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STUDIES

Opinion²

**Ensuring the ‘future’ of Kosovo
in the European Union through
Serbia’s Chapter 35
Negotiations!**

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ENSURING THE FUTURE OF KOSOVO IN THE EUROPEAN UNION THROUGH SERBIA'S CHAPTER 35 NEGOTIATIONS

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ABOUT GLPS

Group for Legal and Political Studies is an independent, non-partisan and non-profit public policy organization based in Prishtina, Kosovo. Our mission is to conduct credible policy research in the fields of politics, law and economics and to push forward policy solutions that address the failures and/or tackle the problems in the said policy fields.

1. In March 2012 Serbia officially became an EU candidate country and on January 21, 2014, the first Intergovernmental Conference took place in Belgrade, marking the beginning of formal accession negotiations. However, before becoming an EU member, Serbia will have to go through a long process of negotiations, which necessarily will have to include a solution to the Kosovo issue. The goal for the European Union, and the Governments of Serbia and Kosovo, should be the successful integration of both Kosovo and Serbia into the Union. This would create a framework for the two states to peacefully coexist and to maintain good neighborly relations. Chapter 35, on 'other issues', should thus be used as a tool for the long-term regulation of coexistence for Serbia and Kosovo and their equal participation in the EU. In addition, this will serve as a means that will prevent the remaining non-recognizers within the Union to block and/or hinder Kosovo future membership into the EU.

2. However, in order for this to happen, stakeholders need to ensure that chapter 35, not only negotiated before other chapters, but that the chapter also includes a proper solution to the issues between Serbia and Kosovo. Therefore, chapter 35 needs to include a firm commitment by Serbia not to block a future accession by Kosovo to the EU, and also a commitment to the territorial integrity of Kosovo. Chapter 35 also needs to include issues such as direct communication between Kosovo and Serbia, as well as a commitment by Serbia not to

block the participation of Kosovo in regional organizations and institutions that are important for EU integration. Chapter 35 could then be used to ensure that the Kosovo issue would not need to be negotiated in each individual chapter, but would instead horizontally apply to all other chapters. If done appropriately, this would ensure the accession of both Serbia and Kosovo to the European Union, and would ensure a more stable and smooth enlargement process.

- *The process and progress of negotiations*

3. The European Council Summit in Thessaloniki in June 2003, where the Council affirmed its view that the future of the Balkans is in the European Union, was the beginning of EU integration for the Balkans states. However, so far only one of the Balkan states¹ present at the Summit, Croatia, has managed to integrate into the Union. Serbia became a candidate country in 2012, but negotiations did not officially commence until earlier this year, largely because of remaining issues with Kosovo.

4. Negotiations will include the agreement on 35 chapters, or policy fields, which make up the body of rights and obligations of EU member states and which have to be accepted and implemented into national law by the candidate country before it can become a member of the European Union.

¹ The states present were Albania, Bosnia-Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia and Montenegro.

Negotiations of each chapter will begin by a screening, where the European Commission carries out a detailed examination, together with the candidate country, of each chapter to determine how well the country is prepared. The findings are presented in a report which contains recommendations of the Commission to either open negotiations of the chapter or to require that opening benchmarks be met first.

5. So far the screening process has been launched for 18 chapters, including chapter 35, and has been finished for three – chapter 23 (judiciary and fundamental rights), chapter 24 (justice, freedom and security), and chapter 32 (financial control). Serbia expressed hope that some chapters might be opened this year, but the EU Delegation to Serbia has said that it is more realistic that the first chapters, probably chapters 23 and 24, will be opened in the first half of 2015.

- The 'Kosovo issue'

6. As the Thessaloniki summit recognized the Balkans as part of the future of the EU, and as Kosovo since its declaration of independence in 2008

and has been recognized by most EU members², it is only natural that Kosovo should be part of this vision. However, the unresolved issues between Serbian and Kosovo and the way Serbia's accession negotiations deal with this may have consequences not only for Kosovo's future accession but also for the future enlargement of the European Union.

7. Serbia and Kosovo have embarked on a process aiming to normalize relations between the two countries with the help of EU facilitated dialogue. Agreements have been reached e.g. regarding border control, freedom of movement, as well as the dismantling of Serb parallel structures in the north of Kosovo and the integration of northern Serb-majority municipalities into Kosovar administration. However, progress has slowed down since March 2014, due to elections in both Serbia and Kosovo. Despite this EU facilitated dialogue and efforts at normalizing relations between Serbia and Kosovo, Belgrade still appears unwilling to find a solution that would mean recognition for Kosovo as an independent state. The Director of the Serbian Office for Kosovo, Marko Djurić, has said that Serbia at some point will have to adopt constitutional law that will regulate the legal status of Kosovo within Serbia, but that such legislation should make sure that future generations will be assured that Kosovo is within Serbia. Mr. Djurić has further referred to relations between Belgrade and Prishtina as an internal matter that will remain so in the future. This shows that a clear solution to the Kosovo issue will be needed before Serbia becomes a full EU member, to ensure that Kosovo's future as an independent member state of the European Union.

8. The European Commission has said that the issue of normalization of relations between Serbia and Kosovo will be addressed under chapter 35 (other issues). Chapter 35 is normally the last one to be opened and negotiated and typically

includes miscellaneous issues that come up during negotiations but which are not covered by any other chapter. However, in this case the Commission has said that chapter 35 'should be tackled early in and throughout the accession negotiations process and in duly justified cases in other relevant chapters'.

- Negotiating chapter 35

9. Chapter 35 needs to produce a stable and durable solution to the Kosovo issue that guarantees Kosovo's independence and path towards EU integration. It also needs to address several other issues that will be important for the normalization of relations between Kosovo and Serbia, and for the future of Kosovo's integration into the European Union. The chapter should then apply horizontally to all other chapters during negotiations, to avoid a piece meal solution where the issue of Kosovo has to be negotiated in each chapter. There are several reasons for making sure chapter 35 is among the first to be opened, and closed, if Kosovo is to be dealt with only in this chapter – not only for the sake of Kosovo's EU accession process, but to ensure a smoother accession for Serbia and a stable enlargement for the European Union.

- Jurisdiction of Serbia

10. Serbia's EU negotiations under chapter 35 need to adequately and sufficiently address the scope of Serbia's jurisdiction. This issue will be one of the most important ones as it has implications for every other chapter negotiated between Serbia and the European Union.

11. To ensure that both Serbia and Kosovo are able to successfully integrate into the European Union, and to develop good neighborly relations, the delineation of Serbia's jurisdiction needs to be expressed in explicit terms in chapter 35. It is essential that the Kosovo government is able to exercise its jurisdiction over the whole Kosovo, without interference by Serbian authorities in the administration of its

² Cyprus, Greece, Slovakia, and Spain have not recognized Kosovo.

territory. The failure to produce a legal commitment from Serbia on the application of its jurisdiction would have serious consequences for every policy decision in Serbia, as these would most probably be argued by Belgrade to apply also to the Serb population in Kosovo. Such a situation would not only negatively impact Kosovo-Serbia relations, and their respective EU integration, but would also hamper the development and evolution of the Kosovo state and its capacity to move forward as a functioning, multi-ethnic state.

12. The European Commission has previously set the end of Serbian involvement with, and sponsoring of, parallel structures in Northern Kosovo as a precondition of EU membership. The Commission has also stated that Serbia shall ensure that adopted legislation, included its geographical scope, does not run counter to the comprehensive normalization of relations with Kosovo. While these conditions are probably an attempt to preemptively counteract a future territorial dispute between another candidate and member country, and to ensure the possibility of a future Kosovo accession, statements from Serbia make it evident that Serbia is not ready to see Kosovo as an independent

state. Hence it will be vital that chapter 35 includes a clear delineation of Serbia's jurisdiction.

- The issue of veto power as a tool for blocking Kosovo's EU accession

13. Furthermore, it is of outmost importance that Serbia's accession negotiations guarantee that Serbia will not use its EU member veto to block a future accession of Kosovo to the EU. It is in both Kosovo's and the EU's interest to avoid a similar scenario to that which occurred during Croatia's accession negotiations, where a border dispute with EU member Slovenia made the latter block Croatia's accession for almost 10 years. During the conflict, the European Union refused to consider it an accession issue and insisted it was a bilateral dispute to be solved between the two states. The dispute was eventually referred to the International Court of Justice (ICJ).

14. The European Commission has said that Serbia's progress towards accession will be measured against, among other requirements, its undertaking to resolve any border disputes, including through the ICJ. It has further stated that the process of improvement in relations between Serbia and Kosovo shall ensure that both states can continue on 'their respective European paths', while avoiding that either can block the other. However, in order to ensure the future of Kosovo in the European Union, this issue needs to be included in chapter 35, with a commitment by Serbia to not use its veto to block the accession of Kosovo. A way to further cement this commitment could be to include it as a clause in the accession treaty.

- Direct bilateral communication

15. Another important issue that should be addressed in chapter 35 is the issue of direct communication between Kosovar and Serbian institutions, which is currently

non-existent. The 19 April Agreement³ did not include any commitment on direct communication between institutions of Kosovo and Serbia. Currently, all communication between the two states is done through international organizations such as EULEX. This is of course an untenable situation as EULEX is preparing to scale down its operation in Kosovo and to withdraw completely within the near future. In fact, the current mandate extends only as far as 2016, and it is not sure it will be extended again. Consequently, if Kosovo and Serbia is to continue on the path of normalization of relations and to successfully coexist with good neighborly relations, direct communication between institutions at all levels is absolutely vital.

- Kosovo's participation in regional cooperation

16. Another issue of vital interest for the future of Kosovo's EU integration, and which needs to be included in the chapter 35 negotiations, is the way Serbia uses its veto power in regional organizations and institutions to block Kosovo's participation.

17. Many regional organizations deal with cooperation between Balkan states on issues such as police, customs, etc. and are core to EU integration. However, at the moment Kosovo is only able to participate in a few of these organizations, due to Serbia using its veto power in these organizations.

18. If the European Commission is serious about normalizing relations between Kosovo and Serbia as a pre-condition to Serbian accession to the EU, more must be done to ensure that Kosovo is able to participate in regional organizations that are important for its path towards EU integration on the same conditions as its neighbors. Therefore this issue needs to be seriously considered for inclusion in chapter

³ The First Agreement of Principles Governing the Normalization of Relations, signed on 13 April 2013.

35 – to make sure that Serbia does not block Kosovo's possibility to cooperate with its neighbors on matters vital to EU integration.

- Peace treaty

19. Finally, the EU might want to consider including the signing of an official peace treaty between Serbia and Kosovo to be part of chapter 35. The purpose of such a treaty would be e.g. to solidify the process of normalizing relations between Serbia and Kosovo and to have a legally binding document that holds both countries to the obligation to keep from acting against each other on the international scene, including in international organizations, in a way that would seriously harm the other's interests and internal policies. Furthermore such a treaty would have to provide recognition for Kosovo as an independent state.

- Conclusion

20. The goal of the European Union has to be the successful integration of both Serbia and Kosovo. However, in order to ensure an as smooth accession process as possible, the issue of Kosovo has to be dealt with during the accession negotiations with Serbia in way that also ensures the future accession of Kosovo to the EU.

Therefore, chapter 35 should not only be negotiated first, but its content should also apply horizontally to the other chapters. Chapter 35 needs to contain a firm commitment by Serbia to the territorial integrity of Kosovo and also a commitment not to block future accession negotiations of Kosovo. Only by making sure that these issues are resolved before Serbia becomes a member state will the EU be able to ensure a smooth process of accession of both countries, as well as a more stable enlargement process for the Balkans.

21. Finally, the EU should consider keeping the option open for block integration of the whole Balkan region. Until 2012 this was the approach of the Commission; however this seems to no longer be the case. Nevertheless, experience from previous EU enlargement processes shows that the strategy of block accession might work better, if comparing the 2004 enlargement of the whole of Eastern European to that of Bulgaria and Romania, which was done in separation from their wider region. In the case of the Balkans, it is particularly important that EU enlargement policy is not designed in a way that would lead to the exclusion of certain states. This would only serve to exacerbate tensions in the region and would do nothing for the issues of reconciliation and development.

OPINION PUBLICATIONS

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