



AN AGREEMENT ON COMPREHENSIVE NORMALISATION OF RELATIONS BETWEEN SERBIA AND KOSOVO

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AN AGREEMENT ON NORMALIZATION OF RELATIONS AND EUROPEAN INTEGRATION

In recent years, officials of the European Union and member states have more frequently been heard saying that it is necessary for Serbia and Kosovo to work towards reaching an agreement on comprehensive normalization of relations. The public was often bidding on the date by which the two parties should reach such an agreement: there were talks of the end of Federica Mogherini's term as High Representative of the European Union for Foreign Affairs and Security Policy in 2019¹, as well as the last year of the (first) mandate of the American president Donald Trump.² At the time of writing, there is active speculation that Belgrade and Pristina would have to reach such an agreement by the end of 2022 or by the middle of 2023.³

On the other hand, research shows that the citizens of Serbia do not know what the ultimate goal of the dialogue that has been going on between Belgrade and Pristina since 2011 is. As many as 50% of respondents explicitly answered that they do not know the government's goal in the process of dialogue with Pristina, while the second most common answer is that it is the process of keeping Kosovo as part of Serbia.⁴ An opinion, therefore, which corresponds to the messages that can be heard from representatives of the authorities in Serbia, but which in any case does not correspond to the reality of what is the essence of the process of normalization of relations, as well as the agreement on comprehensive normalization that is more and more frequently being talked about.

¹ Mogerini želi sporazum do kraja mandata, Danas, June 2018, available at <https://www.danas.rs/vesti/politika/mogerini-zeli-sporazum-do-kraja-mandata/>

² NEPRISTOJNA ŠOK PONUDA IZ VAŠINGTONA: Trump nudi Srbiji - priznajte Kosovo, zauzvrat dobijate eskadrilu F-16, deset MILIJARDI DOLARA i članstvo u EU!, Kurir, September 2019, available at <https://www.kurir.rs/vesti/politika/3316389/nepriostojna-sok-ponuda-iz-vasingtona-tramp-nudi-srbiji-priznajte-kosovo-zauzvrat-dobijate-eskadrilu-f-16-deset-milijardi-dolara-i-clanstvo-i-eu>

³ Albanci tvrde: Novi sporazum Beograda i Prištine 2023, priznanje za 10 godina, Nova.rs, September 2022, available at <https://nova.rs/vesti/politika/albanci-tvrde-novi-sporazum-beograda-i-pristine-2023-priznanje-za-10-godina/>

⁴ Kosovo – šta građani znaju, misle i osećaju?, Beogradski centar za bezbednosnu politiku, November 2020, available at <https://bezbednost.org/wp-content/uploads/2020/11/kos-srb-SRB-f.pdf>

Ever since the beginning of the process of Serbia's accession to the European Union, it has often been heard that the European Union is asking Serbia to recognize Kosovo in order to become a member state. Indeed, such messages often came from various officials of the EU member states, and even from representatives of the authorities in Serbia. Even more often, the opinion could be heard that the European Union, having learned the lesson of Cyprus, will no longer import open disputes, but insist that Serbia and Kosovo resolve their status dispute before becoming members.

However, this picture is not so clear if we know that 5 of the 27 member states of the European Union do not recognize Kosovo as an independent state. This means that the European Union cannot recognize Kosovo as an independent state, and even less can it demand that from Serbia in the accession process. The official position of the European Union is that Serbia and Kosovo should reach a "legally binding agreement on the comprehensive normalization of relations".

What needs to be clarified, therefore, is whether "comprehensive normalization of relations" is just a euphemism for the recognition of Kosovo by Serbia, wrapped in a wafer that would be formally acceptable to the European Union. Furthermore, if there is a difference, no matter how small, between the comprehensive normalization of relations and the recognition of Kosovo's independence, it is necessary, based on the analysis of the basic goals of this agreement, to examine what options Serbia has if it wants to bring this process to an end and become a member of the European Union.

Finally, the normalization of relations is not only a way of buying a ticket to the European Union, but also a process aimed at improving the lives of people affected by the status dispute between Belgrade and Pristina. A comprehensive agreement should therefore offer quality, sustainable solutions in various areas of importance to citizens. The analysis of "comprehensiveness" of the agreement is therefore no less important than its international legal consequences.

THE PROCESS OF NORMALIZATION OF RELATIONS

The basis for the dialogue between Belgrade and Pristina is the United Nations General Assembly Resolution 64/298, adopted on 9 September 2010. Jointly initiated by Serbia and the European Union, this resolution was adopted after the publication of the advisory opinion of the International Court of Justice on the legality of the declaration of independence of Kosovo on 22 July 2010, and aimed at laying the foundations for dialogue between Belgrade and the Pristina authorities after the publication of this decision. The resolution takes note of the advisory opinion, but also calls on the European Union to mediate in the dialogue between the two parties. According to the text of the resolution, this dialogue would be a factor of peace and stability in the region and would aim to **“promote cooperation, achieve progress on the path to the European Union and improve the lives of the people.”**⁵

Goals of Belgrade and Pristina according to the UN General Assembly Resolution (2010):

- Promotion of cooperation
- Progress on the path to the EU
- Improving the lives of people

The status-neutral dialogue between Belgrade and Pristina, mediated by the European Union, then began in March 2011, first in the form of a technical dialogue, where the main negotiators were lower ranked officials of the two governments, and then, from October 2012, a political dialogue, in which the two prime ministers were the main negotiators. In addition to the fact that the “political” dialogue meant meetings at the highest political level, it also meant talking about more fundamental issues than was the case in the first phase of the dialogue. However, according to the words of

⁵ United Nations General Assembly Resolution 64/298, September 2010, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/479/71/PDF/N0947971.pdf?OpenElement>

one of the architects of the dialogue process, British diplomat Robert Cooper, the division into technical and political dialogue was “nonsense”, since it is only a way to say that certain issues are more explosive in the local public. Cooper believes that the philosophy of the dialogue was to deliberately avoid the issue of the status of Kosovo in order to provide space for discussion, as well as “not to change reality, but to bring it under the rule of law”.⁶

The dialogue between Belgrade and Pristina culminated with the signing of the First Agreement of Principles Governing the Normalization of Relations, better known as the Brussels Agreement, on 19 April 2013. This 15-point agreement provided for the abolition of the so-called “parallel” institutions of Serbia in Kosovo - judiciary, police and civil protection, as well as the creation of the Community of Serb Municipalities⁷ in Kosovo, which would represent territorial autonomy for Kosovo Serbs. Point 14 of the Brussels Agreement stipulates that “no party will block, or encourage others to block, the progress of the other party on its path to the EU”.⁸

THE NEGOTIATING FRAMEWORK AND CHAPTER 35 IN THE SERBIAN NEGOTIATIONS ABOUT EU MEMBERSHIP

It is precisely thanks to the signing of the Brussels Agreement that Serbia gets a date for the start of negotiations on EU membership. The negotiating framework, adopted by the EU Council in December 2013, creates a formal link between the European integration of Serbia and the dialogue between Belgrade and Pristina, putting the normalization of relations in the negotiation process itself.

According to the negotiating framework, the issue of “normalization of relations between Serbia and Kosovo” was included in Chapter 35 (Other

⁶ Robert Cooper, “The Philosophy of the Belgrade-Pristina Dialogue“, July 2015, available at <https://europeanwesternbalkans.com/2015/07/16/sir-robert-cooper-the-philosophy-of-the-belgrade-pristina-dialogue/>

⁷ The precise term is Association/Community of Serb majority municipalities in Kosovo

⁸ Prvi sporazum o principima koji regulišu normalizaciju odnosa, April 2013, available at <https://www.srbija.gov.rs/cinjenice/283757>

issues), which will be relevant during the entire negotiation process. The negotiating framework describes the goal of improving relations with Kosovo in more detail, defining it as “a process (that) will **ensure that both sides can continue on their European path**, avoiding blocking each other in these efforts and that it should gradually, until the end of the accession negotiations with Serbia, **lead to a comprehensive normalization of relations between Serbia and Kosovo in the form of a legally binding agreement** with the intention that both parties will be able to fully exercise their rights and fulfill their obligations.”⁹

Improving relations with Kosovo according to the Negotiating Framework (2013)

- It should ensure that both sides can continue their European path
- It should result in a legally binding agreement on comprehensive normalization by the end of Serbia’s EU membership negotiations
- Both parties should be able to fully exercise their rights and fulfill their obligations

Serbia was one of the first countries to open chapter 35 in December 2015. The Common Position of the European Union for this chapter presented then defined Serbia’s obligations more clearly when it comes to the normalization of relations with Kosovo, relying on the negotiating framework as the basic document. It stated that the accession negotiations and the normalization of relations with Kosovo are two parallel processes, and that chapter 35 is the link between them. Specifically, chapter 35 was a mechanism for monitoring progress in the dialogue between Belgrade

⁹ General EU position: Ministerial meeting opening the intergovernmental conference on the accession of Serbia to the European Union, January 2014, available at <https://data.consilium.europa.eu/doc/document/AD%201%202014%20INIT/EN/pdf>, translation available at https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracki_okvir.pdf

and Pristina, and the interim benchmarks were mainly the implementation of various agreements from the previous phases of the dialogue.¹⁰

When it comes to the agreement on comprehensive normalization, the Common Position of the European Union on Chapter 35 states that Serbia should “engage in reaching further agreements, furthering the normalization in good faith, with a view to **gradually lead to the comprehensive normalization of relations between Serbia and Kosovo, in line with the negotiating framework.**” The third interim benchmark for this chapter, “Further agreements and progress in the normalization of relations,” contains almost identical wording.¹¹

In Chapter 35, therefore, Serbia accepts the obligation to implement the existing agreements with Kosovo by the end of its EU accession process, as well as work on reaching new agreements that will result in an agreement on the Comprehensive Normalization of Relations. The chapter itself, however, says nothing about what that agreement should look like, or what its goal is. The negotiating framework referred to clearly speaks of the need to ensure a smooth path for both sides to the European Union but says nothing about how this could be achieved.

AGREEMENT ON COMPREHENSIVE NORMALIZATION COMING ON THE AGENDA

Although based on the negotiating framework and the common position of the European Union for chapter 35, it is expected that the legally binding agreement between Belgrade and Pristina will be on the agenda at the end of Serbia’s negotiations on membership in the European Union, i.e. only after all previous agreements in the dialogue have been implemented, the development of the situation brought a different dynamic.

¹⁰ European Union Common Position, Chapter 35: Other issues, Item 1: Normalization of relations between Serbia and Kosovo, November 2015, available at <https://data.consilium.europa.eu/doc/document/AD-12-2015-INIT/en/pdf>, translation available at https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/pg35_zajednicka_pozicija_eu.pdf

¹¹ Ibid.

Namely, almost 9 years after the opening of negotiations and 7 years after the opening of the first chapters, Serbia has only opened a little more than half of the chapters and closed only two, being far from membership in the European Union. On the other hand, the dialogue itself has not progressed much. Problems with the implementation of existing agreements, especially in connection with the establishment of the Community of Serbian Municipalities, agreed upon by the Brussels Agreement in 2013 and later by a special agreement in 2015, brought the dialogue to a dead end. The loss of a clear European perspective of both Serbia and Kosovo and the stagnation in the dialogue went hand in hand, as was previously the case with progress in both processes in the period from 2011 to 2015.

The so-called European Union Strategy for the Western Balkans, adopted by the European Commission on 6 February 2018, states in several places that “a comprehensive, legally binding agreement is urgent and crucial so that Serbia and Kosovo can progress on their European paths.”¹² This once again states that progress towards the European Union is the key goal of normalizing relations, in addition to long-term stability. What is new, however, is the message that the agreement needs to be reached urgently, that is, as soon as possible, regardless of the current state of negotiations and the process of European integration.

A little earlier, the so-called “internal dialogue” about Kosovo began in Serbia, which represented a good opportunity to start a public debate about expectations from the agreement on comprehensive normalization, which was rarely mentioned in previous years. This process, however, did not result in the definition of a platform for negotiating an agreement, but fell into oblivion over time without clear conclusions.¹³ In 2018, all attention was focused on the “demarcation” plans of President Vučić and President

¹² A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, February 2018, available at https://ec.europa.eu/info/sites/default/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

¹³ Da li je unutrašnji dijalog o Kosovu bio neuspešan?, October 2018, available at <https://europeanwesternbalkans.rs/da-li-je-unutrasnji-dijalog-o-kosovu-bio-neuspesan/>

Thaçi, which were stopped by the introduction of 100% customs duties on goods from Serbia by the Kosovo government, which put the dialogue itself on hold for several years.

When the dialogue between Belgrade and Pristina with the mediation of the EU was finally renewed in the summer of 2020, the European Union had a new instrument at its disposal: the special representative for the dialogue between Belgrade and Pristina and other regional issues in the Western Balkans, Miroslav Lajčák, who was appointed to this position in April 2020. The main goal of his mandate was to “first and foremost achieve the comprehensive normalization of relations between Serbia and Kosovo, which is the key to their European paths.” As the essence of his mandate, it was also described that in cooperation with EU member states “he is working on the comprehensive normalization of relations Serbia and Kosovo through the conclusion of a legally binding agreement that refers to all open issues between the parties.”¹⁴

Description of the comprehensive normalization in the mandate of the EU Special Representative Miroslav Lajčák:

- The most important goal is the comprehensive normalization of relations between Serbia and Kosovo
- Comprehensive normalization is the key to the European paths of Serbia and Kosovo
- It is achieved through a legally binding agreement on comprehensive normalization that applies to all open issues

Since the dialogue resumed, however, it seems that there has not been any progress towards a legally binding agreement, but the talks have mostly been about resolving the current crises and avoiding their escalation. Russia’s invasion of Ukraine on 24 February 2022 encouraged the

¹⁴ Council decision appointing the European Union Special Representative for the Belgrade-Pristina Dialogue and other Western Balkan regional issues, April 2020, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020D0489&from=EN>

representatives of the European Union and member states to insist more strongly on the resolution of the Kosovo dispute. The French - German proposal, certain versions of which have appeared in public, is the latest initiative in that direction.¹⁵ Whatever its fate, it is evident that the comprehensive normalization agreement must be discussed, which is why it is useful to make some contribution to the debate about its content.

HOW TO HAVE EUROPEAN PERSPECTIVE FOR SERBIA AND KOSOVO THROUGH AN AGREEMENT

Based on all the relevant European Union documents regarding the normalization of relations between Serbia and Kosovo, it can be concluded that the main goal of this process is to enable both Serbia and Kosovo to progress on the European path. Although the Serbian public is reluctant to talk about it, it is completely clear that the European Union expects Serbia to sign such an agreement that would enable Kosovo to progress towards membership in the European Union.

All potential agreements that would not meet that condition would not be seen as adequate comprehensive normalization in the eyes of the European Union and could be discussed only outside the context of Serbia's European integration. Here, we will not deal with what Serbia should do, that is, whether it should fulfill what the European Union expects of it, but we will analyze a potential agreement on comprehensive normalization within the framework of European integration.

The most important question is what such an agreement could and must contain in order to fulfill its essential goal of facilitating the European path to Serbia and Kosovo. As far as Serbia is concerned, things are simpler. It is already on its way to membership of the European Union, and the comprehensive normalization of relations will remove this obstacle from

¹⁵ Šta se zna o francusko-nemačkom predlogu za Kosovo i Srbiju?, October 2020, available at <https://www.slobodnaevropa.org/a/srbija-kosovo-francusko-nemacki-predlog-dijalog/32093192.html>

its European path. Serbia has no formal obstacles to membership, only political obligations in Chapter 35.

As far as Kosovo is concerned, things are much more complicated. Although it has reached the Stabilization and Association Agreement (SAA) with the European Union, Kosovo has no prospect of continuing its European path, i.e., obtaining the status of a candidate for membership, until it is recognized as a state by all member states of the European Union. Of the 27 member states, 5 of them do not recognize Kosovo as an independent state: Spain, Slovakia, Romania, Greece, and Cyprus. And while in recent years there has been talk of the possibility of some of these countries changing their position, this has not yet happened, and it is clear that some of them - especially Spain - will not recognize Kosovo in the current circumstances.

The fundamental agreements of the European Union do not clearly state who can become a member of the European Union, except that it is about countries in Europe that meet the basic criteria for membership defined in Copenhagen in 1993 - political, economic and institutional.¹⁶ Experts in international law, however, state that for membership in the European Union, it is necessary for the entity in question to be recognized as a country by other members of the European Union.

Therefore, if the agreement on comprehensive normalization should aim to enable Serbia and Kosovo to enter the European path, it should ensure that Kosovo is recognized by the 5 member states that do not do so and thereby enable the next steps in European integration. The question is, of course, what Serbia needs to do in order for that to happen.

According to experts in international law, it is not necessary for Serbia to formally recognize Kosovo as an independent state in order for other countries that do not recognize Kosovo to change their position. For them

¹⁶ Conclusions of the European Council in Copenhagen, June 1993, available at https://ec.europa.eu/commission/presscorner/detail/en/DOC_93_3

to change their attitude, they need a **political signal about the acceptance of Kosovo's independence by Serbia** (often called *de facto* recognition in the public), which would remove the existing obstacles which are the reasons why these countries refuse to recognize Kosovo since 2008.

The local public is paying a lot of attention to the question of Kosovo's membership in the United Nations. The agreement between the two Germanys from 1972, which is often taken as a model for the process of normalizing relations between Serbia and Kosovo, really opened the door for the membership of both countries in the United Nations, despite the fact that they did not formally recognize each other.¹⁷ In order to gain membership in the UN, Kosovo must receive the support of two thirds of the countries in the General Assembly, as well as 9 out of 15 votes in the Security Council, assuming that none of the permanent members cast a veto.¹⁸ Although Serbia would probably encourage the majority of countries to support its admission to the UN by giving a political signal about accepting Kosovo's membership in the UN, countries like Russia or China can prevent this step. That is why membership in the UN in itself is not a measure of success of the normalization process. According to experts in international law, Serbia's consent to Kosovo's place in the UN can be a sufficient signal for recognition by the 5 member states of the European Union. This question certainly remains open.

What also remains an open question is whether Serbia and Kosovo can become members of the European Union if they do not recognize each other, that is, if Serbia formally continues to view Kosovo as part of its territory. Some experts are skeptical about this possibility, considering that such precedents have never existed. However, there were similar phenomena. Before reaching the Good Friday Agreement in 1998,¹⁹ the

¹⁷ Treaty on the Basis of Relations Between the Federal Republic of Germany and the German Democratic Republic and Supplementary Documents, December 1972, available at https://www.cvce.eu/content/publication/1999/1/1/3b9b9f0d-6910-4ca9-8b12-accfcb91d28e/publishable_en.pdf

¹⁸ About UN Membership, available at <https://www.un.org/en/about-us/about-un-membership>

¹⁹ The Belfast Agreement, April 1998, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1034123/The_Belfast_Agreement_An_Agreement_Reached_at_the_Multi-Party_Talks_on_Northern_Ireland.pdf

Republic of Ireland considered Northern Ireland as part of its territory in its Constitution, which did not prevent both the Republic of Ireland and Great Britain from being members of the European Union. It is similar in case of Cyprus, which does not control more than a third of the territory that formally belongs to it. The argument that the European Union no longer wants to import similar disputes does not mean that it cannot eventually do so.

Serbia has some room for maneuver when it comes to this aspect of comprehensive normalization of relations. However, it is difficult to imagine the end of this process that would satisfy the European aspirations of Serbia, and which would not result in the recognition of Kosovo by all member states of the European Union. It is controversial to say that by reaching this agreement, Serbia should actually lose the support of 5 member states for the preservation of its territorial integrity. However, the controversy of this position stems from years of deliberate ignoring of the question of what constitutes the completion of the process of normalization of relations so that it could enable both Serbia and Kosovo to become members of the European Union. Another question is whether Serbia should go that way, as well as whether it gains or loses more by delaying this process, considering its fundamental interests.

CHALLENGES ON THE WAY TO ACHIEVING THE FINAL AGREEMENT BETWEEN BELGRADE AND PRISTINA

Although the normalization of relations between Serbia and Kosovo does not require formal recognition of Kosovo's independence by Serbia, the statements of certain officials of the EU member states, such as the recent statement of German Chancellor Olaf Scholz²⁰ that at the end of the road of the dialogue between Serbia and Kosovo – there is mutual recognition, speak in favor of the fact that some member countries will probably expect formal recognition of Kosovo's independence from Serbia. On the other hand, as already emphasized, as for the status of a potential candidate, Kosovo has not moved away from the ratification of the SAA because the declared independence is not recognized by five EU member states.

Therefore, there is a clear intention of the majority of member states that have recognized independence to unfreeze Pristina's further path towards the institutions in Brussels through the normalization process. Such a scenario is not possible without the consent of Belgrade, and that is why we can expect pressure on Serbia to reach an agreement with legal formulations that will not mention recognition but will probably include respect for the "inviolability of borders", "territorial integrity" and the "right to independent representation" of Kosovo in international relations.

THE LACK OF CLEAR PERSPECTIVE OF EU MEMBERSHIP AND LOCAL OWNERSHIP OF THE DIALOGUE

Although chapter 35 does not replace the dialogue between Belgrade and Pristina, which is conducted under the auspices of the EU High Representative, in this way the negotiation process was incorporated into the accession negotiations on EU membership and thus became an integral part of Serbia's European integration processes. The conditionality of the

²⁰ Olaf Šolc u Beogradu: Priznanje Kosova nemački uslov za ulazak Srbije u EU, predsednik Vučić tvrdi da to „čuje prvi put“, available at <https://www.bbc.com/serbian/cyr/srbija-61750503>.

accession process to progress in the normalization of relations is especially emphasized - if “progress in the normalization of relations with Kosovo lags significantly behind the overall progress of the negotiations, and if the reason for this is Serbia’s failure to act in good faith, especially when it comes to the implementation of the agreements reached between Serbia and Kosovo”, the Commission will “on its own initiative or at the request of one third of the member states, in accordance with point 25 of the negotiating framework, propose that recommendations for the opening and/or closing of other negotiating chapters are not given, and adjust the associated preparatory work, as needed, until the resolution of this disparity is initiated”.²¹

The negotiating framework thus established a mechanism through which the lack of progress in negotiating chapter 35 could lead to non-opening and non-closing of other chapters, now the clusters. Although member countries have not formally submitted an initiative to stop the process of opening or closing negotiation clusters, it is obvious that stagnation is in effect and that Serbia is not making progress even in clusters for which it has met the criteria, such as Cluster 3 – Competitiveness and inclusive growth. In addition to the topic of Kosovo, it is primarily influenced by the policy of not imposing sanctions on Russia after the aggression against Ukraine.

The main justification of the political leaders from Belgrade and Pristina for the concessions they made so far in the negotiation process was the policy of conditionality in the EU accession process. In this way, the responsibility was removed from the domestic elites and transferred to mediators who present themselves as a third party in the dialogue. The “German – French” proposal reinforces this impression through the absence of any transparency of the process. **Since the dialogue is not presented in the public discourse as national interest but is exclusively related to the European perspective, in the absence of a clear road map**

²¹ GENERAL EU POSITION, Ministerial meeting opening the Intergovernmental Conference on the Accession of Serbia to the European Union (Brussels, 21 January 2014, available at https://eupregovori.bos.rs/progovori-opregovorima/uploaded/General%20EU%20position_EN_2.pdf.

in the enlargement policy, the finalization of the agreement has no prospects for success. Serbia is currently not being offered the acceleration of the accession process, or any creative solution such as phased accession, larger structural funds, or membership in the single European market,²² while Kosovo expects visa liberalization only in 2023.

There is an obvious need for a direct meeting without European and American intermediaries. Belgrade and Pristina are avoiding such a possibility not only because of the status dispute, but because such an event would mean assuming responsibility. A direct meeting, if not of the leaders, then of the technical teams would represent taking ownership of the process, and thus responsibility for the outcome. If this does not happen, the dialogue will continue to be presented in both societies as an unwilling and harmful activity, with political leaders limited to a responsive role - commenting on various proposals, including the “German – French”. Also, the complete non-transparency of the process jeopardizes efforts to normalize relations because it allows negotiators to selectively share information with the public, leaving a lot of room for misinterpretation or populist messages.

22 Offer the four freedoms to the Balkans, Ukraine, and Moldova. For a merit-based EU accession process with a credible goal, available at <https://www.esiweb.org/proposals/offer-four-freedoms-balkans-ukraine-and-moldova>.

Recommendations:

- The EU should formulate a policy towards the countries of the Western Balkans, i.e., **openly present the agenda for Serbia and Kosovo** - can they count on membership or some alternative such as greater access to structural funds, strategic partnership, phased accession, access to the single market, etc. and possibly what would they offer as “benefits” for both parties if they reach an agreement.
- EU mediators should encourage a **direct meeting of negotiators** while respecting status neutrality in order to change the public discourse, and political representatives take responsibility for the success of the process.
- The EU should insist on the **transparency of the process**, in contrast to the current practice of complete secrecy. Although the negotiations imply a certain amount of non-transparency, the previous practice of avoiding the public together with constructive ambiguity had the unintended consequence of the complete unwillingness of both societies to reach a final agreement.

NO IMPLEMENTATION OF WHAT HAS BEEN AGREED, PRIMARILY
THE CSM

Previous dialogue between Belgrade and Pristina did not produce the desired results because both sides interpreted the agreement differently. The European Union, as a mediator of the dialogue, in its desire to avoid deadlocks, resorted to constructive ambiguity, which ultimately led to the opposite effect. Association or community, integrated borders or administrative lines, executive or supervisory powers, are just some of the examples that reinforced different interpretations and misunderstandings. On the other hand, there was no legal consequence of the reached technical agreements and the Brussels Agreement. The Constitutional Court of Serbia stated that the Brussels Agreement is political, without legal consequences, and the Constitutional Court of Kosovo stated that it is an

international agreement with certain points that contradict the current constitution. With the constructive ambiguity and the absence of adaptation of the legal framework, a path of dependence was created that resulted in partial implementation and strengthening of distrust.

The key problem arose from Pristina's political decision to abandon the implementation of the agreement on the Community/Association of Serb-Majority Municipalities. After almost ten years since the agreement was reached, the Community has not been formed. The last deadline of four months for the proposal of the Community's Statute set by the EU expired in August 2018. Despite the announcement by the Prime Minister of Kosovo at that time that the steering group for drafting the statute was reactivated, there were never any concrete results. Statements by current Prime Minister Albin Kurti that the formation of the Community is unacceptable²³ weaken the chances of a final agreement. **It turned out that the main weakness of the dialogue between Belgrade and Pristina is the absence of any guarantees that the previous agreements, as well as any "final" ones, will be implemented after signing.**

According to the Brussels agreement, the Community of Serb Municipalities was foreseen as a personal (made up of local representatives) and territorial (consisting of 10 municipalities with a Serb majority) bringing together of the Serbian community in Kosovo. Its establishment is defined in Article 3 of the agreement, which foresees the statute as the basic normative act and the institutions of the president, vice president, assembly and council, and the main responsibility is to exercise full supervision in four areas that are of vital interest to the Serb community in Kosovo: economic development, education, health, urban and rural planning.²⁴ In the general and final provisions of the agreement from 2015, Pristina committed that the statute of the Community would be drawn up

²³ Kurti: Ne mogu da nadoknadim Srbiji to što je izgubila rat; Niko u EU ne daje više prava manjinama od Kosova, available at <https://kossev.info/kurti-ne-mogu-da-nadoknadim-srbiji-to-sto-je-izgubila-rat-nema-drzave-u-eu-koja-daje-vise-prava-manjinama-od-nas/>.

²⁴ Asocijacija/Zajednica opština sa većinskim srpskim stanovništvom na Kosovu – opšti principi/glavni elementi, available at <https://www.kim.gov.rs/p17.php>.

“within four months from the date of reaching the agreement.” Almost eight years after the expiration of this deadline, the statute is far from being realized, and the drafts are considered only as non-papers among civil society organizations.

Until now, Pristina has insisted on the interpretation that even if the Community of Serb Municipalities is formed, it would be at the level of associations of municipalities that are already legally defined in Kosovo. Belgrade, on the other hand, claims that a community with a special status was agreed upon in Brussels and that they would certainly not negotiate something that already existed as a possibility, but that an agreement was required that would mean changing the existing constitutional and legal framework that is currently valid in Kosovo.

In refusing to implement the agreement, Pristina refers to the decision of the Constitutional Court, which questioned certain points of the agreement. In its decision from 2015, the court found that the Community “cannot be entrusted with full and exclusive authority to promote the interests of the Serb community in Kosovo in its relations with the central authorities”, as well as in point 173 that “it cannot have the right to propose amendments on legislation and other regulations”, which is provided for in Article 10 of basic principles/main elements. Among other objections, the planned transfer of money from Serbia or another party is also disputed, so in Article 180 of the decision, it is stated that the right to transfer finances from the central government belongs exclusively to municipalities with a Serb majority, not to the Community.²⁵

It can be concluded that the Constitutional Court in Kosovo did not question the formation of the Community, but certain specific competencies. **With the good will of negotiators and mediators, these problematic issues can easily be overcome.** Also, through the amendment procedure, it is possible to adapt the constitutional framework in Kosovo

²⁵ Presuda u slučaju br. K0130/15, available at https://www.gjk-ks.org/wpcontent/uploads/vendimet/gjk_ko_130_15_srb.pdf.

for the implementation of all the main elements of the Community. In the end, **the normalization of relations between Belgrade and Pristina meant that at the end of the process constitutional and legal changes would be made in both systems so that the final compromise could have a legal epilogue.**

In recent visits to Belgrade and Pristina, international representatives emphasized that the Community of Serb Municipalities must be formed. The U.S. Deputy Assistant Secretary of State, Gabriel Escobar, said in August that it is necessary to start the discussion on the Community and that “there are many examples in the European Union that could serve as a model for the Community, and we should hope that it will be discussed in Brussels.”²⁶ During his visit to Pristina, EU Special Representative Miroslav Lajčak emphasized that “the agreements reached in the past must be implemented if we want this process to be serious.”²⁷ Although international actors insist on this issue, the problem for Belgrade may be that the formation of the Community is offered as the last concession for the final agreement. In this way, instead of the already established obligation of Pristina, the Community of Serb Municipalities turns into a “new” agreement, a final compromise in which, after its formation, Serbia is expected to recognize Kosovo’s independence and support Pristina’s membership in international organizations.

²⁶ Eskobar: ZSO će biti formirana, to je obaveza za Srbiju, Prištinu i EU, available at <https://www.rts.rs/page/stories/sr/story/9/politika/5040592/gabrijel-eskobar-zso-srbija-kim-eu-.html>.

²⁷ Lajčak: Sporazum o ZSO treba sprovesti, ali ne želimo drugu Republiku Srpsku, available at <https://www.rts.rs/page/stories/sr/story/9/politika/4682696/lajcak-sporazum-o-zso-dijalog-beograd-pristina.html>.

Recommendations:

- **It is necessary to review all 33 agreements** that have been reached so far, since many of them are not implemented in practice. With the mediation of EU services, determine criteria for evaluation and monitoring of implementation.
- It is necessary to hold another round of talks on the Community of Serb Municipalities and remove all institutional and political obstacles to its implementation before the final agreement. **Disputed points about the Community can be overcome** through the implementation of compromise solutions that would not violate the basic idea of autonomy for the Serbian community in Kosovo in four defined areas.
- The final agreement should **incorporate all previous agreements** from the technical and political phase, either in the agreement itself or in the form of an annex. In this way, the legal obligation of all agreements reached earlier would be ensured.
- It is necessary that the final agreement, in addition to the status issue, removes all forms of constructive ambiguity and provides effective mechanisms of **international sanctions in case of non-implementation of the agreed.**
- Before signing the final agreement, it is very important to work on **trust-building measures between the two parties**, because it is impossible to reach a successful agreement in an atmosphere of conflict, fear, warlike rhetoric, and general lack of trust.

IS THERE (STILL) SPACE FOR AN AGREEMENT

INTEREST OF SERBIA IN THE POSSIBLE AGREEMENT

There are many reasons why Serbia has an interest in continuing negotiations despite the absence of a clear European perspective. In the research conducted by CDDRI²⁸ in 2021, citizens of Serbia recognize several goals of the future final agreement: ensuring protection and special rights for the Serb community in Kosovo (89%), where we can add the request for the formation of the Community of Serb Municipalities (74.4%), management of natural resources (83.5%), the status of cultural and religious heritage (82.6%), as well as the realization of lasting peace between Serbs and Albanians (75.2%). The results of the 2022 research within the project “National interests of the Republic of Serbia: from challenge to legitimization” show that citizens mostly agreed with the following national interests: Physical security of Serbs in Kosovo and the possibility to live and work normally (73.1%), preservation of cultural-historical heritage and spiritual heritage of Serbs in Kosovo (65.8%), as well as preservation of Orthodox monasteries (68.1%).²⁹

The unresolved status of Kosovo has a direct impact on the economy, regional connecting initiatives and security. Serbia lost more than 520 million euros due to taxes imposed by Kosovo on Serbian goods. The initiative to establish closer ties in the Western Balkans through the application of the four freedoms and the creation of a single regional market, which is proposed through the Berlin Process and the Open Balkans, is not possible without the participation of Kosovo. Also, the results of the survey show that most Serbian citizens are not ready (59.3%) to jeopardize economic interests such as economic growth, higher incomes and a better standard of living for the sake of achieving political national

²⁸ Stavovi građana Srbije o Kosovu, available at <https://cddri.rs/wp-content/uploads/2021/06/Stavovi-gradjana-Srbije-o-Kosovu.pdf>.

²⁹ Kako građani vide nacionalne interese Srbije, available at <https://nationals.rs/kako-gradani-vidе-nacionalne-interese-srbije/>.

interests, including Kosovo and Metohija. At the same time, they express doubt that political national interests (Kosovo and Metohija, Republika Srpska, position of Serbs in the region...) can be protected with the help of international law (41.5% of the population do not believe, while 23.8% said they do not know).³⁰

The north of Kosovo, despite the integration processes, still represents an area of high security risk due to the measures taken by Pristina to take full control over the territory and the desire of the majority Serb population to remain connected to Serbia. The authorities in Kosovo skilfully use the Serbian community as a means of pressure on Belgrade itself, since they take measures that directly affect its security and the normality of everyday life.

The direct consequence of such a situation are extremely negative trends that NGO Aktiv has been following for years among the Serb community. The fact that every sixth respondent belonging to the age group 18 to 29 believes that the situation in Kosovo will get worse in the next three years is particularly worrying. If this pessimistic sentiment relates to the increasing opportunities and motivation to leave Kosovo, it seems that in the coming years the problem of depopulation and the departure of young people will become more and more acute for the Serb community in Kosovo. Viewed in comparison with the data obtained from the research of the previous year, we can see that in all age groups, except for the oldest, there was a significant increase in the number of those who believe that life in Kosovo will be even worse in the next three years. This is an increase from 14% (age 30-45) to 22% (age 45-65).³¹

One in two respondents do not see themselves in Kosovo in the next five years, while the other half of the respondents are either waiting for the opportunity or have already made the decision to leave Kosovo. This

³⁰Kako građani vide nacionalne interese Srbije, available at <https://nationals.rs/kako-gradani-vide-nacionalne-interese-srbije/>

³¹ Analiza trendova - stavovi srpske zajednice na Kosovu, available at <http://ngoaktiv.org/uploads/files/01tasrb.pdf>.

information has been pointing to the alarmingly bad situation in which the Serbs in Kosovo live for years, and for many of them, leaving Kosovo is perceived as the only solution. The main reason for leaving Kosovo is economic uncertainty (50.9%). The second reason is political instability 19.3%, while the third and fourth motivations for leaving Kosovo are caused by non-respect of the rights of Serbs in Kosovo 14.9% and personal insecurity 14.9%.³² Although the economic element sets the determination of every other respondent, it is unacceptable that after more than two decades after the conflict, the issue of security, political instability and lack of rights are still the factors that determine the decision of the members of the Serb community to leave Kosovo.

In addition to the alarming situation of the Serbs from Kosovo, an additional obstacle is the political discourse in Serbia, which is based on the dichotomy of recognition and non-recognition of Kosovo's independence, but also the dichotomy for and against the EU in the context of resolving the status dispute with the authorities in Pristina. The dialogue is presented as a marathon in which the other side wins and ensures the inviolability of Serbia's territorial integrity. A total of 56% of Serbian citizens fully agree with the statement that preserving Kosovo and Metohija as part of Serbia is an important national interest, but at the same time, more than 70% believe that the priority is to ensure the safety of Serbs in Kosovo.³³ For this reason, it seems unrealistic that Serbia will achieve the demands arising from the Negotiating Framework without an open and public debate on the conditions that stand on the way to full membership in the EU. One of those occasions was the initiation of the Internal Dialogue in July 2017 by President Vučić, which ended without defined conclusions. Serbia's main interest is to preserve the Serbian community in Kosovo as functional and socially active with prospects for a decent existence. Prolonging the agreement directly affects their lives and massively makes them decide to leave Kosovo.

³² Ibid.

³³ Kako građani vide nacionalne interese Srbije, available at <https://nationals.rs/kako-gradani-vide-nacionalne-interese-srbije/>

Recommendations:

- In the continuation of the dialogue, it is necessary to discuss several important topics that would free political leaders in Serbia from public pressure and encourage a solution. These are topics that are of vital interest to Serbia and the Serb community in Kosovo, and which should be an integral part of the final agreement: *permanent status of Serbs in Kosovo, property rights of individuals, rights of displaced persons and return policy, status of Serbian cultural heritage, property over companies located in Serbian areas, issues of the health and school systems, the issue of the missing, Kosovo's participation in regional integration.*
- It is necessary **to stop the trend of emigration**, as well as the significant determination to leave Kosovo in the coming years, by means of affirmative measures, and above all by protecting guaranteed rights and ensuring security.
- It is necessary that the rights and freedoms of the Serb community are not placed in the context of a compromise solution, because these are not issues that are subject to negotiation. In this regard, it is necessary that the final agreement be devoid of possible pressure on Belgrade due to the open threat that the rights of Serbs in Kosovo will be threatened.

INTEREST OF KOSOVO IN A POSSIBLE AGREEMENT

Research conducted by the Kosovar Center for Security Studies shows that most Albanians are in favor of an agreement that would mean formal recognition by Serbia (75%), while the option of non-recognition by Serbia with membership in international organizations, with the formation of the Community of Serb Municipalities and special status for monasteries was supported by only 9% of Kosovo citizens. Also, 43% do not believe in

peace between the two societies in the near future, while 74% support the dialogue between Serbia and Kosovo.³⁴

Political leaders in Pristina are aware that without recognition and agreement with Serbia, Kosovo becomes a permanently disputed territory, economically unattractive for investments and a side that is avoided in regional initiatives because of Serbia. The war in Ukraine further securitizes the dialogue and leads to conflict as a realistic scenario in the absence of an agreement.

The key problem is the created negative narrative about the Community of Serb Municipalities, that is, not agreeing to the implementation of what has already been agreed. The attempt to offer the Community in the final agreement is clearly unacceptable to Serbia because it means that the rights of the Serbs are being offered as a “compromise” for the second time. This is a prerequisite for being able to talk about a sensitive topic such as status. The authorities in Pristina use dialogue as a tool to deal with corruption and crime, but the activities are concentrated only in the north of Kosovo. The rule of law and endemic corruption have not been suppressed with the arrival of the new government in Pristina, despite numerous promises. International pressure in this field is also weak due to the view that this would harm Kosovo in the fight for full international recognition. The main interest of Kosovo is to achieve membership in international organizations and ensure an independent path towards the EU and NATO, and this is not possible without an agreement with Serbia.

³⁴ Barometer 2021, available at https://qkss.org/images/uploads/files/Barometer_2021_Kosovo_4_Eng_%282%29.pdf.

Recommendations:

- It is necessary to initiate a change in the dominant narrative in Kosovo about an uncompromising and confrontational attitude, first of all according to the demands of the Serb community. “Mutual recognition” is constantly emphasized, but in fact the main goal of Pristina is to ensure **the unblocking of Kosovo on the international level** by Serbia. Belgrade is not ready to do so without concessions for the Serbian community and a clear perspective of EU membership.
- Earlier agreements, including the implementation of the Community of Serb Municipalities, must be implemented as a guarantee for the final agreement.
- The issue of **security and guaranteed rights for Serbs** should not be presented in any form of “compromise”.
- It is necessary to present the final agreement as a **guarantee of permanent peace** between Serbs and Albanians.

POLITICAL CONSEQUENCES FOR SERBIA IN CASE OF RECOGNITION

The current authorities in Belgrade, although they enjoy considerable support from citizens, are between the international demand to reach an agreement with Pristina, the need to normalize relations between Serbs and Albanians, and the majority of citizens’ views that the possible recognition of Kosovo would represent a great emotional loss for the state and its citizens (72.9%) with the fear that the fragmentation of the country would not be stopped with Kosovo (74.8%).³⁵

On the other hand, according to the results of the mentioned survey, 71.7% of Serbian citizens oppose EU membership, if the condition is recognition of Kosovo’s independence by Serbia. Also, the solution that currently

³⁵ Stavovi građana Srbije o Kosovu, available at <https://cddri.rs/wp-content/uploads/2021/06/Stavovi-gradjana-Srbije-o-Kosovu.pdf>.

enjoys the greatest support from the citizens of Serbia and seems unattainable includes 1) division, restoring Belgrade's control over the north of Kosovo, 2) forming the Union of Serbian Municipalities for Serbs who would remain living south of the Ibar, and 3) extraterritorial status for Serbian Orthodox monasteries in exchange for recognition of independence, would be supported by only 36.4%.³⁶

An additional aggravating circumstance for Serbia's negotiating position is the Russian attack on Ukraine, since the non-introduction of sanctions promotes the image of Serbia as Russia's "proxy" in the Balkans. In this context, **the securitization of the dialogue between Belgrade and Pristina strengthens the pressure to reach an agreement as soon as possible that would resolve the open issue and geopolitically tie this part of the Balkans permanently to the EU.**

Recommendations:

- International pressure on Serbia regarding Kosovo should be constructive, because a solution that would mean major political consequences for any party or leader deters the agreement. At the same time, **any solution** that the majority of the public would **recognize as unfair** would represent a long-term problem for the political scene and Serbian society as a whole. It is necessary to search for a solution that would cause the least political damage, avoid deeper social splits and at the same time achieve the goal - **permanent normalization of relations.**

³⁶ Ibid.

INSTEAD OF THE CONCLUSION – AN AGREEMENT WITHOUT COMPREHENSIVENESS

The dictation of reaching a final agreement in a short period of time can be fatal to the initial intention of comprehensiveness of the solution. The absence of implementation of earlier agreements has resulted in devastating results on the ground since conflict is still not ruled out as a real possibility. The agreement devoid of the initiative for the reconciliation of Serbs and Albanians in those circumstances can be very easily understood as another forced political document without essential consequences for the two societies. Especially if the practice of blackmail cards were to continue, where Pristina would settle accounts with Belgrade through the Serb community, and Belgrade would make Pristina's position on the international level difficult.

If it is not comprehensive, the question arises as to which arguments support the finalization of the agreement between Belgrade and Pristina. The first is that frozen conflict does not imply the status quo. On the contrary, the conflict is maintained by incidents with the real danger of possible larger conflicts. The second is that most of the problems between the Serbian and Albanian sides including the issues of identity cards, license plates, various permits and licenses cannot be permanently resolved without defining the final status. The third is a constant that will not change for both nations: Albanians, regardless of geopolitical constellations, will not experience Serbia as their country, and Serbs, despite integration into the Kosovo system, see Serbia as a country where they live and whose institutions they trust. In the end, there is no agreement that will not require greater international engagement, primarily in the context of clear and tangible guarantees that the agreement will be fully implemented. The international attention that is currently being paid to the dialogue implies a greater participation in the implementation phase of the possible agreement.

If an agreement is reached, it will require the incorporation of all previous agreements either in the document itself or in the form of an annex. The

signing of the new document would certainly imply the legal obligation of the reached compromise, the road map according to which the agreement would be implemented, as well as the desired commitment to permanent reconciliation between the two nations.

Regardless of the different models of dispute resolution, it is evident that an agreement is needed in many ways. The absence of an agreement would mean that Serbia, without a solution, freezes the conflict, stops its EU integration, and that Kosovo becomes a permanent unfinished project without membership in international organizations. Missing the currently open space for an agreement would bog down Serbia and Kosovo for the next few decades. In anticipation of a possible agreement, the citizens of Serbia and Kosovo would become members of backward societies in which the threat of conflict will be an excuse for endangering democratic government and the rule of law.

A political agreement can only legitimize the establishment of cooperation and create a new framework, by no means establish a full normalization of relations. **It is a long-term process that requires political commitment and significant internal social changes.** At this moment, the absence of a European perspective and irreconcilable positions distance not only the agreement, but also any initiative to continue the dialogue. However, the societies in which Serbs and Albanians live are faced with a choice whether to “normalize” or to be permanently defined as post-conflict and unstable. The agreement is necessary because only a legally binding document can legitimize the right to a new chapter in the relations between the two nations.

The last and key obligation in the dialogue is an institutional confrontation with the past in order to stop further political instrumentalization. Manipulation with the past requires the formation of a joint commission that will lead to the official recognition of the victims through a detailed census. The mistakes of Belgrade and Pristina are particularly noticeable on this topic. Albin Kurti’s government began its mandate with self-victimization, promoting the term genocide, which is not

recognized by any international court when it comes to the war in Kosovo, ignoring the Serbian list and branding the entire ethnic community. On the other hand, the government in Serbia also promotes self-victimization through Serbs as exclusive victims and Albanians as extremists and terrorists. The dominant narrative in which Pristina is presented as an archnemesis, and any agreement with Pristina as an act of betrayal, leaves no room for agreement.

Manipulation of the number of victims and ethnicized demands for justice became part of the colorful instrumentalization of the past by political representatives who proclaimed themselves exclusive interpreters of the former conflict. The direct consequence of such actions is that the agreements that normalize the lives of people on the ground, at the same time do not improve mutual relations or contribute to the creation of a more positive perception of those relations in the near future. In other words, the normalization so far did not lead to reconciliation, so it is likely that the possible final agreement will also remain only on technical and status issues. The normalization achieved in this way is deprived of its essential purpose.



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