economic development

Local economic development in Kosovo is regulated by a series of laws that touch upon the different and often complementary layers of economic development, enterprise support, local development, etc. Both the Municipal Assembly and the Mayor have the right to endorse and implement measures to influence local economic development in their municipality.<sup>78</sup>

An association of municipalities can facilitate the strategic use of material, financial and human resources and guarantee higher quality in economic services (from the project development to the management phase). It could also provide a check on corruption in local economy. An association of Serb-majority municipalities might, finally, also allow a more even development among these municipalities through common investments, attracting of investments, strategic planning and local development, development of qualities for project development and management in order to access EU funding.<sup>79</sup> The Association could also serve as a focal point for infrastructure projects which, by their nature, touch upon or benefit more than one municipality. For example, it could, on behalf of municipalities, assign projects for building roads, hospitals, schools, greenhouses for agriculture, tourism infrastructure, one-stop business registration shops, innovation and business incubator centres, as well as a number of other infrastructure projects designed to foster economic development within one or more municipalities.

### **Recommendations**

\* In the domain of local economic development, Serb-majority municipalities can come together and pool their resources. Competences in this domain remain restricted to coordinative tasks; operational tasks are not relevant. The organisational form most suitable for coordinative competences in local economic development is a joint association designed to coordinate policies and specific infrastructural projects that foster local economic development in one or more municipalities. This joint association can provide a common platform for municipalities to efficiently and evenly share financial and human resources, discuss their needs and concerns, jointly draft legal acts and policies that would enhance their local economic development, and supervise the correct and transparent implementation of urban and rural planning activities.

## 4.5 Rural and urban planning

Rural and urban planning in Kosovo is regulated by the Law on Spatial Planning, which sets forth a number of criteria and responsible bodies for spatial planning in Kosovo. There are four main authorities in charge of spatial (rural and urban) planning in Kosovo. They are: the Assembly of Kosovo, the Government of Kosovo, the Ministry of Environment and Spatial Planning for the central level, and Municipal Assemblies together with the responsible municipal department for the local level.<sup>80</sup> Municipalities have the power to draft Municipal Development Plans, Municipal Zoning Plans, as well as Detailed Regulatory Plans, in line with the Spatial Plan and Zoning Map of Kosovo. They are also free to offer suggestions, comments, and input on the Spatial Plan and Zoning Map of Kosovo, and provide comments with revisions to those plans within their own municipal zoning areas.<sup>81</sup>

78 Law on Local Self Government, Art. 11.

79 Interview with Žarko Kovačević, Senior Project Manager, Regional Development Agency – North, 24 March 2016.

80 'Law (Nr. 04/L-174) on Spatial Planning in Kosovo' (31 July 2013). Art. 5.

81 Law on Spatial Planning in Kosovo, art.20.

As with local economic development, the added value of inter-municipal cooperation between the Serb-majority municipalities in urban and rural planning should be situated in strategic cooperation and sharing of resources. Possible competences of the Association in the domain of urban and rural planning could enable the development of particular urban plans for larger areas, planning and rationalisation of housing policies, industrial zones, roads, public transport, et cetera. In addition, supervision by the Association could disable irregularities in the procedures for granting licenses, decrease corruption and illegal constructions, and tackle the absence of sanction mechanisms for unlawful behaviour of local officials.<sup>82</sup>

However, while urban planning can have some of the same characteristics from one municipality to another, rural planning does not always share the same features; rural planning in Štrpce/Shtërpce, a mountainous municipality with huge tourism potential, necessarily differs from rural planning in Gračanica/Graçanicë, which has a much flatter terrain and huge agriculture potential. As such, loose and flexible networks or mechanisms should be designed to tackle urban and rural planning between participating municipalities in the Association, as no one solution fits all.

### **Recommendations**

\* The organisational form most suitable for coordinative competences in urban and rural planning is a joint association designed to coordinate urban and rural planning. This association provides a common platform for municipalities to efficiently share financial and human resources, discuss needs and concerns, jointly draft policies and legal acts and supervise the correct and transparent implementation of urban and rural planning activities.

### **Overall recommendations: A coordinative Association and three joint public institutions**

\* To conclude, we recommend that Serb-majority municipalities establish an association with coordinative competences in the domains of local democracy and public service delivery, local economy, education, primary and secondary health and social care, urban and rural planning, local living conditions for returnees to Kosovo, research and development, and culture.

\* In addition, Serb-majority municipalities should establish joint public institutions with operational tasks in the domains of education, health and social care and culture. As the joint association of Serb-majority municipalities cannot take over competences of municipalities when it comes to establishing inter-municipal cooperation, the Association cannot establish these public institutions, nor will the joint public institutions fall under the direct control of the Association; they need to be established by Municipal Assemblies first. However, the public institutions can indirectly implement decisions taken by the particular municipalities in line with strategic policies established by the Association and in particular the respective collegia for education, health and social care and culture.

<sup>82</sup> Interview with Žarko Kovačević, Senior Project Manager, Regional Development Agency – North, 24 March 2016; Interview with Miloš Subotić, Officer for International Cooperation at the University of Mitrovicë/a North/“University of Pristina with temporary seat in Kosovska Mitrovica”, 28 March 2016.

## 5. RELATIONS BETWEEN MUNICIPALITIES AND INTER-MUNICIPAL COOPERATION UNITS

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.<sup>83</sup> 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.”<sup>84</sup> Participating municipalities should be able to exercise their legal responsibility both at the stage of the establishment of inter-municipal cooperation and at the stage of the actual functioning of inter-municipal cooperation, as regulated by the Law on Inter-Municipal Cooperation and Local Self-Government.

### 5.1 The establishment of inter-municipal cooperation

In international practice, municipalities are theoretically free to establish inter-municipal co-operation. In addition, inter-municipal cooperation in most cases relies on voluntary participation by municipalities and the possibility for municipalities to withdraw at all stages. “Such voluntary action is a demonstration of the local autonomy accepted by all, usually in the national constitution.”<sup>85</sup> In its review of the Agreement of 25 August, the Constitutional Court judged that the legal framework of the Association should recognise the freedom of association of all participating municipalities and exclusive authority of municipalities – as basic units of self-governance – to decide on inter-municipal cooperation.<sup>86</sup>

The Agreement of 25 August prescribed the following procedures for the establishment of the Association. Within four months after the date of the signing of the Agreement, the Management Team was expected to present a draft Statute for the Association to the High-level Dialogue. The Management Team consists of representatives from the four northern municipalities and was established in the wake of the First Agreement with the task to produce a draft Statute. If approved by the High-level Dialogue, the draft would then be endorsed by decree and subsequently be analysed by the Constitutional Court. Finally, the Statute was to be adopted by a constituent assembly composed of voted members and the assemblies of the participating municipalities.<sup>87</sup>

This procedure has obviously proven to be ineffective for four major reasons. First, the Management Team only includes representatives of the four northern municipalities and thus completely ignores the other, so-called ‘southern’ Serb-majority municipalities. Second, the Management Team has never established any constructive relation with the Kosovo authorities and parliament, shrinking the chances of coming up with a Statute accepted by both sides. Third, the draft Statute, if there was one, was never subjected to public consultation – both within the Kosovo Serb community and within Kosovo in general. Fourth, sending the Statute for review to the Constitutional Court as the final step limits the leeway for making adaptations to the statute, should that be required by the Court.

83 ‘Law on Inter-Municipal Cooperation’, Art. 4.3.

84 Council of Europe: *European Charter of Local Self-Government*, Art. 4.4.

85 Council of Europe: *Good Practices*, p.30.

86 Constitutional Court: ‘Judgment KO 130/15’, Arts 120–36.

87 ‘Association/Community of Serb majority municipalities: General principles/main elements’ (25 August 2015), Art. 3.

In order to break this impasse, the legal framework for the Association should be formulated through an inclusive and transparent process, consisting of two phases. In the first instance, a framework should be formulated, defining the legal possibilities and limitations for inter-municipal cooperation between Serb-majority municipalities. The legal framework for the establishment of these joint public institutions should be composed of an administrative instruction defining the possibilities and limits of municipalities to establish associations, a by-law on the implementation of Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia adopted and signed in September of 2013 on the one hand, and a by-law on the implementation of the Law on Inter-Municipal Cooperation of 2011 on the other.

The Office of the Prime Minister and the Ministry of Local Self-Governance and Administration should appoint technical experts with the task to formulate a technical and legal framework defining the legal possibilities and limitations of what the Association can do, in consultation with the Management Team. The process of drafting this framework should include consultation with civil society, articulating the voice of the public, and engagement with the Kosovo Assembly. The draft framework should then be presented for review to the Constitutional Court and should only subsequently be presented for approval to the High-level Dialogue.

It would then be up to representatives of the municipal assemblies of the ten Serb-majority municipalities to formulate one or more draft Statutes for inter-municipal cooperation within the contours of the framework for inter-municipal cooperation between Serb-majority municipalities and to have this draft Statute approved by a constituent assembly consisting of the voted members of the participating municipalities. The constituent assembly should be preceded by public consultations within each of the participating municipalities. The final Statute(s) as formulated by the constituent assembly should then be submitted for review to the Ministry of Local Self-Governance and Administration, to assess whether they concur with the framework for inter-municipal cooperation between Serb-majority municipalities.

### **Recommendations**

- \* The legal framework for the Association should be formulated through an inclusive and transparent process, consisting of two phases;
- \* In the first instance, a framework should be formulated, defining the legal possibilities and limitations for inter-municipal cooperation between Serb-majority municipalities. Thereby the steps outlined below should be followed:
  - An administrative instruction and by-laws are issued defining the legal framework for the Association and elaborating on the relevant provisions of the Law on Inter-Municipal Cooperation and the 2013 Law on the Normalization of Relations between Kosovo and Serbia
  - Technical experts appointed by the Office of the Prime Minister and the Ministry for Local Self-Governance and Administration and the Management Team define a draft legal framework within which the Association should operate;
  - Consultation with civil society articulating citizen voices and engagement with the Kosovo Assembly on this draft legal framework;
  - Review by the Constitutional Court;
  - Presentation for approval to the High-level Dialogue.
- \* In the second instance, representatives of ten Serb-majority municipalities formulate one or more draft Statute for inter-municipal cooperation within the contours

of this framework. The following steps should be taken to ensure transparency and consultation:

- Public review sessions on the draft Statute in the assemblies of each of the participating municipalities;
- Constituent assembly of voted members of participating municipalities reviews the Statute.
- The MLGA should review the final Statute(s) on compatibility with the framework for inter-municipal cooperation between Serb-majority municipalities.

\* The framework and Statute(s) should also allow all municipalities in Kosovo to join and leave the Association, in line with relevant legislation on inter-municipal cooperation and freedom of association.

## 5.2 The internal organisation of inter-municipal cooperation

In international practice, inter-municipal cooperation consists of representatives of local authorities who are accountable to their municipal councils. When municipal representatives proportionally reflect the power balance within the municipalities, there often is no additional accountability mechanism. When municipal representation does not reflect local power balances, there often are accountability mechanisms in check.<sup>88</sup> The 25 August Agreement defined the organisational structure of the Association as follows:

- (a) The Assembly is the supreme body, composed of representatives appointed by each assembly of the participating municipalities among their elected members.
- (b) The President and Vice-President will represent the Association and will be elected by the Assembly from among the members of the participating municipalities' assemblies and their mayors.
- (c) The Council is an advisory organ of a maximum of 30 members among residents of participating municipalities, including all mayors of the participating municipalities.
- (d) The Board consisting of 7 members voted by the Assembly from the mayors and residents of the participating municipalities will take necessary decisions for the daily management with the assistance of specialised collegia.
- (e) The administration will support the work of the Association (i.e. the coordinative association and the three public institutions). The staff of the administration will enjoy an employment status in accordance with Kosovo Law, including the Law on Labour and the Law on Civil Service. Staff for the administration will be chosen among the employees in the participant municipalities, on the basis of a proportionality key. The Constitutional Court argued that the staff of the administration of the Association may only benefit from the status of civil servant when employed in a position in a public body of the government administration.<sup>89</sup> Employees appointed from the ranks of the municipalities' administration would fall under this category, though it remains unclear whether employees appointed by the municipalities can work directly for the Association, a non-public body.
- (f) The Complaints Office will examine complaints in relations to the Association's objectives.<sup>90</sup>

In order to guarantee democratic representability and to comply with the final responsibility of participating municipalities, the Statute should clarify the selection procedures for members of these bodies in order to guarantee that all participating municipalities are represented. "In any

88 Hulst & Van Montfort: 'Comparative Analysis', pp.222–224; Council of Europe: *Good Practices*, pp.33–38.

89 Constitutional Court: 'Judgment KO 130/15', Arts 157–59.

90 'Association/Community of Serb majority municipalities: General principles/main elements' (25 August 2015), Art. 6.

case, the specificities of particular municipalities, especially the population numbers, should be taken into consideration when defining the criteria on the proportionality of representation of member municipalities in the Association".<sup>91</sup> In addition to the Assembly, which provides a first step of accountability, as it will consist of representatives of participating municipalities, accountability mechanisms should be established in each of the participating municipalities. This second layer of accountability within each of the participating municipalities will give the participating municipalities the opportunity to review the work of the Association, require revisions or, ultimately, withdraw from the Association.

An additional concern is who will have a seat in the Association. The representatives of the Kosovo Serb community interviewed within the framework of this research project expressed their concern that the Association would be led by local politicians, who are controlled by Belgrade, rather than representing the local Serb community. There is also some concern that the Association will be merely an extension of the work of municipalities and their officials, and will not represent a significant departure from current practices and standards of service offered by municipalities.

It is often not in the narrow political interest of local power holders to share competences with other municipalities or an overarching body. It is fair to say that the major political incentive for the creation of the Association comes from Belgrade and not from the participating municipalities themselves. This starting point might lead to a non-functional inter-municipal body. An additional concern is that the Association will become defunct as a result of the political divisions within the Serb community in Kosovo, especially between the four municipalities north of the Ibar/Ibër and the six municipalities south of the river. The southern municipalities have integrated much more thoroughly in the Kosovo framework than the northern municipalities, over which Belgrade exercises stronger influence. In addition, the Serb-majority municipalities in the South are generally smaller, are isolated and scattered, and have smaller populations. This obviously generates different interests and might lead to political stalemates. For these reasons, it can be useful to establish a mechanism that will prevent the obstinacy of particular local power holders.

### **Recommendations**

- \* The Statute should clearly define selection procedures and proportionality for representatives of participating municipalities who will have a seat in the bodies of the Association.
- \* It should establish a second layer of accountability mechanisms in each of the participating municipalities, which will give the participating municipalities the opportunity to review the work of the Association, require revisions or, ultimately, withdraw from the Association.
- \* The Association should involve technical experts in its domains of competences to provide support and expertise. These experts should have a seat in collegia for each of the domains of competences. Clear selection procedures should be defined by Statute.

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<sup>91</sup> Interview with Ksenija Božović, Speaker of the Municipal Assembly of Mitrovica North, 31 March 2016.

## 6. THE ASSOCIATION WITHIN KOSOVO'S MULTI-TIERED COMMUNITY PROTECTION MECHANISM

The reasoning in the existing agreements blurs the concept of a body representing the common interests of the participating municipalities with that of a body representing the interests of the Serb community in Kosovo. The First Agreement stated that the Association will have a representative role to the central authorities and a seat in the Consultative Council for Communities with a monitoring function (Art. 6). The 25 August Agreement elaborated that the Association will promote the interests of the Kosovo Serb community in its relation with central authorities, also through nomination of representatives in the competent bodies/organ of the central government, including the Communities Consultative Council. In addition, according to the Agreement on general principles/main elements, the Association can propose amendments to the legislation and other regulations relevant for the performance of its objective and initiate proceeding before the competent courts against any acts or decision affecting the exercise by the Association of its powers.<sup>92</sup> However, the Constitutional Court severely limited the possibility of the Association to propose amendments, instructing it to do so through the Consultative Council for Communities, of which it is foreseen to be a member. The Constitutional Court also restricted the ability of the Association to challenge legislation and other legal acts, limiting the access to laws that directly affect the Association.<sup>93</sup>

This ambiguity between the Association as a coordination body of participating municipalities and a representative body of the Kosovo Serb community raises two concerns. Although the Association brings together Serb-majority municipalities, it cannot be reduced to a body representing the interests of the Kosovo Serb community only. This would not only duplicate the existing framework designed to promote and protect the rights of minority communities, particularly the Serb community (Guaranteed Seats system in parliament, 2/3 double majority for Laws of Vital Interest, guaranteed participation in the Government of Kosovo in ministerial positions, as well as a range of institutions protecting their interests such as the Language Commissioner, the Office for Community Affairs within the Office of the Prime Minister, as well as the Consultative Council for Communities), but would ignore the non-Serb communities living in the respective municipalities and violate the multi-ethnic principle that underpins Kosovo's legal framework from the local to the central level.

### 6.1. Guaranteeing the multi-ethnic character of the Association

The ethnically-based understanding of the Association also challenges the multi-ethnic character of Kosovo municipalities. The Constitution of the Republic of Kosovo states that local self-government shall have "due regard for the specific needs and interests of the Communities not in the majority and their members".<sup>94</sup> All ten Serb-majority municipalities have non-Serb communities among their population, in some cases these are substantial, such as Albanians in all ten municipalities and Novo Brdo/Novobërdë, Štrpce/Shtërpçë, Mitrovica/Mitrovicë North, Klokot/Klllokot, and Gračanica/Graçanicë in particular, Roma in Gračanica/Graçanicë and the North of Kosovo, as well as Gorani and Bosniaks in Mitrovica/Mitrovicë North.

92 'Association/Community of Serb majority municipalities: General principles/main elements' (25 August 2015), Arts 9–12.

93 Constitutional Court: 'Judgment KO 130/15', Arts 168–176.

94 *Constitution of the Republic of Kosovo*, Art. 123.4.

**Table. Communities in the municipalities of the Association<sup>95</sup>**

Municipality	Serb	Albanian	Bosniak	Gorani	Roma
Leposavić/Leposaviq	18,000/96%	300/1,59%	300/1,6%		
Mitrovica/ë North	22,530/76,48%	4,900/16,63%	1,000/3,39%	580/1,97%	
Zvečan/Zveçan	16,000/96,1%	350/2,06%			
Zubin Potok	13,900/93,29%	1,000/6,61%			
Gračanica/Graçanicë	21,534/82,15%	2,474/9,44%			2,000/7,63%
Novo Brdo/Novobërdë	5,802/61,46%	3,542/37,33%			
Parteš/Partesh	5,300/99,96%				
Klokot/Kllokot	3,500/71,23%	1,362/27,72%			
Ranilug/Ranillug	5,718/97,15%	164/2,79%			
Štrpce/Shtërpçë	9,100/70,58%	3,757/29,14%			
Total	121,384/84,44%	17,849/13,33%			

A number of affirmative measures protect and promote the rights of these non-majority communities at the municipal level, including representation in the municipal organs, the right to use their language, the right to education in their language, etc. Particularly important within the municipal organs are:

- The Communities Committee, which includes representatives of all communities in the municipalities, and members of the Municipal Assembly, with the former forming the majority. The Committee is responsible for reviewing all municipal policies, practices, and activities, and to make recommendations to the Municipal Assembly with the aim to promote and protect the rights of all communities within the municipalities.<sup>96</sup>
- In municipalities where at least 10% of the citizens belong to communities not in the majority within the municipality, a Deputy Chairperson of the Municipal Assembly for the Communities and a Deputy Mayor for the Communities are appointed.
  - The post of Deputy Chairperson of the Municipal Assembly for the Communities is reserved to the non-majority community's candidate who received the most votes at the municipal elections. The Deputy Chairperson promotes inter-community dialogue and serves as formal focal point for addressing non-majority communities' concerns and interests in the Municipal Assembly.<sup>97</sup>
  - The Deputy Mayor for the Communities is appointed on the proposal by the Mayor and the approval by the Municipal Assembly. The Deputy Mayor assists the Mayor and provides guidance on issues related to non-majority communities.<sup>98</sup>

Establishing any kind of institution on ethnic basis, and seemingly excluding other communities, runs counter to the multi-ethnic principles of the Kosovo Constitution and legal framework, including the affirmative measures for minority representation at the municipal level. The Constitutional Court rightly found that the Principles from the 25 August Agreement raise concern on whether the Association will uphold to the principle of ethnic diversity and representation and judged that the final legal act should ensure that the organisational structure

<sup>95</sup> EUROPEAN CENTRE FOR MINORITY ISSUES KOSOVO, *Communities in Kosovo: A Guidebook for Professionals Working with Communities in Kosovo* (2013). For the sake of clarity, populations comprising less than one percent of the total population, have not been included in the table.

<sup>96</sup> 'Law on Local Self-Government', Art. 53.

<sup>97</sup> 'Law on Local Self-Government', Arts 54–55.

<sup>98</sup> 'Law on Local Self-Government', Art. 61.

and staffing of the Association respect the diverse communities living in the participating municipalities.<sup>99</sup>

### **Recommendations**

- \* Different wording, and reasoning, needs to be used in the debates on the Association and in its final statute if the Association is to reflect the spirit of Kosovo's multi-ethnic principles. Policy makers should consider changing the name of the Association and delete the explicit reference to the Serb community, in line with the Croatian example of the Joint Municipal Council. The First Agreement of 19 April 2013 simply states that there will be an Association/Community of Serb-majority municipalities in Kosovo; it does not state what will be the final and definitive name of the Association, nor that it will promote the interests of the Kosovo Serb community. This consideration should also be made when it comes to the coat of arms and flag of the Association.<sup>100</sup>
- \* Representatives of non-Serb communities in the participating municipalities should have the right to be informed and to control the work of the Association. This can be done through guaranteed seats for representatives of non-Serb communities in the bodies of the Association or through an additional control mechanism where Assembly Members representing non-Serb communities in the participating municipalities can have their say on the decisions and work of the Association. This competence falls within the scope of the competences of the Deputy Chairpersons for the Communities within the participating municipalities.

## **6.2 The Association and community representation and protection mechanisms at the central level**

As a coordination body representing the interests of local governments with a majority Serb population – taking into consideration that local self-government is a crucial tier of community rights in Kosovo – the Association should participate in community rights protection mechanisms at the central level. However, it should not be upgraded to an additional mechanism for protecting the rights of the Kosovo Serb community at the central level. Firstly, because it is an association of municipalities, not an association of the Serb community in Kosovo. Secondly, because there are mechanisms in place to promote and protect the rights of communities at the central level. The model of the Joint Municipal Council – which participates in the promotion and the protection of the rights of the Serb national minority in Croatia through the Serb National Council – can provide inspiration. Active participation by the Association in the Consultative Council for Communities in Kosovo may also strengthen and give new impetus to the work of the Consultative Council, not only raising its profile but also ensuring sufficient budgetary means for its work.

In its judgement on the matter, the Constitutional Court asserted that the Association cannot be vested with full and exclusive authority to promote the rights of the Kosovo Serb community at the central level and shall not undermine the authority of existing associations or central-level representatives protecting and promoting the right of communities. In other words, the Association cannot replace or undermine existing mechanisms to ensure the protection and promotion of community rights at the central level.<sup>101</sup>

<sup>99</sup> Constitutional Court: 'Judgment KO 130/15', Arts 153–56.

<sup>100</sup> 'Association/Community of Serb majority municipalities: General principles/main elements' (25 August 2015), Art. 20.

<sup>101</sup> Constitutional Court: 'Judgment KO 130/15', Arts 164–67.

In addition, the Association cannot be entitled to propose legal amendments, as stated in the Principles. It can be a member of the Consultative Council for Communities, and as such, suggest initiatives for legislation.<sup>102</sup> The Court also restricts the access of the Association to the Constitutional Court to cases where its fundamental rights as a legal person are breached. The Association can thus not turn to the Court to protect the rights of the Serb community in Kosovo.<sup>103</sup>

A particular competence of the Association in relation to central authorities, as outlined in the first two Agreements, is that the mayors of the four northern municipalities will present the Kosovo Minister of Internal Affairs with a list of candidates for nomination as regional Police Commander for the northern municipalities on behalf of the Association.<sup>104</sup>

### **Recommendations**

- \* The Statute of the Association should restrict the coordination tasks of the Association to issues concerning its members, i.e. the participating municipalities. The Association should not serve as an additional body representing the interests of the Kosovo Serb community. There are sufficient mechanisms in place to promote and protect the rights of the Kosovo Serb community at the central level. At the central level, the most important mechanisms are the guaranteed representation of political representatives of non-majority communities in the Assembly and the Government, and the Consultative Council for Communities.
- \* As an association promoting the interests of local self-government bodies with a majority Serb population, the Association should contribute to these existing mechanisms, but only on those issues concerning local self-government. Most importantly, the Association should nominate representatives for the CCC, as foreseen in both agreements, and as such promote the interests of local governments with majority Serb population to the central authorities (including taking initiatives for legislation).
- \* On behalf of the Association, the mayors of the four northern municipalities will present the Minister of Interior with a list of candidates for regional Police Commander for the northern municipalities.

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102 Constitutional Court: 'Judgment KO 130/15', Arts 168–73.

103 Constitutional Court: 'Judgment KO 130/15', Arts 174–76.

104 'Association/Community of Serb majority municipalities: General principles/main elements' (25 August 2015), Art. 13.

## 7. THE ASSOCIATION AND THE REPUBLIC OF SERBIA

The Association is seen by Kosovo Serb political representatives and many Kosovo Serbs as a means to strengthen and substantiate bonds between the Kosovo Serb population and the Republic of Serbia, without (too much) interference from Pristina. First and foremost, this bond should be understood in a symbolic manner, as the Association provides the Kosovo Serb community with the opportunity to benefit financially and technically from links with the Republic of Serbia, of which an absolute majority of Kosovo Serbs still have citizenship, as allowed by Kosovo's legislation on citizenship. This symbolism is particularly important when it comes to important domains for cultural and national identity, especially culture and education. As argued above, through the Association and the joint network for Serbian-language education, the Kosovo Serb community can regulate making use of Serbian educational material and curricula. A similar mechanism can be applied for culture, although this is less rigorously prescribed by the state. As such, the symbolic bonds between the Kosovo Serb community, potentially through the Association, and the Republic of Serbia allow for the Kosovo Serb community to remain part of the Serb national community while still being citizens of the Republic of Kosovo.

The links go further, however, than the merely symbolic level. Serbia can provide financial and technical support for the provision of public services. The Agreement of August 2015 stipulated that the Association will receive financial support from the Republic of Serbia.<sup>105</sup> It is estimated that the Serbian state has an annual budget of €200–350 million for Kosovo parallel institutions.<sup>106</sup> Financial and technical support from Serbia are thus crucial for the provision of public services to the Kosovo Serb population. Additionally, Serbian parallel institutions are the biggest employer for the Kosovo Serb community; loss of jobs is one of the main reasons why the Kosovo Serb community fears integration in Kosovo institutions. The Association could regulate the financial and technical support from the Republic of Serbia and thus maintain quality of provision of public services and a level of employment, although rationalisation will be crucial in the long term.

Although it runs counter to the traditional understanding of a sovereign state, particularly given the history of Kosovo–Serbia relations, financial and technical support by the Republic of Serbia to the Kosovo Serb community is in line with the Kosovo legal framework, 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. Financial assistance from the Republic of Serbia to Kosovo municipalities is regulated through the Law on Local Government Finance, on the condition that the financial support goes through the Kosovo Treasury before being transferred to the municipality in question.<sup>107</sup> This Law foresees assistance and support to municipalities for the provision of such services, and not to an entity that is in charge of coordinating those services. In other words, financial assistance from the Republic of Serbia will be provided through the participating municipalities and not to the Association directly.

The Law on Local Self-Government 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

<sup>105</sup> *Ibid.*, Art. 17(d).

<sup>106</sup> See footnote 45.

<sup>107</sup> [Law \(Nr.03/L-049\) on Local Government Finance](#) (13 March 2008), Art. 6.

and technical assistance, including expert personnel and equipment, in the implementation of competences.<sup>108</sup> 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 and provided that the foreign public authority does not exercise any executive, administrative, legislative power in the territory of the Republic of Kosovo.<sup>109</sup>

### **Recommendations**

- \* The Association will receive financial and technical support from the Republic of Serbia, on the basis of the principles of accountability and transparency;
- \* Technical support from the Republic of Serbia should be defined in the form of agreements on cooperation between the Association and the Republic of Serbia, subject to approval by the participating municipalities and the Ministry of Local Self-Governance and Administration;
- \* Financial support by the Republic of Serbia should be defined in the form of agreements on cooperation between the Association and the Republic of Serbia, subject to approval by the participating municipalities and the Ministry of Local Self-Governance and Administration. Financial support should pass through the Kosovo treasury and the participating municipalities and should be subject to auditing by competent authorities in Kosovo, including the Auditor General.

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108 'Law on Local Self-Government', Art. 30.2.

109 'Law on Inter-Municipal Cooperation', Art. 18.3.

## RECOMMENDATIONS

The Association is a potentially vital instrument for ensuring the viability of Serb communities in Kosovo in the long-term, by institutionalising coordination and representation of their collective interests, institutionalising provision of public services, and formalising a link with Serbia. It is the culmination of the decentralisation process that created an institutional framework for the expression and coordination of Serb interests in Kosovo, within the legal framework of the Republic of Kosovo. It has the potential to anchor Serb citizens within the institutional framework of Kosovo, and to institutionalise dialogue and cooperation with the central authorities of the Republic of Kosovo.

The challenge of developing and adopting the Association's Statute, and managing its subsequent implementation, will be significant. The Government of Kosovo and the Management Team will be obliged to negotiate and communicate in good faith to craft a mutually-acceptable framework, under constant fire from the political opposition, and with Serbia playing a key role that is not always constructive. Kosovo's political leadership will be compelled to communicate honestly with citizens about what the Association is and is not, and what its implications for the country's governance are likely to be; Kosovo's Serb political leaders will be required to navigate a treacherous course between the interests of Kosovo, Serbia, and Kosovo Serb citizens themselves. There will be an urgent need for public outreach and transparency, as well as citizen engagement and input wherever possible, to defuse tensions in both communities throughout the process.

The following section lays out a set of recommendations regarding the specific elements of a framework Statute for the Association and proposes a process by which they might be realised.

### I. The establishment process

R1. The legal framework for the Association should be formulated through an inclusive and transparent process, consisting of two phases;

R2. In the first instance, a framework should be formulated, defining the legal possibilities and limitations for inter-municipal cooperation between Serb majority municipalities. The legal framework for the establishment of these joint public institutions should be composed of an administrative instruction defining the possibilities and limits of municipalities to establish associations, a by-law on the implementation of Law on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia adopted and signed in September of 2013 on the one hand, and a by-law on the implementation of the Law on Inter-Municipal Cooperation of 2011 on the other.

Thereby the following steps should be followed:

- An administrative instruction and by-laws are issued defining the legal framework for the Association and elaborating on the relevant provisions of the Law on Inter-Municipal Cooperation and the 2013 Law on the Normalization of Relations between Kosovo and Serbia;
- Technical experts appointed by the Office of the Prime Minister and the Ministry for Local Self-Governance and Administration and the Management Team define a draft legal framework within which the Association should operate;
- Consultation with civil society articulating citizen voices and engagement of the Kosovo As-

sembly on this draft legal framework;

- Review by the Constitutional Court;
- Presentation for approval to the High-level Dialogue.

R3. In the second instance, representatives of ten Serb-majority municipalities formulate one or more draft Statute for inter-municipal cooperation within the contours of this framework. The following steps should be followed to ensure transparency and consultation:

- Public review sessions on the draft Statute in the assemblies of each of the participating municipalities;
- Constituent assembly of voted members of participating municipalities reviews the Statute.
- The MLGA should review the final Statute(s) on compatibility with the framework for inter-municipal cooperation between Serb-majority municipalities.

R4. The framework and statute(s) should also allow all municipalities in Kosovo to join and leave the Association, in line with relevant legislation on inter-municipal cooperation and freedom of association.

## II. The Association

R5. Serb-majority municipalities will establish an association which will take the form of an inter-municipal body with coordinative competences in the domains of local democracy, local economy, education, primary and secondary health and social care, urban and rural planning, local living conditions for returnees to Kosovo, research and development, and culture.

R6. The Association will be an inter-municipal body with the legal status of an association in accordance with Kosovo law.

R7. Participating municipalities should establish accountability mechanisms to check and follow-up on the work of the Association and have the opportunity to withdraw from the association at any stage.

R8. Participating municipalities can establish local public institutions for the purposes of providing services to citizens, as foreseen in the Law on Inter-Municipal Cooperation and entrust the coordination (not management) of those institutions to the Association (cf. recommendations under III).

R9. The Association will not refer to any particular community in its name, coat of arms or emblem.

The Association will have the following internal structure:

### *The Assembly*

R10. The Assembly is the supreme body, composed of representatives appointed by each assembly of the participating municipalities among their elected members.

R11. The composition of the Assembly will reflect the proportional weight of the populations and ethnic composition of each of the participating municipalities.

R12. The President and Vice-President will represent the Association and will be elected by the Assembly from among the members of the participating municipalities' assemblies and their mayors.

### *The Council*

R13. The Council is an advisory organ of a maximum of 30 members among residents of participating municipalities, including all mayors of the participating municipalities.

R14. The Deputy Chairpersons for the Communities of each of the participating municipalities will receive a seat in the Council. They will particularly assess that the Association upholds the principles of multi-ethnicity.

### *The Board and Collegia*

R15. The Board consists of 7 members voted by the Assembly from the mayors and residents of the participating municipalities. It will take necessary decisions for the daily management with the assistance of specialised collegia.

R16. The Board will be assisted by special collegia for local democracy, education, health and social care, local economic development, urban and rural planning, returnees, research and development and culture. These collegia will consist of technical experts and provide support and expertise to the Board on the request of the Board.

### *Administration*

R17. The administration will support the work of the Association. The staff of the administration will be proportionally appointed from the staff of the participating municipalities, provided such appointment is allowed for by the Law on Civil Service and the Law on Inter-Municipal Cooperation.

### *Complaints Office*

R18. The Complaints Office will examine complaints in relations to the Association's objectives.

## **III. Joint public institutions**

R19. Serb-majority municipalities will establish joint public institutions for education, health and social care and culture. The municipal assemblies will need to take specific decisions for establishing these public institutions, in line with relevant provisions of the Law on Inter-Municipal Cooperation and of the Law on Local Self Government, as well as in conformity with relevant legislation that regulates specific public services, such as health, education, culture, etc.

R20. As the Association (cf. recommendations under II) cannot take over competences of municipalities when it comes to establishing inter-municipal cooperation, it cannot establish these public institutions, nor will the joint public institutions fall under the direct control of the Association. However, the public institutions can indirectly implement decisions taken by the particular municipalities in line with strategic policies established by the association and in particular the respective collegia for education, health and social care and culture.

### *Joint network for Serbian-language education*

R21. Serb majority municipalities will have the opportunity to establish a network for Serbian-language education operating within the Kosovo education system. This will take the form of a joint public institution and allocate funds for infrastructure and teaching material (from the municipal budgets and the Republic of Serbia, the latter funding made transparent in accordance with Kosovo legislation), oversee the construction of educational facilities, register and admit students, employ and pay teachers and other school personnel, register and license educational institutions, supervise and inspect the teaching process and students' progress, and develop rules of procedures and codes of conduct.

R22. The Network will rely on strategic policies developed by the Association, but will not fall directly under the authority of the Association (cf. II).

R23. Taking into consideration the competences of the network of Serbian-language schools, it would be beneficial to urge that representatives of the network take part, along with representatives of MEST, in the revision of curricula and teaching material from the Republic of Serbia for use in Kosovo with a mid-term goal being the harmonisation of education systems within an overall Kosovo framework.

R24. The UMN remains an enhanced competence of the municipality of Mitrovica/ë North and cannot fall within the competences of the network of Serbian-language schools.

#### *Joint network for health and social care*

R25. Serb majority municipalities will have the opportunity to establish a network of primary health and social care centres in Serb-majority municipalities operating within the Kosovo health and social care system. This will take the form of a joint public institution and allocate funds for infrastructure and material (from the municipal budgets and the Republic of Serbia, the latter funding made transparent in accordance with Kosovo legislation), organize quality assurance (supervision) in accordance with standards set by the Kosovo Ministry of Health and appoint qualified personnel (who should be licensed by the Kosovo Ministry of Health).

R26. The municipalities of Mitrovica/ë North, Gračanica/Graçanicë and Štrpce/Shtërpçë, municipalities with enhanced competences in secondary health care, could establish a specific joint public institution for cooperation in secondary health care, including registration and licensing of health care institutions, recruitment, payment of salaries and training of health care personnel and administrators.

R27. Both public institutions will rely on strategic policies developed by the Association (cf. II), but will not fall directly under the authority of the Association.

#### *Joint network for Serb culture*

R28. Serb majority municipalities will have establish a joint public institution for stimulating Serb culture in Kosovo. The public institution will act as a focal point for the organisation of cultural events, promote cultural activities and cooperation, as well as provide a range of practical services on behalf of municipalities.

R29. The Network will rely on strategic policies developed by the Association (cf. II), but will not fall directly under the authority of the Association.

## **IV. The Association and the CCC**

R30. The statute of the Association (cf. II) should restrict the coordination tasks of the Association to issues concerning its members, i.e. the participating municipalities. The Association should not serve as an additional body representing the interests of the Kosovo Serb community.

R31. As an association promoting the interests of local self-government bodies with a Serb majority population, the Association should nominate representatives for the CCC, as foreseen in both agreements, and as such promote the interests of local governments with Serb majority population to the central authorities (including taking initiatives for legislation through the CCC).

R32. On behalf of the Association, the mayors of the four northern municipalities will present the Minister of Interior with a list of candidates for regional Police Commander for the northern municipalities.

## **V. The Association and the Republic of Serbia**

R33. The Association will receive financial and technical support from the Republic of Serbia, on the basis of the principles of accountability and transparency, as foreseen by Kosovo's legislation.

R34. Technical support from the Republic of Serbia should be defined in the form of agreements on cooperation between the Association and the Republic of Serbia, subject to approval by the participating municipalities and the Ministry of Local Self-Governance and Administration;

R35. Financial support by the Republic of Serbia should be defined in the form of agreements

on cooperation between the Association and the Republic of Serbia, subject to approval by the participating municipalities and the Ministry of Local Self-Governance and Administration. Financial support should pass through the Kosovo treasury and the participating municipalities, and should be subject to auditing by competent authorities in Kosovo, including the Auditor General.

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