

DISCUSSION PAPER

IMPACT OF DIALOGUE WITH SERBIA ON KOSOVO'S EXTERNAL AFFAIRS





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Introduction

The Republic of Kosovo has entered the 11th year of dialogue with Serbia, after the declaration of its independence, a process initiated after the adoption of the UN resolution¹ in 2010, conducted under the EU facilitation. Whereas, Kosovo has already entered the fifth year since the public discourse is dominated by the approach that the dialogue with Serbia should be concluded with a final, legally binding agreement. One contributor to such an approach has also been the position of the international factor, especially the EU and the US, which have pushed this issue forward as a necessity for both parties.²

However, despite internal statements and numerous requests from outside, the time period when a final agreement can be reached between the parties still remains relatively unclear. And in the absence of a timeline, but also of internal consensus, the dialogue has often been dragging on, causing Kosovo to suffer a number of consequences on the external plane, which will be elaborated in the following sections of this paper.

Through this discussion paper, views will be provided on the need to reach a final agreement with Serbia, as a counterweight to a hypothetical situation of status quo maintenance and the implications it may bring. However, among the main limitations of this discussion paper is its concentration entirely on the external aspect, ignoring the part of the effects on the internal plane that the dialogue process with Serbia and the developments within it may bring.

In view of this paper, an eventual agreement between the two countries implies an agreement for mutual recognition - as proclaimed by our political spectrum but also the main international circles³. Whereas, for the agreement as such, in the framework of the paper will not be taken into account the modalities, respectively the eventual compromises that can be made within this process.

1 For more, see UN Resolution on the Kosovo-Serbia Dialogue, "A / RES / 64/298", dated 9 September 2010. Available at : http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/298

2 For more, see: <https://tvklan.al/dhjet-vjet-bisedime-kosove-serbi-shba-dhe-be-kerkojne-marreshjen-deri-ne-fund-te-vitet/>

3 Only the US has been direct and explicit on the issue of mutual recognition - as an expected outcome of the dialogue. On the other hand, due to the situation with the five non-recognizing states, such a conclusion is not held by the EU, which has not yet determined the expected final outcome of the dialogue.

**Between the
status quo
and the conclusion
of the dialogue**



We are used to constantly hearing political leaders, both in Kosovo and Serbia, declaring that they are 'pro' the dialogue, respectively 'pro' its continuation until a final agreement is reached. But such statements and the will expressed, at least formally, have not always translated into concrete actions in terms of reaching a final agreement, although partial agreements have been reached on certain issues. Indeed, in some cases, the status quo is even motivated by the very actions or positions of the parties. Such cases, among others, were the initiation of the Serbian campaign for the derecognition of Kosovo, or the imposition of a 100% tariff on Serbian products by the Government of Kosovo, consequent actions which had made it impossible to continue the dialogue. The same thing was done after the formation of the 'Kurti 1' Government in Kosovo, when despite the abolition of the tax – a request of Serbia to continue the dialogue, the establishment of reciprocity towards Serbia by Kosovo, kept the dialogue process suspended again.

If the dialogue process is analyzed over a longer time span, especially if its initiation 11 years ago is taken as a starting point, then there is a tendency noted to place it from time to time in a status quo state, especially after 2017, when it was attempted to reach a final agreement based on the exchange of territories, "packaged" under the term 'correction of borders'. The fierce opposition from the then opposition entities (LVV, AAK and NISMA) to the agreements reached during 2015, especially the one regarding the establishing of the Association of Serb Majority Municipalities, also contributed to the birth of this status quo. Whereas, the culmination had occurred after the Kosovo's failure for membership in international mechanisms, especially the case with INTERPOL, as a result of Serbia's aggressive campaign in this regard. And since 2018, external initiatives to resume dialogue have often produced counter-effects, as they have contributed to the parties cementing their antagonistic positions, with the exception of signature of the letters of intent and interest regarding the airline, highway and railway

corridor between Kosovo and Serbia, during the beginning of 2020 – although they were of a technical nature.

In parallel with such a stagnation of the dialogue process, since its initiation in 2011, Kosovo unknowingly and in the absence of a proper dialogue strategy, but also influenced by an intensive lobbying by Serbia which conveyed the message that in fact what is being discussed is the status of Kosovo, found itself in a situation where its international consolidation was already being linked to the conclusion of the dialogue process with Serbia. By constantly maintaining the discourse that the ultimate goal will be the recognition of Kosovo by Serbia, which in most cases was served to the public as mutual recognition, Kosovo in fact conveyed signals to non-recognizing countries that their eventual decisions depend on the conclusion and epilogue of the dialogue.

The suspension of the dialogue during 2020 was also influenced by a number of issues, starting with the pandemic, which caused the states to revert their main focus back on themselves, and to the Kosovo announcing the early parliamentary elections. In such a situation of confrontations, both externally and internally, the dialogue process is now virtually in a softened version of the status quo despite the first meeting of Prime Minister Kurti with Serbian President Vucic being held on 15 June, under the mediation of the EU. This situation is characterized by a declarative will from both sides to continue the dialogue, but with considerable hesitation and diametrically antagonistic positions on the final result expected from the dialogue and the paths to be followed.

Among other things, in recent years Kosovo has faced a declining trend of foreign direct investment⁴. Among the reasons put forward by experts in the field is the dialogue with Serbia, which in many cases has brought political instability in the country, but also the fact that the non-completion of this process has caused the potential investors to be sceptical.

⁴ For more, see: <https://www.evropaelire.org/a/investimet-e-huaja-kosove-/29978901.html>





The biggest relative beneficiary of a status quo of dialogue, whatever it may be, is Serbia, which can use this situation as an argument for non-recognizing states to pursue such an attitude, and even resume the campaign for the derecognition of Kosovo, using also its relations with Russia, which would have a major impact on a significant number of countries. Such a campaign could be launched by invoking one of the clauses of the Washington Agreement, which bans Serbia from lobbying against Kosovo until September this year.

In the past, such an approach by Serbia had been relatively successful, as it had managed to put Kosovo in a defensive position, as well as negatively affected Kosovo's external image - especially in terms of the incapability of membership in international organizations and mechanisms. Moreover, Serbia had managed to portray Kosovo as a non-constructive party by insisting on the abolition of the tax and then reciprocity measures, to continue the dialogue.

Also, Kosovo risks that its relations with international allies are turned into "pressure relations", as has happened in certain cases in recent years. The possible straining of relations with international allies, and in particular with the US and the EU, respectively its main states such as Germany and France, may be accompanied with multidimensional effects in the international sphere for Kosovo. Beyond the financial aspect, which could be the first area where the effects of the strained relations would be noticed, given the reduced capacity of Kosovo diplomacy to operate independently in the international arena, Kosovo would face extremely limited opportunities, and perhaps even the impossibility of membership in international organizations, especially those that are of strategic importance, such as NATO and the EU, securing new recognitions, and perhaps eventually even the withdrawal of existing recognitions. And in case of inability to secure new recognitions, among which the recognition by the five EU states is of colossal importance, any European integration process would become much more complicated for Kosovo, since so far, the influence of the five non-rec-

ognizing states has in many cases been a determinant of relations between Kosovo and the EU or even contractual relations between them.

The same issue in the integration dimension can be presented in Kosovo's path towards NATO and UN membership. Although for the former we are dealing with almost the same situation as with the European integration, UN membership is a significantly more complicated situation. This, especially if one considers the composition and manner of decision-making within this organization, where the two states that are permanent members of the Security Council, the Russian Federation and China, have veto power for new memberships in the UN.

Another danger that Kosovo faces is the shifting of our issue to the bottom of the international community's priorities, either as a result of eventually a non-serious and lax approach on the part of Kosovo, or as a result of the rise of far-right parties across Europe, which has prompted current governments to concentrate more on their internal affairs. Moreover, Kosovo has a bitter experience precisely from the developments in this dimension, in the case of visa liberalization, where the failure to use the opportunity in time had made the issue remain pending to this day.



Beyond the need to prevent the dialogue from slipping into the status quo, another important factor remains the timing of the conclusion of the dialogue, namely the approach that Kosovo should employ in terms of “haste” to conclude the dialogue with Serbia.

In this regard, at the beginning, upon the constitution of the new Government in Kosovo following the February 14 elections, led by Prime Minister Albin Kurti, it was relatively unclear what trajectory the dialogue process will follow, given the non-prioritization of this process by the executive side, which has considered this process sometimes as the sixth or seventh priority, and sometimes as the fourth priority⁵. Also, the line was often followed that the process should firstly be given time, and secondly that it should not take place under the pressure of time, so that initially the dialogue is subjected to a proper analysis and is duly prepared. However, despite these statements, as it has usually happened, dialogue has become one of the main topics of the executive, advancing to the list of priorities - with or without the will of the Government.

In relation to the issue of setting a deadline for the dialogue, both the EU⁶, and the US have repeatedly stated that the prolongation of the process risks its degradation on issues that are not beneficial to the parties⁷; therefore, conclusion of an agreement should be a matter of months rather than years⁸. In fact, many international actors, especially the US, have alluded to the existence of a “window of opportunity” to reach an agreement, but this has not been translated into any tangible results yet. Even the Prime Minister Kurti himself has stated that the agreement with Serbia should be reached during

the respective mandates of US President Biden and EU High Representative Borrel.⁹ Therefore, it is evident that the international factor, led by the US, the EU and its main states, such as Germany and France, although it has declaratively spoken out against the imposition of strict deadlines, is keen on recreating a momentum to achieve a final agreement between Kosovo and Serbia within a reasonable timeframe.

However, the experience so far with the dialogue process, especially from 2017 until now, has shown that the “pressure” on the parties to reach an eventual agreement within a relatively short period of time has produced more counter-effects than it has managed to really push the parties towards agreement. Also, accompanied by a lack of transparency, this pressure has forced the parties to reinforce ambiguity for eventual agreements or agreements already reached. In this regard, it should be borne in mind that the pressure to reach an agreement should not risk being a factor leading to an agreement that would not be entirely to the benefit of Kosovo. This is because the rush to quickly reach an agreement of any kind may even result in a harmful, unstable or unenforceable agreement on the ground. Thus, the parties must set a deadline for the process, a period during which Kosovo must make the necessary preparations, develop a proper platform and strategy for dialogue, as well as maintain coordination with the main Western decision-making centres. However, this should by no means be used as a way of delaying and thwarting dialogue by the Kosovo side, as at the current stage, more than a “fight” of arguments and dialogue, Serbia seems to be trying to shift the “fight” to the issue of who is the destructive party that does not dialogue and that puts this process in the status quo.

5 For more information, see: <https://www.koha.net/arberi/259163/kurti-dialogu-me-serbine-nuk-do-te-jete-ne-top-dy-prioritetet/>

6 For more information, see: <https://www.evropaelire.org/a/31004262.html>

7 For more information, see: <https://www.dw.com/sq/be-optimist-p%C3%ABr-ballkanin-shba-ja-k%C3%ABrkon-njohje-t%C3%AB-nd%C3%ABrsjell%C3%AB-kosov%C3%AB-serbi/a-57740405>

8 For more information, see: <https://www.dw.com/sq/laj%C3%A7ak-brenda-muajsh-mund-t%C3%AB-arrihet-marr%C3%ABveshje-kosov%C3%AB-serbi/a-56747279>

9 For more information, see: <https://telegrafi.com/kurti-theksova-se-marreshja-serbine-te-duhej-te-behet-gjate-mandatit-te-biden-e-borrell/>



Firstly, Kosovo must, with all its institutional capacity, define a state position, balanced between the need to reach a final agreement and to avoid prolonging this process. Such a position should in no way overlook the expectations of the international community for not holding up the process, as

well as the interest of the state of Kosovo in concluding the dialogue with Serbia - being aware that the status quo in the dialogue actually means the status quo for the state of Kosovo, especially the consolidation of its international subjectivity.

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Conclusion of the dialogue with Serbia as an imperative for the consolidation of Kosovo in the international arena (?)

Serbinë si imperativ për konsolidimin e Kosovës në arenën ndërkombëtare (?)

Although the dialogue, initiated by the UN Resolution, initially envisaged the development of a process aimed at improving the lives of citizens, in fact, it was to be expected that this process would affect Kosovo's statehood itself. Such an impact is expected to be more noticeable at the international level, namely in achieving full international subjectivity, although it will certainly have effects at the domestic level as well.

Since the beginning of the dialogue in 2011, the trajectory of new recognitions of Kosovo has begun to fall, although, undoubtedly, there are other factors that have played a role in this regard¹⁰. In addition to the decline in the number of new recognitions, as a result of Serbia's campaign to delegitimize the state of Kosovo through derecognitions, Kosovo has encountered many difficulties in convincing non-recognizing states to recognise it, but also states with derecognition potential, not to do so. Most states that have not recognized Kosovo, but also almost all states that have withdrawn their recognition - although the existence of such a concept is highly questionable

- cite the conclusion of the dialogue as the main reason for the relevant actions¹¹. Even the latest recognition by Israel, the only one in the last three years, is a result of the indirect economic agreement reached with Serbia in Washington on 4 September 2020. Therefore, based on those reasons, in the pragmatic aspect, it is almost impossible for Kosovo to unblock the current impasse in which it finds itself in terms of universal recognition, or at least obtain new recognitions, without reaching a final agreement with Serbia, namely concluding the dialogue. In this regard, the fact that a significant part of the "fault" as to why Kosovo's path to international consolidation is exclusively related to dialogue lies with policymakers in Kosovo, in particular previous governments, should not be abstracted. The same, perhaps unconsciously, led by ad-hoc politics and their rhetoric have given their own argument to non-recognizing states or potentially derecognizing states for them to link the conclusion of dialogue with the establishment of diplomatic relations with Kosovo.

10 Çakolli. E. 2020. "Kosovo: Between universal non-recognition and 'derecognition'". KDI & KAS. Pristina. p. 14-15. Paper accessible at: <https://bit.ly/3h25Jmx>

11 Ibid. p. 24



The approach of the international factor that the reaching of the final agreement between Kosovo and Serbia would contribute to the international consolidation of Kosovo has almost imposed the continuation of dialogue towards this goal, which in principle is the right action, certainly, but on the other hand has brought numerous difficulties towards ensuring new recognitions.

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However, it should be borne in mind that the conclusion of the dialogue does not automatically imply immediate universal recognition of Kosovo. In fact, at this level, the conclusion of the dialogue would serve more as a means of removing the reasons for some of the non-recognizing states. Kosovo should then, through lobbying and support of its allies and diplomatic service, intensify the work and efforts to concretize cooperation with these countries until mutual recognition. These recognitions would result in the removal, or at least easing, of barriers to Kosovo's membership to international organizations and mechanisms, from which Kosovo would receive many benefits, especially access to large funding means and opportunities through various international organizations or agencies. Specifically, membership in the UN, which would mean automatic membership in most of its 17 independent agencies, ranging from food and agriculture, civil aviation, telecommunications, education, health and others, which would pave the way for development of Kosovo. The latter, also related to the potential of Kosovo's demographic advantage, namely the dominant young age groups, could bring rapid economic development.

The inability to conclude the dialogue so far has also served as a deterrent for foreign direct investors, who, in the absence of detailed information on the current situation or perhaps due to Serbia's intense negative lobbying, have been reluctant to invest directly in Kosovo.¹² However, it is almost entirely understandable and expected that investors have no predisposition to invest in politically unstable countries, with no stability and above all unresolved problems with other countries. In addition, the frequent change of governments in Kosovo, which has almost always had the dialogue with Serbia as its main cause, has become an argument for foreign investors not to come to Kosovo.

Guaranteeing the sustainability of Kosovo through its establishment as a fully completed issue is the main argument that the conclusion of the dialogue is an almost insurmountable need. In fact, the full establishment of Kosovo's statehood at the international level implies in itself the stability of Kosovo, with almost no consideration of other developments.

Last but not least, reaching a final agreement between Kosovo and Serbia would have regional implications, in the context of accelerating the European journey of perhaps all Western Balkan countries. The conclusion of the dialogue between Kosovo and Serbia, under the facilitation or mediation of the EU, would surely mean that, based on its "carrots and sticks" approach, the parties would have to be offered something concrete as an incentive and reward for achieving of the relevant agreement. Given the context and previous experience with EU enlargement, the option of accelerating integration across the Balkans would be more than realistic.

¹² For more information, see the interview of the US Ambassador to Kosovo, Philip Kosnett, regarding the issue of US investors and direct investments in Kosovo: <https://www.youtube.com/watch?v=AQzqUu3L1h4>

Kosovo's journey towards international consolidation, after the declaration of independence, has been a journey of many ups and downs. Among the bigger ups, if not the biggest, is certainly the ICJ decision on Kosovo's declaration of independence, which legitimized the declaration of independence. However, despite high expectations, this decision was never capitalized to the extent to serve as the basis for ensuring universal recognition and full international consolidation of Kosovo. On the contrary, just after this decision, a dialogue was initiated between the parties, which continues to be a prolonged, arduous process that often brought many polarizations in Kosovo. This process of dialogue between the parties has been transformed from a technical process aimed at improving the lives of citizens into a purely political process aimed at reaching a final agreement, which may eventually lead to mutual recognition.

However, the current situation does not seem so promising, especially for Kosovo. In Serbia, the voices and the attitude that there will never be recognition of Kosovo, and on the other hand, the non-prioritization and declarative dodging of this topic by the new government in Kosovo, as well as the extreme political polarizations, have left this process in the status quo. Based on such a status quo, it is evident that both sides would be losers, although Serbia would have a greater benefit – due to its capacity to lobby for derecognition, as well as the inability of Kosovo to obtain new recognitions (in the eventual lack of assistance from allies) and consequently non-membership in international organizations and mechanisms.

Therefore, in this regard, the new executive, in coordination with the Presidency and the Assembly of Kosovo, should not bypass the dialogue process, as well as should avoid the portraying of Kosovo as a destructive and rejecting party to the dialogue. Kosovo should, in its preparations for reaching a final agreement with Serbia, strike a well-reasoned bal-

ance between the need for a rapid conclusion of the dialogue and its prolongation. In this regard, Kosovo must show readiness and determination to conclude this process in order to open its perspective for consolidation and development. During this period, Kosovo should also prepare a state plan to approach new non-recognizing countries and international organizations, always keeping in mind the scenario of not reaching a final agreement with Serbia.

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