

# Association of Municipalities in the Republic of Kosovo in which the Kosovo Serb Community is in the Majority

January 2023



Publisher: Friedrich Ebert Stiftung Kosovo, Str. Pashko  
Vasa 23, 10000 Prishtina, Republic of Kosovo

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Date: January 2023

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Design: Milky Way Creative

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Printed by: Studio Forma

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## Preface

We, the European Institute of Peace (EIP) and Friedrich-Ebert-Stiftung (FES) Pristina Office are pleased to present the result of our work on a draft statute for an “Association of Municipalities in the Republic of Kosovo in which the Kosovo Serb Community is in Majority”.

In its 23 years of presence in Kosovo, the Friedrich-Ebert-Stiftung Pristina Office has contributed to the public discussion and policy making on many different political, economic and social issues. As part of our programme, we aim to strengthen Kosovo as a partner for peace and security in the region and to support its committed political agenda for EU integration.

The European Institute of Peace is a Brussels-based public interest foundation, set up specifically to complement and strengthen European peacemaking and to support European conflict resolution efforts. The Institute has been active in the Western Balkan region since early 2021 with a comprehensive focus on the Kosovo-Serbia normalization efforts and their vital role for regional stability.

Against this background, the two organisations launched a joint series of workshops in 2022 on outstanding issues of normalisation between Kosovo and Serbia. One of the most prominent – and challenging – issues is the establishment of an “Association of Serb-majority municipalities,” which stems from the 2013 First agreement on principles governing normalization of relations reached in Brussels.

In 2015, Kosovo’s Constitutional Court ruled that the “principles as elaborated in the “Association/Community of Serb majority municipalities in Kosovo - general principles/main elements are not entirely in compliance with the spirit of the Constitution [...]”. However, it also concluded that the Association/Community is part of the Kosovo legal system and that the Association/Community is to be established as provided by the First Agreement [of principles governing normalization of relations], and provided detailed guidance on how to address any constitutional concerns in the establishment of an Association /Community.

Since then, there have been no attempts to present a proposal for public discussion and scrutiny. The publication seeks to fill this void.

The publication has the following objectives:

- (1) Present a proposal for an “Association of Municipalities in which the Kosovo-Serb community is in Majority” that is in line with Kosovo’s constitutional and legal system in effect;
- (2) Address and incorporate practical expectations and concerns of the residents of the presumed member municipalities; and
- (3) Facilitate a public discussion on a subject of national importance on the basis of a draft statute.

To attain the best possible outcome for such a public proposal, we conducted thorough research into the full spectrum of documents framing the issue, followed by a series of internal workshops with subject-matter experts and representatives from civil society. Upon completion of a working draft, we conducted a comprehensive legal review to assure that our proposal is constitutional.

Given the public attention to our work on this matter, we would like to stress that FES and EIP are independent non-governmental organizations and that we were neither “authorized” nor asked by any particular actor to draft a proposal. In a highly politically instrumentalized environment, the publication should therefore be seen rather as a starting point for an evidence-based contribution. Our work was solely guided by the motivation to contribute to initiating a substantive public discussion and offering our recommendations shaped through appropriate local and international expertise – as we have done in the past on various political and socio-economical issues.

In this publication, you will find a draft statute of an “Association of Municipalities in which the Kosovo-Serb community is in Majority,” as well as an explanatory note to provide context on the proposal.

We hope that you will find the draft engaging, considerate and a constructive contribution to the on-going efforts on normalizing relations between Kosovo and Serbia.



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# Statute of the Association of Municipalities in the Republic of Kosovo in which the Kosovo Serb Community is in the Majority

Pursuant to the Law on Ratification of the First Agreement of Principles Governing Normalization of Relations between the Republic of Kosovo and Republic of Serbia, the following municipalities (LIST OF MUNICIPALITIES) form the Association/Community of Municipalities in which the Kosovo Serb Community is in Majority.

## I. General Provisions

### Article 1

1. The Association/Community is as a legal entity established in line with the Constitution and legal system of the Republic of Kosovo.
2. The Statute of the Association/Community is the highest legal act of the Association/Community.
3. The Statute will be adopted by a constituent assembly of the Association/Community composed of the voted members of the municipal assemblies of the participating municipalities in accordance with the Law on Ratification of the First Agreement and the Constitution of the Republic of Kosovo. The Statute shall be enacted by a legal act of the Government of Kosovo and shall receive the power of a Government regulation under the Kosovo legal system upon review by the Constitutional Court.
4. The Assembly of the Association/Community is the body responsible for amendments to the Statute. Amendments of the Statute should follow the same procedure as the adoption and enactment.
5. The Association/Community consist of the following ten (10) municipalities (LIST OF MUNICIPALITIES) and represents theirs and the interest of their residents. Membership in the Association/Community is voluntary. Procedures for additional membership, departure from membership and dissolution of

the Association/Community are defined by this Statute.

6. The Association/Community shall not replace, supersede, or reduce the rights and interests of communities in the Republic of Kosovo, as enshrined in its Constitution and provided by the legal system.

### Article 2

1. Members of the Association/Community are the municipal authorities of the participating municipalities.
2. The official names of this legal entity are: "Association/Community of Municipalities in the Republic of Kosovo in which the Kosovo Serb Community is in the Majority," "Community of Municipalities in the Republic of Kosovo in which the Kosovo Serb Community is in the Majority," and "Association of Municipalities in the Republic of Kosovo in which the Kosovo Serb Community is in the Majority." All three official names refer to the legal entity established by this Statute. In this Statute, the designation Association/Community shall mean all or any of the official names. Official bodies of Kosovo or representatives of the Association/Community have the right to refer to it by any of the three official names.
3. The activities of the Association/Community are based on the principles of voluntary participation by its members, advancing democracy and local governance, and respect for the provisions of protection and representation of the rights and interests of communities embedded in the Constitution and laws of Kosovo.
4. Municipal authorities join the Association/Community on the basis of a decision by their Municipal As-

semblies in accordance with the legal provisions regulating decision-making of this municipal body. In the process of joining the Association/Community, each member must endorse its Statute. Members of the Association/Community are free to join other national, regional and international associations in line with the legal system and Constitution of the Republic of Kosovo.

5. Members of the Association/Community have the right to cease their membership. Decision to leave the Association/Community shall be taken by the Municipal Assembly of the respective municipality in accordance with the legal provisions regulating decision-making of this municipal body. A municipality that left the Association/Community may decide to reinstate its membership through the procedures outlined under point 4 above.
6. The Association/Community will be open to any other municipality provided that the members are in agreement. The decision to accept a new member of the Association/Community will be taken by a simple majority of its Assembly delegates.
7. The Association/Community can only be dissolved by a decision of its Assembly adopted by a 2/3 majority of its members. In case a dissolution decision is enacted by the Assembly of the Association/Community, the dissolution of the Association/Community is carried out by the Government. The assets of the Association/Community are distributed according to the decisions of the Assembly of the Association/Community.

The Members of the Association/Community have the responsibility to:

- Respect the Statute and the acts of the Association's organs;
  - Pay the membership fee regularly;
  - Refrain from acting within or through the Association/Community in a manner contrary to the Statute;
  - Uphold integrity, credibility, and reputation of the Association/Community.
8. Members of the Association/Community have the right to expel one or more municipalities from membership through a decision of its Assembly adopted by a 2/3 majority of its members.
  9. The Association/Community shall have its own official symbols, to include a coat of arms and a flag, which will be designed by the Board of the Association/Community in accordance with the Constitution of the Republic of Kosovo and the Law on Local Self-government.

10. The seat of the Association/Community will be determined by the Statute [in the course of its finalization and through consultation among the Association/Community stakeholders].
11. The Association/Community is entitled to its own integral budget, bank accounts and has the right to own property and engage in financial transactions.

## II. Objectives of the Association/Community

### Article 3

1. In accordance with the Ratified First Agreement and the Constitution, the Association/Community will have as its main objectives in delivering public functions and services to:
  - a. Strengthen local democracy. The Association/Community exercises this function through facilitation of cooperation among its participating municipalities, supporting the participating municipalities in the design of policies that advance local democracy, facilitating, funding or promoting activities that advance civic participation and democratic practices, and representing the interests relevant to local democracy with the central authorities.
  - b. Promote and protect the ethnic, linguistic, religious, and other forms of cultural identities represented among the population of its participating municipalities. In the conduct of this function, the Association/Community will facilitate cooperation among its participating municipalities and support them in the design of projects, policies and measures that uphold, promote, and protect cultural expression and identity represented among their residents. This may include facilitation and/or funding of projects related to culture and cultural heritage on the territory of its participating municipalities, as well as related to maintenance, rehabilitation or construction of cultural heritage sites. The Association/Community may also fund or organize events, campaigns, and other forms of public manifestations related to the promotion of the cultures and cultural diversity represented in the participating municipalities.

The Association/Community may also provide technical, legal, and professional advice to its participating municipalities and the central authorities regarding legislation, policies, activities and public engagement in the sphere of culture and cultural diversity. In the conduct of these functions, the Association/Community will respect the cultural diversity represented among the residents of its participating municipalities and diversity norms included in the Constitution and legal system of the Republic of Kosovo.



- c. Exercise full overview to develop local economy. The Association/Community exercises this function through facilitation of cooperation among its participating municipalities, supporting them in the design of projects, policies and measures that develop their local economies or assisting in the engagement of financial and human resources relevant to economic services, funding and promoting activities that enhance economic development, investment and business connectivity, and representing the interests of the participating municipalities and the economic actors located on their territories in relations with the central authorities, as well as other state and economic operators in the region and beyond, including those from the Republic of Serbia. For conducting these functions, the Association/Community shall regularly receive documents produced by the economic, financial, and budgetary authorities of the participating municipalities and shall have the right to request additional information from the participating municipalities as relevant for the conduct of this function. It shall also have the right to request official information from the central authorities relevant to the conduct of these functions.
- d. Exercise full overview in the area of education. The Association/Community fulfils this objective through the conduct of the following functions:
- Facilitating cooperation among its members for the purposes of advancement of education standards at the local level.
  - Representing the education policy interests of its members and their residents with the central authorities.
  - Conducting research and following education trends among its members, in Kosovo and abroad, and providing guidance to advance education standards, policy and technical skills.
  - Providing legal, scientific, financial, and secretarial support to its members in the implementation of their competences in the area of education, including higher education as provided by law.
  - Providing an advisory role to the central and the authorities of its participating municipalities with regard to the development and provision of Serbian-curriculum education as regulated by Kosovo law.
  - Providing legal, subject-matter and research-based advice to the central authorities and the participating municipalities with regard to the determination of the teaching, school management and support staff numbers and salary scales for the education system in the participating municipalities.
  - Provide legal, subject-matter and research-based advice to the central authorities as regards the management of the education sector on the territory of the participating municipalities.
- Funding education-related initiatives – including scholarships, teacher training, research grants, IT solutions, academic exchanges, summer programs, and other – for the benefit of education advancement among its participating municipalities.
  - Funding construction and infrastructure projects related to the provision of education among its participating municipalities, as well as providing financial support for maintenance of education and related facilities (sports halls, IT labs, etc).
  - Facilitating and/or funding the transport and distribution of education textbooks related to the Serbian-curriculum education under Kosovo law. The Assembly/Community will provide the same service for the Kosovo curriculum education in Albanian and other languages if needed by any group of residents of its participating municipalities.
  - Liaising with other parties, including the education authorities of the Republic of Serbia, for the fulfilment of this objective.
  - Providing advice to the central authorities on amendments related to legislation on education.
2. For the conduct of the above-defined functions, the Association/Community shall regularly receive documents produced by the education authorities of the participating municipalities and shall have the right to request additional information from the participating municipalities as relevant for the conduct of this function. It shall also have the right to request official information from the central authorities relevant to the conduct of these functions.
3. In the conduct of the full overview in the area of education, the Association/Community shall fully abide by the Constitution and legal system of the Republic of Kosovo. The administrative review of acts of municipalities by the central authorities in the area of their own competences, limited to ensuring compatibility with the Constitution of the Republic of Kosovo and the law, as outlined in Article 124.7 of the Constitution, shall apply *mutatis mutandis* in relation to the decisions of the Association/Community.
- e. Exercise full overview to improve local primary and secondary health and social care. The Association/Community fulfils this objective through the conduct of the following functions:

- Facilitating cooperation among its members for the purposes of advancement of primary and secondary health and social welfare at the local level.
  - Representing the health and social policy interests of its members and their residents with the central authorities.
  - Conducting research and following health and social welfare trends among its members, in Kosovo and abroad, and providing guidance for the advancement of health and social welfare provisions, policy and research.
  - Providing legal, scientific, financial, and secretarial support to its members in the implementation of their competences in the area of health and social welfare, as provided by the law.
  - Providing legal, subject-matter and research-based advice to the central authorities as regards the management of the health sector on the territory of the participating municipalities.
  - Providing an advisory role to the central and the authorities of its participating municipalities with regard to any specific health and social welfare needs of their residents.
  - Providing legal, subject-matter and research-based advice to the central authorities and the participating municipalities with regard to the determination of the health sector professionals, management and support staff numbers and salary scales in the participating municipalities.
  - Funding and facilitating capacity building and professional training of the medical and social welfare personnel of the participating municipalities, for the benefit of improvement of health and social care among its participating municipalities.
  - Funding construction and infrastructure projects related to the provision of health and care and social welfare among its participating municipalities. The Assembly/Community also provides financial support for maintenance of medical facilities.
  - Funding social housing in the participating municipalities, respecting the ethnic diversity of its population and provisions of Kosovo law regarding the selection of beneficiaries.
  - Funding the facilities, equipment and material expenses related to any specific health or social welfare needs in the participating municipalities, such as those related to mobile health provision, persons with disabilities, or elderly health care.
  - Funding and/or raising funds for social welfare support of the residents of its participating municipalities, respecting their ethnic diversity.
  - Promoting, facilitating, and funding public health awareness campaigns and measures for improving public health standards, other than those regularly provided by the health care providers as per the relevant laws.
  - At times of pandemics or public health crises,
- the Association/Community supports the implementation of Government-provided public health measures by the participating municipalities.
- At times of pandemics or when otherwise needed, funds and/or facilitates the provision of medicines, vaccines and medical equipment for the needs of the residents of the participating municipalities.
  - Liaising with other parties, including the health and social welfare authorities of the Republic of Serbia, for the fulfilment of this objective.
  - Funding the purchase of specialized medical equipment as may be needed by its participating municipality(ies) and placing the purchased equipment to the management of the legally provided medical institutions.
  - Advising the central authorities in terms of the primary and secondary health and social care in the participating municipalities, as well in terms of amendments to the legislation on municipal primary and secondary and social care.
  - Through a joint commission established with the central authorities, facilitating the payment of social welfare financial assistance from the Republic of Serbia for beneficiaries residing in the participating municipalities.
4. For the conduct of the above-defined functions, the Association/Community shall regularly receive documents produced by the health and social welfare authorities of the participating municipalities and shall have the right to request additional information from the participating municipalities as relevant for the conduct of this function. It shall also have the right to request official information from the central authorities relevant to the conduct of these functions.
  5. In the conduct of the full overview in the area of primary and secondary health and social care, the Association/Community shall fully abide by the Constitution and legal system of the Republic of Kosovo. The administrative review of acts of municipalities by the central authorities in the area of their own competences, limited to ensuring compatibility with the Constitution of the Republic of Kosovo and the law, as outlined in Article 124.7 of the Constitution, shall apply *mutatis mutandis* in relation to the decisions of the Association/Community.
  - f. Exercise full overview to coordinate urban and rural planning. The Association/Community fulfils this objective through the conduct of the following functions:
    - Facilitating cooperation among its members for the purposes of inter-municipal urban and rural planning.

- Representing the interests of participating municipalities with the central authorities as regards inter-municipal urban and rural planning.
- Conducting research and other forms of technical support to the participating municipalities in their application of legal competences in urban and rural planning.
- Providing legal, scientific, financial, and secretarial support to its members in the implementation of their competences in the area of their legal competences in urban and rural planning.
- Funding and/or facilitation of capacity building programs in the area of urban and rural planning. Providing advice to the central authorities with regards to inter-municipal infrastructure projects related to the participating municipalities.
- Providing guidance to the participating municipalities with regards to their legal competences on urban development and zoning maps.
- Providing guidance and support to the participating municipalities for the protection and promotion of cultural heritage.
- Providing advice to the central authorities on amendments to legislation related to municipal urban and rural planning.
- Providing legal, subject-matter and research-based advice to the central authorities and the participating municipalities with regard to expropriation processes on the territories of its participating municipalities.
- Facilitation of cooperation among the participating municipalities for the benefit of the returnee community.
- Funding of housing solutions for returnees to Kosovo in the participating municipalities.
- Liaison with the displaced community and identification of particular needs to address in the context of return and other durable solutions and advice to the participating municipalities in terms of meeting these needs within their legal competences.
- Liaison and cooperation with the Ministry for Communities and Return and other central institution with regard to the implementation of the relevant strategies and regulatory documents on return, as relevant for implementation by the participating municipalities.
- Providing advice and guidance to the participating municipalities in terms of policies and measures on the socio-economic integration of returnees.
- Funding socio-economic integration programs for returnees to the participating municipalities. The Assembly/Community also provides other forms of financial and material assistance to the returnees, including outside the participating municipalities.
- Providing advice to non-participating municipalities relevant to their return-related policies and measures.
- Providing advice to the central authorities with regards to legislation, policies, strategies and measures in support to returns.
- Facilitating the return of and provides other forms of durable solutions with respect to the return of displaced person to the participating municipalities from other areas of Kosovo.

6. For the conduct of the above-defined functions, the Association/Community shall regularly receive documents produced by the urban and rural planning authorities of the participating municipalities and shall have the right to request additional information from the participating municipalities as relevant for the conduct of this function. It shall also have the right to request official information from the central authorities relevant to the conduct of these functions.

7. In the conduct of the full overview in the area of rural and urban planning, the Association/Community shall fully abide by the Constitution and legal system of the Republic of Kosovo. The administrative review of acts of municipalities by the central authorities in the area of their own competences, limited to ensuring compatibility with the Constitution of the Republic of Kosovo and the law, as outlined in Article 124.7 of the Constitution, shall apply *mutatis mutandis* in relation to the decisions of the Association/Community.

Adopt measures to improve local living conditions for returnees to Kosovo. The Association/Community fulfils this objective through the conduct of the following functions:

8. For the conduct of the above-defined functions, the Association/Community shall regularly receive documents produced by the returns-related authorities of the participating municipalities and shall have the right to request additional information from the participating municipalities as relevant for the conduct of this function. It shall also have the right to request official information from the central authorities relevant to the conduct of these functions.

9. In the fulfilment of this objective, the Association/Community shall fully abide by the Constitution and legal system of the Republic of Kosovo. The administrative review of acts of municipalities by the central authorities in the area of their own competences, limited to ensuring compatibility with the Constitution of the Republic of Kosovo and the law, as outlined in Article 124.7 of the Constitution, shall apply *mutatis mutandis* in relation to the decisions of the Association/Community.

- h. Conduct, coordinate and facilitate research and development activities. In the fulfilment of this objective and in addition to the research and development activities outlined above, the Association/Community shall conduct any other research and development activity deemed necessary by the participating municipalities, as may be relevant for their own individual needs or those related to inter-municipal cooperation.
- i. Promote, disseminate and advocate issues of common interest of its members and represent them, including to the central authorities. In the fulfilment of this objective and in addition to the activities outlines under the objectives above, the Association/Community shall promote and advocate issues of common interest of its members and represent them with the central authorities as requested by the members. In the fulfilment of this function, the Association/Community shall not undermine or circumvent the constitutionally and legally provided municipal competences and communication, reporting, and cooperation channels between the municipalities and the central authorities or between the residents and central authorities.
- j. Provide services to its members in accordance with Kosovo law. In the fulfilment of this objective and in addition to the services outlined above, the Association/Community shall provide other services that may be requested by its members or local community associations of the participating municipalities, in line with Kosovo's legal system laws and without undermining or circumventing the constitutionally and legally provided municipal competences and communication, reporting and cooperation channels between the municipalities and the central authorities or between the residents and central authorities.
- k. Assess the delivery of public services to its members and their residents as to support the Association/Community in forming positions of common interest for the participation to the work of the central authorities. For the conduct of this function, the Association/Community shall have the right to request official information from the municipalities and central authorities relevant for assessing the delivery of public services. These assessments shall be used for guidance to the municipal authorities and central institutions as regards improvements in the delivery of public services, as well as for formulating positions of common interests of its members or their residents in the participation to the work of the central authorities, as pertaining to issues related to public services.
1. Conduct monitoring as required for the implementation of its objectives. In the fulfilment of its monitoring objective, the Association/Community shall have
    - h. the right to request official information from its members in all areas covered by its objectives listed above.
    - m. Establish relations and enter into cooperation arrangements with other associations of municipalities, domestic, regional, and international, relevant to the fulfilment of its objectives and in line with the Constitution and relevant laws of Kosovo.
    - n. Provide subject-matter and legal advice to its participating municipalities and the central authorities with regard to outstanding issues in the conduct of legislative, budgetary, administrative or policy interventions pertaining to the implementation of the normalization of relations agreements. Under explicit request by the Government of Kosovo or another mandated central authority, the Association/Community, in compliance with its internal democratic governance, may form special commissions, on its own or jointly with central authorities, for the facilitation of administrative solutions required for this implementation, such as verification of diplomas and certificates. This article may also be applied on open issues between the Republic of Kosovo and the Republic of Serbia, such as mutual acceptance of phytosanitary certificates and similar matters of relevance for free movement of people and commerce.

#### Article 4

1. In the fulfilment of its Objectives, the Association/Community will not undermine or circumvent the constitutionally and legally provided authority and competences of the participating municipalities nor in any way replace or undermine the constitutionally and legally provided relationship between the central and local authorities in the Republic of Kosovo.

#### Article 5

1. The Association/Community will exercise other additional competences as may be delegated by the central authorities in accordance with the Constitution and laws of Kosovo.

### III. Organizational Structure

#### Article 6

1. The Association/Community will have the following bodies:
  - Assembly of the Association/Community;
  - President of the Association/Community;
  - Vice-president of the Association/Community;
  - Council of the Association/Community;
  - Board of the Association/Community;



- Appeals and Complaints Office of the Association/Community.
2. The bodies of the Association/Community shall promote coexistence and peace between the citizens of their member municipalities and encourage building appropriate conditions to enable all communities to express, preserve, and develop their national, ethnic, cultural, religious, and linguistic identities.

## Article 7

1. The Assembly of the Association/Community is its supreme body composed of representatives appointed by each assembly of the participating municipalities among their elected members and shall reflect the composition of the municipal Assemblies.
2. The number of representatives of the Assembly is determined by the number of representatives in the assemblies of the participating municipalities at a ratio of 10 to 1. Each participating municipality delegates one representative to the Assembly of the Association/Community for each of the municipal assembly's ten seats.
3. The delegates to the Assembly of the Association/Community are elected by the respective municipal assembly upon the proposal of the mayor.
4. In the proposal and selection, the mayor and the municipal assemblies will respect the principle of ensuring ethnic diversity of their municipality. Thereby, the ethnic proportions represented in the municipal assembly will be reflected in the composition of its delegates to the Assembly of the Association/Community. In this process, the mayors and municipal assemblies will respect the community rights norms included in the Constitution and legal system of the Republic of Kosovo.
5. The term of the Assembly will be connected to the terms of the municipal assemblies of the participating municipalities. Upon each local elections, within one month after the establishment of the municipal assemblies, the municipal assemblies established thereby will undergo the procedure of electing their representatives in the Assembly of the Association/Community under the procedures outlined above and in accordance with the law.
6. The term of the Assembly delegates ends with the end of their term in the respective municipal assembly. All legally provided forms for the end of the term in office as a municipal assembly councilor shall apply to the end of term in the Assembly of the Association/Community. In case of a repeated election or a

by-election in a given participating municipality, the term of that municipality's representatives in the Association/Community ends and is replaced by delegates of the municipal assembly established through the repeated or by-election under the procedures outlined above and in accordance with the law.

7. The municipal assembly of each participating municipality has the right to revoke the mandate of one or more of its delegates to the Assembly of the Association/Community. Revocation of the mandate has to be justified in terms of respect for this Statute and the legal system of Kosovo. In the replacement of its delegates to the Assembly, municipal assemblies will respect the principle of ethnic diversity outlined above. The initiative to replace a delegate to the Assembly may be taken by the mayor, deputy mayor for communities, deputy chairperson of the municipal assembly for communities, or any municipal assembly councilor. Decisions on revocation of mandate and its replacement are taken by the municipal assembly of the respective municipality.
8. Delegates to the Assembly of the Association/Community will be entitled to financial compensation for their work in the Assembly. The financial compensation will be determined by the Assembly's Rules of Procedure and will be in line with the financial standards of public service regulated by Kosovo law.

## Article 8

1. Meetings of the Assembly of the Association/Community are called and chaired by the President of the Association/Community. In his/her absence, meetings will be called and chaired by the Vice-President of the Association/Community. In case both are absent or otherwise prevented, the eldest available delegate may call and chair the respective meeting of the Assembly.
2. Meetings of the Assembly are called on the initiative of the President of the Association/Community, the Board of the Association/Community, or by 1/3 of the delegates of the Assembly of the Association/Community.
3. Upon inauguration and within three months, the Assembly will draft its Rules of Procedure to govern its voting system and other procedural matters. The Rules of Procedure will be in line with the Statute and the Kosovo legal system. The Rules of Procedure will, as closely as possible, reflect the rules of procedure of municipal assemblies in Kosovo. The Rules of Procedure require the endorsement of 2/3 of the Assembly delegates.

4. The Assembly will meet at least twice annually and may hold other regular and ad hoc meetings. The scheduling and other Assembly meeting procedures will be regulated by the Rules of Procedure.

### Article 9

1. The Assembly adopts the Statute of the Association/Community, in line with the provisions outlined above.
2. The Assembly deliberates and adopts amendments to the Statute of the Association/Community, in line with the provisions outlined above.
3. The Assembly adopts its Rules of Procedure, in line with the provisions outlined above.
4. The Assembly decides on admission and dismissal of its delegates, in line with the provisions outlined above.
5. Elects and dismisses the President, Vice-President and Board of the Association/Community.
6. Reviews and adopts the budget of the Association/Community.
7. Upon recommendation from the President or the Board of the Association/Community, the Assembly reviews and adopts strategic policy guidance documents relevant for the work of the Association/Community or for implementation of the Association/Community objectives, when they relate to all members of the Association/Community.
8. Deliberates, reviews and sets policy priorities for the implementation of the Association/Community Objectives.
9. Reviews and approves cooperation agreements with the central authorities or third parties, domestic or foreign, pertaining to the Objectives or the Association/Community as a whole.
10. Deliberates and approves construction, infrastructure and other investment projects valued at more than 50,000 Euro, upon proposal by the President and the Board of the Association/Community.
11. Deliberates and adopts other administrative regulations and decisions related to the Association/Community Objectives in accordance with the Statute and legal system of Kosovo.
12. All Assembly decisions pursuant to the points outlined above are applicable to its members. When

necessary and determined by the Constitution and laws of Kosovo, the participating municipalities will effectuate the Assembly decisions through the legal, administrative, budgetary and other procedures pertaining to the scope of competences of municipalities in Kosovo. Any member of the Association/Community has the right to formally express a different decision or otherwise not enact decisions of the Assembly through its own constitutionally and legally provided procedures.

13. As the supreme body of the Association/Community, the Assembly may decide to change the competences of any other body of the Association/Community, if necessary, through amendments to the Statute.

### Article 10

#### President and Vice-President of the Association/Community

1. The Association/Community will have a President elected by the Assembly from among the members of the participating municipalities' assemblies and their mayors. The procedure for electing the President will be regulated by the Assembly Rules of Procedure.
2. The Association/Community will have a Vice-President who will assist the President in the conduct of his/her duties. The Vice-President is elected by the Assembly from among the members of the participating municipalities' assemblies and their mayors. The procedure for electing the Vice-President will be regulated by the Assembly Rules of Procedure.
3. The mandates of the President and Vice-President are connected with their respective mandates within their participating municipalities. Upon each local election cycle, once itself constituted, the Assembly will elect a new President and Vice-President. There are no limitations as to the repeated service in these two functions. If the President's or Vice-President's municipal mandates are otherwise ceased through any legally prescribed manner, the Assembly will dismiss them and elect a new President and Vice-President.
4. The President will represent the Association/Community before the central authorities and third parties, domestic or foreign.
5. The President chairs the meetings of the Assembly and is among the parties authorized to call Assembly meetings.
6. The President supervises the work of the Association/Community Board and administration and manages

the work of the Association/Community, implementation of the Association/Community Objectives and Assembly decisions.

7. Assisted by the Association/Community Board and administration, the President manages the Association/Community budget and spending, in line with the provisions of the Statute and legal norms of Kosovo.
8. Assisted by the Board, the President is the authorized entity of the Association/Community for managing its bank accounts, property-related documents, entering cooperation agreements, representation at court and other administrative matters, and other forms of formal correspondence necessary for the functioning of the Association/Community. In the conduct of this authority, the President will follow procedures outlined in the Statute and the legal system of Kosovo.
9. The President initiates the deliberation and approval of strategic policy guidance and other documents outlined above under the competences of the Assembly of the Association/Community.
10. The Vice-President assists the President in all functions described above, represents the Association/Community in consultation with the President and replaces the President in the conduct of his/her duties when necessary. The President may temporarily delegate any of the functions above to the Vice-President.
5. Frequency and scheduling of meetings, decision-making and other matters regulating the Council's proceedings will be determined by the Assembly of the Association/Community through a special regulation in accordance with this Statute and legal system of Kosovo.
6. Membership in the Council for non-mayors will reflect the ethnic diversity of the participating municipalities and otherwise respect the constitutional and legally provided norms for the representation of communities in Kosovo.
7. The Council of the Association/Community is an advisory body which provides guidance to the work of the Association/Community.
8. The Council provides advice to the other Association/Community bodies and its members may otherwise directly engage in the research, analysis, strategic guidance formulation, and professional collegia associated with the implementation of the Association/Community Objectives.
9. The Council provides recommendations to the President, Vice-President, Board, and Assembly of the Association/Community in all aspects of their work.
10. The Council members have the right to observe meetings of the Assembly of the Association/Community and table written proposals for the Assembly's consideration and approval.
11. The Council provides an advisory opinion on all forms of decisions of the Assembly of the Association/Community.

## Article 11

### The Council of the Association/Community

1. The Association/Community will have a Council composed of a maximum of 30 members among residents of the participating municipalities, including all mayors of the participating municipalities.
2. The composition of the Council will reflect the ethnic diversity of the participating municipalities and respect the constitutional and legal provisions on the representation of communities in Kosovo.
3. The rules specified above for the term of service of municipal councilors and mayors within the bodies of the Association/Community will apply for the Council term in office for the mayors.
4. The election and criteria for membership on the Council for its members who are not mayors or municipal assembly councilors will be determined by the Assembly of the Association/Community through a special regulation in accordance with this Statute and legal system of Kosovo.

## Article 12

### The Board of the Association/Community

1. The Association/Community will have a Board composed of 7 members voted by the Assembly from among the mayors and residents of the participating municipalities.
2. The composition of the Board will reflect the ethnic diversity of the participating municipalities and respect the constitutional and legal provisions on the representation of communities in Kosovo.
3. The Board will be elected by the Assembly of the Association/Community on the proposal of the President. Election of the Board requires a simple majority of the Assembly's delegates.

4. In formulating his/her proposal for the Board, the President will consult the leadership of all the participating municipalities, the Office of the Prime Minister of Kosovo, the Association/Community Council, civil society, and non-majority community leaders from the participating municipalities. To the greatest extent possible, the views of the consulted interlocutors will be reflected in the President's proposal for the Association/Community Board members.
5. As regards the mayors who may be elected for membership on the Board, their terms with the Board are connected with their terms as mayors, in line with the relevant provisions outlined above in the Statute.
6. The Assembly may select any other resident of its participating municipalities for membership on the Board. In this selection and in addition to adherence to the norms of non-majority community representation, the Assembly is guided by the values of professionalism, personal and subject-matter competence, track record of institutional and community service and representation.
7. The Board will elect its chairperson, who will coordinate its activities and reporting to the Assembly and the President of the Association/Community.
8. Under the supervision of the President, the Board manages the implementation of the Assembly's Objectives, relevant Assembly decisions, and the Association/Community's administration.
9. In their work, the members of the Board will be supported by professional collegia composed of experts in the fields covered by the Association/Community Objectives.
10. The Board will establish professional collegia in the following areas:
  - Development of local economy;
  - Education;
  - Primary and secondary health care;
  - Social welfare;
  - Urban and rural planning;
  - Conditions and durable solutions for the returnees;
  - Public services;
  - Legal, administrative, and procedural matters;
  - Non-majority community rights.
11. The Board may decide to establish other professional collegia in line with the Association/Community Objectives.
12. The work of the collegia is limited to research, professional and technical advice related to the implementation of the Association/Community Objectives, as pertaining to the competences of the Board.
13. Under the overall supervision of the President, the work of the collegia is supervised by the Board, under the coordination of its chairperson.
14. In the selection of the professional collegia, the Board will respect the provisions of ethnic diversity outlined in the constitution and laws of Kosovo.

## Article 13

### Administration of the Association/Community

1. The Association/Community will have an administration, headed by a Chief of Administration appointed by and reporting to the Board.
2. The administration supports the work of the Association/Community, in particular the Board and the President.
3. The staff of the administration is composed of impartial, professional, and accountable citizens of Kosovo – regardless of their municipal residence. The staff of the administration reflects the multi-ethnicity and gender equality standards embedded in the Kosovo legal system. The staff of the administration are employed by the Board based on merit and upon passing selection procedures drafted and approved by the Board, in line with this Statute and the legal system of Kosovo.
4. The staff of the administration will benefit from a formal employment status with the Association/Community and will enjoy the rights and protection afforded to employees by the Law on Labour.
5. The staff of the administration will be subjected to the duties outlined for employees in the Law on Labour.
6. The Association/Community will respect all relevant provisions of the Law on Labour.
7. The Chief and staff of the administration will not come from the ranks of elected mayors or municipal assembly members of the participating municipalities nor will they hold any other functions in the Association/Community.



8. The members of the Association/Community may engage employees of the member municipalities under special-expertise temporary contracts to conduct a particular task in support of the Board and the Association/Community in the implementation of the Objectives. In this regard, the members of the Association/Community will act in line with the Kosovo Law on Labour and will not undermine the capacity of the participating municipalities to deliver services in line with the Kosovo legal system.
3. The Association/Community may provide guidance, technical and legal advice to its participating municipalities with respect to their constitutionally and legally provided rights on proposing legislation.
4. In relations with the central authorities, the Association/Community may also provide advice and technical expertise in the drafting of legislation under the established legal norms of Kosovo. The Association/Community may participate in public hearings regarding new legislation or amendments to existing legislation. The Association/Community may be invited by the Government or Assembly of Kosovo to provide advice in the drafting of legislation pertaining to local governance, community rights, or any area covered by the Association/Community Objectives.

## Article 14

### Appeals and Complaints Office of the Association/Community

1. The Association/Community will have an appeals and complaints office mandated to receive and deliberate upon appeals and complaints by the municipal authorities (mayor and municipal assembly) of the participating municipalities or civic groups, commercial entities, or professional unions from the participating municipalities.
2. The complaints and appeals that may be submitted to this Office are those pertaining to alleged violations by the Association/Community against the rights and interests of its participating municipalities, their residents, commercial entities or professional associations.
3. The Office will also be mandated to receive and deliberate upon motions and petitions by the societal actors from the participating municipalities with regards to the fulfilment of the objectives and the functioning of the bodies of the Association/Community.
4. Decisions of this Office in relation to the complaints, appeals and petitions submitted to it shall be applicable to the relevant bodies of the Association/Community. The Office's decisions may be appealed with the relevant judicial authority of the Republic of Kosovo.
5. The Association/Community will have the right to initiate or participate in proceedings before the competent Courts in accordance with the Constitution and relevant laws of Kosovo.
6. The Association/Community may initiate proceedings before the Constitutional Court only where the Association/Community as a legal entity can claim to be a victim of a violation of its fundamental rights and freedoms guaranteed by the Constitution within the meaning of Article 113.7 of the Constitution.
7. The Association/Community will have the right to nominate representatives in the competent bodies of the central authorities, including the Consultative Council for Communities.
8. The Association/Community will have the right to have access and information from central authorities in accordance with Kosovo law.
9. Acting on behalf of the Association/Community, the four mayors of the northern Kosovo municipalities – as long as they are all members of the Association/Community – will provide the Kosovo Ministry of Internal Affairs a list of candidates for nomination as regional Kosovo Police Commander, as specified in Article 9 of the Ratified First Agreement.

## IV. Relations with the central authorities

### Article 15

1. The Association/Community will engage with the Kosovo central authorities on the basis of mutual cooperation and information sharing, in the spirit of promoting democracy and multiethnicity, and in line with the Kosovo legal system.
2. The Association/Community will promote the interests of the communities and residents of its participating municipalities, in good faith and in the spirit of inclusive multiethnicity.

## V. Legal Capacity

### Article 16

1. Through a legal act, the Government of Kosovo will endow the Association/Community the status of legal entity and the legal capacity necessary to perform its Objectives. This includes the right to own moveable and immoveable property, to co-own companies that provide local services within the scope of the As-

sociation/Community's Objectives, and to conclude contracts, including employment contracts.

2. The Members of the Association/Community retain their legal, proprietary, and financial independence after obtaining a membership status in the Association/Community.

## VI. Budget and support

### Article 17

1. The Association/Community will have its own budget, which will be administered in accordance with the principles of transparency and accountability, and the provisions of the Law on Public Procurement and the Republic of Kosovo legal system.
2. The Association/Community's expenditures shall be subject to audits by the competent authorities, including by the Auditor General of Kosovo.
3. The Association/Community will be funded from:
  - Contributions from its members;
  - Income and revenue from the services provided by the Association/Community, its companies or drawn from its movable or immovable assets;
  - Transfers from the central authorities;
  - Contributions, grants, donations, as well as financial support from other associations and organizations, domestic and international, including the Republic of Serbia;
  - The Association/Community will be exempt from duties and taxes in the pursuit of its Objectives, on the same basis as the participating municipalities.
4. The Association/Community will have an annual integrated budget proposed by its Board and approved by its Assembly. Its annual budget shall be proportional to, defined by and appropriate for the Association/Community objectives and functioning of its bodies, as defined by this Statute.
5. The Government and Auditor General of Kosovo shall receive each annual integrated budget of the Association/Community prior to its approval. The Government and Auditor General will conduct a review of the draft budget for compliance with the Association/Community's objectives and functioning of its bodies as defined by this Statute. The Government

and Auditor General will conduct the draft budget review within 15 working days upon receipt. If found to be compliant, the central authorities will notify the Assembly of the Association/Community, which will then approve the budget through its designated procedures. If a portion of the draft budget is found to be non-compliant, the Government and Auditor General will not hold the entire integrated budget pending. In such cases, the Assembly of the Association/Community shall be given recommendations on amending or eliminating the disputed budget provisions. If the Assembly of the Association/Community disagrees with the recommendations of the central authorities, it shall notify them within 10 working days. In such cases, the Government will refer the matter to the Constitutional Court, the decision of which will be final and obligatory for all parties.

6. Under the provisions listed above, the Association/Community will have full autonomy in the management and perusal of its integrated budget.
7. Any funding that the Association/Community may be set to receive beyond its integrated annual budget will be for expenditures in line with this Statute and shall require specific approval by the Government of Kosovo.
8. The Association/Community shall provide annual reports to the Government on the receipt and management of its funds. All funding, especially that from the Republic of Serbia, will be conducted under the legal provisions of Kosovo.
9. The Association/Community shall not infringe on the exclusive powers of the participating municipalities guaranteed by Article 40.2 of the Law on Local Self-government.

## VII. General and final provisions

### Article 18

1. Within one year of the adoption of the Statute of the Association/Community, a review of its implementation shall be conducted by the Government. In case of disputes between the Government and the Association/Community resulting from the review, the Government will refer the issue to the Constitutional Court. Unless otherwise provided by the rules or official proceedings of the Constitutional

Court, the Association/Community will have the right of representation of its arguments in case of a Constitutional Court review.

- 2 In any aspect of its objectives, policies, rules of procedure, decisions, policies, or activities, the Association/Community will not undermine or circumvent the constitutionally and legally provided authority and competences of the participating municipalities nor

in any way replace or undermine the constitutionally and legally provided relationship between the central and local authorities in the Republic of Kosovo.

- 3 Whenever necessary and in line with the Constitution and legal system of Kosovo, the participating municipalities will enact their own procedures in the effectuation of the consequences of their membership in the Association/Community.

# **Association/Community of Serb Majority Municipalities**

**(Association/Community of Municipalities in which the  
Kosovo Serb Community is in the Majority)**

**Gjyljeta Mushkolaj**

# Association/Community of Serb Majority Municipalities<sup>1</sup>

(Association/Community of Municipalities in which the Kosovo Serb Community is in the Majority)

## Introduction and Background

Kosovo is today under severe criticism for not establishing the “Association/Community of Serb Majority Municipalities”. The opposition in Kosovo to forming Association/Community of Municipalities in which the Kosovo Serb Community is in the majority is associated with the horrific war in Croatia which started with the Belgrade inspired Association of Municipalities of Northern Dalmatia and Lika<sup>2</sup>, and genocide in Bosnia and Herzegovina, which was preceded by the formation of the Community of Municipalities of Bosnian Krajina<sup>3</sup>.

Similar fears for allowing the formation of Association of Municipalities in which the Kosovo Serb Community is in the majority was expressed several times by the international community in the last 20 years. In 2003, two unions of Kosovo Serb majority municipalities were formed: the first in northern Mitrovica and the second in eastern Kosovo. UNMIK did not recognize either union as a legitimate structure, as they were based on mono-ethnicity<sup>4</sup>, and considered it an attempt to divide Kosovo along ethnic lines. However, the Unions were actively pressuring Serbs in Kosovo for a boycott of Kosovar institutions. In 2008, another Association of Municipalities in which the Kosovo Serb Community is in the majority was created, this time directly by parallel Serb municipal councils that were set up in accordance with the election results and a “Kosovo Serb Assembly” was brought into being.<sup>5</sup>

It is a fact that municipalities in which the Kosovo Serb Community is in the majority are fully controlled by only one political party, Srpska Lista (SL) which is founded, financed and controlled by Belgrade. SL candidates came into power in all ten municipalities in which the Kosovo Serb Community is in the majority, by violating all principles for democratic, free, and fair elections.<sup>6</sup>

There is a well-grounded fear that forming an Association/Community of Municipalities in which the Kosovo Serb Community is in the majority under these circumstances, reopens the wounds of the mass atrocities for the people of Kosovo.

However, there is a need to clarify the importance for establishing the Association of Municipalities in which the Kosovo Serb Community is in the majority, as well as the necessity for defining its structure, powers, and suitable bylaws that would preserve the constitutional order of the Republic of Kosovo and prevent Belgrade to establish parallel structures. The Association of Municipalities in which the Kosovo Serb Community is in the majority should serve the interests of all the citizens residing in the participating municipalities, in achieving wellbeing and prosperity.

<sup>1</sup> Municipalities are public legal entities, and as such, they serve their residents, with no discrimination if they are in minority. Certain communities can be in majority, but this does not make local governments property of the majority community. Kosovo Law on Local Government, which is one of the so-called vital laws, and was drafted by the Council of Europe experts, uses the term Municipalities in which the Kosovo Serb Community is in the Majority. After all, Serbia is a state party to all Council of Europe Treaties and should observe the right terminology.

<sup>2</sup> International Criminal Tribunal for the former Yugoslavia. (2002, November 18). Transcript, page 12900. The Trial of Slobodan Milosevic (IT-02-54). Retrieved November 6, 2022, from [https://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/021118ED.htm](https://www.icty.org/x/cases/slobodan_milosevic/trans/en/021118ED.htm)

<sup>3</sup> <https://iwpr.net/global-voices/courtside-bosanska-krajina-trial-15>. (2005, February 22). Retrieved November 7, 2022, from [https://www.eeas.europa.eu/eom-kosovo-2021/eu-eom-kosovo-2021-municipal-elections-final-report\\_en](https://www.eeas.europa.eu/eom-kosovo-2021/eu-eom-kosovo-2021-municipal-elections-final-report_en)

<sup>4</sup> United Nations Security Council. (2003, April 14). Security Council - UNMIK. <https://www.un.org/securitycouncil/content/secretary-generals-reports-submitted-security-council-2003>. Retrieved November 7, 2022, from <https://unmik.unmissions.org/sites/default/files/s-2003-421.pdf>

<sup>5</sup> United Nations Security Council. (2009, March 17). S/2009/149. Security Council Report. Retrieved November 7, 2022, from <https://www.securitycouncilreport.org/un-documents/document/Kos-S-2009-149.php?print=true>. Džihic, V., & Kramer, H. (2009). Kosovo After Independence. Is the EU's EULEX Mission Delivering on its Promises.

<sup>6</sup> See EU EOM Kosovo 2021 municipal elections - final report. EU EOM Kosovo 2021 Municipal Elections - Final report | EEAS Website. (2022, February 3). Retrieved November 7, 2022, from [https://www.eeas.europa.eu/eom-kosovo-2021/eu-eom-kosovo-2021-municipal-elections-final-report\\_en](https://www.eeas.europa.eu/eom-kosovo-2021/eu-eom-kosovo-2021-municipal-elections-final-report_en)

## First Agreement on the Normalization of Relations

With the joint proposal of Serbia and EU, on September 9 2010, the UN General Assembly<sup>7</sup> acknowledged by consensus the International Court of Justice's Advisory Opinion on Kosovo's declaration of independence and welcomed the EU readiness to facilitate a process of dialogue between the parties, "to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people" both in Kosovo and Serbia.

The dialogue facilitated by the European Union was launched in March 2011, initially as a series of technical negotiations. The negotiations progressed to a high-level dialogue under the auspices of the EU High Representative for Foreign Affairs and Security Policy, Catherine Ashton, which led to a landmark April 2013 First Agreement on the Normalization of Relations.

This agreement sets out a series of steps to facilitate the normalization of the relations between Kosovo and Serbia. The first six points of the agreement refer to establishing an Association of Municipalities in which the Kosovo Serb Community is in the majority in Kosovo, as follows:

1. *There will be an Association/Community of Serb majority municipalities in Kosovo. Membership will be open to any other municipality provided the members are in agreement.*
2. *The Community/Association will be created by statute. Its dissolution shall only take place by a decision of the participating municipalities. Legal guarantees will be provided by applicable law and constitutional law (including the 2/3 majority rule).*
3. *The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo municipalities e.g. President, vice President, Assembly, Council.*
4. *In accordance with the competences given by the European Charter of Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Community/Association collectively. The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning.*

5. *The Association/Community will exercise other additional competences as may be delegated by the central authorities.*
6. *The Community/Association shall have a representative role to the central authorities and will have a seat in the communities' consultative council for this purpose. In the pursuit of this role a monitoring function is envisaged.*

### ***The essential requirements of the (not so ambiguous) 2013 First Agreement on the Normalization of Relations to establish the Association/Community of Serb majority municipalities in Kosovo***

An important feature of the 2013 *First Agreement on the Normalization of Relations* is that the bases of the powers and competences of the Association/Community are provided by the European Charter of Local Self Government and Kosovo law<sup>9</sup>. This point is also continuously emphasized by EU officials.<sup>10</sup> In addition, **the Implementation Plan of the First Agreement** provides for the establishment of the Association/Community based on point 2 as well as on point 6<sup>11</sup> that regulates the role and function of the association, typical for associations of municipalities based on the fundamental right to freedom of association as guaranteed by Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution, and in particular with Articles 21 and 44.

The Constitution of the Republic of Kosovo expresses the requirement to respect, observe and implement the European Charter on Local Self Government to the same extent as it is required of a signatory state.<sup>12</sup>

The right for local authorities to associate is codified in the European Charter of Local Self-Government. The Charter demonstrates the far-reaching consensus of European states on the importance of local self-government. Article 10 of the Charter recognizes the right of local authorities to cooperate and to associate with other local authorities of the same or another state. The right to associate is an important aspect of the development of local autonomy and the entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities is recognized in each state party of the European Charter of Local Self-Government.

<sup>7</sup> UN General Assembly resolution A/RES/64/298, 13 October 2010.

<sup>8</sup> Law No. 04/L-199 on Ratification of the First International Agreement of Principles Governing the Normalization of Relations Between the Republic of Kosovo And the Republic Of Serbia. Retrieved November 3, 2022, from <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=11205>.

<sup>9</sup> See point 4 of the First Agreement on the Normalization of Relations.

<sup>10</sup> Ewb, & Tanjug. (2018, April 11). EU: Community to be formed in line with Kosovo laws. European Western Balkans. Retrieved November 4, 2022, from <https://europeanwesternbalkans.com/2018/04/10/eu-community-formed-line-kosovo-laws>

<sup>11</sup> Draft laws in reading. Republic of Kosovo - Assembly - Draft Laws. (n.d.). Retrieved November 6, 2022, from <http://old.kuvendikosoves.org/?cid=2%2C194%2C815>

<sup>12</sup> Article 123.3 of the Constitution of the Republic of Kosovo. Retrieved November 3, 2022, from <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

<sup>13</sup> European Charter of Local Self-government (Strasbourg, 15 October 1985). CVCE.EU by UNI.LU. (n.d.). Retrieved November 3, 2022, from [https://www.cvce.eu/en/obj/european\\_charter\\_of\\_local\\_self\\_government\\_strasbourg\\_15\\_october\\_1985-en-9fee0e1f-2199-4c2a-bd69-500f5ec4e2ec.html](https://www.cvce.eu/en/obj/european_charter_of_local_self_government_strasbourg_15_october_1985-en-9fee0e1f-2199-4c2a-bd69-500f5ec4e2ec.html)



In order to facilitate the right of local authorities to association, states applying the Charter are encouraged to develop an enabling legal framework. In most of the European countries, this right is codified in laws (Belgium, Spain, France) and sometimes is even guaranteed in constitutions (Greece, Poland, Portugal), as is the case of Kosovo.<sup>14</sup>

Associations of municipalities serve primarily three aims:

- Advocacy: promoting the interests of local authorities.
- Service provision: delivering services to local authorities, e.g., training, databases.
- Communication: serving as a platform where municipalities meet. The three directions of communication are: (a) communication between municipalities for the exchange of ideas and best practices; (b) bottom-up communication, ideas formulated at local level are communicated to central level; and (c) top-down communication, ideas about new legislation are communicated to local level.

It is important to emphasize that an association of local governments has also a political dimension. In defending the interests of municipalities, an association of local governments should not however be likened to an interest group, since an association does not represent specific groups pursuing particular economic or professional ends but represents **all citizens** served by the member local governments. As a general rule, an association represents all local authorities of a particular kind on a regional or national basis. However, the official Explanatory Report of the European Charter explicitly states that the right to belong to such associations does not imply central government recognition of any individual association as a valid interlocutor.

In accordance with the European Charter of Local Self-Government, the Kosovo Law on Local Self Government<sup>15</sup>, which is subject to the vital interest clause of the Constitution, guarantees and regulates the right of municipalities to associate.<sup>16</sup>

A specific feature of the Law is that it foresees the provision of enhanced participatory rights in the selection of the local police station commanders and enhanced competencies in the area of culture to municipalities with Serb-majority population. In reference to health and education, it outlines the provision of enhanced competencies regarding university education in the municipality of

Mitrovicë/Mitrovica North, as well as in secondary health care in the municipalities of Mitrovicë/Mitrovica North, Graçanicë/Gracanica, and Shtërpcë/Štrpce. Furthermore, the Law explicitly states that municipalities are allowed to cooperate directly with institutions of the Republic of Serbia.

These specific and enhanced competencies of the municipalities provided by the Law on Local Self-Government will have a significant impact when developing the Statute of the Association/Community of municipalities with Serb-majority population. In this regard, the process of defining the Association/Community's powers and competencies will be unique and different to the other associations of municipalities.

As mentioned above, in accordance with the Implementation Plan of the 2013 First Agreement on the Normalization of Relations, the Republic of Kosovo should take into consideration the following steps when establishing the Association of Municipalities in which the Kosovo Serb Community is in the majority (Points 2 and 6):

- The Association/Community will be created by statute; Its dissolution shall only take place by a decision of the participating municipalities; Legal guarantees will be provided by applicable Kosovo law and constitutional law (including the 2/3 majority rule);
- The Association/Community shall have a representative role to the central authorities and will have a seat in the communities' consultative council for this purpose. In the pursuit of this role a monitoring function is envisaged.

However, this does not mean that Municipalities in which the Kosovo Serb Community is in the majority are going to be deprived of **inter-municipal cooperation**. On the contrary, because of the enhanced competencies, they will have more potential for inter-municipal cooperation than the rest of Kosovo municipalities.

The Association/Community, would serve as a forum for developing ideas, projects and plans for intermunicipal partnerships as an answer to a very diverse situation. Intermunicipal cooperation is complex and needs to take account of economic, legal, financial, demographic, technical and organizational dimensions in order to find its most appropriate form. The Association/Community is a good setting for providing support to the municipalities in which the Kosovo Serb Community is in the majority, through capacity-building, expertise and information.

<sup>14</sup> Similarly to the settled case-law of the Austrian Constitutional Court not only private corporations but even State actors such as territorial authorities may be entitled to constitutional rights (See, e.g., VfSlg. 19.961/2015, 20.117/2016 and 20.118/2016 (associations) in Dopplinger, L. (2021). Legal Persons as Bearers of Rights Under the ECHR. University of Vienna Law Review, 5(1), 1-46.), **the Kosovo Constitutional Court Judgment on the constitutionality of the Principles and Main Elements of the 25 August 2015 agreement between Kosovo and Serbia made it evident that municipalities enjoy the right of the freedom of associations (see points 128 & 129 of the Judgment in Case No. KO130/15' (23 December 2015).**

<sup>15</sup> Law no. 03/L-040 local Self-Government. (n.d.). Retrieved November 4, 2022, from <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2530>

<sup>16</sup> Article 81 of the Constitution provides that the legislation on local government is considered of "vital interest." The laws of vital interest "require for their adoption, amendment or repeal both the majority of the Assembly deputies present and voting and the majority of the Assembly deputies present and voting, holding seats reserved or guaranteed for representatives of Communities that are not in the majority". Therefore, under the Kosovo Constitution, issues crucial to the interest of ethnic communities enjoy protection, granting communities de facto veto protection from majority rule.

The Association/Community will be well aware of the weakness of many municipalities and their consequent poor performance in service provision. It will also be able to inform municipalities about the values of inter-municipal cooperation for the benefits of all their citizens. It is important to emphasize that the Association/Community can be also used to assist municipalities and provide technical support to develop capacities for providing services beyond the means of individual municipalities, through building inter-municipal partnership to address the challenge of absorbing EU funds. Of course, the involvement of the Association/Community is limited to providing support, by not interfering with the powers of the member municipalities, whose assemblies have the sole power to take decisions.

The membership in Association/Community does not interfere with the right of member municipalities to join the Association of Kosovo Municipalities (AKM), as a very much needed forum to engage in international activities and to make use of its significant training center.<sup>17</sup>

In the end, it is important to highlight that the Asso-

ciation/Community of Municipalities in which the Kosovo Serb Community is in the majority has the duty to assure the respect of the **Rights of Communities and Their Members** guaranteed by **Chapter III** of the **Constitution of the Republic of Kosovo**. In addition, it should ensure the respect of the constitutional requirement that *“local self-government is based upon the principles of good governance, transparency, efficiency and effectiveness in providing public services having due regard for the specific needs and interests of the Communities not in the majority and their members.”*<sup>18</sup>

**Council of Europe Framework Convention for the Protection of National Minorities**, in its entirety is directly applicable in the Republic of Kosovo and, in the case of conflict, has priority over provisions of laws and other acts of public institutions of the Republic of Kosovo. All municipalities of Kosovo, not only individually, but also in cooperation with other entities, including the Association/Community of Municipalities in which the Kosovo Serb Community is in the majority, have an obligation to respect every provision of this European instrument.<sup>19</sup>

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<sup>18</sup> Constitution of the Republic of Kosovo, Art. 123.4.

<sup>19</sup> Constitution of the Republic of Kosovo, Art. 22.4.









**Association of Municipalities in the  
Republic of Kosovo in which the Kosovo  
Serb Community is in the Majority**

January 2023