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The Brussels dialogue ten years after Kosovo's
independence*

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Abstract

The Kosovo-Serbia dialogue is one of the most important processes that the Republic of Kosovo has been engaged since its independence in 2008. However, from the beginning, the so-called Brussels dialogue has been characterized by the lack of transparency, dishonesty, and ambiguity. This article concentrates on the effect of the Brussels dialogue on the consolidation of Kosovo's statehood. The article reveals that the Kosovo-Serbia dialogue has damaged Kosovo's statehood internally and weakened it externally. While in the domestic aspect, the agreements reached in the dialogue have posed a serious challenge for Kosovo's political and judicial systems, in the international arena, the dialogue has been an obstruction to Kosovo's efforts to consolidate its position in the international relations. The Brussels dialogue is rather unique and unprecedented for the state consolidation literature in the sense that a democratic and sovereign state interferes, with the support of all international actors, in the internal affairs and organization of another democratic and sovereign country. This article also shows the EU's impotence as a mediator in this process.

Keywords: *The Brussels dialogue, state consolidation, democratization, European Integration, Kosovo, EU*

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Bilateral disputes between Kosovo and Serbia date back to the early '90ies. Ever since Milosevic abrogated Kosovo's autonomy in 1989, relations between Kosovo and Serbia have gone from bad to worse, which eventually culminated with a war in the late '90ies. The war ended with a NATO bombing campaign against Milosevic's Yugoslavia, who preliminarily refused to sign a peace agreement which would have ended the conflict by giving Kosovo a substantial autonomy. After the war, Kosovo spent almost nine years in a *status quo*: its status was not defined while it remained a UN protectorate.

In 2005, negotiations on Kosovo's status between Kosovo and Serbia under international mediation were initiated. However, the so-called Vienna negotiations led only to the unilateral declaration of independence by Kosovo, which did not solve the disputes between the latter and Serbia. Consequently, in 2011 a new process of dialogue between Kosovo and Serbia started with the aim of addressing a few technical issues, such as free movement or mutual recognition of diplomas. Thus, the new dialogue between Kosovo and Serbia was said to be only technical. In reality, the so-called 'Brussels dialogue' was political from the beginning.

This paper analyses the Brussels dialogue¹ with regard to the consolidation of Kosovo statehood internally, and in the international arena². Domestically, the dialogue has been supposed to facilitate the integration of the Serb community in Kosovo's institutional life and remove the influence of Serbia,

¹ The dialogue between Kosovo and Serbia is being held in parallel at two distinct levels: at the technical level and at the political level. Since these two processes are tightly intertwined, and in order to avoid confusion, we consider both levels of dialogue as a single process.

² By "internal consolidation" we mean controlling all its territory, having effective institutions and exercising sovereignty throughout its territory. By "external consolidation" we mean equal representation and membership in the international organizations, including the United Nations.

which has been exercised through its parallel institutions and activities in the Republic of Kosovo. Internationally, the dialogue has been considered as a key tool which would eventually pave the way for Kosovo's membership in international organizations, including the UN, thus leading to the full consolidation of the Kosovo statehood in the international arena.

This paper argues that the dialogue has not contributed to the strengthening of the Kosovo statehood internally, nor it has contributed to the consolidation of the Republic of Kosovo as an international actor. Rather, the dialogue has slowed down the process of recognition of Kosovo's independence, since countries that have doubts on the legality and legitimacy of the independence of Kosovo are waiting for the dialogue epilogue, hoping that it will clarify the situation. At the same time, internally, the agreements which derive from the Brussels dialogue, have only formalized the influence and presence of Serbia in Kosovo, and have threatened Kosovo's internal organization and its constitutional order.

The paper analyses the role of the EU in the process too, which was deemed to be the facilitator, but in reality, it has been the mediator from the beginning.

The paper starts by giving an overview of the Brussels Dialogue from the beginning up to date. Then, it analyses the approach of the EU to the dialogue. Moving on, the paper discusses the first political agreement between Kosovo and Serbia and the SAA between the EU and Kosovo. In the end, we discuss the outcomes of the dialogue so far.

The Brussels dialogue: an overview

Shortly after the International Court of Justice's opinion on whether the 'unilateral declaration of independence by the

Provisional Institutions of Self-Government of Kosovo was in accordance with international law', a UN resolution, sponsored by Serbia and the 27 EU member states, was adopted calling for a process of dialogue between Belgrade and Pristina, under the EU facilitation (UN, 2010). Through this resolution, the UN stressed that '[The General Assembly] Welcomes the readiness of the European Union to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security, and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people' (UN, 2010). The resolution came as a compromise text between Serbia (who initially planned a resolution questioning Kosovo's independence) and the European Union.

The dialogue's initial purpose has been to solve all open issues between two countries and potentially be concluded with a comprehensive legally-binding agreement, which would eventually end the long-lasting conflict and normalize the relations between the two countries (Bieber, 2015). The normalization of the relations between Kosovo and Serbia is a must for both countries in order to advance in their paths towards European Integration (EU, 2018). In this context, a legally-binding agreement between the two states is expected to enable Kosovo to be part of the international organizations, including the EU, thus leading to the full consolidation of the Kosovo statehood in the international arena.

In the beginning, there was neither a clear roadmap of the timeline nor a defined objective of the process. Rather, the initial idea of the High Representative, Catherine Ashton, was to promote a dialogue between the two countries in order to reduce tensions, relax bilateral relations, and produce a settlement of some key issues that have been real obstacles for Kosovo (Bieber, 2015). Thus, the EU did not seek to resolve the

question of Kosovo's statehood but sought to set it aside in order to make some practical progress on the ground. But, putting the issue of Kosovo's status aside led to a number of consequences for the process of dialogue. More importantly, it precluded the signing of formal agreements which would have implied that agreements were legally binding (Bieber, 2015). Hence, trying to avoid the question of status in order to achieve tangible results, the EU, in fact, damaged the process itself and the implementation of the agreements on the ground.

The Pristina-Belgrade³ dialogue began as a 'technical dialogue' because of the insistence of the Kosovo government that "political dialogue is not on the table" (Bajrami, 2013). However, while this position changed over time, in reality, the dialogue was political from the beginning. Similarly, the Kosovo government's promise that internal state issues will not be discussed with Serbia, turned out to be untrue, since many internal issues, including issues related to the North of Kosovo, were discussed and negotiated in the dialogue (Bajrami, 2013). Nonetheless, since the process started as a technical one and the issues to be discussed were technical, the negotiating teams from both countries were not of the highest level. Serbian delegation was led by Borko Stefanovic, appointed by the then Serbia President, Boris Tadic, while the head of Kosovar delegation was appointed Edita Tahiri, Deputy prime minister and minister for dialogue.

The technical dialogue produced numerous agreements which aimed to solve some non-political issues. However, over time, it became clear that the implementation of the technical agreements needs a degree of political will. Thus, a political dialogue was inevitable. The political dialogue, which began in the 2012 autumn, brought together prime ministers of two

³ This is the official name of the Brussels dialogue

countries, Mr. Hashim Thaci of Kosovo and Mr. Ivica Dacic of Serbia.

The Brussels dialogue has been characterized by tensions and frequent interruption. The 2014 national elections in both countries, the 2014 elections for the EU institutions and the 2016 Presidential elections in Serbia, have contributed to slowing down the process. Also, domestic political tensions, in particular in Kosovo, have paralyzed the dialogue for almost two years (Koha Ditore, 2014). Nevertheless, up to date, over 23 agreements have been reached, even though most of them have not been implemented yet.

From the beginning, the process has been criticized for the lack of transparency and accountability (KDI, 2016). The lack of transparency has been problematic because the ordinary people have no idea how the implementation of the agreements will affect their lives (KDI, 2016). Consequently, Kosovo citizens from both communities lacked the willingness and readiness to participate and facilitate the implementation of the agreements. Furthermore, in many cases, they have resisted the implementation of the dialogue agreements⁴. At the same time, because of the top-down approach, the agreements have had a small possibility to directly impact the ethnic reconciliation in Kosovo, since those agreements can hardly be enforced in their entirety without the support of the people for whom those agreements are dedicated. Thus, the dialogue can be considered more an “Elite pact-making” and exclusive process, rather than an inclusive process that aims to deliver the real problems of the inhabitants of Kosovo.

⁴ Such resistance has been noted in the case of Agreement on Association/community of Serb municipalities and agreement for the revitalization of the bridge in Mitrovica.

Stability first, democracy second. Is the EU to blame?

The dialogue between Kosovo and Serbia is of great importance for the EU itself. It was considered a good opportunity for the newly established European External Action Service, headed by Ashton, to achieve some positive results in its early days. The dialogue has been also a test for the EU mediation and 'its ability to utilize the prospect of accession to address protracted conflicts' (Bieber, 2015:290). Therefore, the EEAS and particularly the High Representatives Ashton and Mogherini have been maximally dedicated to the process.

However, the EU is showing its impotence to deal with such a complicated and fragile process. As Bieber argues, the EU top-down approach 'left considerable room for divergent and conflicting interpretations of key provisions' that resulted in a lack of implementation of the agreements (Bieber, 2015:290). Consequently, up to date, most of the agreements have not been fully implemented or their implementation has not started yet (See: Office of the PM, Reports on Dialogue). Furthermore, the implementation of the agreements is also affected by the EU's "creative ambiguity" approach, which portrayed success where there was little (Bieber, 2015:297). Thus, the ambiguity of the agreements reached between Serbia and Kosovo in the dialogue, complicated their implementation, since both pairs had their own version and interpretation of the agreements.

The EU approach to dialogue also led to a lack of transparency and accountability, which is one of the weakest points of the dialogue (Beha, 2015). The Kosovar public, civil society, and even opposition parties and their MPs, in most cases, have been informed by the media only after the agreements have been signed (KDI, 2016). For instance, the former prime minister, Isa Mustafa, reported only once during its term in the Kosovo

Assembly on the issues concerning the Kosovo -Serbia dialogue (KDI, 2018).

Another serious concern, with regard to the EU role in the process, is that the dialogue and factors that affect it have taken priority over the rule of law-based issues, including the functionality of EULEX. Since the unpredictability of the Kosovar leadership implicates a degree of uncertainty over the stability of the region, EULEX has been instructed, and even pressured from the Brussels, not to disturb the dialogue and those involved (Jackson, 2015). Combating high-profile corruption and organized crime, which would potentially involve Kosovo's political elites, would pose a risk for destabilization and also would eliminate the EU's negotiating partners. Hence, certain elites, which are critical to the dialogue, have received extra impunity from the EU and the international community for the sake of stability (See: Capussela, 2015). Moreover, by pushing Kosovo to be more engaged in dialogue with the EU rather than with its own parliament, the EU is undermining and damaging the strength of the state that it is helping to build (Hoogenboom, 2011). At the same time, by prioritizing the stability over democratization, the EU is undermining its fundamental values and its reputation as a normative actor.

To move on, the EU's inability to have a single voice and a unified policy toward Kosovo is another feature that has affected its role in the Brussels dialogue. The EU's role as a mediator in the dialogue has been mostly defined by the five EU countries that do not recognize Kosovo, thus hindering a full and credible European perspective for Kosovo. The EU 'neutrality' towards Kosovo's independence has limited the EU credibility in the eyes of Kosovar public and its authorities. But, some European diplomats argue that by not recognizing Kosovo's independence, the five EU countries "helped the EU

become the best possible facilitator in the dialogue between Belgrade and Pristina" (Quoted in Palokaj and Tuhina, 2016). One of the highest EU officials involved in the facilitation of the dialogue admits that *"this is also an advantage because it enables us [the EU] to be the best possible facilitator in the dialogue between Kosovo and Serbia, by being neutral. We tell the Kosovars that their independence is a done deal because the vast majority of EU member states recognized them, and we tell the Serbs that five countries still did not recognize Kosovo, and thus we are neutral towards status"* (Palokaj and Tuhina, 2016, p. 12).

Nonetheless, seeing from a positive point of view, the EU has been able to link Serbia's EU accession and the status of Kosovo through some EU members which 'sought a more constructive role for Serbia in relation to Kosovo as a prerequisite to accepting Serbia's EU membership application' (Bieber, 2015, p. 298). Individually, Germany and the UK conditioned Serbia's progress toward the EU with the progress in Belgrade's dialogue with Kosovo, thus signaling that the normalization of the relations with Kosovo is a must for Serbia in order to consider its application for EU membership (Gazeta Zëri, 2016). This ended the Serbian government's ambition to decouple its EU accession process from its policy towards Kosovo.

Thus, as we can note, the EU's involvement in the process has been crucial as it meant that the dialogue between two countries and their willingness to compromise have been embedded in EU accession. For Kosovo, the SAA has been the incentive offered by the EU while for Serbia the rewards have been 'status of candidate' and the opening of accession negotiations.

Looking for normalization: The Brussels agreement and the normalization of the relations

During 2011 and 2012, Kosovo and Serbia reached several technical agreements which would presumably improve the life of Kosovo citizens, in particular, help the integration of Kosovo-Serbs into the Kosovo institutional and social life. Nevertheless, as we noted above, despite being considered as technical, the implementation of these agreements needed a degree of political will from both sides. Hence, in order to ensure the necessary political will to implement the agreements, parallel to the technical dialogue started a political dialogue, as a process of for the normalization of relations. In the political dialogue, both countries were represented by their prime minister, and the importance given to the political level overshadowed the technical dialogue.

Around sixth months after the political dialogue between Kosovo and Serbia started, the first agreement of principles governing the normalization of relations (which is known also as the April or Brussels agreement) was achieved, by 19 April 2013, under the EU mediation (The first agreement of principles, 2013). The April agreement has been considered as a starting point for a long process of reconciliation and normalization of the relations between Kosovo and Serbia, which eventually will be concluded with a legally binding agreement between two countries (Beha, 2015). At the same time, the agreement has been considered a milestone in the Kosovo-Serbia relations and a remarkable development for both countries in their respective paths towards European Integration (Bieber, 2015).

The April Agreement is of particular importance for the process of normalization of relations between Kosovo and Serbia since it is the first international agreement to be reached

between Serbia and Kosovo, after the latter declared its independence in 2008. Up to April 2013, all the agreements that were reached in relation to Kosovo - Serbia conflict were done between the international community and one of the parties, but not between Serbia and Kosovo (Mehmeti, 2013). Therefore, the April Agreement is a signal that Serbia has moved from its previous position and can deal with Kosovo on equal terms. From the Kosovo side, the April Agreement has been considered as a "historic agreement" which represents the "factual recognition" of Kosovo (Beha, 2015).

A particular feature of the April Agreement has been the so-called 'creative ambiguity' which avoided a clear and direct address of the status of Kosovo (Bieber, 2015). The parties are considered as 'sides' without further details and there is not any indication concerning Kosovo's statehood. In fact, it was only due to this creative ambiguity that the agreement was possible to be reached. Otherwise, any direct or indirect involvement of Kosovo's status would have hampered the deal. However, looking from a different point of view, the Brussels agreement touches some sensitive issues of the internal organization of Kosovo, including the Justice, Police, and provides the creation of Association/Community of Serb Municipalities, which poses a direct threat to the unitary system of the Republic of Kosovo (The first agreement of principles, 2013). In its first six articles, the agreement underlines general principles for the creation of the Community of Serb municipalities. According to this arrangement, a Community of Serb Municipalities shall be created in Kosovo, which will have "full overview of the areas of economic development, education, health, urban and rural planning" (Ibid. Article 4). Furthermore, according to the second article of the agreement, "the Community/Association will be created by

statute [and] its dissolution shall only take place by a decision of the participating municipalities" (Ibid. Article 2).

The idea of an autonomous Serb region in northern Kosovo goes beyond the Ahtisaari plan. It challenges the principle of multi-ethnic Kosovo that has been promoted by the international community and which is at the core of the Kosovo Constitution (Constitution of the Republic of Kosovo, 2008). This argument has been supported also by the Constitutional Court of Kosovo. On 23 December 2015, after the then President of Kosovo, Atifete Jahjaga, brought a referral concerning the compatibility of the ASM and its general principles/main elements with the spirit of the Constitution to the Constitutional Court of the Republic of Kosovo, the latter decided 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' (Constitutional Court, 2015). Ever since the status of Association/Community has been 'frozen'.

It has been argued that the formation of the Community/Association of Serb Municipalities means a *de facto* Kosovo Serb government with conflicting legal guarantees by Kosovo Constitution and the applicable law (KIPRED, 2013). Jackson argues that ASM represents a 'unified Serb political entity, removed from the central system, with the power to make legally binding decisions'(Jackson, 2015:43). The association/community (ASM) would have greater power in the judiciary and the police. The ASM would have a regional police commander, whose ethnicity must be Serb, and who will be proposed by the ASM and approved by both Pristina and

Belgrade (Ibid. p. 56). This is an unprecedented case when an independent country concedes power in its own rule of law matters to a foreign government.

Additionally, the Association/Community creates the third level of power in Kosovo, something between the central and local power. The April agreement provides the ASM with full competencies in education (actually it is the competence of the Ministry of Education), economic development (it is the competence of municipalities), health (it is the competence of the Ministry of Health), and urban and rural planning (it is the competence of Ministry of Environment and Spatial Planning) (Beha, 2015). The Law on Local Self-Government states that "Such associations may offer to its members a number of services, including training, capacity building, technical assistance as well as research on municipal competencies and policy recommendation in accordance with law" (Beha 2015, p. 115). But, such associations, for instance, the Association of Municipalities in Kosovo, do not have any executive power and are qualified as NGOs. Therefore, as Beha rightly points out, 'the 19 April Agreement reinforces a third level of "stronger" power in Kosovo, because the Association of Serb Municipalities, as the third level of governance in Kosovo, would have extensive powers, which the Association of Municipalities in Kosovo does not possess' (Ibid. p. 118).

The ASM is also in contradiction with the European Charter of Local Self-Government to whom the agreement refers. Instead of bringing the institutional services closer to the citizens, what the basic principle of the charter, subsidiarity, requires, the formation of ASM means exactly the opposite: centralizing the institutional services and decision-making (ECLSG, 1985).

Besides these arguments, there is also the danger of this entity being captured and controlled by Serb radicals. This fear

is related to another 'creature' of the April agreement, Lista Srbska. Aiming to motivate the integration and participation of the Kosovo Serbs in Kosovo elections and institutions, Lista Srpska was established, based on the agreement between the then Prime Ministers, Thaci, and Dacic. However, while the formation of Srbska Lista was meant to help Kosovo Serbs to integrate into Kosovo institutions and be better represented, in fact, the formation of Srbska Lista proved the opposite.

In the 2013 local elections, *Lista Srbska* based in, and controlled by Belgrade, won all but one Serb majority municipality in Kosovo. Thus, beyond the North, Lista Srbska enabled the Serbian government to extend its control in the Southern Serb majority municipalities, too. Moreover, by labeling Kosovo Serb politicians as loyal partners of Kosovo government, Lista Srbska, helped by local media, initiated a campaign against them, thus eliminating them from the political scene (Gazeta Express, 2017). In this way, instead of supporting Kosovo Serb politicians, who have continuously been engaged in advancing the interest of Kosovo Serbs through the integration and participation in the Kosovo institutional and social life, the Brussels dialogue penalized them and established a new elite of Serb politicians in Kosovo, hard-core nationalists and controlled by Belgrade.

Another important feature of the April agreement is judiciary. The agreement provides that as part of the integration of the parallel judicial authorities within the Kosovo legal framework, a department of the Appellate court in Pristina, composed of a majority of Kosovo Serbs judges, will be established in the Mitrovica North (Agreement on Justice, 2015). This department/panel will deal with all Kosovo Serb majority municipalities. By establishing a special department/panel of the Appellate court, composed of Serbs and Albanians only, the agreement conflicts with the Kosovo

constitutional principle of non-discrimination based on ethnicity (Constitution of the Republic of Kosovo, 2008). Furthermore, the functioning of a department/panel of Appellate Court, who will have jurisdiction only over the Kosovo Serbs, encroachments on Kosovo's unitary legal system. The agreement also was meant to dismantle the Serbian parallel institution in northern Kosovo. In fact, it only legitimized those structures by integrating them into the Kosovo legal framework (Mehmeti, 2013). Before this agreement, Belgrade had a strong influence in the North of Kosovo that was criticized and opposed by both Kosovo and the international community. Through the April agreement, Serbia not only legitimized its influence in the North of Kosovo but also extended its influence in the South (Beha, 2015).

Finally, the April agreement is only 'a drop in the ocean' since the normalization of relations between Kosovo and Serbia is still far away with the latter continuing to block Kosovo in the international arena. The dialogue in general and the April agreement, in particular, have failed to address the most important issues between two countries, including transitional justice, particularly the fate of missing people. Even worse, these and other dealing with the past issues between Kosovo and Serbia are not expected to be addressed during the next phase of the dialogue, which eventually will conclude this process.

Stabilization and Association Agreement (SAA)

For both countries, the EU facilitated dialogue came ahead of the beginning of their EU integration processes. Thus, strong incentives of both Kosovo and Serbia to show their willingness to move toward the EU has been a key factor that enabled some concessions concerning the Kosovo-Serbia relations. As the

main reward, Serbia was offered the opening of the accession talks while Kosovo was offered a Stabilization and Association Agreement, which has been considered of a particular importance for Kosovo since it is the first contractual agreement between Kosovo and the EU.

The Stabilization and Association Agreement (SAA) negotiations with Kosovo started in October 2013, as a reward for the 'April agreement' with Serbia earlier that year. The SAA was initiated in July 2014 while it was signed one year later, roughly two years after the start of the negotiations. It has been Kosovo's main benefit from the dialogue so far.

The SAA is the first formal step towards the EU integration, thus, besides the rhetoric that Kosovo has a European future, the signing of the SAA was the first practical step in this regard. It is also of a particular importance for the EU-Kosovo relations since, as we noted above, it is the first contractual agreement between the parties. The SAA provides a great opportunity for Kosovo to access the EU market. At the same time, its implementation will produce significant results for Kosovo in other realms too. The EU Stabilization and Association Agreement will benefit Kosovo's economy, rule of law, education, industry, environment, energy system, and many other realms. Moreover, besides these positive effects, its positive impact on trade with the EU and helping in the harmonization of the Kosovo legislation with the *acquis communautaire*, the SAA is a very important instrument in the fight against trafficking, money laundering, and terrorism (Palokaj and Tuhina, 2016, p. 9). Therefore, the full implementation of the SAA will change the country for the better. As Palokaj and Tuhina (2016) rightly argue, the SAA undoubtedly has historical significance without any exaggeration, since it finally closes the long and difficult process of establishing a contractual relationship between the

latter and the Union. Meanwhile, by concluding the SAA with Kosovo, the EU closes a very long process that started at the end of 2000.

Another important feature to be mentioned is that despite the EU's neutrality towards Kosovo, the EU was able to sign the SAA agreement with Kosovo⁵. Thus, the case of the SAA proved that if Kosovo complies with the EU requirements, the Union –despite lacking a unified policy towards Kosovo- is able to find a practical solution for Kosovo in order to advance its EU integration process.

Nevertheless, besides these positive effects, there are some concerns with regard to Kosovo's SAA, which is different from those of the other countries in the region. Palokaj and Tuhina (2016) argue that the fact that this agreement is distinct from similar EU agreements with other countries in legal terms constitutes a matter of concern for Kosovo's full integration into the EU. For instance, the EU does not take over the obligation to advance the rapprochement with Kosovo, as is the case with other countries (Ibid.). In Serbia's or Albania's SAA, the chapter on political dialogue highlights the full integration into the community of democratic nations and a gradual rapprochement towards the EU, as some of the objectives of the dialogue (Ibid. pp 15-16). In the case of Kosovo, there is not a clear reference that SAA leads to Kosovo's full integration into the EU, as it was stipulated in other cases (Palokaj and Tuhina, 2016, p. 16). These discrepancies, which exist due to status-related legal obstacles, will make it impossible for Kosovo to

⁵ The SAA with Kosovo was only possible thanks to the Lisbon treaty, which conferred legal personality to the EU meaning that the Commission can sign international agreements on its own, thus avoiding ratification by member states. Was the agreement to be ratified by the EU member states, it would have been 'mission impossible' because of the five EU members who do not recognize Kosovo's statehood

take the following formal step that each country took after signing the stabilization and association agreement: submitting a request for the EU membership.

Moreover, the clause “should circumstances so permit” follows when the agreement mentions some crucial objectives. For instance, the article 11 on political dialogue states that political dialogue ‘is intended to promote in particular Kosovo’s participation in the international democratic community’, followed by the sentence ‘should objective circumstances so permit’ (SAA, 2015). This makes Kosovo’s EU integration perspective rather ambiguous and vague. At the same time, instead of European integration, in the case of Kosovo, the term used is ‘European perspective’ which is a broader and vague term (Palokaj and Tuhina, 2016). Besides this, since the possibility of membership is reserved only for states, and the EU does not formally recognize Kosovo as a state, even the full implementation of the SAA will not guarantee a clear European Integration perspective. This ambiguous approach has also been used in the latest enlargement strategy by the European Commission (EC, 2018). However, it is important to underline that the SAA is not the warranty to be integrated into the EU. Obviously, it is a good benefit and opportunity to fulfill the conditions and standards required to become a full EU member. Nonetheless, the SAA is a necessary but not a sufficient condition for EU accession, in particular, in case of Kosovo and Serbia, where the unresolved territorial disputes and tense relations constitutes a major obstacle for both countries in their paths toward the European integration. The full normalization of relations between Kosovo and Serbia has been reemphasized in the 2018 enlargement strategy as a key precondition for both countries in order to advance in their respective EU integration paths (EC, 2018).

The outcomes of the dialogue

When the dialogue between Pristina and Belgrade began in March 2011 there was not a defined objective of the process. The whole process started as an effort to reduce tensions and eventually produce a settlement of some key issues that were real obstacles for Kosovo (Bieber, 2015). At the same time, the newly established diplomatic office in Brussels, External Action Service, was eager for a success in its early days and the dialogue between Pristina and Belgrade provided such an opportunity (Bieber, 2015). However, the results of the dialogue are rather complicated. Indeed, the situation on the ground, particularly in the North of Kosovo, has started to improve albeit very slowly. Nonetheless, most of the agreements between the parties, including the 19 April agreement are still far from being implemented.

The implementation of the agreements from the dialogue has turned out to be a major problem. Out of 23 agreements reached so far, only four of them have been fully implemented, while the vast majority of the others have stagnated in the first stage of implementation or their implementation has not started at all. Thus, the implementation of most agreements is either ambiguous or delayed. Serbia's parallel structures are still active while the Serbs of Kosovo are not yet 'sufficiently integrated into Kosovo's system' (EP, 2017, p. 2). Similar problems have been noticed with the implementation of the 2015 energy deal, which has been delayed, and the agreement on telecommunication which has only recently started to implement (Ibid.). Meanwhile, some positive results have been

noted in other topics discussed in Brussels, such as the IBM agreement⁶.

The difficulties in the implementation of the agreements reached during the Brussels dialogue are a result of numerous factors. First, the lack of implementation is a result of the exclusion of the local Serbs who are feeling abandoned by the Serbian government and also excluded from the government of Kosovo (Beha, 2015). They have refused to be part of the implementation process of the agreements reached in Brussels since influenced by the Serbian nationalist media and public discourse, they believe that these agreements lead to the recognition of Kosovo's statehood by Serbia and Kosovo Serbs. Thus, where possible, they have hampered the implementation of the agreements and often accused Serbia of 'selling Kosovo and Kosovo Serbs' (OBCT, 2010).

Second, the other factor that has negatively affected the implementation of the dialogue agreements is the so-called 'creative ambiguity'. By using this approach, the EU left to both parties' discretion to interpret the agreements in the way they want. This dual interpretation of the same agreements has been used by the EU in order to reach practical results, thus avoiding issues that would be an obstacle, such as the question of Kosovo's status. This approach has been very fruitful in achieving agreements in different areas, but it has been proven to be a serious problem when it comes to the implementation stage. However, some argue that less ambiguous agreements would have been impossible to be reached (Van Der Borgh, Le Roy, & Zweerink, 2016).

Except for these problems with the implementation, the dialogue also has failed so far to solve the issue of Kosovo's

⁶ The IBM abbreviation has two meanings: Integrated border management, for Kosovo, and Integrated boundary management for, Serbia. This dual interpretation is due to the so-called 'creative ambiguity' approach by the EU.

representation and consolidation in the international arena. Kosovo's applications in international organizations such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) have been hindered by Serbia's campaign against Kosovo's membership. Serbia's campaign and lobbying against Kosovo have also been major obstacles for Kosovo's potential UN membership. While part of the 19 April agreement has been a commitment by both countries to not block their counterpart's path towards EU integration, no effort has been made by the EU to push Serbia to do the same when it comes to Kosovo's UN membership. On the other hand, Kosovo has been powerless to pressure the EU to achieve any agreement or commitment by Serbia that would have paved the way for Kosovo's UN membership. However, it is surprising how Kosovo has not been more persistent in its demand to achieve a practical solution that would enable the country to become a UN member since the UN membership is of vital importance for the consolidation of the statehood internationally (Mehmeti, 2013).

On the other hand, the Brussels dialogue has produced results which have been a real challenge for the unitary system of the Republic of Kosovo. The agreement on Justice and the arrangement for the creation of the ASM, are the best examples. Moreover, the Brussels dialogue, instead of integrating Kosovo Serbs into the Kosovo institutional and social life, it has contributed to a bigger segregation based on ethnic lines, between Kosovo Albanians and Kosovo Serbs.

Conclusion

The Brussels dialogue has neither contributed to the strengthening of Kosovo's statehood internally nor has it contributed in consolidating it internationally. The Republic of

Kosovo is still struggling to control and exercise its sovereignty in some part of the country while in the international arena, it has been blocked by Serbia in all its attempts to join international organizations.

At the same time, the dialogue has been characterized by a lack of transparency and accountability, which has weakened its credibility and delegitimized it. The dialogue has been rather a closed process and Kosovo governments have avoided discussions and debates on this topic. Moreover, being considered as an “elite pact-making” process, the dialogue has lacked credibility and support from the citizens in Kosovo. Therefore, most of the agreements that have been reached in the Brussels have not been implemented. The lack of implementation is also a result of ambiguity, lack of transparency and in some cases because the agreements are in conflict with the constitutional order. In this context, the April agreement, which has been considered as a milestone in the Kosovo-Serbia relations, has been rather contradictory. The principles highlighted in this agreement and the arrangements that derived from the April agreement have threatened Kosovo’s internal organization and constitutional order. The agreement on establishing the Association/Community of Serb Municipalities has been proved unconstitutional, while the agreement on the Judiciary has threatened Kosovo’s unitary legal system. Additionally, the dialogue between Pristina and Belgrade is giving Serbia strong formal and informal roles in Kosovo, leading to a *de facto* degree of shared sovereignty in parts of Kosovo.

Meanwhile, the EU role in the process has been rather contradictory. While it has been actively engaged in the process, by prioritizing stability over rule of law and democratization, it has undermined the democratization and the rule of law in Kosovo. Furthermore, the lack of a unified

policy towards Kosovo (because of the five EU members who do not recognize Kosovo), has prevented the EU from demanding the recognition of Kosovo independence by Serbia.

References

Beha, A.(2015). *Disputes over the 15-point agreement on normalization of relations between Kosovo and Serbia*. Nationalities Papers 43(1), pg. 102-12

Bieber, F. (2017). *What is a stabilitocracy?*, Centre for Southeast European Studies, retrieved from:

<http://www.suedosteuropa.uni-graz.at/biepag/node/245>

Bieber, F. (2015). *The Serbia-Kosovo Agreements: An EU Success Story?* Review of Central and East European law, pg. 285-319

Capussela, A.(2015). *State-building in Kosovo. Democracy, Corruption and the EU in the Balkans*. New hardback edition published by I.B. Tauris & Co Ltd, London Constitutional Court of Kosovo. Judgment In Case No. K0130/15, Pristina, 23 December 2015 Ref. No.:AGJ877/15, accessible at http://www.gjk-ks.org/repository/docs/gjk_ko_130_15_ang.pdf

Comprehensive Status Proposal, accessible at:

http://www.esiweb.org/pdf/kosovo_Ahtisaari%20Proposal%20.pdf

Constitution of the Republic of Kosovo(2008). Accessible at:

<http://www.kryeministri-ks.net/repository/docs/Kushtetuta.e.Republikes.se.Kosoves.pdf>

European Commission (2018). *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*. Strasbourg, accessible at:

https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

European Commission, (2005). *A future for Kosovo*. COM 156, accessible at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52005DC0156>

European Parliament (2017). *Serbia and Kosovo: Normalisation of relations*. Retrieved from

http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/579079/EPRS_ATA%282016%29579079_EN.pdf

European Charter of Local Self-Government, Strasbourg, 25 October 1985, accessible at: <https://rm.coe.int/168007a088>

First Agreement of Principles Governing the Normalisation of Relations, accessible at:

<http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>

Group for Legal and Political Studies (2012). *From Technical Arrangements to Political Haggling: —The Kosovo-Serbia Dialogue and the North of Kosovo*. A Policy Report, NO. 02

Group for Legal and Political Studies (2013). *Kosovo–Serbia Dialogue: Windows of Opportunity or a House of Cards?* Policy Analysis, Number 03

Jackson, C. M. (2015). *The EU and civilian crisis management: A case study of EULEX Kosovo and building multi-ethnic rule of law* (Unpublished Manuscript. Masters Thesis). University of Illinois at Urbana Champaign

Kosovar Institute for Policy Research and Development (2013). *Zbatimi i marrëveshjes së dialogut politik Kosove-Serbi*, Policy Analysis

Kosova Democratic Institute (2016). *Transparenca e dialogut Kosovë-Serbi: këndëvështrimi i qytetarëve*, accessible at: <http://votaim.org/Public/Article/DownloadFile/1004>

Kosova Democratic Institute (2018). *Dialogu Kosovë - Serbi në legjislaturën e pestë 2014-2017*. Accessible at <http://votaim.org/Public/Article?Dialog=true&Dialog=false&SelectedTab=Publications&SelectedMonthID=&SelectedYear=#publications>

Ligji nr. 05/1 -021 për mbrojtjen nga diskriminimi. Gazeta zyrtare e Republikës së Kosovës. 26.06.2015, accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10924>

Mehmeti, L. (2013). *Kosovo - Serbia: normalisation of relations or just diplomatic theatre? An analysis of the April 2013 EU brokered agreement between Kosovo and Serbia*. University of South Australia, Adelaide, Australia

Palokaj, A. and Tuhina, GJ. (2016). *The Upshot of the SAA: Kosovo-EU Relations*. Kosovo Foundation for Open Society

Treaty of Lisbon, 2007/C 306/01. Accessible at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>

The UN resolution 64/298, September 2010, accessible at: https://unmik.unmissions.org/sites/default/files/old_dnn/GA64298.pdf

The agreement on justice. Accessible at: http://www.kryeministriks.net/repository/docs/Marrevshja_per_Drejtesi_-_09022015.pdf

Van der Borgh, CH., Le Roy, P. and Zweerink, F. (2016). *EU peacebuilding capabilities in Kosovo after 2008: an analysis of EULEX and the EU-facilitated Belgrade-Pristina Dialogue*. Centre for Conflict Studies, Utrecht University

Other sources

GazetaExpress, "Serbs campaign against their politicians Slobodan Petrovic and Aleksandar Jablanovic, 11 April 2017. Accessible at: <http://www.gazetaexpress.com/en/news/serbs-campaign->