



BRIEF ANALYSIS

KOSOVO-SERBIA DIALOGUE CHALLENGES AND THE WAY FORWARD

MARCH, 2018



DEMOCRATIZATION
AND PARLIAMENTARY
PRACTICES



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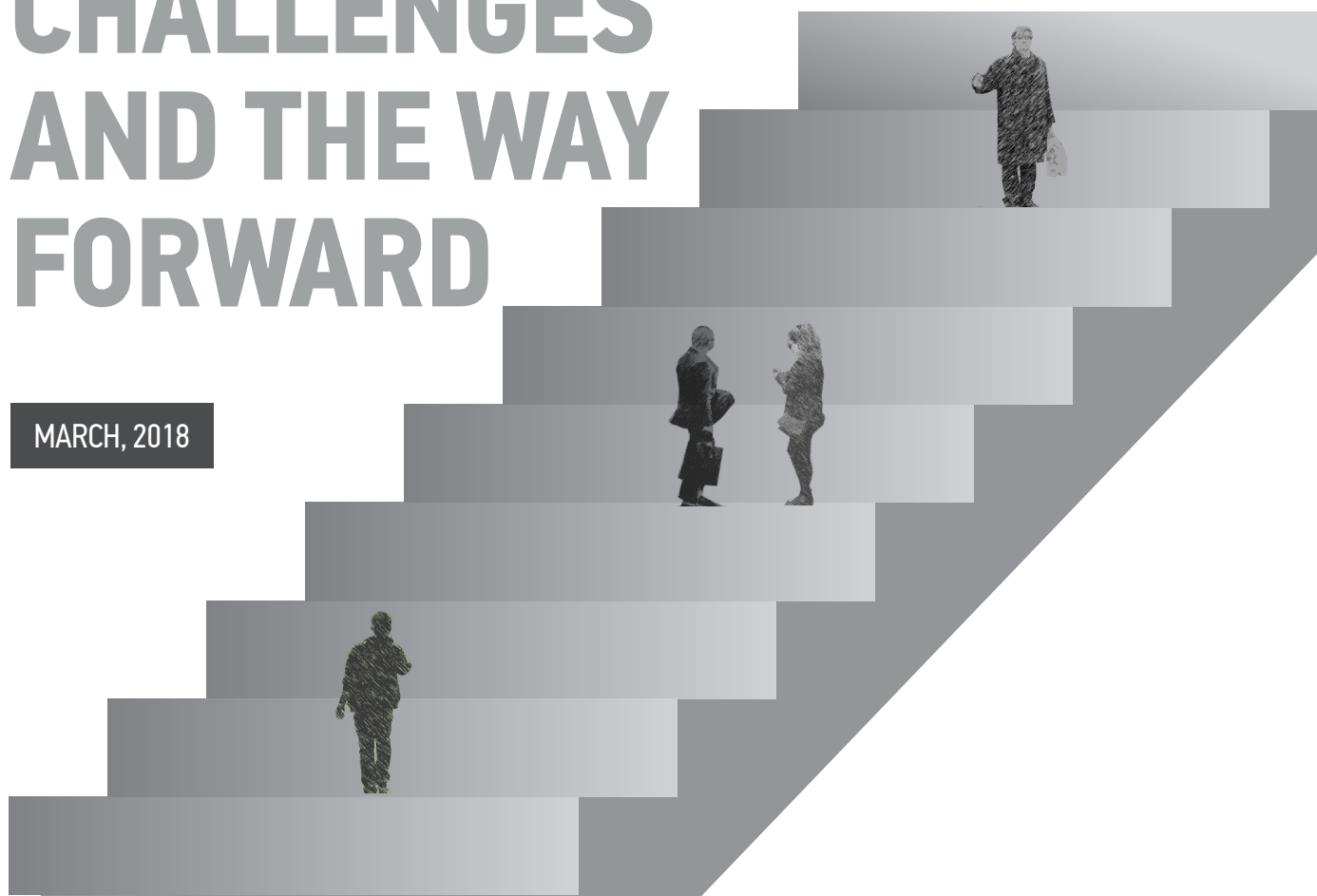


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EXECUTIVE SUMMARY

Following the advisory opinion of the International Court of Justice (ICJ) on the act of declaration of Kosovo's independence, the United Nations General Assembly, on 9 September 2010 adopted a resolution sponsored by the 27 then-European Union countries and Serbia, which opened the way for launching the Kosovo-Serbia dialogue, facilitated by the EU.¹ This resolution, adopted with consensus by the UN General Assembly, welcomed the ICJ opinion and welcomed the readiness of the European Union to facilitate the process of dialogue between Kosovo and Serbia, stating that this process would serve as a factor of peace, security and stability in the region. This process was said to promote cooperation, improve the lives of citizens and help both countries to make progress on their path towards European Union.

As a result, on 10 March 2011, the Kosovo Assembly adopted a Resolution mandating the Government of the Republic of Kosovo to commence technical negotiations with Serbia, as well as requesting it to regularly report on the course of the process.² Through this Resolution, the Assembly of the Republic of Kosovo also obliged the executive to present the basic document for dialogue within legal deadlines, specifying the general principles of the technical dialogue, the objectives and non-negotiable issues. In addition to technical negotiations, political talks on the normalization of relations also began at the end of 2012. On 18 October 2012, the Kosovo Assembly adopted a new resolution that supported the start of political dialogue by mandating again the Government of Kosovo to lead this process.³

The dialogue with Serbia has been characterized by intermittent terminations and delays, as a result of the tensions, either internal or even between the two countries. In particular, the 2014 national elections, in both countries, caused major delays in holding the dialogue. Finally, the dialogue was terminated through a resolution of the Kosovo Assembly in March 2017⁴, following the detention of Ramush Haradinaj on 4 January 2017 in France.

Up-to-date, over 23 agreements have been reached at the technical and political level. Most of these agreements have addressed issues significant to the lives of citizens, which aimed at dissolution of Serbian parallel structures in Kosovo, extending the rule of law throughout the country and consolidating Kosovo's international subjectivity. However, their implementation was not satisfactory starting from the very nature of the agreements as well as the non-readiness of the parties, especially Serbia, to observe the agreements reached.

The dialogue process has been developed with major contradictions and polarization of the political arena. Lack of transparency and accountability has characterized this process from the very outset. Therefore, recently it has been articulated a need for a general political consensus on this issue. The closing phase of the dialogue is expected to be crowned with the achievement of a legally binding agreement between the parties, while the EU, in the recent European Commission enlargement strategy, has clearly noted that the path towards the EU, for both parties, is related to this process.

¹ United Nations General Assembly, "Resolution A/RES/64/298", 9 September 2010. Available at, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/298

² Assembly of the Republic of Kosovo, "Resolution for the Dialogue between the Republic of Kosovo and the Republic of Serbia", 10 March 2011. Available at, http://www.kuvendikosoves.org/common/docs/Rezoluta_per_dialogun_midis_R.Kosoves_dhe_R.Serbise_2.pdf

³ Assembly of the Republic of Kosovo, Resolution "On normalization of relations between the Republic of Kosovo and the Republic of Serbia", 18 October 2012. Available at, http://www.kuvendikosoves.org/common/docs/Rezolute_Marredhenive_Kosova_Serbia.pdf

⁴ Assembly of the Republic of Kosovo, "Resolution regarding the Detention of the Former Prime Minister of Kosovo, Ramush Haradinaj, in France", 10 March 2017. Available at, http://www.kuvendikosoves.org/common/docs/2017_03_09_Rezolutio_No_011.pdf

INTRODUCTION

Following the declaration of Kosovo's independence, Serbia has continuously engaged actively in preventing the internal strengthening and consolidation of the Republic of Kosovo in the international arena. Such an engagement was also seen in its endeavour to challenge the declaration of independence through the International Court of Justice, which was rejected. However, the ICJ opinion paved the way for launching a new process of dialogue between Kosovo and Serbia aimed at resolving bilateral disputes, which would lead to full normalization of relations between the two states.

The purpose of this paper is to assess whether the dialogue, with Serbia, has reached its objective that of extending sovereignty throughout its territory, strengthening the statehood in the international arena, and integrating the Serb community into institutions and social life of Kosovo. Also, based on the requests of citizens and the public opinion, this paper provides a set of recommendations to political spectrum on how to proceed further.

The entire dialogue process has been confined, thus damaging its credibility. Lack of transparency and accountability affected also the implementation of the agreements reached. Simultaneously, due to the lack of information regarding the course of the process, the disagreement and oppositions of dialogue have increased over time. Moreover, seven years following the commencement of the dialogue, there is little progress in the relations between the two countries. A significant number of agreements have been reached, but their implementation remains unsatisfactory. The reasons for the non-implementation of the agreements vary, ranging from lack of political willingness to the conflict of their content with the constitutional and legal order of the Republic of Kosovo. Same time, Serbia has continued to lobby against and hinder Kosovo's consolidation in the international arena.

Despite this, the dialogue with Serbia is already entering its final phase. Many issues are still unclear, ranging from representation, format, topics to be discussed, or the epilogue of the dialogue. However, the European Union made it clear that it expects soon the conclusion of a legally binding agreement between the parties, in order to pave the way for advancement towards EU membership.

KOSOVO – SERBIA DIALOGUE:

Dialogue during the Thaçi II Government (2011 – 2014)

The UN Resolution initiated the Kosovo-Serbia dialogue process and on 10 March 2011, the Assembly of the Republic of Kosovo adopted a Resolution supporting the “dialogue between two independent and sovereign states, Kosovo and Serbia, on practical issues, in view of improving the lives of citizens and advancing the European agenda for both countries and for the region”.⁵ This Resolution also obliged the Government of Kosovo to present the basic document for the dialogue to the Assembly, within the legal deadlines, and it reaffirmed the right of the Assembly to ratify international agreements.⁶

The first meeting between Kosovo and Serbia was held on 9 March 2011 where the Republic of Kosovo was represented by Mrs Edita Tahiri, Deputy Prime Minister and Minister for Dialogue in the then Government of the Republic of Kosovo, whereas the Serbian delegation was led by Mr. Borko Stefanovic, Serbia’s Special Representative to the Dialogue. During the first phase of the dialogue,⁷ by the end of 2012, 7 agreements were reached on: 1. Freedom of movement, 2. Integrated border management/IBM Agreement, 3. Cadastral records, 4. Civil registry books, 5. Regional representation, 6.

Recognition of diplomas, 7. Agreement on mutual recognition of customs stamps. Whereas discussions on issues related to telecommunication and energy were initiated.⁸

However, since most of the agreements reached exceed the technical nature and are more of a political connotation, the process that started as a technical dialogue was followed by a political dialogue on normalization of relations.

As a result, on 18 October 2012, the Assembly of the Republic of Kosovo adopted a new Resolution authorizing the Government of the Republic of Kosovo to lead the process of political dialogue, requesting the participation of relevant parliamentary committees.⁹ As in the first resolution, this Resolution also stated that the Government of Kosovo is obliged to report regularly on the dialogue process, stressing that the agreements of the normalization process are to be ratified by the Assembly. In this Resolution, it is noted a change in the terminology used since the dialogue is now considered a process for solving problems between two independent and sovereign states. Also, the role of USA undergoes a change, from

5 Assembly of the Republic of Kosovo, “Resolution for Dialogue between the Republic of Kosovo and the Republic of Serbia”, 10 March 2011. Available at, http://www.kuvendikosoves.org/common/docs/Resolution_for_dialogue_between_R.Kosovo_and_R.Serbia.pdf

6 Ibid. Item five of the Resolution.

7 Dialogue has been conducted in two phases so far (a division based on the Resolutions of the Assembly of the Republic of Kosovo)

8 Office of the Prime Minister of the Republic of Kosovo, Ministry for Dialogue, “Program of the Government of the Republic of Kosovo on the Brussels Dialogue / 2014 – 2018”, 15 January 2015, p. 6. Available at, http://www.kryeministri-ks.net/repository/docs/Programi_i_Qeveris%C3%AB_s%C3%AB_Republik%C3%ABs_s%C3%AB_Kosov%C3%ABs_per_Dialogun_e_Brukselit_-_periudha_2014-2018_-_150115.pdf

9 Assembly of the Republic of Kosovo, Resolution “On normalization of relations between the Republic of Kosovo and the Republic of Serbia”, 18 October 2012. Available at http://www.kuvendikosoves.org/common/docs/Rezolute_Marredhenive_Kosova_Serbia.pdf

facilitator to strong supporters of this process. This Resolution also states that the agreements should be in accordance with Kosovo's sovereignty, international subjectivity, territorial integrity and internal regulation, the unique constitutional order of Kosovo.¹⁰

On 19 October 2012, Mr Hashim Thaçi, in the capacity of Prime Minister of Kosovo, met with Prime Minister of Serbia, Ivica Dačić, in Brussels. Thus began the political dialogue that was called as the normalization dialogue, led by the heads of the executive of both states and facilitated by the EU. The statement by Mrs Ashton, following the first meeting, did not offer many details but it was only said that the meeting was held in a good and constructive spirit.¹¹

After 10 rounds of meetings between the Prime Ministers, on 19 April 2013, Mrs Ashton announced, in a press statement, that the two Prime Ministers had agreed on the text of the first agreement on general principles for normalization of relations between Kosovo and Serbia, known otherwise as the "Brussels agreement". She congratulated the Prime Ministers on their courage, considering this achievement as a step closer to Europe.¹² Even the then President of the European Council, Mr Herman Van Rompuy, congratulated the two Prime Ministers, considering this agreement as historic and reaffirming the European perspective for both countries.¹³

The following day, after returning from Brussels, Prime Minister Thaçi held a press conference whereby he stated that all parties won, and that this agreement would lead to normalization in north, and the constitutional and legal system of Kosovo would be extended throughout the entire country.¹⁴ Thaçi also assured that this agreement was in full compliance with the Kosovo constitution and legislation. Whereas, with regards to the Association/Community of Serb-majority municipalities, he stated that it shall have the same competences as the

current Association of Kosovo Municipalities. He concluded his addressing by adding that Kosovo is now entering the era of normalcy.¹⁵ In fact, these expectations from dialogue process could not be met even after 7 years of negotiations.

On 22 April 2013, the Kosovo Assembly passed a Resolution expressing its consent and support for the signing of the first agreement on the principles governing the normalization of relations, as well as the support to the commitments deriving from this agreement.¹⁶ This Agreement was subsequently ratified on 27 June 2013 in the Kosovo Assembly by the 2/3 vote of the MPs as an international agreement. This is also the only Agreement reached within the Kosovo-Serbia dialogue which was ratified by the Kosovo Assembly.¹⁷

The Fifteen-Point Agreement of 19 April 2013 mostly addresses the integration of the Serb community, particularly the northern municipalities of Kosovo, in exchange for the establishment of the Association/community of Serb-majority municipalities, which according to the agreement has full competences in many areas, including economic development, education, health and urban and rural planning.¹⁸ In addition, the Brussels Agreement provided for integration of members of Serbian security structures into equivalent Kosovo structures, organization of local elections in northern municipalities for the first time since the declaration of independence, the transparent funding by Serbia, discussions on energy and telecom as well as neither side shall not block the other side in the path towards EU.¹⁹

The Brussels Agreement also stipulates that there will be a regional Police commander for the four Serb-majority municipalities, who will be of Serbian nationality, as well as the general principles for the integration of parallel judicial authorities within the framework of the legal system of the Republic of Kosovo.²⁰

¹⁰ Ibid.

¹¹ European Union, "Statement by High Representative Catherine Ashton on the continuation of the EU-facilitated dialogue", 19 October 2012. Available at, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/133036.pdf

¹² European Union, "Remarks by High Representative Catherine Ashton on the EU-Facilitated Dialogue", 19 April 2013. Available at, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/136875.pdf

¹³ European Council, "Statement by the President of the European Council Herman Van Rompuy, on the occasion of the agreement within the facilitated dialogue on the normalisation of relations between Serbia and Kosovo", 19 April 2013. Available at, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/136877.pdf

¹⁴ Office of the Prime Minister of the Republic of Kosovo, "Prime Minister Thaçi: The option of peace, stability and integration has won", 20 April 2013. Available at, <http://www.kryeministri-ks.net/?page=1,9,3499>

¹⁵ Ibid.

¹⁶ Assembly of the Republic of Kosovo, Resolution "On granting consent to sign the First Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia", 21 April 2013. Available at, http://www.kuvendikosoves.org/common/docs/Rezoluta_per_marreshje.pdf

¹⁷ Assembly of Republic of Kosovo, "Law No. 04/L-199 on the Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia", 27 June 2013. Available at, <http://www.kuvendikosoves.org/common/docs/ligjet/Ligji%20per%20ratifikimin%20e%20marreshjes%20se%20pare%20per%20normalizimin%20e%20marredhenjeve%20Kosove%20Serbi.pdf>

¹⁸ Ibid. Point 4.

¹⁹ Ibid.

²⁰ Ibid. Point 9 and 10.

This agreement was also considered as an integration of parallel structures in the Kosovo constitutional framework, in exchange for the legal influence of the Serbian government on Kosovo's internal affairs through the Association/Community, largely funded by Belgrade.²¹

This agreement sparked numerous reactions and objections in Kosovo, due to its content. A part of the then opposition claimed that this agreement and the plan for its implementation defunctionalized the state of Kosovo and creates an autonomous Serb entity in the north²². Therefore, in July 2013, the Vetëvendosje Movement, which strongly opposed the agreement, sent it to the Constitutional Court to request the assessment of the constitutionality and legality of the law on the ratification of this agreement.²³ The Constitutional Court rejected the interpretation of the agreement of 19 April with the justification that the assessment of this agreement and the implementation plan "falls outside the scope of the jurisdiction *ratione materiae* of the court".²⁴

The enthusiasm on the achievements that the 'historic' agreement would lead to the dissolution of parallel structures, to the reduction of Serb influence in Kosovo, to the integration of northern municipalities in the constitutional and legal system of Kosovo, was faded by lack of implementation of agreements by the parties. The years 2013 and 2014 would see a diversion of the dialogue from the epicentre of politics due to step down of Mrs. Clinton from her post as US Secretary of State, the elections in the European Union, following which, Federica Mogherini replaced Baroness Ashton as High Representative of the European Union on Foreign Affairs and Security Policy and Vice-President of the European Commission, and the early elections in Kosovo and Serbia.²⁵



The Brussels Agreement also stipulates that there will be a regional Police commander for the four Serb-majority municipalities, who will be of Serbian nationality, as well as the general principles for the integration of parallel judicial authorities within the framework of the legal system of the Republic of Kosovo. ▮▮

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²² Radio Evropa e Lire (Free Europe), "Vetëvendosje me demonstrata kundër ratifikimit të marrëveshjes", 29 May 2013, available at <https://www.evropaelire.org/a/25000854.html>

²³ Constitutional Court of the Republic of Kosovo, Judgment in case no. K095/13, 9 September 2013, available at http://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ko_95_13_mk_ang.pdf

²⁴ Ibid, p. 23.

²⁵ David L. Phillips, Director of the Program on Peace-building and Rights Institute for the Study of Human Rights Columbia University, "Implementation Review of the Kosovo-Serbia Dialogue", 5 September 2017, p. 8 and 9. Available at, http://www.humanrightscolumbia.org/sites/default/files/2017_09_05_kosovo-serbia_report.pdf

Dialogue during the Mustafa Government (2014 – 2017)

On 25 August 2015, a new infusion was attempted to be given to the Kosovo-Serbia Dialogue, where the Prime Minister of the Republic of Kosovo, Isa Mustafa, and the one of Serbia, Aleksandar Vucic, after a series of meetings, reached the Brussels Agreements Package, which included: Agreement on energy, Telecomn, establishment of the Association of Serb-majority municipalities, and Freedom of movement/Mitrovica Bridge. This meeting was considered by Mrs Federica Mogherini as a point of return for advancing the agenda of the Kosovo-Serbia dialogue, thus marking a great achievement in the process of normalization.²⁶ Particular importance was also attached to the agreement on the Principles for the Association of Serb-majority Municipalities, by which it was said to be an agreement that paves the way for its establishment.²⁷

The Kosovo side stated that the association would have the powers of an NGO, while the Serbian side stated that the Association/community of Serb-majority municipalities would have executive powers.²⁸ The agreement reached between the parties on the Association of Serb-majority municipalities was fiercely opposed by the opposition and civil society in Kosovo due to the powers that this Association would have. KDI stated, at the time, that this agreement, as such, "goes beyond the freedom of association according to the constitutional order of the Republic of Kosovo. This Association/Community does not constitute a non-governmental organization (NGO) as it was announced, but it leads to a third layer of governance."²⁹

The means used to oppose this deal, such as the teargas set-off by opposition parties in the Assembly, the mass protests as well as the 200,000 signatures gathered by citizens on a petition against the association and demarcation³⁰, overly polarized the political scene, an objection that paralyzed the normal operation of the Assembly. This situation damaged the trust to the Agreements reached within this process, and the dialogue process itself.

In search of a solution to overcome the political crisis created in the country, the then President of Kosovo, Mrs Atifete Jahjaga, on 30 October 2015, addressed to the Constitutional Court requesting interpretation of the compatibility of principles of the Association with the Constitution of the Republic of Kosovo. In its Judgment of 23 December 2015, the Constitutional Court found that the principles, as elaborated in the "Association/Community of Serb-majority Municipalities in Kosovo - General Principles/Main Elements" are not entirely in accordance with the spirit of the Constitution, demanding that the decisions regarding the Association/Community, the statute and the accompanying legal act of the government, be in full compliance with the Constitution.³¹

²⁶ European Union, "Statement by High Representative/Vice-President Federica Mogherini following the meeting of the EU-facilitated dialogue", 25 August 2015. Available at, https://eeas.europa.eu/headquarters/headquarters-homepage/3182/statement-by-high-representativevice-president-federica-mogherini-follo%C3%ABing-the-meeting-of-the-eu-facilitated-dialogue_en

²⁷ Ibid.

²⁸ BIRN, Bodo Weber, DPC, "BIG DEAL: AWKWARD JUGGLING: Constitutional insecurity, political instability and the rule of law at risk in the Kosovo-Serbia dialogue", 2016. Available at, <http://prishtinainnsight.com/wp-content/uploads/2016/04/BIRN-Report-2016-SHQIP.pdf>

²⁹ Kosovo Democratic Institute (KDI), "Marreveshja nuk krijon një OJQ por qon në nivel të tretë qeverisës (The agreement does not create an NGO but it leads to a third layer of governance)", 26 August 2015. Available at, <http://kdi-kosova.org/aktivitetet/marreveshja-nuk-krijon-nje-ojq-por-qon-ne-nivel-te-trete-qeverises/>

³⁰ Telegrafi Portal, "200 mijë nënshkrime në peticionin kundër Asociacionit dhe demarkacionit (Video) (200 thousand signatures in the petition against the Association and the demarcation (Video))", 20 October 2015. Available at, <https://telegrafi.com/200-mije-nenshkrime-ne-peticionin-kunder-asociacionit-dhe-demarkacionit-video/>

³¹ The Constitutional Court of the Republic of Kosovo, found in the JUDGMENT in Case no. K0130/15 that: "The Principles as elaborated in the "Association/Community of Serb majority municipalities in Kosovo – general principles/main elements" are not entirely in compliance with the spirit of the Constitution, Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms] and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo", 23 December 2015. Available at, http://www.votaimo.org/Uploads/Data/Documents/VLERES-1_GmystyF653.PDF



Generally, the dialogue suffered major shocks, particularly with the engagement of the Serb diplomacy against recognition of the state of Kosovo or against its membership in international organizations such as **UNESCO** and **INTERPOL**, as well as the wall built on the bridge of Mitrovica, at a time when the opening of the bridge was expected to be taking place.”

The dynamics of the talks slowed significantly after the summer of 2015, inter alia, also due to the political situation in Kosovo³². The meetings held between the parties during 2016, under the EU mediation, also had the spirit of expressing readiness to implement the agreements in formal meetings with Mrs Mogherini. These meetings served to agree on implementation plans for agreements deriving from April Agreement, as well as setting the timelines for implementation³³. Nonetheless, the trend of non-compliance with the agreed timelines continued further. Technical level meetings continued to be held between the parties, under EU facilitation, but the non-compliance with the agreed timelines turned into a norm within the dialogue.

Generally, the dialogue suffered major shocks, particularly with the engagement of the Serb diplomacy against recognition of the state of Kosovo or against its membership in international organizations such as UNESCO and INTERPOL, as well as the wall built on the bridge of Mitrovica, at a time when the opening of the bridge was expected to be taking place.

Also, the reactivation of international warrants by Serbia against Kosovo high officials and citizens, strained the relations between the two parties, thus leading to the termination of the dialogue by the Kosovo side. All these events damaged the constructive spirit between the parties and the very purpose of this dialogue. The situation was extremely

exacerbated in January 2017 with the sending of an illegal train by Serbia, containing religious iconography and “Kosovo is Serbia” notes.³⁴

This provocation made official Brussels intervene in order to ease tensions. Mrs Mogherini, attempting to calm the situation, invited both sides to a meeting in Brussels, which would consist of the Prime Ministers and the Presidents of the two countries, where it was stated that the parties agreed to put the tensions behind and to move forward. In this meeting, Mrs Mogherini stressed that progress in normalizing relations was essential, thus praising the leadership, vision and commitment of leaders to push forward the dialogue that was expected to have new high-level meetings.³⁵

But the tense situation between the parties failed to calm as in March 2017, the Assembly of the Republic of Kosovo approved a resolution requesting termination of the dialogue process until the release of the current Prime Minister of Kosovo, Mr Ramush Haradinaj, who was detained in France based on a warrant issued by Serbia.³⁶ While the political parties started to articulate the need to change the approach to the dialogue, thus requesting the reformation of this process and broad political consensus³⁷. Following this Resolution, the Kosovo Assembly went through new elections and no meeting was held between the Prime Ministers of the two countries until the formation of the new Government.

³² Kosova në vitin 2015, more information at <https://www.zeriamerikes.com/a/kosova-ne-vitin-2015-/3123197.html>

³³ For more information on these meetings, http://eeas.europa.eu/headquarters/headquarters-homepage/9823/eu-facilitated-dialogue-implementation-of-the-freedom-of-movement-agreement_en

³⁴ The sending of a train with religious iconography with ‘Kosovo is Serbia’ notes to enter illegally in Kosovo has aggravated the relations between the parties, where EU intervention was considered important for calming the situation.

³⁵ European Union, “Federica Mogherini’s statement following the high level meeting in the framework of the EU-facilitated Dialogue between Belgrade and Pristina”, 24 January 2017. Available at, https://eeas.europa.eu/headquarters/headquarters-homepage/19150/federica-mogherinis-statement-following-high-level-meeting-framework-eu-facilitated-dialogue_en

³⁶ Assembly of the Republic of Kosovo, “Resolution regarding the Detention of the Former Prime Minister of Kosovo, Ramush Haradinaj, in France”, 10 March 2017. Available at, http://www.kuvendikosoves.org/common/docs/2017_03_09_Rezolutio_No_011.pdf

³⁷ A roundtable organized by KDI where the political parties discussed the path forward and articulated the position for changing the dialogue approach and linking this process to the path of Kosovo towards the EU, for more information click on <http://votaimo.org/Public/DialogActivity/Detail/87>

Dialogue during Haradinaj government (2017 - ...)

The Brussels meetings were reinstated on July 3, 2017, when President of Kosovo and of Serbia, Hashim Thaçi, and Aleksandar Vučić, met to agree on entering a new phase of dialogue where more important issues would be discussed and continue this way towards the end of this process.³⁸ Further, in August 2017, the Presidents met again and agreed on the implementation of the Agreement on Justice, setting October 17 as the date for starting its implementation.³⁹

The dialogue continued to take place at Presidential level under EU facilitation, thus announcing a new closing phase of the dialogue, which is expected to be finalized upon reaching a legally binding agreement.

Opposition parties have consistently expressed their dissatisfaction as regards the dialogue being led by the President of the country, arguing that the latter is not mandated by the Assembly⁴⁰ and emphasizing the need for a new Resolution by the Assembly. However, the VI legislature has not yet held any plenary session, since its constitution, with regards to discussing the Kosovo-Serbia dialogue and it would demand a new Resolution for the next stage of the dialogue. Although President Thaçi declared the need for a unity team, he has not yet taken any actual steps in this regard.⁴¹ On the other hand, Serbian President Vučić has started an internal dialogue, in Serbia, on solving the Kosovo issue.

The current Government led by Mr. Ramush Haradinaj, AAK leader, has consistently sought to change the dialogue

approach, for a full transparency and mutual recognition as the only epilogue for this process.⁴² However, in spite of this, with the decision of the Government on January 12, 2018, based on the EU's request, Prime Minister Haradinaj appointed his Chief of Staff, Mr. Avni Arifi as chief negotiator with Serbia.⁴³ Prime Minister Haradinaj at a government meeting stated that "political dialogue is represented by President Hashim Thaçi, while the chief negotiator will be able to follow the process with political decision-makers."⁴⁴

On January 15, 2018, the EU invited the parties to continue the technical dialogue and discuss the implementation of the agreements reached. While the Kosovar side started negotiations with high officials,⁴⁵ on the same day in northern Mitrovica, the Serbian leader of the political party SDP, Oliver Ivanovic, was assassinated. The Serbian side withdrew from the negotiations threatening not to return until this issue was clarified.

The parties returned to negotiations table after the EU invitation to continue this process on February 26 and 27, 2018, discussing the implementation of the agreements reached such as the agreements: on Freedom of Movement, Integrated Border Management, the Association Serb-majority Municipalities, Justice, Energy, and the Mitrovica Bridge. The parties agreed to continue these meetings during the upcoming month. They also agreed that there should be no press statements after this meeting, but only an official EU statement on the progress of this process.⁴⁶

38 European Union, "Federica Mogherini meets President Vucic of Serbia and Thaci of Kosovo", July 3, 2017. Available at, https://eeas.europa.eu/headquarters/headquarters-homepage/29156/federica-mogherini-meets-president-vu%C4%8Di%C4%B7-serbia-and-tha%C3%A7i-kosovo_en

39 European Union, "Federica Mogherini meets President Vucic of Serbia and Thaci of Kosovo", August 31, 2017. Available at, https://eeas.europa.eu/headquarters/headquarters-homepage/31526/federica-mogherini-meets-president-tha%C3%A7i-kosovo-and-vu%C4%8Di%C4%B7-serbia_en

40 Portal INSAJDERI, "Vjosa Osmani stated that President Thaci should be accountable as regards the Dialogue with Serbia", March 2, 2018. Available at, <http://www.insajderi.com/vjosa-osmani-thote-se-presidenti-thaci-duhet-te-jap-llogari-per-dialogun-serbine/>

41 KDI, "Në tryezën e KDI-së, Presidenti Thaçi bën thirrje për konsensus nacional për të përmbyllur dialogun Kosovë-Serbi", September 14, 2017. Available at, <http://votaimo.org/Public/DialogActivity/Detail/130>

42 Assembly of the Republic of Kosovo, Transcript of the Assembly session, December 17, 2017, p.41. Available at, http://www.kuvendikosoves.org/common/docs/proc/trans_s_2017_12_14_10_7135_al.pdf

43 Office of the Prime Minister of the Republic of Kosovo, Government Decision, no. 12/24, adopted on January 12, 2018. Available at, www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_së_24-të_të_Qeverisë_së_Republikës_së_Kosovës_2018.pdf

44 Radio Evropa e Lirë, "Avni Arifi emërohet përfaqësues i Qeverisë së Kosovës në dialog me Serbinë", January 12, 2018. Available at, <https://www.evropaelire.org/a/28971350.html>

45 Office of the Prime Minister of the Republic of Kosovo, "Kosovo negotiating team for the dialogue with Serbia starts its meetings in Brussels", January 15, 2018. Available at, <http://www.kryeministri-ks.net/?page=1,9,7485>

46 European Union, "Spokesman's statement after the meeting under the EU facilitated Dialogue", February 27, 2018. Available at, https://eeas.europa.eu/headquarters/headquarters-homepage/40471/statement-spokesperson-following-working-level-meeting-within-eu-facilitated-dialogue_en

KOSOVO – SERBIA DIALOGUE GOVERNMENT PLATFORMS

The document “Platform of the Government of the Republic of Kosovo on an Inter-state Technical Dialogue between the Republic of Kosovo and the Republic of Serbia” of the date of March 2011, a platform defining framework principles, agenda, objectives and the dialogue team. This document provides arguments on dialogue as a tool for international empowerment of Kosovo.

Important elements such as i) the sovereignty and territorial integrity of the Republic of Kosovo is inviolable, inalienable and indivisible, ii) internal order of the country is a sovereign competence of state institutions, and iii) Ahtisaari Plan for regulation of rights and guarantees for communities – are set forth as non-negotiable principles.⁴⁷ It is worth noting these concepts as it is often claimed that dialogue has brought Kosovo’s internal issues to the negotiating table, going beyond the Ahtisaari Plan.

In the official document of the Government of Kosovo regarding the strategy of the dialogue, the agreements reached are considered to be derived in the form of a pyramid, where the parties under EU facilitation have reached the basic agreements and subsequently agreed on the implementation plans, while in other phases they have reached agreements on sub-issues that derive from the basic agreements.

The Government of Kosovo has also published a so-called The Republic of Kosovo Government Program on the Brussels Dialogue 2014 – 2018, of former Minister for Dialogue, Edita Tahiri. This document, dated January 15, 2015, presents Kosovo’s benefits of Dialogue, the purpose for mutual recognition, non-negotiable principles/ red lines, the pillars of the negotiation process as well as transparency and accountability.⁴⁸ It states, among other things, that one of the fundamental principles is non-interference with one another’s sovereignty and complete dismantling of all remaining parallel/illegal Serbian structures in Kosovo. It also mentioned the settling of war reparations and succession issues under international law. However, so far Serbia’s parallel structures have not yet been dismantled and the issue of reparations and succession has not yet been discussed within the dialogue.

47 Office of the Prime Minister of the Republic of Kosovo, “Platform of the Government of the Republic of Kosovo on an Inter-state Technical Dialogue between the Republic of Kosovo and the Republic of Serbia”, March 2011. Available at, http://www.kryeministri-ks.net/repository/docs/Platform_of_the_Government_of_Republic_of_Kosovo_on_an_interstate_dialogue_between_Republic_of_Kosovo_and_Republic_of_Serbia_010311.pdf

48 Office of the Prime Minister, “The Republic of Kosovo Government Program on the Brussels Dialogue 2014 – 2018”, January 15, 2015. Available at, <http://www.kryeministri-ks.net>

IMPLEMENTATION OF AGREEMENTS AND CONSTRUCTIVE AMBIGUITY

Constructive ambiguity is an element that characterized these agreements, a method to suit the parties' stance on the status of Kosovo. This term, employed by the former US Secretary, Henry Kissinger in the 70s is a method premised on the belief that ambiguously worded text can create opportunities for advancing the interests of both parties to a negotiation. This method became a hallmark of the Oslo Accords between Israel and Palestine, which has been argued that has succeeded only in producing confusion and eroding trust between the parties.⁴⁹

Even in the Kosovo-Serbia dialogue process, constructive ambiguity offered space for the parties to interpret the agreements according to their version and both sides announce their victory in negotiations. The result was confusing; it was not clear what was agreed and what was actually achieved within this process. In order to avoid frequent interpretations, the EU as a mediator of this process in agreement with the Parties decided to formally inform the public of the meetings held but not to interpret the agreements reached by not contributing significantly to the reduction of uncertainties but in fact further contributing in decreasing the transparency of the process itself.

This way of agreement-making resulted to be problematic at implementation phase. But this is just one of the elements that linked to the implementation of the agreements. It was the parties themselves, especially the Serbian side, which did not respect the agreements reached, not excluding the delays by the Kosovo side.

Dialogue agreements were generally characterized with poor implementation, where timelines are often neglected by both sides. As a consequence, it has prolonged their implementation process by returning them to the discussion table, where they were renegotiated by delegations and new implementation timelines were set, timelines often not observed. This has made the effects to the lives of citizens unclear.

Certain agreements have also found use outside the original scope, such as the one on footnote, an agreement aimed at overcoming the barriers from Serbia for Kosovo's regional representation.⁵⁰ This agreement has already become a form of representation of Kosovo either in the Stabilization and Association Agreement or to the granting of telephone code by ITU.

Due to this, on March 30, 2017, the Kosovo Assembly adopted a declaration whereby recognizing Kosovo only on the basis of its constitutional name as the Republic of Kosovo, which would be annexed to each international agreement, which is ratified by the Assembly from that day on, including the documents signed between Kosovo and the EU.⁵¹

Inevitably, the reality of institutional gap and the non-extension of the state to the north of Kosovo have made some of the agreements to not be implemented due to resistance and lack of security such as the Agreement on dissolution of parallel structures.

net/repository/docs/Programi_i_Qeveris%C3%AB_s%C3%AB_Republik%C3%ABs_s%C3%AB_Kosov%C3%ABs_per_Dialogun_e_Brukselit_-_perudha_2014-2018_-_150115.pdf

49 BROOKINGS, OP-ED: "When Ambiguity is Destructive", Khaled Elgindy, January 22, 2014. Available at, <https://www.brookings.edu/opinions/when-ambiguity-is-destructive/>

50 Office of the Prime Minister of the Republic of Kosovo, Agreement on Regional Representation and Cooperation, February 24, 2012. Available at, <http://www.kryeministri-ks.net/?page=1,191>

51 Assembly of the Republic of Kosovo, Declaration/Statement, March 30, 2017, p. Available at, http://www.kuvendikosoves.org/common/docs/proc/trans_s_2017_03_30_10_6926_al.pdf



The state of Kosovo has not managed to set all the institutions due to threats and the operationalization of these institutions is still pending.”

The state of Kosovo has not managed to set all the institutions due to threats and the operationalization of these institutions is still pending.⁵²

These agreements, apart from the principles agreed upon by the Resolutions, have affected Kosovo's internal regulation by violating the spirit of Kosovo's civic and multi-ethnic state, such as the Agreement on Association of Serb-majority municipalities or the Agreement on Justice, a very controversial agreement which remains unpublished and the details of the implementation of this agreement remain confined.

Often the barriers to the implementation of the agreements have led to high financial costs, such as the case of interconnection between Kosovo and Albania⁵³, which has remained non-operational due to the lack of Serbia's readiness to implement the energy agreement, thus blocking the independence of Kosovo in this sector⁵⁴.

The principle of reciprocity was lacking in the implementation of the agreements as is the case with the license plates where the Serbian side forced the drivers from Kosovo to use the probation plates while Kosovo did not request the same from Serbian drivers, or with the state documents recognition and travel of foreign citizens through border crossings points between Kosovo and Serbia.

Despite the large number of agreements reached within this process, only one agreement was adopted by the Kosovo Assembly, respectively, the First Agreement of Principles governing the normalization of relations. This agreement was initialled by the two Prime Ministers on April 19, 2013, and adopted by the Kosovo Government and enacted by the Kosovo Assembly on April 22, 2013. The agreement became a law on June 27, 2013.

It was often argued that the agreements that were subsequently reached in the areas that we agreed within the Brussels agreement were derivative of this Agreement, although international law experts argued that the agreements containing new elements are considered as new agreements and shall be viewed as such.⁵⁵

While the dialogue is expected to move forward in the next phase, there is no clear overview of the agreements implementation stage, where challenges and problems are faced, and there is a lack of scanning of reached agreements as well as reflection on the entire process that would serve for further dialogue steps.

52 Office of the Prime Minister of the Republic of Kosovo, "The Government of Kosovo has requested from the European Union to stop Serbia's destruction of the Brussels agreements", December 29, 2017. Available at, <http://www.kryeministri-ks.net/?page=1,9,6459>

53 Letter from the former Minister of Dialogue Ms. Edita Tahiri to Minister of Energy of the Republic of Albania Mr. Gjijnuri on the non-implementation of the Energy Agreement. For more information, click on http://www.kryeministri-ks.net/repository/docs/Letter_from_Minister_Edita_Tahiri_to_ITU_Secretary_General_Houlin_Zhao_100117.pdf

54 Ibid

55 Parliamentary Research, prepared by Kushtrim Istrefi for the Committee for European Integration of the Assembly of Kosovo, "The Role of the Assembly in the Kosovo-Serbia Dialogue and the Road to the EU", October 2017.



POLITICAL LEVEL

Robert Cooper



Edita
Tahiri



Borko
Stefanovic



POLITICAL LEVEL

Catherine Ashton



Hashim
Thaçi



Ivica
Dacic



2011

09 SEPTEMBER
UN General Assembly
Resolution No. 64/298

* Acknowledges the ICJ
advisory opinion on
Kosovo's declaration
of independence and
welcomes the EU's
readiness to facilitate
the process of dialogue
between Kosovo and
Serbia

AGREEMENTS
REACHED



08-09 MARCH
First meeting of the
technical dialogue

2 JULY

Agreement on Freedom of
Movement

1

Agreement on Civil Registry
Books

2

Agreement on Recognition
of University Diplomas
(1Diplomave Universitare (1)

3

2 SEPTEMBER

Agreement on customs
stamps

1

Agreement on cadastral
records

2

21 NOVEMBER

Agreement on Recognition of
University Diplomas (2)

1

2 DECEMBER

Agreement on Integrated
Border Management

1

2012

AGREEMENTS
REACHED



24 FEBRUARY

Agreement
on Regional
Representation and
Cooperation

1

19 OCTOBER

Agreement on
liaison officers

1

19 OCTOBER

First meeting
of the political
dialogue



7 NOVEMBER

Agreement on
the Pristina-Nis
motorway

1

4 DECEMBER

Agreement on
liaison officers

1

2013

AGREEMENTS
REACHED



17 JANUARY

Brussels Agreement
on Customs Revenue
Collection

1

17 APRIL

Agreement on Justice

1

19 APRIL

FIRST AGREEMENT OF
PRINCIPLES GOVERNING
THE NORMALIZATION OF
RELATION (BRUSSELS
AGREEMENT)

1

21-22 MAY

Brussels Agreement
Implementation Plan

1

30 MAY

Agreement on Liaison Officers
(Conclusions of the Chair)

1

8 SEPTEMBER

Agreement on Telecom

1

Agreement on Energy

2

7 OCTOBER

Agreement on official visits

1

2014

AGREEMENTS
REACHED



JULY 2014

Technical
dialogue



Edita
Tahiri



Marko
Djuric

14 NOVEMBER

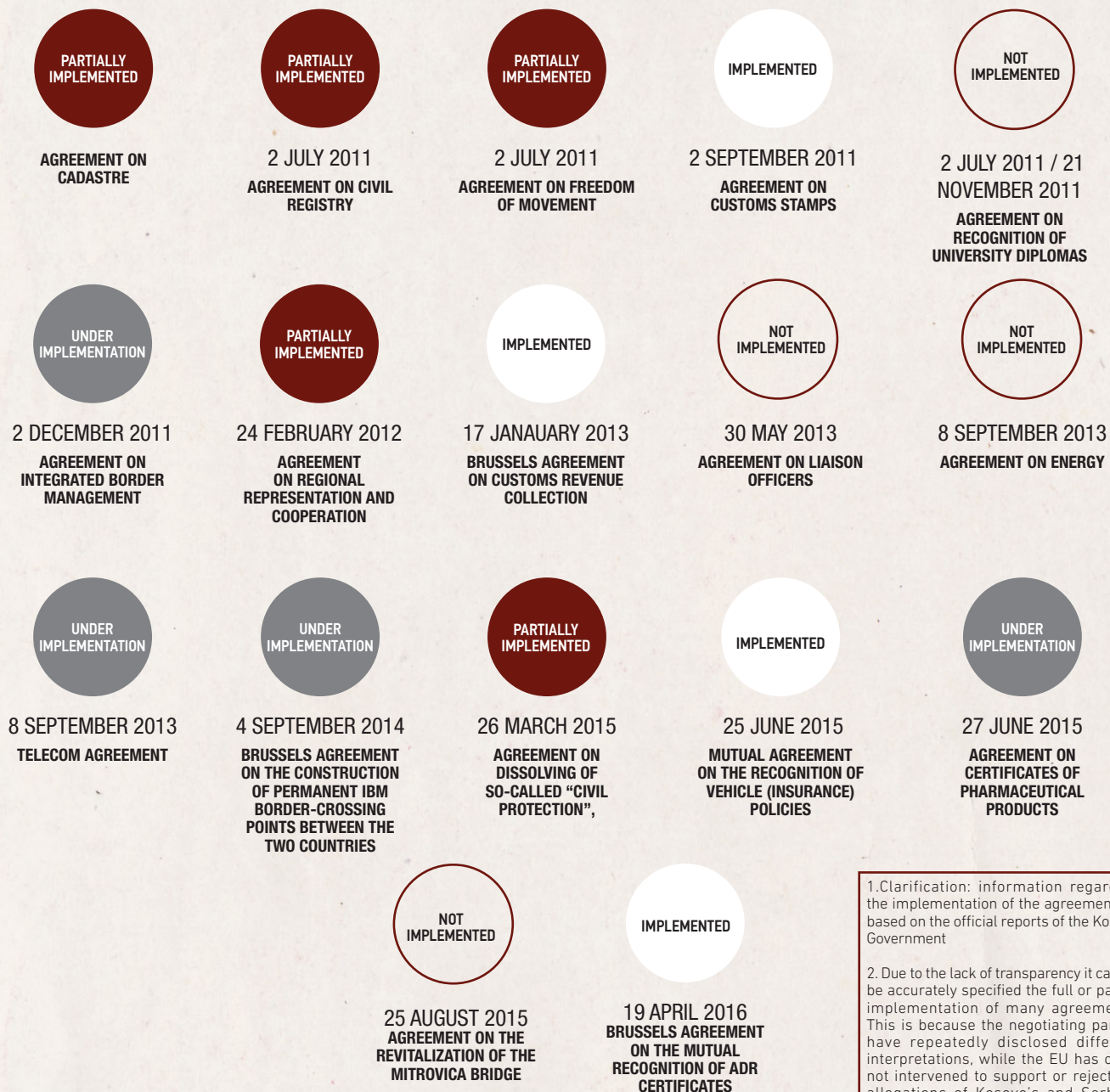
1

Arrangements for
official visits

KOSOVO-SERBIA DIALOGUE > < < >



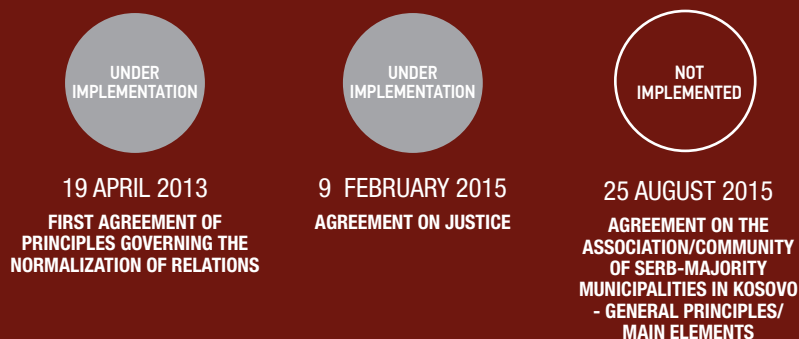
Technical Dialogue Agreements ^{1 2}



1. Clarification: information regarding the implementation of the agreements is based on the official reports of the Kosovo Government

2. Due to the lack of transparency it cannot be accurately specified the full or partial implementation of many agreements. This is because the negotiating parties have repeatedly disclosed different interpretations, while the EU has often not intervened to support or reject the allegations of Kosovo's and Serbia's representatives.

Political Dialogue Agreements ^{3 4}



3. Implemented – Full implementation; partially implemented – only a part of the agreement has been implemented; On-going implementation – the agreement is being implemented; not implemented – it has not started to be implemented at all

LACK OF TRANSPARENCY

From the very outset, Kosovo-Serbia dialogue is characterized with a lack of accountability and transparency. For many people, the dialogue has been more of an elite dialogue rather than a process that addresses the needs of citizens.⁵⁶ On the EU side, the non-transparency regarding this process has been argued to be due to the fragility and complexity of this process.⁵⁷ Since the topics discussed during this process have affected delicate issues of relations between Serbia and Kosovo, the European Union has considered it appropriate for the process to be almost completely confined.⁵⁸ However, the process transparency and opening to the public has been considered a necessity in order to avoid subsequent disagreements at the stage of implementing the agreements.⁵⁹ This confined approach of dialogue, of agreements reached and their outcomes, produced uncertainty, dissatisfaction, and polarization of the political scene.

High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the Commission issued regular press releases on formal meetings held and discussion topics but did not provide transparency on the process as they were mostly general without providing relevant details on the achievements of the meetings.

The Prime Minister's Office website served as a window of information where some of the agreements were published, but their publication in many cases was delayed and for some of them, such as the Agreement on Justice, whose

implementation plan is still kept hidden.⁶⁰ The content of this agreement, in the Serbian version has 15 points whereas in Albanian version, 14 points.⁶¹

Minister for Dialogue and former Chief Negotiator Ms. Edita Tahiri on behalf of the Government of Kosovo has submitted to the European Union/European External Action Service, periodic reports on the state of implementation of the dialogue agreements⁶², however, they are published on the official website of the Prime Minister's Office, but nor regular reports to the Kosovo Assembly of this nature have taken place, except in cases of parliamentary questions, calls for reports in parliamentary committees or interpellations, which have also been rare. Government reports on the state of the dialogue are not translated into Serbian language thus making it impossible for the Serb community in Kosovo to have access to these documents.⁶³

In the so-called "Republic of Kosovo Government Program on the Brussels Dialogue 2014 – 2018" document of the former Minister for Dialogue, Ms. Edita Tahiri, she justified the lack of full transparency due to confidentiality as a result of the sensitivity of this process. However, she has stated that in the next phase of the dialogue, transparency should be increased and this can be achieved by opening a webpage for dialogue, by publishing publications for both phases technical and normalization dialogue, publishing a guiding brochures for citizens to make better use of the services that the agreements offer, etc.⁶⁴

⁵⁶ See Bieber, F. (2015). "The Serbia-Kosovo Agreements: An EU Success Story?" Review of Central and East European law 40 (2015) 285-319, and Beha, A. (2015). Disputes over the 15-points agreement on normalization of relations between Kosovo and Serbia. Nationalist papers 43(1), p. 102-12.

⁵⁷ Bieber, F. (2015), quoted

⁵⁸ Ibid.

⁵⁹ Group for Legal and Political Studies (GLPS), Aubrey Hamilton, "From Technical Arrangements to Political Haggling", February 2012. Available at, <http://legalpoliticalstudies.org/download/Policy%20Report%2002%202012%20english.pdf>. See also, International Crisis Group, "Serbia and Kosovo: The Path to Normalisation", Europe Report, February 19, 2013, Nr.223., Available at, <https://www.crisisgroup.org/europe-central-asia/balkans/serbia/serbia-and-kosovo-path-normalisation>

⁶⁰ KDI has also submitted a request for access to public documents about this agreement to the Office of the President, the Office of the Prime Minister, the Ministry of Justice, the Judicial Council and the Prosecutorial Council, however, none of them provided the requested information.

⁶¹ Office of the Prime Minister of the Republic of Kosovo, Agreement on Justice. Available at, http://www.kryeministri-ks.net/repository/docs/Marreveshja_per_Drejtesi_-_09022015.pdf. Government of Serbia, Agreement on Justice in Serbian language. Available at, <http://www.kim.gov.rs/eng/p06.php>

⁶² Office of the Prime Minister of the Republic of Kosovo, Reports of the former Minister for Dialogue. Available at, <http://www.kryeministri-ks.net/?page=1,252>

⁶³ Ibid, website in Serbian. Available at, <http://www.kryeministri-ks.net/?page=3,252>

⁶⁴ Office of the Prime Minister of the Republic of Kosovo, Ministry of Dialogue, the Republic of Kosovo Government Program on the Brussels Dialogue 2014 – 2018, January 15,

However, three years after the publication of this document, none of these actions have been delivered by the government.

Apart from the MPs of the Assembly, the public was not properly informed about the dialogue and agreements derived from this process. In a opinion poll conducted by KDI, the overwhelming majority of citizens, over 75%, are dissatisfied with the level of their involvement in the dialogue, through discussions or public consultations; whereas 43% of citizens of the Republic of Kosovo expressed that they are unaware of any agreement.⁶⁵

Also, most of Kosovo citizens believe that the establishment of an Association of Serb-majority municipalities is detrimental.⁶⁶ It is important to note that the establishment of the association is considered beneficial only by the Serbian community.⁶⁷ Whereas, in the case of agreements for the integration of parallel structures, most citizens do not believe that integration will be successful.⁶⁸ Citizens are also sceptical about the normalization of relations between Kosovo and Serbia.⁶⁹ More than half of citizens see no improvement in relations between the two countries and do not believe the Brussels dialogue has managed to normalize Kosovo-Serbia relations.⁷⁰

The EU has never articulated what it means to normalize relations between Kosovo and Serbia by constantly emphasizing the neutral position on Kosovo's status that is reflected in the signed documents between Kosovo and the EU. Moreover, the Kosovo-Serbia dialogue and the agreements reached within this process have not affected the change of position of the 5 EU non-recognizing countries.⁷¹ There has been a major contradiction by the state of Spain up to the refusal of participation of the President in meetings where Kosovar leaders were present.⁷²

The Kosovar side has articulated different positions with regards to the normalization of relations, ranging from mutual recognition to membership in international organizations without obstruction by Serbia and without the need for recognition.⁷³ While the Serbian side stated that the parties must reach a compromise to resolve the Kosovo issue by removing from dialogue table the option of mutual recognition.⁷⁴

Even now that the dialogue is moving towards the new phase and the next meeting between the two Presidents under EU mediation is expected to take place, the executive has not presented any document on how this stage is to be developed and what will be Kosovo's approach in the dialogue with Serbia. The Kosovo Assembly and public remain uninformed about how this process will continue.

2015. Available at, http://www.kryeministri-ks.net/repository/docs/Programi_i_Qeveris%C3%AB_s%C3%AB_Republik%C3%ABs_s%C3%AB_Kosov%C3%ABs_per_Dialogun_e_Bruk-selit_-_peridudha_2014-2018_-_150115.pdf

65 KDI, Opinion Poll Survey, "Transparenca e Dialogut Kosovë-Serbi: Këndvështrimi i Qytetarëve", September 2016. Available at, <http://votaime.org/Public/Article?PollDialog=true&PollDialog=false&SelectedTab=Polls&PollSelectedMonthID=&PollSelectedYear=#polls>

66 Kosovo Center for Security Studies (KCSS), Kosovo Security Barometer: "Special Edition: Public Perceptions toward Kosovo's Foreign Policy and Dialogue with Serbia", February 2018. Available at, http://www.qkss.org/repository/docs/KSB-2017-ForeignPolicy_364397.pdf

67 Ibid.

68 KDI, Opinion Poll Survey "6 vite pas: (mos)konsolidim i shtetësisë: Këndvështrimi i qytetarëve rreth dialogut Kosovë – Serbi", April 2017. Available at, <http://www.votaime.org/Public/Article?PollDialog=true&PollDialog=false&SelectedTab=Polls&PollSelectedMonthID=&PollSelectedYear=#polls>

69 KCSS, Kosovo Security Barometer: "Special Edition: Public Perceptions toward Kosovo's Foreign Policy and Dialogue with Serbia".

70 KDI, Opinion Poll, "Normalizimi i marrëdhënieve Kosovë – Serbi, këndvështrimi i qytetarëve", KDI, February 2018. Available at, <http://www.votaime.org/Public/Article?PollDialog=true&PollDialog=false&SelectedTab=Polls&PollSelectedMonthID=&PollSelectedYear=#polls>

71 ISPI, Francesco Martino, "Kosovo: Beyond the "Brussels Agreement", Analysis No. 254, May 2014. Available at, http://www.ispionline.it/sites/default/files/pubblicazioni/analysis_254_2014.pdf

72 Koha Net, "Propozohet heqja e flamurit të Kosovës në samitin e Sofjes për të bindur Spanjën të marrë pjesë", 17 March, 2018. Available at, <http://www.koha.net/arberi/81586/propozohet-heqja-e-flamurit-te-kosoves-ne-samitin-e-sofjes-per-te-bindur-spanjen-te-marre-pjese/>

73 VOA, "Interview with the President of Kosovo, Hashim Thaci" February 7, 2018. Available at, <https://www.zeramerikes.com/a/4243121.html>. Koha Net, "Pacolli përkujton takimin me Millosheviqin, Vuçiqin...", December 4, 2017. Available at, <http://www.koha.net/arberi/61346/pacolli-perkujton-takimin-me-millosheviqin-vuciqin/>

74 Koha Net, "Vucic: Nëse dialogu zhvillohet vetëm për ta njohur Kosovën, atëherë mirupafshim", January 25, 2018. Available at, <http://www.koha.net/arberi/71523/vuciq-nese-dialogu-zh-villohet-vetem-per-ta-njohur-kosoven-atehere-mirupafshim/>

ACCOUNTABILITY

The entire process of dialogue between Kosovo and Serbia has been characterized by a lack of accountability by representatives of the Republic of Kosovo. As an elite dialogue, it is not considered as a genuine accountability process that is developed from the bottom-up and guarantees inclusiveness and transparency.⁷⁵ In this context, there have been no consultative meetings with civil society and citizens, in order for them to be informed about the content of the dialogue or even to hear and include their requests and concerns in this process.

There was lack of accountability in relation to the highest representative institution in the country, the Assembly of the Republic of Kosovo. During the fourth legislature, Prime Minister Hashim Thaçi has been repeatedly accused by the opposition parties for lack of reporting on the dialogue process.⁷⁶ Even the government after that, during the fifth legislature, is characterized by a lack of accountability for the issue of dialogue. During the time he was in charge of the government, Prime Minister Isa Mustafa reported only once to the Kosovo Assembly for the Brussels Dialogue, following the Agreement on Justice on February 9, 2015. In September 2015, even though he was invited to report on the Agreement of August 25th on the establishment of the Association/Community of Serb Majority Municipalities, Prime Minister Mustafa was prevented from doing so by the then opposition to the Kosovo Assembly by throwing things in the direction of the Prime Minister.⁷⁷ After this session, Prime Minister Mustafa has never reported again on the issue of dialogue until the end of his term.

It is worth mentioning that the MPs of the Assembly of Kosovo were not active in exercising their right to ask parliamentary questions regarding the Kosovo-Serbia dialogue process. Of the total of 428 parliamentary questions during the Fifth legislature, only 28 (about 7%) of them were related to the Kosovo-Serbia dialogue process. Meanwhile, out of the 28 questions by Kosovo Assembly MPs on the issue of dialogue, only half of them received responses from the executive. Even in the questions asked by the MPs of the Kosovo Assembly for Prime Minister Isa Mustafa (11 in total), the Prime Minister had responded to only three of them. While in the current legislature, the Kosovo Assembly has not held any parliamentary debate on dialogue-related issues. Prime Minister Haradinaj has not reported yet in the Assembly on this issue, while the chief negotiator Mr. Avni Arifi reported before the Foreign Affairs Committee⁷⁸ but not at the plenary session.

⁷⁵ See Bieber, F. (2015). "The Serbia-Kosovo Agreements: An EU Success Story?" Review of Central and East European law 40 (2015) 285-319, and Beha, A. (2015). Disputes over the 15-points agreement on normalization of relations between Kosovo and Serbia. Nationalist papers 43(1), 102-12

⁷⁶ See Bieber, F. (2015). "The Serbia-Kosovo Agreements: An EU Success Story?" Review of Central and East European law 40 (2015) 285-319, and Beha, A. (2015). Disputes over the 15-points agreement on normalization of relations between Kosovo and Serbia. Nationalist papers 43(1), 102-12

⁷⁷ Koha Net, "Kryeministri gjuhet me vezë, ndërpritet seanca e Kuvendit [video]", September 22, 2015. Available at, <http://archive.koha.net/?id=27&l=76068>

⁷⁸ Avni Arifi reports to the Foreign Affairs Committee, <http://www.kuvendikosoves.org/?cid=1,110,140>

THE JOURNEY TOWARDS THE EU

The Kosovo-Serbia Dialogue is one of the key processes for advancing Kosovo and Serbia on their path towards the European Union membership. In the annual reports of the European Commission on Kosovo's progress on its path towards the EU membership, the normalization of relations with Serbia has been given a special importance. In almost all progress reports, since the beginning of the political dialogue, it is clearly stated that the progress towards the normalization of relations remains essential for the advancement in their European path, for both Serbia and Kosovo.⁷⁹ The improvement of relations with Kosovo as a precondition for the EU integration is also mentioned in the Chapter 35 of Serbia's membership. In this Chapter, the EU seeks, from Serbia, commitment and results in the process of the normalization of relations with Kosovo, stressing that the process of membership and normalization should be developed simultaneously and by supporting each other.⁸⁰

Thus, in exchange for the engagement and commitment of both countries in the dialogue on the normalization of relations, the EU has offered tangible benefits to both countries on their path to the European Union. Following the first agreement on the principles of the normalization of relations, in April 2013, the European Council decided to open accession negotiations with Serbia on the one hand, as well as the negotiations for the Stabilization and Association Agreement with the Republic of Kosovo on the other hand, as a reward for the progress made towards the normalization of relations.⁸¹ While the Republic of Serbia has closed two accession negotiation Chapters out of 12 opened for negotiation, on 2 October 2015 the Republic of Kosovo and the European Union signed the Stabilization and Association

Agreement, which entered into force on 1 April 2016.⁸² The signing of this agreement was made possible thanks to the Lisbon Treaty, which gives legality to the European Commission for the signing of agreements on behalf of the Union without the need for such an agreement to be ratified by all members of the Union.

Despite the differences that the Stabilization and Association Agreement for Kosovo has with the SAAs of the countries of the region, the signing of the SAA has been considered as an extraordinary achievement for the Republic of Kosovo, since it marks the first contractual agreement with the European Union.⁸³ Moreover, in addition to the opportunity that the SAA offers to Kosovo for access to the common European market, its implementation will bring important results for Kosovo, by advancing the democracy, among other things, which would have positive effects for the country. The implementation of the SAA will bring benefits to Kosovo in the following areas: economy, rule of law, education, industry, environment, energy and many more. In addition, apart from the benefits in the above mentioned areas that help approximate domestic legislation to that of the EU, the SAA is a very important instrument in combating trafficking in human beings, money laundering and terrorism.⁸⁴ At the same time, the signing of the SAA is a clear political signal for Kosovo, indicating that the engagement in meeting the EU criteria brings results despite political obstacles.

However, Kosovo remains the only country in the Western Balkans without a clear future of the EU membership, owing to the five member states that do not recognize the state of Kosovo. In the enlargement strategy published

79 European Commission, Kosovo Progress Reports. Available at, https://ec.europa.eu/neighbourhood-enlargement/countries/package_en

80 Ibid, page 2.

81 European Union Council, 21 January, 2014. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/140676.pdf and the European Commission, 22 April 2013. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2013/ks_spring_report_2013_en.pdf

82 Stabilisation Association Agreement between the European Union and Kosovo, 2 October 2015. Available at, https://eeas.europa.eu/sites/eeas/files/stabilisation_and_association_agreement_eng_0.pdf

83 Kosovo Foundation for Open Society (KFOS). Augustin Palokaj and Gjerajina Tuhina "The Upshot of the SAA: Kosovo-EU relations", 2016. Available at, http://kfos.org/wp-content/uploads/2016/11/MSA-ENG_TEXT-2.compressed.pdf

84 Ibid.

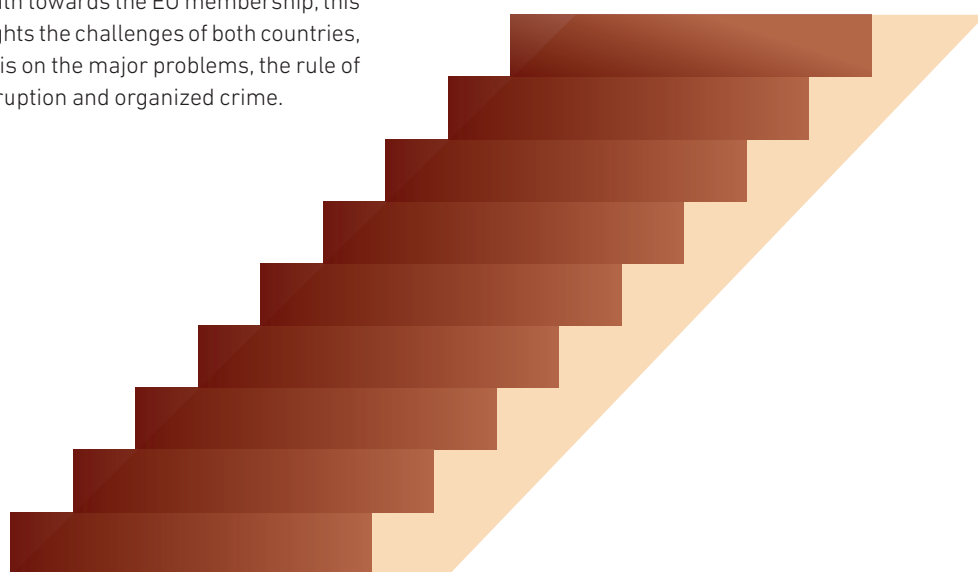


“

at the beginning of February 2018, Kosovo is promised advancement on its path to the European Union if objective circumstances allow.⁸⁵ Underlining that the full normalization of relations between Kosovo and Serbia is a necessity for both countries, for their advancement to the European path, in this strategy, the EU requires that the dialogue between Kosovo and Serbia shall be concluded with a legally binding agreement which would solve the open issues between the two countries, including the demarcation of the border as well as mutual non-interference in the international arena.⁸⁶ However, despite the fact that in this strategy the EU underlines that following the conclusion of the dialogue with Serbia, Kosovo will benefit on its European path, at no point is it specified how and what this benefit will be.

It is important to note that although the normalization of relations between Kosovo and Serbia remains a fundamental precondition for both countries on their advancement to the path towards the EU membership, this strategy clearly highlights the challenges of both countries, with a special emphasis on the major problems, the rule of law, state capture, corruption and organized crime.

Kosovo remains the only country in the Western Balkans without a clear future of the EU membership.”



⁸⁵ European Commission, “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”, 2018. Available at, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

⁸⁶ Ibid.



INTERNAL DIALOGUE IN SERBIA

The resolution of issues with Kosovo remains a main precondition for Serbia on its path to the European Union membership.⁸⁷ The European Union, and in particular some of the key members individually, have repeatedly stressed that the path to the EU membership for Serbia “passes through Kosovo”.⁸⁸ In this context, upon taking the post of the President, Alexander Vucic has initiated an internal dialogue in order to reach a broad consensus in Serbia regarding the future of Kosovo-Serbia relations. In addition to reaching the consensus regarding the future of relations with Kosovo, Vucic has also sought the undertaking of concrete steps in this regard, including constitutional changes, so that Serbia can advance on its European path.⁸⁹ In an autobiographical script, Vucic said that “it is time for people to no longer act as an ostrich and to hide their heads in the sand. We must strive to become realistic, not to let ourselves lose or give up what we have. But we should not expect to regain what we lost long since”.⁹⁰

This dialogue includes all relevant institutions and entities of Serbia, including the Serbian Academy of Sciences, Serbian Orthodox Church, civil society, media and other stakeholders in this field. For about six months, several rounds of discussions have been organized between these stakeholders in order to discuss the ideas, proposals, visions and modalities for giving a resolution to issues with Kosovo.⁹¹ Radical parties and the

Serbian Orthodox Church have repeatedly appeared against any compromise with Kosovo, while voices opposing the normalization of relations with Kosovo have also come from the members of the Serbian Government, including Foreign Minister Ivica Dacic and interior minister Aleksandar Vulin.⁹²

Thus, the internal dialogue in Serbia has so far revealed the extreme polarization between relevant actors and society in general. However, this dialogue, which is expected to end soon, aims to establish a common approach of Serbian institutions and society regarding the future of relations with Kosovo, on the basis of which a platform will be built and a solution to the normalization of relations will be provided by Serbia.⁹³

President Vucic stated that he will present a proposal to the resolution of the Kosovo issue by late March or early April. As he had warned, he initiated meetings in the Serbian enclaves in Kosovo, in order to incorporate their position to this discussion. Such meetings were held on 7 and 8 March 2018.⁹⁴ So far, some proposals have emerged in the public as a potential epilogue of the dialogue, ranging from the separation of Kosovo, the exchange of territories, to the autonomy of Serbs within Kosovo.⁹⁵

87 Ibid.

88 Portal Express, “Mesazh i qartë i Gjermanisë pas zgjedhjeve: Serbia duhet ta njoh Kosovën”, 17 March 2014, Available at, <http://www.gazetaexpress.com/lajme/mesazh-i-qarte-i-gjermanise-pas-zgjedhjeve-serbia-duhet-ta-njoh-kosoven-3556/?archive=1>, Portal Lajmi.net, “G Ministri gjerman: Serbia para se të hyjë në BE duhet ta njoh Kosovën”. Available at, <http://lajmi.net/ministri-gjerman-serbia-para-se-te-hyje-ne-be-duhet-ta-njoh-kosoven/>, and Blic Newspaper, “Ministri i Gjermanisë: S’ka BE për Serbinë pa e njohur Kosovën”, February 2018. Available at, <https://gazetablic.com/ministri-gjermanise-ska-per-serbine-pa-e-njohur-kosoven/>

89 Portal Express, “Serbia mund ta heq Kosovën nga Kushtetuta në fund të 2017-s”, 8 maj 2015. Available at, <http://www.gazetaexpress.com/lajme/serbia-mund-ta-heq-kosoven-nga-kushtetuta-ne-fund-te-2017-s-99624/?archive=1>

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92 Koha.net, “Vulin: Serbia nuk do ta njohë Kosovën që të bëhet anëtare e BE-së”, 15 February 2018. Available at, <http://www.koha.net/arberi/75761/vulin-serbia-nuk-do-ta-njohet-kosoven-ge-behet-anetare-e-be-se/>

93 Koha.net, “Dialogu i brendshëm për Kosovën po del të jetë puna më e vështirë për Serbinë”, 30 October 2017. Available at, <http://www.koha.net/arberi/54211/dialogu-i-brendshem-per-kosoven-po-del-te-jete-puna-me-e-veshtire-per-serbine/>

94 Koha Net, “Dialogu i brendshëm i Serbisë edhe në Kosovë, Qeveria hesht”, 8 March 2018. Available at, <http://www.koha.net/arberi/79711/dialogu-i-brendshem-i-serbise-edhe-ne-kosove-qeveria-hesht/>

95 Zeri Info, “Ideja e ministrit serb për ndarjen e Kosovës bën bujë në mediat ndërkombëtare”, 6 February 2018. Available at, <http://zeri.info/aktuale/185345/ideja-e-ministrit-serb-per-ndarjen-e-kosoves-ben-buje-ne-mediat-nderkombetare/>, Koha Net, “Karrige në OKB për Kosovë, autonomi për serbët e saj, zgjidhja sipas Beogradit”, 25 February, 2018. Available at, <http://www.koha.net/arberi/77560/karrige-ne-okb-per-kosove-autonomi-per-serbet-e-saj-zgjidhja-sipas-beogradit/>, Zeri Info, “Drecun: Thaçi po na ofron shkëmbim teritorësh”, 7 May 2017. Available at, <http://zeri.info/aktuale/142163/drecun-thaci-po-na-ofron-shkembim-teritoresh/>

STATE PLATFORM TO THE NEW PHASE OF THE KOSOVO-SERBIA DIALOGUE

The Kosovo side is following the same trend over the new phase of the dialogue, where despite statements and calls for political consensus, it is continuing the dialogue without broad political or social consultation.

What is happening is the continuation of talks behind the curtains and secret agreements, an approach that could only harm Kosovo's future and undermine the expectations from this process.

As argued in this paper, the process of dialogue has so far been characterized by a lack of transparency and accountability, unimplemented agreements where their content is disputed, whereas the Kosovar side has not clearly articulated what they intend to achieve with this process.

The new phase of dialogue shall be developed on some basic principles that can lead the Kosovo side towards building a state platform based on broad political consensus, achieving institutional and civic legitimacy. A comprehensive evaluation regarding the dialogue process and agreements reached shall take place. The findings of this evaluation shall reflect in the new phase of the dialogue.

Certainly, the results of the dialogue process should bring about internal state consolidation and the consolidation of the international subjectivity of the state of Kosovo.

BASIC PRINCIPLES FOR THE DIALOGUE PLATFORM:

- **Negotiating team:** Building of a comprehensive political team leading Kosovo-Serbia dialogue talks, supported by a team of experts based on topics/areas to be addressed within this process.
- **Political consensus:** The dialogue process requires vigilance and broad political involvement. Therefore, it shall be initiated a political leaders' discussions in relation to the format, topics of the dialogue and the epilogue of this process, in order to reach a broad political consensus.
- **Transparency:** The dialogue should provide transparency for citizens by articulating the agreements reached and the impacts that these agreements will have in their lives. Information and consultation meetings with citizens and civil society should be constant throughout the process.
- **The role of the Assembly:** The Assembly shall have its uncontested and active role, giving legitimacy and legality to the Brussels talks. The Assembly shall exercise its oversight role over the entire negotiation process, including regular reporting by the negotiation team before and after reaching of agreements and the consultation of the relevant committees.
- **Topics:** Topics to be discussed and included within the new phase of the dialogue are those related to coping with the past, succession and disintegration of parallel structures in Kosovo.
- **Reciprocity:** The Kosovar side should apply the principle of reciprocity throughout the dialogue process.
- **Red lines:** The agreements reached within this process must not violate the state order of the unitary state of Kosovo, of its territorial integrity and of the representation of Kosovo as an independent and sovereign state in the international arena. Ahtisaari's plan is the only and non-negotiable compromise in the dialogue.
- **Epilogue:** Recognition of Kosovo by the state of Serbia, Kosovo's membership as a full-fledged UN member country.
- **UN membership:** The EU should be the sponsor of a new US-backed UN Resolution. This new UN Resolution opens the door to Kosovo fully-fledged membership by invalidating the UN Resolution No. 1244.
- **Implementation of agreements:** The new phase of dialogue should avoid past mistakes by clearly defining the timelines, agreement implementation mechanisms, and punitive measures by the EU for parties that do not implement them, linking this process with the advancement of the parties towards the EU.
- **Lobbying:** The state of Kosovo should set up a state lobbying mechanism to support its state dialogue platform with the European and US capitals. This lobbying should continue further in order to reach new recognitions, in particular with the 5 EU non-recognizing countries and Kosovo's membership in international organizations.

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