

## Legislative and executive power in Serb-majority municipalities in North Kosovo – a rollercoaster ride in turbulent political circumstances

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### 1. Introduction

A system of local self-governments in which Serb-majority municipalities in North Kosovo have been operating after the war and the arrival of UNMIK is like a rollercoaster<sup>2</sup> which surprises you with a free fall and a sudden change of direction, but it always goes back to the beginning, where the ride started. Namely, Serb-majority municipalities in North Kosovo retained the institutional structure that existed in Kosovo before 1999, which continued to operate under the laws of the Republic of Serbia even after the signing of the Kumanovo Agreement and the arrival of the UNMIK mission. On the other hand, municipalities have also adopted administrative structures established within the framework of the UNMIK mission, and later the Kosovo Government. In this way, a dual system was created in which the municipalities in North Kosovo operate: one in line with Serbian and the other with Kosovo legislation.

Although it was expected that the implementation of the Brussels Agreement would bring drastic changes in terms of the functioning of local self-governments in North Kosovo, this did not happen. Temporary measures were introduced in municipalities operating under Serbian laws, and presidents of municipalities were replaced by presidents of provisional bodies. On the other hand, local elections were organized as a part of the Kosovo system, when the mayors of these municipalities were elected and the municipal assemblies were constituted under the laws of Kosovo.

Namely, after the signing of the Brussels Agreement in 2013, local elections were held for the first time in the whole territory of Kosovo, including the municipalities in North Kosovo. Serbs are the majority in 10 of the 38 municipalities in Kosovo, and Serb-majority municipalities have extended jurisdiction in relation to the neighbouring municipalities where Albanians are the majority. However, despite the changes resulting from the Brussels Agreement and the organisation of local elections within the Kosovo system, the Serbian Government continued to finance local institutions in Kosovo that continue to provide a large number of services to their citizens within the system of local self-government of Serbia.

Therefore, it can be said that the municipalities in North Kosovo operate in the circumstances that constitute the symbiosis of the two systems, those of Serbia and Kosovo. This paper presents the similarities and differences in the functioning of these two systems in Serb-majority

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<sup>2</sup> A rollercoaster is a type of ride in amusement parks, safe but powerful and fast, with free falls, sudden changes in direction, riding in upside down positions and similar stunts.



municipalities in North Kosovo. Also, a comparative overview of the laws on local self-government of Serbia and Kosovo has been presented, with particular emphasis on the competences regarding the functioning of municipal assemblies, and the elections, responsibilities and authority of the mayor.

## 2. Work of the Assembly in the municipalities in North Kosovo

According to the Serbian Law on Local Self-Government<sup>3</sup> and Kosovo's Law on Local Self-government,<sup>4</sup> Municipal Assembly is the highest body of local self-governments. As part of the implementation of the Brussels Agreement and the creation of conditions for the organisation of the first local elections within the Kosovo system, in September 2013, the Government of the Republic of Serbia dissolved the Municipal Assemblies in the four municipalities in North Kosovo and introduced provisional measures headed by the Presidents of the Provisional Bodies. Even though according to the laws of Serbia, the president of the National Assembly should announce the elections for councillors within two months of the entry into force of the decision on the introduction of provisional measures and the dissolution of the Municipal Assemblies in local self-government units, this has not happened even after almost four years. Therefore, the municipalities in North Kosovo that operate within the Serbian system continue to function without the elected Assemblies, but are managed by the Provisional Bodies, headed by the Presidents.

On the other hand, in the municipalities of North Kosovo, there is also a system of local self-governments that emerged after the arrival of the UNMIK mission, which was later taken over by the Kosovo authorities. Following Kosovo's declaration of independence, this system was not applied in four northern municipalities, but the situation changed with the signing of the Brussels Agreement when the conditions for the organisation of local elections were created. Municipal councillors were elected and Municipal Assemblies were formed at the local elections. Also, new municipal statutes were drafted, which were verified by the Ministry of Administration and Local Self-Government of Kosovo. Municipal Assemblies in North Kosovo are rare examples of institutions that operate only under Kosovo's laws, and not Serbian, so the operation of these institutions will be analysed only in the Kosovo system.

The Municipal Assembly has the authority to pass the statute, the rulebook, municipal regulations and any other legislation that are necessary for the efficient functioning of the municipality (Article 12 of the Law on Local Self-Government of Kosovo). Members of the Municipal Assembly, the councillors, are elected by citizens in local elections, and their term is four years (Article 37). There is a gender clause in local elections that promotes gender equality (one in three councillors in a political body must be female).

The number of councillors in the Assemblies is proportional to the population of the municipality, so depending on the population, Assemblies may have 15 to 41 councillors. The exception is the Municipal Assembly of the city of Pristina, consisting of 51 councillors (Article 36). All four municipalities in North Kosovo have an equal number of councillors in the Assembly (19 each). According to the official estimates and data of the OSCE Mission in Kosovo,<sup>5</sup> the municipality of Mitrovica North has 29,460 inhabitants<sup>6</sup> and thus, according to the Law on Local Self-government of Kosovo, it should have 21 councillors. However, Pristina's central authorities do not recognize population data, but they have their estimates, and according to those, much less people live in this municipality.

Municipal Assembly elects the president by secret ballot of councillors. In order to become president, a candidate councillor should receive more than half of the votes of the total number of elected councillors (Article 41). In the municipalities where more than 10% of the population is from non-majority communities according to the last census, the Assembly must also have a deputy president for communities (Article 54). For this position, the Assembly appoints councillors from the non-majority community with the most votes in the elections. (Article 54).

Municipalities are obliged to have at least 10 assembly sessions annually, of which 5 should be scheduled in the first six months (Article 43.3). According to the report of the Ministry of Administration and Local Self-Government on the functioning of municipalities in Kosovo, in 2016, all the municipalities in North Kosovo fulfilled the legal obligation on the number of regular sessions held by Municipal Assemblies. The municipalities of Mitrovica and Leposavic have exceeded the number of ten assembly sessions in the past year.<sup>7</sup>

<sup>3</sup> "RS Official Gazette", no. 129/2007, 83/2014 and 101/2016

<sup>4</sup> Law no.03/L – no. 040 on Local Self-Government, available at <http://bit.ly/2tyqufg>

<sup>5</sup> OSCE Mission in Kosovo

<sup>6</sup> Municipal profile – Mitrovica North, Organization for Security and Co-operation in Europe (OSCE), Mission in Kosovo, available at <http://bit.ly/2dHGd0L>

<sup>7</sup> Izveštaj o funkcionisanju opština, strana 8, Ministarstvo administracije i lokalne samouprave, available at <http://bit.ly/2rC0zXq>

The Assembly sessions are open to the public and all interested parties are permitted to follow and participate in the work of the sessions, in accordance with the provisions of the Rules of Procedure. In North Kosovo, monitoring of the Assembly's sessions and their duration vary between municipalities. For example, the sessions of the Municipal Assembly of Leposavic last for a long time, and due to the existence of a strong opposition, the discussions are dynamic and often on the verge of verbal conflict. The session of the Leposavic Municipal Assembly is recorded by local television and the public is significantly informed about their work. On the other hand, in Zubin Potok, municipal assembly sessions are short and rarely attended by the media or citizens.

All Municipal Assemblies have an obligation to form a Politics and Finance Board and a Community Board. The Politics and Finance Board is responsible for proposing municipal budget, participating in its drafting, adopting the final account, reporting to the Assembly on the financial situation of the municipality and all issues related to the financing of the municipality and the adoption of guidelines for the work of the Assembly. This Board must reflect the composition of the Assembly and it is chaired by the President of the Assembly (Article 52.1). The Community Board is composed of councillors and representatives of non-majority communities. The Board is authorised to ensure respect of the rights and interests of minority communities on the territory of the municipality, as well as to promote the cultural, ethnic and religious identity of communities (Article 53.2).

Both local self-government systems (Kosovo and Serbian) are mainly conducted in the same administrative buildings. The only exception is the newly formed municipality of Mitrovica North which does not have an adequate space for the work of its bodies. However, this problem will be solved with the financial support of the European Union, which has allocated funds for the construction of a new municipal building.

### *2.1. Differences in legislation in relation to the Serbian system*

There are some differences in the functioning of the Assembly between the Kosovo and Serbian legislation. Although they are not significant in terms of the functioning of Municipal Assemblies, it is important to list them. One of the differences relates to the number of councillors in Municipal Assemblies where Serbian laws provides for a greater number of councillors than Kosovo. According to the Kosovo system, the Municipal Assembly of Leposavic has 19 councillors, and while it functioned within the Serbian system, it had 31 councillors. The following table gives a comparative overview of the number of councillors in the Municipal Assemblies in North Kosovo in the two systems.

**Table 1 Comparative review of the number of councillors in Municipal Assemblies according to the Kosovo and Serbian system**

Municipality	Number of councillors according to the Kosovo laws	Number of councillors according to Serbian laws
Mitrovica North/Kosovska Mitrovica	19	30
Zvecan	19	27
Zubin Potok	19	31
Leposavic	19	31

There are also visible differences in the number of Assembly sessions that should be held in the course of one year. According to the laws of Serbia, the Assembly sessions were held at least once every three months, or at least four times a year. According to the laws of Kosovo, the Assembly must hold at least 10 sessions a year, which is considerably more than stipulated by the law in Serbia.

In accordance with the ethnic structure of municipalities, the Kosovo law provides for the existence of the Deputy President of the Assembly for Communities as one of the mechanisms for the inclusion of non-majority communities. For the appointment of the Deputy President, the law stipulates a threshold of 10% of the municipality's population who are members of non-majority communities (Article 54). In the event that this threshold has not been reached, municipalities have the discretion to establish the post of the deputy, if they estimate that this would be useful for the protection of non-majority communities. In the municipalities of northern Kosovo, this position was established in Mitrovica North, Zubin Potok and Leposavic.

### 3 Election and responsibilities of the president of the municipality/mayor<sup>8</sup> in the municipalities in North Kosovo

In the municipalities that operate under Kosovo laws, the executive authorities are the mayors directly elected in the elections, who have their authority and responsibilities defined in the Law on Local Self-Government. Their work is assisted by deputies and advisers appointed by the Mayor, whose term of office is related to the mayor's.

The description of the duties of the mayor indicates that he also appoints and dismisses municipal directors, i.e. directors of municipal departments. Although in municipalities in North Kosovo, the mayors have accepted most of the responsibilities that should be exercised as the holders of executive power, due to the specific political situation, some of them are still not easy to implement. This is primarily reflected in the process of establishing a municipal administration, that is, the appointment of directors of municipal departments, which has not yet been completed in all municipalities. Although this is a decision that the mayors should make, it does not depend solely on their will, but also on the municipal budgets that should provide sufficient financial resources for the establishment of a functional municipal administration. The exception is the Municipality of Mitrovica North which has inherited the bodies of the Administrative Office of Mitrovica North which includes functional departments.<sup>9</sup>

Under the Law on Local Self-Government of Kosovo, the Mayor is obliged to report on the economic and financial situation and implementation of municipal investment plans at regular time intervals, at least once in 6 months, or when required by the Municipal Assembly (Article 58). Whenever they deem it necessary, the councillors have the right to request a report on the work of the executive authority. For this reason, the presence of the Mayor is necessary during the sessions of the Assembly.

The Ministry of Administration and Local Self-Government of Kosovo has conducted the monitoring process of the municipalities in relation to the obligation of the Mayor to submit a report to the Municipal Assembly, especially on the economic and financial situation in 2016. The monitoring has shown that the municipalities in North Kosovo have fulfilled this legal obligation, because during the year, the mayors reported to the Municipal Assembly twice<sup>10</sup> and showed a high degree of responsibility and cooperation that enables the complementarity of the functioning between the two bodies, the Assembly and the Mayor.

The president of the municipality, as the holder of executive function in the Serbian system, is elected by the Assembly from the members. However, after the introduction of provisional measures by the Government of the Republic of Serbia, the executive power in the municipalities in North Kosovo that operate in the Serbian system is carried out by a provisional body managed by the president, who performs tasks within the competence of the president of the municipality.<sup>11</sup>

As a consequence of the existence of a dual system, in each of the four municipalities in North Kosovo, there are two representatives of the executive power, the president of the provisional municipal authority, and the mayor. The exception is the municipality of Zubin Potok, where one person holds both functions.

<sup>8</sup> There are differences in terminology in the laws on local self-government of Serbia and Kosovo. In the Serbian legislation, the executive body of the municipality is called the president of the municipality, and in the Kosovo law it is called the mayor. Further in the paper, terminology will be used in accordance with the terms used by the relevant laws. Mayor/s for elected leaders under the laws of Kosovo and president/s of the municipality - president/s of the provisional authority for the holders of this function under the laws of Serbia.

<sup>9</sup> According to the Organogram of the North Mitrovica Administrative Office, these are the following departments: Department of General Administration; Department of Finance, Budget and Economic Development; Department of Public Services, Infrastructure, Inspection and Emergency; Department of Urban Planning, Cadastre and Geodesy; Department of Education, Culture, Youth and Sports; Department of Health and Social Welfare; Department of Local Communities, Return and Public Relations

<sup>10</sup> Izveštaj o funkcionisanju opština, januar – decembar 2016, Ministarstvo administracije i lokalne samouprave, available at <http://bit.ly/2rC0zXq>

<sup>11</sup> The presidents of municipalities in North Kosovo were replaced after the Government of the Republic of Serbia passed a decision to dissolve their Assemblies in September 2013 and the introduction of a provisional body. The provisional body consists of the president and four members appointed by the Government of the Republic of Serbia. The president of the provisional body performs the function of the president of the municipality.

### 3. Conclusion

The functioning of local self-governments in the Serb-majority communities in North Kosovo is a reflection of political events in Kosovo after the war, and the institutional resistance of the Serbian community to the creation of an independent Kosovo. As a result, a unique dual system has been created where local self-government bodies work, and where political decisions are often above the established legal solutions.

The Brussels agreement brought a lot of changes in Serb-majority municipalities in North Kosovo, primarily in terms of organizing local elections, electing mayors and establishing Municipal Assemblies. In spite of the lack of adequate working conditions, and in some cases the lack of physical space for the normal functioning of municipal services, local self-governments in North Kosovo have shown a high level of responsibility in the performance of their duties, as can be seen from the report of the line ministry.

However, there are still many problems in the functioning of local self-governments, primarily in the functioning of municipal administrations and the duality in the enforcement of legislation. These problems will probably remain present until the establishment and creation of institutional solutions within the Community/ Association of Serb Municipalities.

*InTER – Institute for Territorial Economic Development – is an independent non-governmental think tank with the mission to promote and improve sustainable socio-economic development in the Western Balkans.*

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