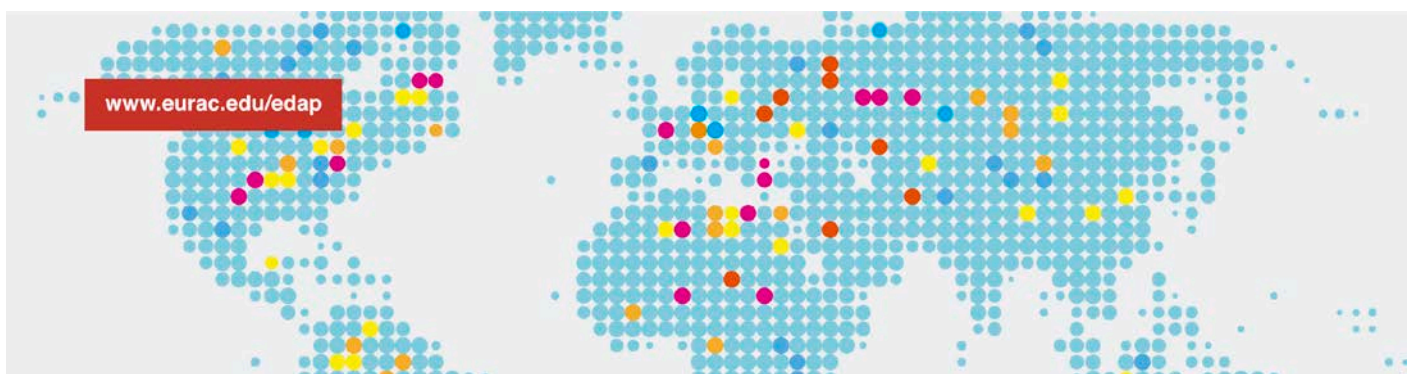


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Ongoing Pristina - Belgrade Talks: from Decentralization to Regional Cooperation and Future Perspectives.

Entela Cukani



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Abstract

On 17 February 2008, Kosovo declared independence, ending its nine years unresolved status. The principal goal was, and remains, the need to involve different communities in the state structures. The new state, which aims to fulfil all the obligations set by the Ahtisaari plan, is trying to complete the decentralization process the implementation of which continuous to face obstacles in the two main communities: the Serbs and the Albanians. This article discusses matters related to community acceptance of the decentralization process, the functioning of the parallel structures, the situation in North Kosovo and the on - going talks between Pristina and Belgrade. The article provides evidences that while the implementation of the decentralization process is the best possibility for Kosovo, it must not follow only an ethnic line.

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Key words

Pristina - Belgrade - decentralization - minorities - North Kosovo.

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Ongoing Pristina - Belgrade Talks: from Decentralization to Regional Cooperation and Future Perspectives.

Entela Cukani

1. Introduction

At the end of negotiations to settle its status, Kosovo declared independence on 17 February 2008, ending nine years' of endeavour since the beginning of the war in 1999, to resolve its status. Kosovo is now going through a period of significant transition to build democratic institutions and to guarantee an inclusive multi-ethnic society, with the aim of strengthening its independence and fulfilling all the required criteria to join the European family.

Undoubtedly, the need to increase the confidence and the participation of different communities¹ in the political structures of the new state remains a principal goal.

The key issue is the Serb community within the state. The Serbs have established parallel structures (such as courts, schools and hospitals) in their areas since 1999. They were funded by Belgrade and respond directly to Belgrade, therefore, operating parallel to the United Nations Interim Administration Mission in Kosovo (UNMIK).

In 2012, four years after the declaration of independence, the functioning of these parallel institutions supported by Serbia continues to undermine the new government's efforts to develop inclusive democratic institutions and implement minority rights.² This is evident in North Mitrovica, where the Serb community's attitude - inclines *towards* - Belgrade government rather than towards Pristina, and where the community is unwilling to accept the decentralization plan. As a result, the establishment of new municipalities is only partly completed.

On 9 September, 2010, the UN General Assembly highlighted the advisory opinion of the International Court of Justice (ICJ) which concluded that the declaration of independence of Kosovo did not violate international law.³ Furthermore, the General Assembly Resolution called for new negotiations

¹ In Kosovo, the term "community" is used to refer to the different minorities living in the territory. The main ethnic groups living in Kosovo are: Albanians (over 90% of the population), Serbs (5%), Roma/Ashkali/Egyptians, Bosnians, Gorani, Turks, Croats and Montenegrins (5%).

² The overall operation and administration has been reported by OSCE "Parallel structures in Kosovo" at <http://www.osce.org/kosovo/24618>.

³ ICJ No. 141 "Accordance with International Law of the unilateral declaration of independence in Respect of Kosovo", decision of 22 July 2010.

between Kosovo and Serbia, under UN supervision⁴ in relation to the so-called good neighbourly relations, which is the key criterion for integrating the Western Balkans into the European Union (EU). The technical dialogue directed towards the eventual normalization of relations between Kosovo and Serbia started on 8 March 2011.

Supervised independence will end in 2012, the International Civilian Office's (ICO)⁵ mandate in Kosovo ended on 10 September 2012. The end of supervised independence depends on the fulfilment of the obligations arising from the Ahtisaari plan, rather than on a specific date. As a fundamental part of its declaration of independence, Kosovo made it clear to the international community that it would stand by the Comprehensive Proposal for the Kosovo Status Settlement (CSP), which was proposed by the then Special Envoy for Kosovo, the former Finnish president, Mr. Martti Ahtisaari. The CSP was rejected by Serbia and was not adopted by the United Nations Security Council. However, the Kosovo Constitution and all the laws are more or less based on the CSP principles.

The decentralization process remains one of the most controversial aspects of the Ahtisaari plan. The issue of decentralization, implemented by the Ahtisaari package, has been a central issue for Kosovo since 1999, a milestone discussed at all levels, from local to international meetings. Local self government is indeed one of the strongly emphasized principles of the governmental structure of the state. Additionally, when it comes to the issue of community rights, having an exceedingly decentralized system at both central and local level makes Kosovo open to the power-sharing systems of some federal countries. The CSP, the Constitution and allied local self-government laws ensure that Kosovo has the right to locally self-govern the municipalities, to generate their own sources of income and entitlement and to obtain grants from the central government.

One of the main challenges of decentralization in Kosovo was the establishment of new municipalities. The process has been often associated with the territorial (ethnic) division of the new state, thus troubling the different communities. In relation to that, let us consider some of the fundamental provisions (in particular the minorities' rights) of the Ahtisaari plan and then move to certain Articles of the Constitution and the 2008 Law on Local of Self Government. Finally, we will add some observations on the current situation created during the on-going talks between Belgrade and Pristina.

⁴ UN General Assembly Resolution A/RES/64/298 of 9 September 2010, "Welcomes the readiness of the European Union to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people".

⁵ The ICO has been operating under the International Steering Group. For further information about the operation of the ICO in Kosovo, consult the official page at <http://www.ico-kos.org>.

2. The Decentralization Process

2.1 2.1 Decentralization in the Ahtisaari Plan

The Ahtisaari plan⁶ covers a wide range of issues relevant to Kosovo's future. It gives Kosovo the status of an internationally supervised state, protects the Serbian community and boosts decentralization and the protection of minority rights. It particularly concentrates on adopting the proper measures - with special regard to the Serbian community - to ensure Kosovo's non-Albanian communities' security and total inclusion. In the light of this overview, it marks the path to achieving autonomy; it provides Serbs with Enhanced Municipal Competencies - majority municipalities in areas such as education, healthcare and cultural affairs, - and creates the grounds for establishing several new municipalities.⁷ The plan proposed a sustainable system of local self-government with special regard to the concerns of Serbs in Kosovo. Therefore, the CSP foresees that five new municipalities will be established and one existing municipality will be extended. These are the so-called "5+1" new municipalities, in which Serbs would constitute the majority.⁸ Additional municipalities may be established in consultation with minority communities. It allocates to Belgrade the mechanisms to cooperate

⁶ Ahtisaari developed the CSP (Comprehensive Proposal for the Kosovo Status Settlement) during the Vienna negotiations and the proposal was presented to Belgrade and Pristina on 2 February 2007. Even if the proposal did not explicitly include independence, some of the specific measures (i.e. the right to apply for membership in international organizations) opened the way for the future independence of Kosovo. As is known, the CSP was denounced as illegitimate by Belgrade, but it was accepted by Kosovo's institutions. High level talks took place in March 2007, and in the same year Ahtisaari presented his final proposals to the UN Security Council, including a recommendation for Kosovo's independence for a specified period of international supervision. This final proposal, accepted by Pristina and refused by Belgrade, met the strong opposition of Russia. Under the threat of a Russian veto, the UN Security General launched another time limited round of negotiations led by a troika of US, EU and Russian negotiators. When the Troika's negotiations closed without any result on 10 December 2007, under the threat of Russia's UN veto power, Kosovo's leaders declared unilateral independence on 17 February 2008. Full text of the proposal is at: <http://www.unosek.org/unosek/en/statusproposal.html>.

⁷ Martti Ahtisaari, Comprehensive Proposal for the Kosovo Status Settlement, UN doc S/2007/168 (26 March 2007), Annex III, Article 4 Enhanced Municipal Competencies:

4.1 Certain municipalities in Kosovo shall have their own competences enhanced as follows:

4.1.1 The municipality of Mitrovicë/Mitrovica North shall have competence on higher education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators;

4.1.2 The municipalities of Mitrovicë/Mitrovica North, Graçanicë/Graçanica, Shtërpcë/Strpce shall have the competence to provide secondary health care, including registration and licensing of health care institutions, recruitment, payment of salaries and training of health care personnel and administrators;

4.1.3 All municipalities where Kosovo's Serb Community comprises the majority shall have: a) The power to be the responsible authority for cultural affairs, including the protection and promotion of Serbian and other religious' and cultural heritage and local religious communities within the municipal territory, in accordance with the provisions of Annex V of this Settlement; b) Enhanced participatory rights in appointing Police Station Commanders, as Article 2.6 of Annex VIII of this Settlement states.

⁸ The new enhanced municipalities where the Serbs are the majority: Mitovice/ North Mitrovica; Gracanice, Raniilug, Partesh, Kllokote/Verboce and Novoborde.

with and provide financial and technical assistance to these municipalities and allows them to join partnerships with broader associations.⁹

According to the plan, Kosovo's Ministry of Local Government Administration (MLGA) should be notified of agreements between the municipalities and Belgrade. The MLGA will review them and, if necessary, amend them in case they do not meet Kosovo's legislative compliance requirements.¹⁰ A similar provision in the plan includes financial assistance from Serbia to the Serbian majority municipalities, assistance which should be transparent and limited "to carry out the municipality's responsibilities within its own competencies". The Serb majority municipalities may only provide such assistance through the Central Banking Authority's certified accounts in Kosovo. Similarly, in education, it provides an autonomous Serbian language university in North Mitrovica and empowers other Serb municipalities to borrow text-books and curricula developed by the Republic of Serbia. In the case of curricula, Kosovo's Ministry of Education, Science and Technology needs to be notified of these curricula.¹¹ Undoubtedly, the Ahtisaari plan achieves a significant autonomy within the newly established Serb municipalities, but its full implementation, as we will show in section 3, some obstacles have to be overcome.

2.2 The Constituion

The Constitution, of the Republic of Kosovo, adopted by the Assembly of Kosovo on 9 April 2008, came into force on 15 June of the same year, after the end of the transitional period.¹² It is based on the Ahtisaari plan and addresses the multi - ethnic nature of the new state. Albanian and Serbian are designated as its main official languages and special provisions are included to protect minority rights. To illustrate: the provisions of Article 5 (2) state that "Turkish, Bosnian and Roma languages have the status of official languages at the municipal level or will be in official use at all levels as provided by law". The chapter on the Rights of Communities and their Members¹³ sets out the state's obligations to preserve the language, culture and identity of minorities', as well as other specific obligations to ensure the

⁹ Municipalities will have the right to cooperate with municipalities and institutions in Serbia, including the right to receive financial and technical assistance from Serbia, within certain clear parameters set by the Ahtissari plan. For the Ahtissari plan text and its explanations consult United Nations Office of the special Envoy for Kosovo (UNOSEK) "Report of the Special Envoy of the Secretary-General on Kosovo's future status" <http://www.unosek.org/unosek/en/statusproposal.html>.

¹⁰ Ahtisaari, Comprehensive Proposal, Annex III, Article 10.4.

¹¹ Ahtisaari, Comprehensive Proposal, Annex III, Article 7.1.1.

¹² After the declaration of independence, Kosovo entered a period of transition of 120 days during which the former Provisional Institutions of Self-Government prepared to assume full powers. Writing and adopting the new Constitution became a central issue in the full implementation of the Ahtissari plan. A draft of the Constitution was put out for public debate and approved by the EU representative in Kosovo, Mr Pieter Feith; 103 members voted in favour and afterwards, the Assembly of Kosovo adopted it. The plan came into force on 15 June 2008. The full text of the Constitution is at: <http://www.kushtetutakosoves.info/?cid=2,302>.

¹³ Constitution of the Republic of Kosovo, section 3.1.

political participation and equitable representation of minority communities. As a specific mechanism for exchange of practices between the central government and Kosovo's communities, it foresees the creation of a Consultative Council for Communities (CCC).¹⁴ This Consultative Council includes representatives of communities, among others, whose role would be to comment, at an early stage, on legislative or policy initiatives for the communities, and who would have their views incorporated in relevant projects and programmes.

Community rights in the legislative process are also protected by the Constitution. In order to implement national-level integration, the Constitution, in accordance with the CSP provisions, established that 20 of the 120 seats of the Assembly of Kosovo are reserved for the representatives of non-majority communities;¹⁵ the Serb community will be represented by one minister, and another one from the non - majority community, and if the Kosovo government has more than 12 ministers, three must be appointed from communities.

Furthermore, making integration into the judicial system possible, 15 per cent of the judges at the Supreme Court of Kosovo must come from the minority communities.¹⁶ In accordance with the importance of community rights in Kosovo, Article 78 of the Constitution requires the creation of the Assembly Committee on the Rights and Interests of Communities, provided that the legislation concerning certain issues will be considered as legislation of vital interest. Therefore, legislation of vital interest requires a double majority in order to be adopted, amended or repealed, that is, both the Assembly majority and the majority of the deputies holding seats guaranteed for communities.¹⁷ In relation to decentralization, it states that municipalities are the basic territorial units of local self-government.¹⁸ The CSP, the Constitution and the related local self-government laws ensure that Kosovo has the right to locally self-govern the municipalities, to generate their own sources of income and entitlement and to obtain grants from the central governmental level. Additionally Article 143 of the Constitution states that the Constitution itself and other legal acts of Kosovo shall be interpreted in compliance with the CSP and in case of inconsistency the latter (CSP) shall prevail. The repercussion of such provisions is that the municipalities have the right to locally self-govern themselves both at constitutional and international level.

¹⁴ Article 60 of Chapter III of the Constitution foresees the creation of this Council.

¹⁵ Article 64 of the Constitution of the Republic of Kosovo incorporates the CSP.

¹⁶ Article 103.3 states "At least fifteen per cent (15%) of the judges of the Supreme Court, but not fewer than three (3) judges, shall be from Communities that are not in the majority in Kosovo."

¹⁷ Constitution of the Republic of Kosovo, Article 81.

¹⁸ Constitution of the Republic of Kosovo, Article 12 - (1) states: "1. Municipalities are the basic territorial unit of local self-governance in the Republic of Kosovo. 2. The organisation and powers of units of local self-government are provided by law."

2.3 The Law on Local - Self Government, 2008.

As stated above, the Constitution¹⁹ establishes that municipalities are the basic units of self-government, exercising exclusive and delegated powers. Local governance in Kosovo is regulated by the Law on Local Self Government, together with the Law on Administrative Municipal Borders of 2008 and Law on Local Government Finances (2008). The Law on Local Self-Government,²⁰ nr. 03/L-040, specifically determines the “decentralization of the powers” from central to local governments or from the matrix to the new municipalities. In 1999, under the terms of the new post-conflict situation and with the intention of creating a modern close-to-the-citizens system of local government, the UNMIK initiated the process of competencies transfer.

The new Law on Local Self-Government,²¹ based on UNMIK Regulation 2000/45 and the amended UNMIK Regulation 2007/30, created the necessary basic conditions and paved the road to functional local governance based on the principles of the European Charter of Local Self-Government of the Council of Europe.²² Nevertheless, the new local self - government related laws²³ have introduced new elements in the areas of competencies, institutions and territorial organization of the municipalities. In particular, the Law on Local Self-Government²⁴ - the basis of a democratic function of institutions at local level and based on the principles of the European Charter of Local Self-Government - sets out a clear local government structure and decentralizes over 25 competencies and powers to local governments. According to this substantially new law, there are, in general, four types of powers provided to the municipalities: enhanced; full and exclusive; delegated; and what is called residual competencies. Despite the fact that the three latter types of competency apply symmetrically to all municipalities, the enhanced competency applies only to the municipalities inhabited principally by the Kosovo Serb community (existing or new ones). In order to better understand what kind of competencies are accorded to the

¹⁹ Chapter X, Article 123.

²⁰ The new Law on Local Self-Government, which entered into force in June 2008, provides that municipalities have full competencies in all local issues, including local economic development and taxation policies. For more information's consult: European Parliament-Directorate General for external policies, The decentralisation process in Kosovo and the creation of the new municipalities (a Kosovo-Albanian and a Kosovo-Serb minority view), 2010, http://www.iris-france.org/docs/kfm_docs/docs/observatoire-voisinage-europeen/briefing-note-kosovo-decentralisation-process-published.pdf.

²¹ The full text of the law is at: http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L040_en.pdf.

²² Council of Europe, European Charter of Local Self-Government: Article 3, section 2, at <http://conventions.coe.int>.

²³ Since the entry into force of the new Constitution on 15 June, 2008, Kosovo has signed 41 new laws from the Ahtisaari package. Most of the laws in this large package deal with the organization and operation of effective local government in Kosovo including: the Law on Local Self-Government 2008, the Law on Municipal Boundaries, 2008, (which has determined that the territory of the new Republic consists of 38 municipalities, 27 of them governed by Kosovo Albanians, 10 by Kosovo Serbs and one by Kosovo-Turkish citizens), the Law on Local Elections of 2008, the Law on Education in the Republic of Kosovo Municipalities (2008) and the Law on Local Government Finances of 2008.

²⁴ Chapter III of the Law on Local Self Government.

municipalities, Chapter III of the Law on Local Self Government of 2008, sets out the following current classifications:

- Full and exclusive competency: means that only the municipalities have the power to regulate and exercise functions in the specified areas. Such competencies include: local economic development; urban and rural planning; provision of public pre-primary; primary and secondary education; provisions of public primary health care; tourism; cultural and leisure activities.
- Residual competency: the law on Local Self Government and the CSP give the municipalities additional competencies on “matters not explicitly excluded from their competence nor assigned to any other authority.” Such a wide variety of competency given to the municipalities is comparable to the power distribution systems in certain federalized countries.
- Delegated competencies: according to the Law on Local Self-Government, all municipalities shall symmetrically exercise competencies in delegated central government areas. The new law clearly attributes more delegated competencies to the municipalities.²⁵ In accordance with the provisions of Article 18 of the law, municipalities have delegated competencies in the areas of: the civil register; voter registration; business registration and licensing; distribution of social assistance payments (excluding pensions); forestry protection in the municipal territory that the central authority has therein delegated.
- Enhanced competencies: new additional (enhanced) competencies in some areas²⁶ given to Kosovo Serb municipalities (new and existing ones). These asymmetrical allocated competencies comprise two particular types: the ones available for certain Kosovo Serb municipalities (in areas such as higher education, i.e., the University of North Mitrovica, and secondary health-care for the municipalities of Gracanica/ Graganice, Strepce/ Strepce and North Mitrovica/ Mitrovica), and the ones available for all Kosovo Serb municipalities (in areas such as cultural affairs and local police).

Such an asymmetrical power allocation system, giving more additional or enhanced competencies to municipalities inhabited by a majority of the Kosovo Serb communities, aims to accommodate their welfare in the areas already mentioned. However, the distribution of power from central to local government, by giving more power to the inhabitants of the above-mentioned communities, aims to increase their reliance on the CSP and the institutions of Kosovo. Though achieving the transfer of powers means going through

²⁵ Art 18 Law on Local Self-Government 2008.

²⁶ *Ibid.* Article 19 Enhanced Municipal Competencies: “19.1. Certain municipalities explained below shall have their own competencies enhanced in the areas of health, education and cultural affairs and shall have participatory right in selecting local station police commanders as set forth in the subsequent articles.”

various stages, and at the moment the situation looks rather positive, the transfer of municipal competency has already been completed, the transfer of delegated powers is still on-going, the transfer of enhanced competencies has not started yet, and during 2009 the transfer of exclusive powers was fully completed.²⁷

In order to fully implement the Ahtisaari plan, the transfer of the competencies from central to local level must be followed by the transfer of competencies from existing municipalities to the newly established ones. The process began with the establishment of the Pilot Municipal Units (PMUs) and continued thereafter during 2010 within the newly created municipalities.²⁸ The transfer covered the following areas: property tax, urban planning, marital status, cadastre etc. The complete transfer of competencies, as the Law on Local Self-Government foresees, is strictly connected with the successful implementation of the Ahtisaari package. Nevertheless, it depends on the coordination of municipalities as well, but most of all, it is based on the will of the communities to collaborate with the central institutions of Kosovo without using such powers allocated by the law to increase the function of parallel structures and, consequently, the role of Belgrade in the new municipalities. This is very evident in the areas of education and healthcare where municipalities have exclusive competencies. It is indeed hard for the new municipalities to maintain these institutions under their control, especially the education system, which during the last decade has operated under Serbia's curricula, and in many cases the institutions rejects any kind of assistance from the Kosovo authorities, apart from financial assistance and salaries. But it must be emphasized that because of sharing common language, religion and traditions, the Serbian community living in the Kosovo enclaves naturally feels closer to its kin state culture rather than to Kosovan culture.

3. Community Acceptance of Decentralization

According to its most basic definition, decentralization is the transfer of administrative competencies from the central to the local level.²⁹ Article 3, section 2 of the European Charter of Local Self-Government reflects the principles of self-government and subsidiarity, and asks European countries to implement the principle of the lowest-level self-governing institutions having decision-making roles.

²⁷ Rezarta Ukimeraj, "The implementation of Kosovo's Action Plan on Decentralization", *RIT Centre for Multidisciplinary Studies 2011*, 47, at <https://ritdml.rit.edu/handle/1850/14111>.

²⁸ Transfer of documentation from the matrix municipalities to the newly established ones was accompanied by necessary Memorandums of Understanding (MOUs) signed regularly by the Ministry of Local Government Administration, the Ministry of Finance and the other ministries and municipalities.

²⁹ John M. Cohen and Stephen B. Peterson, *Administrative Decentralization: Strategies for Developing Countries* (published for and on behalf of the United Nations, Kumarian Press, 1999), 16 - 20.

Some authors, such as Gurr,³⁰ and Burgess and Tarr³¹ have argued that the self-government of a specific territory where one ethnic group comprises the local majority, can be translated in territorial autonomy. Basing on the example of South Tyrol, Gurr argues that territorial autonomy and power sharing can give good results in solving ethnic conflict in divided societies.

For Smith³² decentralization can play a unifying role for consolidating new national identities.

Others, such as Norris,³³ argue that group autonomy or the decentralization of power is not an automatic solution and state that "centralized government is thought to enhance integration, decisiveness, uniformity, economies of scale, and cost efficiency". For Norris responsibilities are defined in a more clear way in centralized governmental systems and the consequence is stability in the decision-making process.

Lijphart's³⁴ model of consociational democracy or power-sharing has been underlined like a successful model for state-led settlement in deeply divided societies from interethnic tensions. Lijphart's model has been largely applicable in the Balkan contest but sometimes it has been misunderstood as giving the possibility to the non-dominant groups to unite themselves in concentrated geographical areas and proclaim autonomous regions.³⁵

According to Zahar,³⁶ the power sharing system, if utilized in a wrong way, leads in a stalemate that can destabilize the state and does not reach stability in the decision-making process.

Leaving aside the different theories, be they consociational or integrative,³⁷ decentralization is a familiar process across Europe, but in Kosovo it still seems to be an immensely complex and difficult programme. From time to time, the reform in local authority power has been used as a tool to increase communities' integration and has been a core subject of the negotiations over several issues in Kosovo. Four years have passed since the declaration of independence, but decentralization continues to play a key role in the efforts to integrate the Serb community into the social and institutional life and, furthermore, its correct implementation is crucial to integration into the

³⁰ Ted Robert Gurr, *Minorities at Risk: A Global View of Ethno-Political Conflict* (US Institute of Peace Press, Washington DC, 1993).

³¹ Michael Burgess and G. Alan Tarr, *Constitutional Dynamics in Federal Systems. Sub - National Perspectives. Forum of Federations* (Mc Gill Queen's University Press, Montreal, 2012).

³² Brian C. Smith, *Spatial Ambiguities: Decentralization within the State, Public Administration and Development* (Allen & Unwin, Boston, 1985), 455 - 465.

³³ Pippa Norris, *Driving Democracy: Do Power Sharing Institutions Work?* (Cambridge University Press, Cambridge 2008), 162.

³⁴ Arendt Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (Yale University Press, New Haven, 1977).

³⁵ This seems to be the case of Macedonia, where the described scenario is what the dominant group fears more.

³⁶ Marie - Joëlle Zahar, "Power Sharing in Lebanon: Foreign Protectors, Domestic Peace and Democratic Failure", in Philip G. Roeder and Donald Rothchild (ed.), *Sustainable Peace* (Cornwell University Press, Ithaca, 2005), 219 - 240.

³⁷ The application of the different theories in Kosovo's case has been argued by Adem Beha, "Decentralization in Kosovo: A Challenge to Deal With", in 17 *Journal of Peace, Conflict and Development* 2011, at <http://www.peacestudiesjournal.org.uk/dl/Iss%2017%20Art%206%20Final.pdf>.

larger European family. To correctly implement such an ambitious plan, cooperation and coordination at both the horizontal level (central government) and vertical level (central and local government) is needed, and, most importantly, all society must fulfil its responsibilities.

In December 2009, the International Civilian Office and the government of Kosovo presented the -Strategy for Integration of Northern Kosovo³⁸- that guarantees Kosovo territorial integrity. The Strategy for Integration of Northern Kosovo aims to apply the Ahtisaari package as a whole, without implementing the CSP selectively. During the first years, the CSPs implementation faced different obstacles, among other things, community acceptance proved to be the main difficulty. Community acceptance of the decentralization process, both for Albanians and Serbs, is suffering from political obstacles rather than as practical ones. Decentralization has been so highly politicized that both communities feel suspicious about its benefits. In general, decentralization is understood as beneficial to minorities rather than as part of the local government reform. Moreover, there is an impression that decentralization was a benefit for minority groups only, and not equally beneficial for all citizens. Consequently the question is: who is the minority³⁹ in the territory of Kosovo?

3.1 Serbian Community Acceptance.

For the Serbian community, decentralization reflects negative connotations, being associated with the package that paved the way for the declaration of independence of Kosovo.⁴⁰ Hence, if the majority of the Serb community accepted a part of the independence package, they would have to accept the independence of Kosovo, which most the Serb community (especially those living in North Mitrovica) refuses to do.⁴¹

One of the main obstacles for its implementation, or its acceptance among the Serb community, remains the role of Belgrade and the functioning of its

³⁸ International Crisis Group, *North Kosovo: Dual Sovereignty in Practice*, Europe report nr. 211 (14 march 2011), at <http://www.unhcr.org/refworld/pdfid/4d7f25e82.pdf>.

³⁹ According to the 1977 definition of Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, a minority is: "A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members-being nationals of the State- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language". United Nations Human Rights, *Minorities Under International Law*, at <http://www.ohchr.org/EN/Issues/Minorities/Pages/internationalallaw.aspx>.

For a controversial vision of the term minority see: G. Poggeschi, *Language rights. A comparative analysis (I diritti linguistici. Un'analisi comparata)* (Carocci Editore, Roma, 2010), 25-27; Francesco Palermo and Jens Wolek, *Comparative constitutional law of groups and minorities (Diritto costituzionale comparato dei gruppi e delle minoranze)* (Cedam, Padova, 2nd ed. 2011), 11 - 34.

⁴⁰ Kosovo Local Government Institute, *Implementing Decentralization in Kosovo: One Year On* (June 2009) at [http://www.fesprishtina.org/wb/media/Publications/2009%20and%20earlier/KLGI%20Implementing%20Decentralisation%20in%20Kosovo%20one%20year%20on%20\(English\).pdf](http://www.fesprishtina.org/wb/media/Publications/2009%20and%20earlier/KLGI%20Implementing%20Decentralisation%20in%20Kosovo%20one%20year%20on%20(English).pdf).

⁴¹ Kosovo Local Government Institute Report, *Framework and Provisions for the Minority Communities* (5 May 2009), at <http://www.klg-institute.org/20090520%20Framework%20and%20Provisions%20for%20the%20Minority%20Communities.pdf>.

parallel structures in the territory of Serb enclaves. It is of great interest that, the classification of such Serbian parallel structures by certain studies gives: first, the ones operating south of the Iber River; and the second, ones operating in North Kosovo.⁴²

Belgrade's politicians consider decentralization as a mechanism that legitimizes the independence of Kosovo rather than as an instrument to reinforce and protect the rights of Serbs in Kosovo. Therefore, through its parallel structures and financial support, Belgrade has managed to detach the Kosovo Serb community from the integration process of Kosovo and used its influence by not letting them take part in the larger Kosovan society,⁴³ and by this Belgrade managed to build and control parallel structures⁴⁴ within the territory of Kosovo. These parallel structures have become the strongest mechanisms for boycotting the decentralization process, undermining the implementation of the CSP, and, above all, they hinder the functionality of the new municipalities.

The main problem remains the fact that, while these parallel structures deliver only financial benefits to the Serbs living in Kosovo, they are unable to stimulate development in the enclaves. However, Kosovan salaries cannot match the high wages in the parallel municipalities. Nevertheless, there has been a weakening of Belgrade's efforts to control the Kosovo Serb community, a weakening that is directly related to the economic crisis that has negatively affected Serbia, straining its budget. In such a difficult economic situation, the Serbian government is forced to progressively decrease its support for the Serb community. In the light of a noticeable reduction of control over the Serbs living in Kosovo, Belgrade has cut over 50 per cent of the extra wages it provided for Kosovo Serbs,⁴⁵ and other significant budget cuts in the parallel municipalities are an ongoing process. The economic situation of Serbia has had an impact on the Kosovo Serbs who have returned to the Kosovan budget benefits. This is particularly evident in the fields related to healthcare and education professionals. At the same time, a number of elderly Serbs have enrolled for the social welfare and pensions of Pristina. Furthermore, the increasing participation of members of the Serbian community in local elections shows that things are moving in the same direction, the Serb community in Kosovo is turning over the Kosovan institutions.⁴⁶ It can be said that the Serb community, especially those living

⁴² Such distinction is taken in consideration of, in particular, their relations (or not) with the Kosovan institutions or with the Kosovo Albanian population. Adem Beha, "Decentralization in Kosovo...".

⁴³ International Crisis Group Europe Report nr. 211, *North Kosovo: Dual Sovereignty in practice* (14 March 2011) at <http://www.unhcr.org/refworld/pdfid/4d7f25e82.pdf>.

⁴⁴ For the operation of the parallel structures see: Coordinator's office for the Strategy of North, Belgrade with a Foot on the North and an Open Hand in Europe (May 2011) at [http://www.helsinki.org.rs/doc/English%20Version%20of%20Report%20\(2011\).pdf](http://www.helsinki.org.rs/doc/English%20Version%20of%20Report%20(2011).pdf).

⁴⁵ *Ibid.*

⁴⁶ According to the last local election, that took place in Partesh, in the last implemented Serb municipality in Kosovo, in July 2010, over 55% Serb participants were counted. In general, in the elections held for the creation of new municipalities in independent Kosovo, the overall Serbian turnout was ten times higher than in the last elections held by UNMIK in November 2007, but, more importantly, the turnout were higher than in the Serbian organized parallel elections of May 2008

south of the Iber River, appear to have taken a longer and more pragmatic approach towards the decentralization process.⁴⁷ Such more pragmatic approach towards the decentralization, unfortunately, is not applicable in the case of the Serbs living in the three existing northern municipalities of Leposaviq, Zubin-Potok and Zvecan and the ones living in North Mitrovica which do not collaborate with the Kosovan authorities.

The parallel institutions are the only ones used by people in North Mitrovica. Because of the pure ethnic composition of the municipality, they do not depend on an interaction with Kosovan institutions or Kosovo Albanians in their everyday lives. Given the small population of around 50,000 inhabitants, Serbia finds it fairly simple to procure adequate financing, certainly more generous than those Pristina offers. This situation allows the Serb community in North Mitrovica to have a more militant approach towards anything resembling integration; hence, opposition to decentralization begins with the non participation in the local elections, which would create legitimate municipalities.⁴⁸

The aftermath of the past unclear definition of the - future status - of Kosovo, the North continues to be one of the major problematic areas facing not only Pristina but also all parties involved in the created situation. Consequently, since 1999 the North Kosovo represents 15 per cent of Kosovo's territory outside Pristina's control. If, at the beginning, the Kosovo Serbs considered it an oasis where the Serbian population and institutions would continue to function and develop, now it is a symbol of corruption. Receiving so many funds from Pristina, Belgrade and the international community made corruption inevitable,⁴⁹ and, because of a lack of effective policing, mismanagement of funds and smuggling activities gave people a golden era and made them prefer living in this unclear status, and the feel that it was suitable to keep profiting from such high budgets from all parties. However, to Belgrade, the influence in North Kosovo represents fertile ground for playing politics, even at the international level. Furthermore, Belgrade tries hard to distance itself from the criminal activities and lawlessness occurring in the North Mitrovica, while, at the same time, it provides support and

and August 2009. European Parliament-Directorate General for external policies, The decentralisation process in Kosovo and the creation of the new municipalities (a Kosovo - Albanian and a Kosovo - Serb minority view), 2010, at http://www.iris-france.org/docs/kfm_docs/docs/observatoire-voisinage-europeen/briefing-note-kosovo-decentralisation-process-published.pdf.

⁴⁷ For example, during the first year of implementation, over twenty Serbs decided to return to the Kosovo police services and many Serb community members have applied for Kosovan documents and accepted Kosovan salaries; also, during the first year, over 300 Serbs expressed their wish to be part of the Municipal Preparation Team (MPT), a fundamental body for the establishment of the five new municipalities. For more information consult: Kosovo Local Government Institute, Implementing Decentralization in Kosovo.

⁴⁸ The successful organization of the 2009 elections in the enclaves seems to be not sufficiently satisfactory for the North Mitrovica, where finding candidates remains one of the main obstacles. Even Kosovo Serb parties like the Serbian Liberal Party of Kosovo Serbs (SLS), do not have a presence in North Mitrovica, having failed in past attempts to create local branches, as a result of a lack of interest among the locals, who are more interested in the Serbian political situation.

⁴⁹ International Crisis Group Europe Report nr. 211, *North Kosovo: Dual Sovereignty in practice...*

finance to the institutions there, even though this position, at times, brings clashes.

The current situation in this part of Kosovo continues to be critical especially during 2012, risking to become crucial for the further political development situation of both Kosovo and Serbia. All this points to the fact that the Kosovan government does not yet have a strategy to dissolve parallel structures, and relies on the decrease of Belgrade's financial commitments. However, Brussels' policies were more persuasive than they were in the past, forcing Belgrade to change its position regarding the functioning of parallel structures, especially those established in North Kosovo. It seems emblematic that a day after submitting its application for EU membership in Stockholm, Serbia committed 42 million euros for parallel structures.⁵⁰ Now, after receiving the status of EU candidate country, it is showing no sign that the policy towards the participation of Serbian communities in the political institutions of Kosovo will change. A few days after Serbia received candidate country status, Boris Tadic, at that time Serbian president, declared that the Serbian Constitution provisions would be fully applied by holding elections in all its territory (North Kosovo included). This hybrid position of Belgrade, having one leg in the EU and the other in Kosovo, undermines not only the function of the new republic but also the good inter-ethnic relations in the whole region.

3.2 Albanian Community Acceptance

Decentralization has also been politicized for the Albanian community of Kosovo. The Albanian community is also divided when it comes to accepting decentralization. The majority of the population and the government agree with the process of decentralization, admitting it is a little compromise for a greater cause - the full independence of Kosovo. Yet, part of the population sees decentralization as a negative process. The self-determination movement (Vetevendosja), in particular, has been the most outspoken actor against decentralization in Kosovo.⁵¹ Its members perceive decentralization as a loss of Kosovo's administrative control and sovereignty over its

⁵⁰ For more information see European Parliament - Directorate General for external policies, The decentralisation process in Kosovo and the creation of the new municipalities (a Kosovo - Albanian and a Kosovo - Serb minority view), 2010, at http://www.iris-france.org/docs/kfm_docs/docs/observatoire-voisinage-europeen/briefing-note-kosovo-decentralisation-process-published.pdf.

⁵¹ For self-determination movement (Vetevendosja), "The Declaration included the Package of Ahtisaari which will create a Serb Republic inside Kosova (similar to that of Bosnia) and will install the executive and undemocratic rule of EULEX (again similar to Bosnia). The independence, as described in Declaration, does not include an army and will not guarantee territorial integrity or seats in the UN. Not being a member of the UN, Kosovo cannot be a signatory to any of the UN Conventions. Nowhere does the Declaration mention explicitly the separation from Serbia. It mentions the "non-consensual breakup of Yugoslavia". However, it is known across the world that, after the dissolution of the Union of Serbia and Montenegro, Serbia was made direct inheritor of Yugoslavia in Resolution 1244". Self-determination movement, One step forward - three steps back, (15 June 2010), at http://www.vetevendosje.org/repository/docs/One_step_forward_three_steps_back.pdf.

territory,⁵² which would lead a lack of stability and foster the creation of more enclaves like the one in North Mitrovica. Moreover, this movement and that part of the population that opposes the CSP plan see its implementation as the transposition of the Bosnia-Herzegovina (BiH) situation, where the creation of the Republic of Srpska and the installation of the executive, the European Union Rule of Law Mission in Kosovo (EULEX), could be possible inside Kosovo's territory and would create the same asymmetrical and reliant power-sharing, as in the Bosnia-Herzegovina model.⁵³

Therefore, a Kosovo without full control over its entire territory cannot be an independent Kosovo. In consequence, decentralization does not serve the purpose of true independence.

One of the most discussed topics is the kind of relation between these new municipalities and the central government. According to the Ahtisaari package and to related laws, municipalities are autonomous in the exercise of their exclusive and delegated competencies under the MLGA supervision. The government of Kosovo cannot directly invalidate municipal legislative or executive acts, notwithstanding that they are not in line with the Constitution or with other Kosovan laws. In such a case, the government may request municipalities to re-examine such decisions or acts, but the execution of those acts will not be suspended. After the request of re-examine, municipalities are obliged to probe such decisions or acts. If municipalities respond negatively, or do not answer within a given deadline, the government can only bring the issue to a competent court or to the Constitutional Court.⁵⁴ Such lack of government intervention is what the central government fears the most about fully-functioning new municipalities.

Another fear, promptly misused by politicians, relates to actions that violate the Constitution or other laws the new municipalities might legislate. However, this seems to be a false fear because the government has full legal authority to dissolve municipal assemblies and to call for new municipal elections.

Undoubtedly, positive steps have been taken the past four years. There is considerable progress in the establishment and functionality of the new municipalities,⁵⁵ except in the new municipality in North Mitrovica. A tense

⁵² This is typical of brokered international agreements. David Wippman, in many of his works, analyses the growing impact of these international agreements, classifying them as "internationally brokered". For more on this, see: David Wippman, *International Law and Ethnic Conflict* (Cornell University Press, Ithaca, 1998), 211-241.

⁵³ For a detailed study on the BiH model as a federal state and its asymmetries see: Jens Woelk, "Bosnia - Herzegovina: Trying to Build a Federative State on Paradoxes", in Michael Burgess and G. Alan Tarr (eds), *Constitutional Dynamics in Federal Systems. Sub - National Perspectives, Forum of Federations* (Mc Gill, Queen's University Press, Montreal, 2012), 109 - 139.

⁵⁴ Ahtisaari, Comprehensive Proposal, section III, Article 6 "Administrative Review of Municipal Activities".

⁵⁵ The first elections in the state of Kosovo were held in 2009. For this purpose, three new municipalities (Gračanica, Ranilug and Kollokot) were created and the existing municipality of Novo Berde was expanded. Successful local elections for the new municipality of Partesh took place in

situation and several ethnic problems still prevent the creation of this municipality. The future of North Mitrovica should be within Kosovo's boundaries, completing the decentralization process established in the Ahtisaari package, which is the sign of the will to accomplish the establishment of the boundaries in the Balkans. Mitrovica constitutes the inter-ethnicity model in the whole international community, especially, but not only, in the successful creation of a multi-ethnic society in Kosovo. If such a programme fails, the division of the territories by only ethnic lines will have a domino effect, involving the whole area and threatening regional stability in the Balkans.⁵⁶ Therefore, any kind of proposal to divide North Mitrovica from Kosovo should be rejected by the international community for the sake of the stability in the region and long-lasting peace in the Balkans.

4. Talks between Belgrade and Pristina, and the European Perspective

On 9 September 2010, the UN General Assembly highlighted the advisory opinion of the International Court of Justice, which concluded that the declaration of independence of Kosovo did not violate international law.⁵⁷

Furthermore, the General Assembly Resolution called for new negotiations between Kosovo and Serbia under UN supervision,⁵⁸ with respect to the so-called 'good neighbourly relations', which is the key criterion for integrating the Western Balkans into the EU. Technical dialogue directed towards the eventual normalization of relations between Kosovo and Serbia started on 8 March 2011. There are some asymmetries in this dialogue, some 'sensors' of no reciprocity between the two parties involved in technical talks. Except for the requests Serbia advanced for the Serbian minority living in Kosovo without conceding any kind of privilege to Albanians living in Serbia, another sensor of such non-reciprocity seems to emerge, that is, Serbian officials will be able to enter into Kosovo's territory, but not the opposite.⁵⁹ Local medias have highlighted that such dialogue held in Brussels seems to be strictly addressed to what Belgrade has leaked as the main subject of the dialogue, that is, the internal issues of Kosovo, and not to the issue of Kosovo and Serbia itself. As

June 2010. That same year, the process of hiring staff in these municipalities was over 70% complete.

⁵⁶ Some of the possible scenery may be: Serbs living in the other enclaves will be pushed through North Mitrovica fearing Kosovo Albanians reactions, Kosovo Albanians living in south Serbia (Iugina e Presheves/Prehevo) will intend to join Kosovo; the same scene will occur in BiH, especially with regard to the Republic of Srpska, and then in Macedonia, Montenegro etc.

⁵⁷ ICJ decision No. 141, Accordance with International Law of the unilateral declaration of independence in Respect of Kosovo, decision of 22 July 2010.

⁵⁸ Resolution 64/298, section 2, "Welcomes the readiness of the European Union to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would promote cooperation, achieve progress on the path to the European Union and improve the lives of the people", 13 October 2010.

⁵⁹ Boris Tadic has visited Decan, but Ibrahim Makolli did not go to Presheve/Prehevo. This was the first time a minister of the government of Kosovo tried to go to Eastern Kosovo but the attempt failed: he was immediately turned back. Albin Kurti, *The Republic's Economy*, 19 January 2012, at <http://www.vetevendosje.org/?cid=2,31,3866&author=1>.

such, some examples are: Serbia's demands for Kosovo's Serbs the Albanian community present in Serbia, especially in Presheva/Prehevo, Medvegja/Medveja and Bujanoc/Bujanovac, are not included; the talks on custom stamps imposed only for Kosovo and not for Serbia and the issue of car licence plates, obliging Kosovo to issue UNMIK car licence plates for the next five years.

Local media emphasized that the role of the EU is unclear. On one hand, the EU is the mediator of the dialogue between Kosovo and Serbia, and, on the other hand, the EU rules over the dialogue through the executive powers of EULEX. Undoubtedly, the main unspoken subject of the problem is the Serbian refusal to recognize the independence of Kosovo; also, the Constitution of Serbia proclaims that Kosovo is part of Serbia.⁶⁰ As such, Serbia still finances and controls parallel structures in Kosovo, especially in the North. As a result of the policies pursued by Belgrade in this area, on 9 December 2011, the Council of the European Union postponed its decision to give Serbia the status of European Union candidate until March 2012, making specific reference to, amongst other things, the situation in North Kosovo.⁶¹ As a result, after the first months, where talks were concentrated on topics such as the civil registry, land registry documents, customs, university diplomas, energy and telecommunications, the attention turned back to the issue of 'official representation' of Kosovo in the region; with or without the 1244 Resolution the question was whether or not to accept the Republic of Kosovo.

In fact, in all the negotiations held between the two parties, in accordance with Serbia's refusal to recognize Kosovo's independence, Kosovo has had to erase the reference to republic from its own name. The answer to the question 'what are the talks about?' seems to be quite obvious: to find the right 'halfway', which means that the open issue between the two parties will be neither an obstacle for Serbia's full process of integration into the EU nor an obstacle for the completion of Kosovo's international integration into the EU. But what is the price of such deliverance?

Once more, the issue of the creation of the new municipalities (Serbian enclaves) and the mechanisms Belgrade cooperates with and provides financial and technical assistance to, as the Ahtisaari plan foresees, turns out to be crucial for the latest developments in the region. The visit of the then Serbian president, Boris Tadic, in Kosovo, to celebrate the Orthodox Christmas Day on 7 January 2012, was protested against by hundreds of citizens, and undoubtedly offered the Serbian government the possibility of underlining its position about the Kosovo issue once more. As a matter of

⁶⁰ The preamble of the Constitution of Serbia, approved after the referendum held on 28 October, 2006, states that: "Kosovo is an autonomous province of Serbia with significant autonomy". The full text of the preamble of the 2006 Serbian constitution is at <http://www.wipo.int/wipolex/en/details.jsp?id=7378>.

⁶¹ After 27 EU foreign ministers voted on 28 February, 2012 (26 voted for and 1 voted against), Serbia was issued with a candidate status recommendation. Serbia received what it was aiming for - full candidate status - on 1 March 2012.

fact, this visit was announced as a normal religious visit and the government of Kosovo approved it under an EU request to the offices in Belgrade and Pristina. Nevertheless, what Tadic declared to the journalists outside the monastery totally violated such agreement. Despite all the guarantees of the Kosovan state authorities, Tadic transformed his 'religious' visit into a 'political' one. When the journalists asked if Serbia would recognize Kosovo, he replied "Never", emphasizing that Serbia would not remove Serbian institutions from Kosovo.⁶² As a result of this declaration, hundreds of people staged protests in the principal towns of Kosovo and the government of Kosovo declared that the institutions would not issue Tadic with permission to visit Kosovo again since he continuously violates the terms of agreements that both countries agreed for such purpose. Recently, the EU has mediated talks held in Brussels and talks has specifically focused on how Kosovo will be identified on the table top cards, that is, to identify how each conference participant is represented (the so-called regional presentation moniker). The disagreement on this topic shows some similarities with the longstanding dispute between Macedonia and Greece. Both governments held opposite positions: Pristina wants 'Republic of Kosovo' in on its sign, but Belgrade insists Kosovo be described according to the [UN Resolution] 1244'.⁶³ This dispute between the parties seems have been going on for four years: Kosovo pretends Serbia does not have the right to refer to the 1244 Resolution because it was approved in 1999, when Serbia did not exist as a state; Serbia pretends that the 1244 Resolution is of vital importance - a kind of red line that should not be passed.⁶⁴

Since Kosovo declared its independence, it has accepted substantial compromises in order to be recognized as an independent state, but there is no doubt that if, under strong pressure, it accepts a compromise with Serbia to give up the name 'Republic' that defines its juridical status, it would become a milestone in Kosovo's future history. Nevertheless, during the celebration of the fourth year of independence, Prime Minister Hashim Thaci

⁶² "We will not accept to remove our institutions. This is impossible. If we accept that we would displace Serbs from Kosovo. It means that the Serbs would have no schools, no health and social services and other social providing", Tadic said. "Serbia does not accept Kosovo's independence, never will. This is based on Resolution 1244 and our Constitution". *Kosovo Media Monitor*, (07 January 2012), at http://newsmonitors.org/mon/index.php?option=com_content&view=article&id=912:draft-broadcast-report-07-01-2011&catid=36:evening.

⁶³ "We have far distant positions. What will happen in the coming days remains to be seen," said Tadic to the reporters on January 31, after meeting Robert Cooper, Kosovo's chief negotiator. Linda Karadaku, "Serbia play name game" *Southeast European Times* (Pristina, Kosovo, 03.02.2012) at http://setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/02/03/feature-03.

⁶⁴ The UN Security Council passed UN Security Resolution 1244 on 10 June 1999, placing Kosovo under interim UN administration (UNMIK) and authorizing a NATO-led peacekeeping force (Kosovo Force (KFOR)). The aim of the Resolution 1244 was to give a political solution to the Kosovo crisis, but it recognized the sovereignty and territorial integrity of the Federal Republic of Yugoslavia. According to the Resolution 1244, Kosovo would have autonomy within the Federal Republic of Yugoslavia, and the territorial integrity of Yugoslavia, legally succeeded by the Serbia Republic, would be maintained. Resolution 1244 (1999) Adopted by the Security Council at its 4011th meeting, on 10 June 1999, S/RES/1244 (1999), is at <http://www.unmikonline.org/misc/N9917289.pdf>.

and President Jahjaga reiterated that the Republic of Kosovo is an undeniable and non-negotiable fact, a reality accepted by everyone.⁶⁵

As stated below, 2012 is the year in which supervised independence and the implementation of priorities for European Kosovo will end; that is the International Civilian Office,⁶⁶ which operates under the 25-nation International Steering Group (ISG), will end its mandate in Kosovo this year. For this purpose, the ISG which supported the pledge of the government of the Republic of Kosovo gave in its statement and the Parliament of Kosovo expressed its readiness to offer full support to the government to end such supervision. The government has to complete all obligations deriving from this resolution. Therefore, the government is expected to enact legislation predisposed to ensure human rights and to strengthen democratic institutions. In the above-mentioned statement, the ISG urged both parties to work together in order to avoid any type of tension. It urged Serbia to “refrain from interfering in Kosovo, including by withdrawing its police, security, and other state presence ... to ensure that its local elections are not extended into northern Kosovo”.⁶⁷ It also urged the government of Kosovo to “reach out actively to its Serb citizens, particularly those in its northern municipalities”,⁶⁸ by increasing the role they play in running their own affairs and by respecting their language and identity. The International Civilian Representative (ICR)⁶⁹ Mr. Pieter Feith, urges Serbs both in Kosovo and Serbia to accept the territorial integrity of Kosovo. But the reality on the ground seems to be rather far from such ‘auspices’.

On 14 February 2012, Serb community living in northern Kosovo (North Mitrovica), started a two-day referendum in which people were asked to vote on the question: “Do you accept the institutions of the so-called Republic of Kosovo seated in Pristina?”.

Keeping in mind that Serbs in North Kosovo (especially the ones living in North Mitrovica) have never accepted the independence of Kosovo, the result of the vote, as was expected, was ‘no’. According to the organizers, 99.7 per cent of the voters rejected the government of Kosovo. Nevertheless, it cannot be denied that the situation in North Mitrovica, ever since the day Kosovo

⁶⁵ Kosovo has been recognized by 91 states. The complete list of the states that have recognized Kosovo is available here: <http://www.kosovothanksyou.com>, a website that monitors who recognized Kosovo as an independent state.

⁶⁶ The ICO assisted the International Steering Group, whose mandate is to establish a “multiethnic society which shall govern itself democratically, and with full respect for the rule of law”. The ICR was appointed by the International Steering Group (ISG) on 28 February 2008. The end of the supervised independence depends on the fulfilment of the obligations arising from the Ahtisaari plan. For further information of the operation of the ICO in Kosovo consult the official page, ICO, About us, at <http://www.ico-kos.org/?id=9>.

⁶⁷ Fourteenth meeting of the International Steering Group for Kosovo, 24th January 2012, Vienna, section 3, at http://www.ico-kos.org/data/Image/2012_ISG_Vienna_Communique_ENG.pdf.

⁶⁸ *Ibid.*

⁶⁹ The ICR supported by the ICO, pursuant to the Ahtisaari plan, was appointed by the ISG. The ICR was the ‘final authority in Kosovo regarding interpretation’ of the Plan and had the ‘ability to annul decisions or laws adopted by Kosovo authorities and sanction and remove public officials whose actions he/she determines to be inconsistent’ with the Plan. Ahtisari plan, section IX, articles 3 and 4 at http://www.unosek.org/docref/Comprehensive_proposal-english.pdf.

declared independence in 2008, has been out of control. In November 2011, the last attempt of the NATO-led Kosovo Force (KFOR) peacekeeping force to dismantle barricades erected by the Serbs alongside the border failed. Over 50 KFOR soldiers were wounded during this attempt.

However it is to be noted that, 40,000 members⁷⁰ of the Serb community living in North Kosovo use only Serbian parallel structures, disregarding the official Kosovan ones. Under EU pressure, the Belgrade government call the referendum in question “unconstitutional”, on the other hand, the Kosovo’s official position is clear: with respect to the territorial integrity of Kosovo as a unit state, under no circumstance will there be a special status for North Mitrovica.⁷¹ The EU itself ignored the result of the referendum, preferring to concentrate on further development of the technical dialogue. On the third day of the ninth dialogue round that took place on 24 February 2012 in Brussels, an agreement was finally reached concerning both regional cooperation and border checkpoint management. In the end, the parties met halfway: the country’s name will be written Kosovo*, with an asterisk and the complete explanation will be: “This name does not judge the stances towards the status and its full accordance with the UN Resolution 1244 and the ICJ Opinion about Kosovo’s independence declaration”.⁷² On one hand, Serbia has not “lost the 1244 Resolution”, and on the other, Kosovo has not “won the Republic” but, nevertheless, in addition to the 1244 Resolution, there will be the ICJ opinion.

So, Kosovo* (territorial integrity of the Republic of Yugoslavia - an in-accordance-with-international-law declaration of independence) seems to be the right moniker for both parties. Apart from the form, which is not the ideal solution, both parties hope that such agreement will bring important benefits. Serbia undoubtedly welcomed these agreements which were reached one week before the European Council’s decision to confer candidate status on Serbia. For Kosovo, this further step - automatically makes it a participant with full rights in regional meetings and enables further progress towards contractual agreements with the EU, especially the signing of the Stabilization and Association Agreement, the first step towards prospective

⁷⁰ It is estimated that there are over 120,000 ethnic Serbs in Kosovo; 40,000 of those live in North Kosovo on the border with Serbia. The rest of the members of Serb community live in enclaves scattered throughout the territory. While it has been noted that Serbs in southern enclaves are more open to working with the institutions of Kosovo, those living in the north still depend on Belgrade. Kosovo agency of statistics, People on the move: an analysis of international, national and local mobility of Kosovo people, 2011 at <http://esk.rks-gov.net/rekos2011/repository/flipbook/2/People-on-the-move-ENG/#/0>.

⁷¹ “The future of North Mitrovica is the same as that of the sovereign state of Kosovo. The future of the north is the future of Kosovo, always respecting the Constitution and laws of Kosovo; respecting the document of President Ahtisaari, so under no circumstance will there be special status, or any proposal read in media, and such an idea has not been presented or discussed, or proposed by anyone. So the north of Mitrovica is part of Kosovo. Kosovo will function as a state unit, with territorial integrity respected and guaranteed and recognized internationally,”- said Mr Hashim Thaci, prime minister of the Republic of Kosovo in an interview on 27 October 2012 text of the interview at the official website of the prime minister of the Republic of Kosovo <http://www.kryeministri-ks.net/index.php?page=2,9,2640>.

⁷² Agreement on Regional Cooperation and IBM technical protocolo, 24.02.2012, Ref: EU12-047EN at http://www.eu-un.europa.eu/articles/en/article_11884_en.htm.

EU integration.⁷³ Undoubtedly, these agreements strengthen regional cooperation and guarantee necessary representation; they represent the dedication of both parties to the future European perspective. After the decentralization process has completed its cycle as it is foreseen in the CSP, in the coming years it remains to continue in full accordance with the European Charter of Local Self-Government. Thus, required reforms and further laws should be concentrated more on increasing round-table meetings with citizens rather than on ethnic criteria. Offering more information about what decentralization is and what further reforms consist of, will help citizens to better understand the various benefits they can achieve from such measures and will lead to an easier acceptance and implementation of different necessary reforms. Last but not least, the civil society in Kosovo will have the opportunity to contribute to the construction of stability in Kosovo, preventing fragmentation and separation of the territory by diminishing bipolarity and ethnic fragility between the two major communities.

Kosovan and Serbian politicians must change their partisan programmes and work to enforce democracy and law in both countries, and especially in North Mitrovica. In light of this, the community needs to change its perception of decentralization. The creation of the new state of Kosovo is a reality. The wheel of history cannot be changed, so it will be better for both parties to work together to make the system of decentralization efficient with a view to further integration in Europe.

5. Conclusions

Administrative decentralization, that is the distribution of powers from central to local government authorities, is a common process across Europe. As this article shows, such a principle is enshrined in the main documents concerning the independence of Kosovo. Nevertheless, during the first years its implementation, decentralization has faced different obstacles and communities remain suspicious about its benefits.

Undoubtedly, the full implementation of the Ahtisaari package remains a key issue not only for the European future of the country but, above all, to prove that the people of Kosovo can work together to build a civic society where they are wholly integrated as citizens of the same country. Decentralization constitutes the best opportunity for the integration of the Serb community and for the correct functionality of the new state. But in order to be understood and accepted as part of a common process for all the citizens, it must not follow only ethnic lines. Decentralization along only

⁷³ After the agreement with Serbia, the European Commission will start the feasibility study in Kosovo. It will take several months to assess the ability of the country to start the Stabilization and Association Agreement with the EU. During the talks for reaching such agreement for Kosovo, the accelerated visa liberalization, the trade and contractual agreements with the EU and the accelerated membership in the European Bank for Reconstruction and Development also will be discussed.

ethnic lines would jeopardize the stability of the region, bringing a domino effect into the Balkans. The Ahtisaari package preserves the territorial integrity of Kosovo and maintains the autonomy of the Serb community in areas where Serbs constitute the majority of the population. Therefore, it seems to be the best option to maintain the multi-ethnic structure of the new state. Therefore, the partition of Mitrovica along ethnic lines does not match with the values enshrined in the principles of decentralization as set out in the Ahtisaari package and as established by the Constitution of the new state.

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