



APRIL 2018

## Update on the Process of Association of Serb-Majority Municipalities

The arrest of Marko Duric, head of Belgrade's office for Kosovo and Metohija and Foreign Policy Advisor to the President of Serbia, has led to increased tensions and might even lead to the disruption of the Kosovo government. Duric, one of the negotiators in the Pristina-Belgrade dialogue, was arrested while attending a public round table in Mitrovica regarding 'internal dialogue over the Kosovo issue'. A big underlying part of the tensions is the inability of the Kosovo government to form the Association/Community of Serb-Majority Municipalities (hereinafter *the Association*). Serbian List, the party which mainly represents the interests of the Kosovar Serbs, has issued an ultimatum about the creation of *the Association*. Serbian List decided to join the Kosovo government in September 2017 primarily to form *the Association* as soon as possible.

The party currently has three ministerial seats and one Deputy Prime Minister, covered by Dailob Jevtic (Deputy PM & Min. Returns and Communities), Ivan Teodosijevic (Min. Local Government) and Nenad Rikalo (Min. Agriculture).<sup>1</sup> On 28 March, the mayors and councilors of ten communes which have a Serbian majority in Kosovo, held a meeting out of which several conclusions followed.<sup>2</sup> The Serbs municipalities announced to start forming *the Association* independently from Pristina, if Kosovo politicians are not ready to start working on it within the next three weeks. Additionally, they want the people responsible

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<sup>1</sup> Arben Qirezi, 'Serbian List's Threats Could Rebound on Kosovo Serbs', website *Balkan Insight*, 29-03-2018, <http://www.balkaninsight.com/en/article/serbian-list-s-threats-could-rebound-on-kosovo-serbs-03-29-2018> (29-03-2018).

<sup>2</sup> Muhamer Pajaziti, 'Serbian List issues an ultimatum about the creation of the Association of Serbian Communes', website *IBNA*, 28-03-2018, <http://www.balkaneu.com/serbian-list-issues-an-ultimatum-about-the-creation-of-the-association-of-serbian-communes/> (28-03-2018).

for the arrest of Marko Duric to be prosecuted, Interior Minister Flamur Sefaj dismissed and KFOR and EULEX to increase their presence in defense of the Serbian people.<sup>3</sup>

President Thaci and Prime Minister Haradinaj have already stated that according to them an ultimatum is the wrong approach.<sup>4</sup> On the other hand, a little bit more than a week after Serbian List presented their demands, Thaci and Haradinaj renewed their efforts for the implementation of the agreement by reactivating the managerial team tasked to draft the statute of *the Association*.<sup>5</sup> This action was welcomed by the EU Office in Kosovo, which stated that the agreement on *Association* should be implemented 'without further delay'.<sup>6</sup> However, Serbian List is still not satisfied, because they find it 'unacceptable' to initiate the statute based on the Constitution of Kosovo.<sup>7</sup> The idea of the establishment of *the Association* was and is still part of the Brussels dialogue between Kosovo and Serbia and was meant as an element of the 'normalization of relations' process, which was drawn-up in April 2013.<sup>8</sup> In the summer of 2016, ECMI Kosovo released a report named *The Association/Community of Serb-Majority Municipalities: Breaking the Impasse*.<sup>9</sup> ECMI's report aimed to contribute to the development of a draft statute for *the Association* by offering concrete recommendations. This policy brief will analyze recent developments and follow-ups with regard to *the Association* dialogue.

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<sup>3</sup> UNMIK, 'Session of 10 Serb-majority municipalities in Mitrovica North – 3 conclusions adopted', website *UNMIK*, 28-03-2018, <http://media.unmikonline.org/?p=82782> (29-03-2018).

<sup>4</sup> N.N., 'No exchange of territory or partition of Kosovo, says PM Haradinaj', 28-03-2018, website *Gazeta Express*, <http://www.gazetaexpress.com/en/news/no-exchange-of-territory-or-partition-of-kosovo-says-pm-haradinaj-173906/> (29-03-2018).

<sup>5</sup> N.N., 'Kosovo recommence work on establishment of Serbian Municipal Association', 04-04-2018, website *Gazeta Express*, <http://www.gazetaexpress.com/en/news/kosovo-recommence-work-on-serbian-municipal-association-173941/> (06-04-2018).

<sup>6</sup> N.N., 'Eichhorst visiting Pristina: EU welcomes announcement on start drafting Statute of the Association/Community', 05-04-2018, website *EU Office in Kosovo*, [https://eeas.europa.eu/delegations/kosovo/42501/eichhorst-visiting-pristina-eu-welcomes-announcement-start-drafting-statute\\_en](https://eeas.europa.eu/delegations/kosovo/42501/eichhorst-visiting-pristina-eu-welcomes-announcement-start-drafting-statute_en) (06-04-2018).

<sup>7</sup> N.N., 'Srpska List opposes Kosovo Government initiative on Association', 05-04-2018, website *Gazeta Express*, <http://www.gazetaexpress.com/en/news/srpska-list-opposes-kosovo-government-initiative-on-association-173949/> (06-04-2018).

<sup>8</sup> EEAS, 'Association/Community of Serb majority municipalities in Kosovo – general principles/main elements', website *European External Action Service (EEAS)*, [http://eeas.europa.eu/archives/docs/statements-eeas/docs/150825\\_02\\_association-community-of-serb-majority-municipalities-in-kosovo-general-principles-main-elements\\_en.pdf](http://eeas.europa.eu/archives/docs/statements-eeas/docs/150825_02_association-community-of-serb-majority-municipalities-in-kosovo-general-principles-main-elements_en.pdf).

<sup>9</sup> Adrian Zeqiri, Pieter Troch and Trim Kabashi, *The Association/Community of Serb-Majority Municipalities: Breaking the Impasse* (2016).

### Breaking the Impasse

*Breaking the Impasse* focused on several fields such as inter-municipal cooperation in Kosovo and the legal framework that regulated it. Additionally, it focused on the existing structure and functioning of the Association of Kosovo Municipalities.<sup>10</sup> Further on, the competences of *the Association* were explained and how they would differ from the existing Association of Kosovo Municipalities. What became clear was that Serb-majority municipalities would get institutional autonomy and coordination in several fields such as education, health and social care, culture, local economic development, as well as rural and urban planning. ECMI's report raised concerns regarding the mono-ethnic character of *the Association*, since in all Serb-majority municipalities, other communities are still living as well, such as Albanians, Bosniaks, Roma and Gorani. *Breaking the Impasse* stated that '*the Association* cannot be reduced to a body representing the interests of the Kosovo Serb community only' and that *the Association* 'should participate in community rights protection mechanisms at the central level.'<sup>11</sup>

What made *the Association* explicit for the Serbs living in these municipalities, is that it would allow more direct interaction, financial and technical support from the Republic of Serbia. Although this was seen as a way to regulate the relations between Kosovo Serbs and the Republic of Serbia, *Breaking the Impasse* stated it should be done completely through the existing legal framework of Kosovo.<sup>12</sup> First, a by-law defining the legal possibilities and limitations for inter-municipal cooperation between Serb-majority municipalities should be formulated. Second, representatives of the Serb-majority municipalities should formulate one or more draft Statutes for inter-municipal cooperation within the contours of this framework as defined by the by-law. This, the report stated, should be done through an inclusive and transparent process, because subsequent constitutional court rulings can't be achieved through the establishment of just one mechanism, for it will disrupt the legal order of Kosovo. *Breaking the Impasse* suggested rather to establish several mechanisms that all together will achieve most of the Serb communities' demands.<sup>13</sup>

The central issue of establishing *the Association* is that it cannot entail all agreements and provisions in the first-, the second- and the constitutional court ruling on association into one institution, without

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<sup>10</sup> Ibidem, 13-15.

<sup>11</sup> Ibidem, 35.

<sup>12</sup> Ibidem, 37-38.

<sup>13</sup> Ibidem, 6-7.

disrupting the constitutional and legal order of Kosovo.<sup>14</sup> Unless major constitutional changes are undertaken, there is no possibility that only one institution will contain all elements of the above stated agreements. Therefore, the report states that this can only be achieved by way of establishing several institutions that will jointly address all the provisions of the agreements so far on the association agreement, and, most importantly, will function within the existing constitutional and legal framework of Kosovo. The report proposes the establishment of one association, which will operate as a Non-Governmental Organization and will be in accordance with the Law on Local Self-Government and the Law on Freedom of Association in Non-Governmental Organizations.<sup>15</sup> In addition, at least three 'joint public institutions' should be established in accordance with the Law on Local Self-Government and the Law on Inter-municipal Cooperation.<sup>16</sup> The established association will have a political oversight and coordination, but no authority over the joint public institutions. Although the NGO will coordinate directives, these institutions will function independently.

This means that *the Association* will be framed as an exercise in inter-municipal cooperation, within the legal framework of Kosovo, which provides for far-reaching self-government. By way of establishing three 'joint public institutions', as mentioned in Article 9 of the Law on Inter-municipal Cooperation, most of the demands of the Serb community will be met.<sup>17</sup> These public institutions will jointly execute municipal competences in specific fields, such as Serbian-language education, health and social care, and culture. Through the establishment of these mechanisms, the provisions of the first-, the second- and the constitutional court ruling on association will be fulfilled. And most importantly, the process will not disrupt the constitutional and legal order of Kosovo.<sup>18</sup> It has been almost two years since *Breaking the Impasse* was released. Five years have passed since the first agreement and 3 years since the follow-up agreement on general principles/main elements of *the Association*. Anno March 2018, the impasse is still there and the agreement remains unimplemented. The situation has not changed, even though most of the other Brussels agreements have been fulfilled and others are already in process.<sup>19</sup> The following paragraphs of this policy brief will examine what caused this stagnation.

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<sup>14</sup> For more information about these rulings, see: European Centre for Minority Issues (ECMI) Kosovo, [The Constitutional Court's Decision on the Association/Community of Serb Majority Municipalities](#) (28 January 2016).

<sup>15</sup> ['Law \(Nr. 03/L-040\) on Local Self Government'](#) (20 February 2008) and ['Law \(Nr. 04/L-057\) on Freedom of Association in Non-Governmental Organizations'](#) (29 August 2011).

<sup>16</sup> ['Law \(Nr. 04/L-010\) on Intern-municipal Cooperation'](#) (21 July 2011).

<sup>17</sup> *Ibidem*, Art. 9.

<sup>18</sup> Zeqiri et al, *Breaking the Impasse*, 6-7.

<sup>19</sup> Office of the Prime Minister of Kosovo, 'Brussels Agreements Implementation State of Play', website *Kryeministri*, 25-11-2016, <http://www.kryeministri->

## Background developments surrounding *the Association* dialogue

During the second half of 2016, the appointment of a management team that was supposed to draft the statutes of *the Association* created disagreements during the discussions in Brussels.<sup>20</sup> Kosovar representatives accused Serbia of creating a management team without their consultation. As a consequence, a new team had to be appointed with the agreement of all parties, which could continue working on the draft statutes of the Association.<sup>21</sup> There hasn't been any progress since then, due to several events. Recent actions by both parties have created doubts about the stabilization developments and have had a bad influence on the implementation of agreements. It seemed that the two parties had different perspectives on how the stabilization should look like, which has resulted into renewed tensions. For example, in October 2016, the Kosovo government increased its authority over the region by taking over 80% of the Trepca mines at the border of South and North Mitrovica.<sup>22</sup> Additionally, from March 2017 on, Kosovo President Thaci has repeatedly stated that he aims to form the first Kosovo Army.<sup>23</sup> NATO has stated that such a unilateral idea is 'unhelpful', because it should be in agreement with the Serbian community of Kosovo and will entail change of constitutional amendments.<sup>24</sup> On the other hand, the US has recently announced support for the establishment a Kosovo military.<sup>25</sup>

These actions were not welcomed by Serbia and especially not by the Serb community living in North-Mitrovica. Serb authorities, on the other hand, have not been fully constructive either. For example, by trying to build a concrete wall near their side of the bridge connecting South and North Mitrovica at the end of 2016.<sup>26</sup> Further, in January 2017 a train with paintings of the Serbian flag, religious orthodox figures

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[ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_implementation\\_of\\_the\\_Brussels\\_Agreements\\_25\\_November\\_2016.pdf](https://ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_implementation_of_the_Brussels_Agreements_25_November_2016.pdf) (05-03-2018).

<sup>20</sup> N.N., 'Community of Serb Municipalities steering team unveiled', website B92, 08-09-2016,

[https://www.b92.net/eng/news/politics.php?yyyy=2016&mm=09&dd=08&nav\\_id=99146](https://www.b92.net/eng/news/politics.php?yyyy=2016&mm=09&dd=08&nav_id=99146) (06-03-2018).

<sup>21</sup> Office of the Prime Minister of Kosovo, 'Statement by Minister for Dialogue, Edita Tahiri', website *Kryeministri*, 08-09-2016, <http://www.kryeministri-ks.net/?page=2,9,6132> (06-03-2018).

<sup>22</sup> Fatos Bytyci, 'Kosovo government takes control of Trepca mine, Serbs protest', website *Reuters*, 08-10-2016, <https://www.reuters.com/article/us-kosovo-mines/kosovo-government-takes-control-of-trepca-mine-serbs-protest-idUSKCN12808T> (28-03-2018).

<sup>23</sup> EUNPACK, *The EU's Crisis Management in the Kosovo-Serbia crises* (2017) 30.

<sup>24</sup> Fatos Bytyci and Robin Emmott, 'NATO, U.S. slap Kosovo's move to create national army', website *Reuters*, 08-03-2018, <https://www.reuters.com/article/us-kosovo-army/nato-u-s-slap-kosovos-move-to-create-national-army-idUSKBN16F1GE> (30-03-2018).

<sup>25</sup> Lauren von Bernuth, 'The US Wants to Help form first ever Kosovo Army', website *Citizen Truth*, 27-03-2018, <https://citizentruth.org/kosovo-army/> (28-03-2018).

<sup>26</sup> Die Morina, 'Kosovo Bans Building of Serb Wall in Mitrovica', website *BIRN*, <http://www.balkaninsight.com/en/article/kosovo-serbs-build-a-wall-in-northern-divided-city-12-08-2016> (28-03-2018).

and the slogan 'Kosovo is Serbia' in 21 different languages was sent from Serbia to Mitrovica.<sup>27</sup> Indications to hold the April 2017 Serbian Presidential elections in the Northern part of Kosovo have also not helped to normalize relations.<sup>28</sup> None of these actions have contributed much to the progress for integration of Kosovo Serbs and northern municipalities into the Kosovar system, they rather have destabilized developed common ground between the parties. Moreover, Kosovo authorities have insisted on implementing other agreements first, such as a country telephone code for Kosovo, as well as dismantling the parallel structures of Serbia within Kosovo before creating the Association.<sup>29</sup>

### Border Demarcation and EU integration

Kosovo held its parliamentary elections during the summer of 2017 and local elections in October of the same year.<sup>30</sup> Since the end of 2017, discussions in the Assembly have mainly been focused on the ratification of the border demarcation agreement with Montenegro.<sup>31</sup> The international community, i.e. representatives of the EU and the US, have been quite vocal in asking Kosovo politicians to vote for the demarcation ratification as it is one of the last remaining requirements for Kosovo to obtain visa liberalization.<sup>32</sup> Serbian List has played a big part in the blockage of the demarcation deal. For them, the border demarcation deal was subordinate to *the Association*, which spokesperson Igor Simic has stated several times: 'When we talk of obligations Kosovo has assumed towards the international community,

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<sup>27</sup> N.N., 'Serbian Nationalist Train Halts at Border With Kosovo', website *the New York Times*, 14-01-2017, <https://www.nytimes.com/2017/01/14/world/europe/kosovo-serbia-train.html> (28-03-2018).

<sup>28</sup> EUNPACK, 'The EU's Crisis Management in the Kosovo-Serbia crises', website *EUNPACK*, 31-03-2017, <http://www.eunpack.eu/sites/default/files/deliverables/D5.1%20The%20EU%E2%80%98s%20Crisis%20Management%20in%20the%20Kosovo-Serbia%20crises.pdf> (05-03-2018).

<sup>29</sup> Office of the Prime Minister of Kosovo, 'Brussels Agreements Implementation State of Play', website *Kryeministri*, 25-11-2016, [http://www.kryeministri-ks.net/repository/docs/Kosovo Report on State of Play in implementation of the Brussels Agreements 25 November 2016.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo%20Report%20on%20State%20of%20Play%20in%20implementation%20of%20the%20Brussels%20Agreements%2025%20November%202016.pdf) (05-03-2018).

<sup>30</sup> BIRN, 'Kosovo Ex-Warriors and Vetevendosje Celebrate Elections Results', website *Balkan Insight*, 12-06-2017, <http://www.balkaninsight.com/en/article/kosovo-ex-warriors-and-vetevendosje-celebrate-elections-results-06-12-2017> (05-03-2018) and *GazetaExpress*, 'All You Need to Know about Kosovo Local Elections', website *GazetaExpress*, 23-10-2017, <http://www.gazetaexpress.com/en/news/all-you-need-to-know-about-kosovo-local-election-173127/> (05-03-2018).

<sup>31</sup> Fjona Krasniqi, 'The Kosovo-Montenegro Border Agreement: What You Need to Know', website *Open Democracy*, 23-02-2017, <https://www.opendemocracy.net/can-europe-make-it/fjona-krasniqi/kosovo-montenegro-border-agreement-what-you-need-to-know> (06-03-2018).

<sup>32</sup> *Balkan Insider*, 'Juncker Urges Kosovo to Ratify Demarcation', website *Balkan Insider*, 01-03-2018, <https://www.balkaninsider.com/juncker-urges-kosovo-to-ratify-demarcation/> (05-03-2018).

the establishment of the Association of Serb-majority municipalities is a priority for us.<sup>33</sup> Now that the border demarcation deal is finally signed, *the Association* has returned back on the discussion table.

The new Western Balkans Strategy of the European Commission mentions several problems that need to be tackled by all Western Balkan countries for their future EU membership possibilities.<sup>34</sup> The European Commission states clearly that the future of the Western Balkan countries is within EU. However, it also mentions that ‘in order for the countries to meet all membership conditions and strengthen their democracies, comprehensive and convincing reforms are still required in crucial areas, notably on the rule of law, competitiveness, and regional cooperation and reconciliation.’<sup>35</sup> Regarding the rule of law, all the countries need to show tangible results in the fight against corruption, organized crime and weak judicial systems. Fundamental rights are well included in official documents, but they lack widely effective implementation in practice. Additionally, all countries should ensure and maintain good governance and functional democratic institutions, hence this strategy calls for public administration reforms.<sup>36</sup> The Kosovo government has not yet developed a clear plan for the process on developing a statute for *the Association*. The process is complex and will need time and consultation with all relevant stakeholders. Because of this, the ultimatum set out by Serbian List is not a constructive development as this very important issue needs to be tackled in a mature way with involvement of all sides.

#### About ECMI Kosovo

**ECMI Kosovo is the principal non-governmental organisation engaged with minority issues in Kosovo, with the overarching aim to develop inclusive, representative, community-sensitive institutions that support a stable multi-ethnic Kosovo. ECMI Kosovo contributes to the developing, strengthening and implementation of relevant legislation, supports the institutionalisation of communities-related governmental bodies, and enhances the capacity of civil society actors and the government to engage with one another in a constructive and sustainable way.**

<sup>33</sup> N.N., ‘Serbian List has no position on border demarcation deal’, website *RTK Live*, <https://www.rtklive.com/en/news-single.php?ID=10660> (28-03-2018).

<sup>34</sup> N.N., ‘Strategy for the Western Balkans: EU sets out new flagship initiatives and support for the reform-driven region’, website *European Commission*, 06-02-2018, [http://europa.eu/rapid/press-release\\_IP-18-561\\_en.htm](http://europa.eu/rapid/press-release_IP-18-561_en.htm) (06-03-2018).

<sup>35</sup> European Commission, *A Credible Enlargement Perspective for and enhanced EU engagement with the Western Balkans* (2018) 3.

<sup>36</sup> *Ibidem*, 4-5.