



GROUP FOR LEGAL
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STUDIES

Opinion¹

THE IMPLEMENTATION OF THE EU FACILITATED AGREEMENT(S) BETWEEN KOSOVO AND SERBIA

- A short analysis of the main achievements and challenges

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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. The EU facilitated dialogue between Kosovo and Serbia began in March 2011. In three years, the dialogue has spawned a number of 'mediated' agreements, it advanced from technical to political dialogue, and moreover, made possible that Kosovo and Serbia cooperate and discuss about issues that both simultaneously have had concurring positions.

2. The fact that high level officials from Serbia and Kosovo have come together to hold talks and reach consensus about a number of agreements represents a groundbreaking step in Kosovo-Serbia relations.

3. Yet, the key to fruitful relations lie in the good-faith implementation of the agreements. A successful implementation of agreements is necessary for normalizing relations, improving the lives of citizens, and in determining the progress in the EU integration agenda of both Serbia (the opening of accession talks for Serbia) and Kosovo (further the EU integration through the conclusion of a Stabilization and Association Agreement and visa liberalization for Kosovo).

4. A general belief among Kosovars is that dialogue is an incremental process, which will incentivize a peace agreement putting to an end the dispute about the statehood of Kosovo. Of course, skepticism among Kosovars is increasing due to the format, outcomes and practical effect of the dialogue in establishing normal relations between Kosovo and Serbia. For many, the

dialogue is a tool which has permitted the EU to show some foreign policy impact in the Balkans (or even in Europe), while it managed to construe a perception of stability in the region. In the same time, it was a window of opportunity for Serbia to change its reputation in Europe, and to reconfirm itself as a 'cause' to the regional stability. On the other hand, Kosovo authorities missed this opportunity to reinforce Kosovo's statehood and utilize the dialogue to bring to an end Serbia's role in the north, and in particular, expand its European integration perspective. Technical agreements as well as the first agreement signaled the weakness of Kosovar foreign policy and validated the unpreparedness of Kosovo Government to respond to the contention by Serbian representatives that 'Kosovo issue' has not been settled yet.

5. The April 2013 Agreement signed in Brussels (referred to as: the First Agreement of Principles Governing the Normalization of Relations) between the governments of Serbia and Kosovo, approved by Kosovo's parliament and the Serbian government deals with a number of disputed issues, especially the northern Kosovo. Moreover, the agreement reflects the consensus of 'both' parties in relation to police force, education system, economy, justice sector, culture, and health & community-related organizations in those four Serbian municipalities in the north of Kosovo. On 22 May 2013 the Prime Ministers of Kosovo and Serbia agreed on a six month implementation plan for the agreement. The implementation plan, which

has been adopted by the governments of Kosovo and Serbia, addresses the following areas:

- The adjustment of legal frameworks

6. Both parties agreed to present (by the end of May 2013) to the Implementation

Committee for discussion their detailed plans and timelines for legal changes necessary for the implementation of the Agreement. In mid-June (2013) both parties ratified all changes to the implementation plan. To this end, the Government of Kosovo proceeded to the Kosovo Assembly on May 2013 for approval the "First International Agreement Of Principles Governing The Normalization Of Relations between the Republic of Kosovo and the Republic of Serbia" and the implementation plan for the agreement. The Assembly on 27 June 2013 ratified the Brussels Agreement as an international agreement by 84 votes in favor, 3 against, and only one abstention. On the other hand, the Serbian government approved on 22 of April the Agreement, followed by an approval vote of the Serbian Parliament on 26 April 2013 by 173 votes in favor, 24 against, and 1 abstention out of total 250 deputies. Moreover, Kosovo continued to

amend its laws in order to implement the First Agreement requirements. The Law on Local Self-Governance, the Law on Protection and Promotion of the Rights of Communities And their Members in Republic of Kosovo were amended, while the new Law on Amnesty was, as agreed, adopted by the Assembly of Kosovo.

-The establishment of the Association of Serb Municipalities (ASM)

7.The Agreement enabled the establishment of the Association/Community of Serb Municipalities (this would be an ethnic-based association of municipalities consisting of representatives of Serb-majority municipalities). The implementation plan envisaged that after the municipal elections a management team responsible for the creation of the ASM will be dissolved. The Government of Serbia appointed four officers to this team to draft the Statute of the ASM.

8. On 18 June 2013 the Government of Kosovo amended the Law on Local Self-Government, to include the Association of Serb Municipalities in it, and amended the Law on Protection and Promotion of Communities and their Members – specifying an 'added' legal guarantee about the representation of the Association of Serb Municipalities (in the north) in the Consultative Community Council within the Office of the President. The members of this team in the beginning refused to collaborate with the Ministry of Local Government Administration.

9. In the joint meeting held in Brussels on 3 December 2013, the Management Team announced that they did not start the drafting of the statute. However, according to a source in the northern Kosovo, a draft-Statute of the Association of Serbs Municipalities is completed by Serb representatives, but it is Belgrade that will have the final say in this process. It is apparent that the Draft-Statute is not agreed and/or shared with Kosovo Government as well as Brussels.

10. The debate about the statute of the Association of Serbs Municipalities is related to the legal status that the Serbian Government is willing to vest upon the Association. The aim of the Serbian Government is to establish an Association which is entitled to 'state/municipal powers' and maintains the position of a 'Regional Institution' with the authority to supervise and control municipal officers and political appointees. This would challenge the autonomy of municipalities in the north (and of course the provisions of the European Charter of Local Self-government and the Constitution of Kosovo that guarantee the autonomy of municipalities) and make the mayors controllable by the Association (and the Serbian Government) as a result. The two level structure of government (central-exercised by central government institutions while local-exercised directly by municipalities) as designed in the Ahtisaari Plan have to change (mainly through constitutional amendments) if the Association is shaped on those premises. Having this in mind, there is little hope to see the Association functional soon.

11. The establishment of an ethnic-based Association (which would serve as a regional authority) is in conformity with Serbian Government foreign policy claim to become a regional power and/or determinative factor. It suffices to establish mechanisms to control and manage the behavior of Serbian political leadership in Kosovo (as well as Bosnia and Herzegovina and Montenegro), to transform Serbia into a regional power, regardless of its economic, strategic or otherwise military power. In our opinion, such utilization of the dialogue and its outcomes shows the level of vigilance that Serbia employs before any decision in relation to Kosovo (and other neighboring countries) is reached. On the other hand, Kosovo's continuous lack of attentiveness in the dialogue process (especially with regard to the establishment of the Association) is generating problems in terms of governance in the north and diminishing the trust of Kosovo citizens in the dialogue per se.

12. In general, as long as the Serbian Government insists to shape the legal status of the Association of Municipalities the establishment of the Association would be barely impossible. Of note is the fact that Kosovo Municipalities already have established an Association, which is registered as an NGO and has no state powers.

- *The police*

13. The implementation plan demands the establishment of a working group to develop detailed plans and timelines for the integration of the Serbian Security personnel into Kosovo structures and appoint an Acting Regional Commander for Northern Kosovo by end of May 2013. Moreover, by mid-June 2013 Serbia had to commence the closure of its security structures' premises in Kosovo. The agreed deadline for the integration and dismantling process in the security area was 30 September 2013.

14. After the meeting of both Prime Ministers in Brussels, an acting Regional Police Director for the four northern municipalities (as proposed by Belgrade) was appointed on 25 June 2013 by Kosovo Minister of Internal Affairs. Moreover, on 22 July 2013 Kosovo adopted an

administrative instruction to establish and organize the Regional Police Directorate. To date the Regional Police Directorate is fully functional.

15. Regarding the dismantling of the Serbian parallel security structures, progress has been done with disclosure of approximately 800 security personnel in northern Kosovo by Serbia. On the other hand, according to the Government of Kosovo there is no progress on dismantling the so-called 'civil protection corps' and other MUP offices that are directly coordinated by Belgrade.

16. An increasing phenomenon is the establishment of several physical security companies (private companies), which employ mostly former-MUP officers and civil protection corps members. This is obviously perceived as Belgrade gradually altering its mode of intervention in the north, signaling that MUP presence will continue to be part of the developments there.

17. Regarding the integration of Serb individuals in the Kosovo Police, Kosovo has developed an integration plan (in close cooperation with EULEX). Moreover, Kosovo Police and EULEX have conducted the verification and background checks for all candidates/former MUP officers, who have expressed the willingness to join the KP.

18. However, though many former MUP officers are willing and have joined Kosovo Police, their ability to perform police functions under the guidance of Kosovo institutions is limited due to their trust and pressure from the Serbian Government. As a result, Kosovo Police officers acting in the northern region remain not reliable as far as their credibility and loyalty towards Kosovo and the application of law.

The Judiciary

19. The implementation plan calls for the establishment of a working group that consists of both Serbia and Kosovo representatives to develop a plan on the

integration of the Serbian judicial authorities into Kosovo structures, including basic courts and public prosecutors offices in Northern Kosovo. In accordance with the implementation plan agreed between parties the deadline for dismantling and integration justice structures was September 2013. Based on Kosovo government sources there has been limited progress in implementing the plan. Parallel court and prosecutorial offices are not closed and salary payments have not been terminated by Serbia. However, the Serbian parallel courts in Kosovo are declaring that they no longer accept criminal and civil cases. Such information is not reliable. The integration of Serb judicial staff in the Kosovo judicial institutions has not yet commenced. The Kosovo Judiciary will continue to operate as an integrated judiciary with one Appellate Court, one Basic Court and one Basic Prosecution Office for the Mitrovica region. Judiciary remains one of the key areas where there is no progress but its importance vis-a-vis the establishment of the rule of law and good governance remains indispensable.

- *Municipal elections*

20. The Kosovo Central Election Committee (CEC) organized and certified local elections and OSCE provided facilitation for the northern municipalities. These elections have been legitimated even by international actors including the EU Observation Mission as free and fair. CEC, for the first time after the war, has registered and certified all political entities and participants in municipal election in the northern part of Kosovo. During the Election Day there were some violent incidents in north Mitrovica. Following the election, the inauguration sessions have been completed in all municipalities in Kosovo, even in northern municipalities in accordance with Kosovo law and Brussels Agreement.

- **General issues:**

Development Fund

21. The Government of Kosovo has created the Development Fund for the North. This fund will consist of custom duties collected at the Jarinje and Bernjak border points and duties collected from goods that have northern Kosovo as their final destination.

22. This is a special fund in addition to the regular state funding that northern municipalities (similar to other municipalities in Kosovo) enjoy. On the other hand, EU has pledged a fund of 38.5 (million Euro), dedicated to the development of the north, and has conditioned the utilization of this fund on their cooperation with Prishtina authorities.

23. On this regard, the Government of Kosovo amended the Law on Budget in order to make the Fund effective. A Board consisting of the Minister of Finance, a representative of the northern municipalities and the EUSR in Kosovo became fully operational. Of note is the fact that municipalities are entitled, via official requests, to ask the Board to distribute and/or permit the support of a specific project through the fund. So far, none of the municipalities in the north have made

such request (either through direct request to the Ministry or to the Board).

24. There are two factors that determined this outcome. The first relates to the lack of information about the Fund and the means that municipalities have to utilize it. Of course, this relates to the absence of Kosovo institutions in the north as well as the lack of an information campaign that aims to inform the public and municipal authorities about the Fund. The second factor has to do with the funds coming from Belgrade. The Republic of Serbia, in its 2014 state budget, has committed approximately 300 million Euros ‘...planned for operation of state and local government, public enterprises and institutions in the province (Kosovo)¹ [emphasis added]. This provides an incentive for the representatives in the north to disregard the utilization of the Development Fund and remain attached to the Serbian Government.

- **On the implementing of the previously reached agreement:**

- **Freedom of Movement/Dismantling illegal barricades:**

25. The freedom of movement agreement is being implemented, except for the northern part of the border which continues to have obstacles mainly generated by political discontents. In the meantime, the ground transportation for the Kosovo police and customs officials operating at border points at Bernjak and Jarinje have gradually normalized, respectively in June and in December 2013.

26. The Iber river barricade still remains and attempts to remove it have updated its status from a ‘stone barricade’ to a ‘park barricade’. The Government of Serbia (confirmed by the presence of the Director for the Office for Kosovo, Marko Đurić, who inaugurated the beginning of the

transformation of the ‘stone barricade’ into a ‘park’) through an informal decision has transformed the stone barricade (in the Iber River Bridge) into a park (ironically labeled as the ‘Peace Park’). The park barricade was so constructed so as to maintain the physical division of the city of Mitrovica.

27. The two fold aim of the Serbian Government to maintain the physical division that this barricade symbolizes and circumvent its obligation to dismantle the barricade has all been achieved.

University Diplomas

28. The Agreement on reciprocal acceptance of University diplomas through certification by the European University Association (EUA) was achieved on July 2, 2011. There has been no progress on the acceptance of Kosovo diplomas by the Serbian side. The Constitutional Court of Serbia declared unconstitutional the Agreement on the recognition of university diplomas. Therefore, it remains under the Government of Serbia to find legal means how to conform the Agreement to its constitutional provisions.

Cadaster

29. The Agreement on Cadastre (2 July 2011) calls for the return to Kosovo of cadastral documents taken by Serbia during the war. The implementation Plan was agreed on 21 December 2011 but there has been no progress in implementation, besides for preparatory work. The Constitutional Court of Serbia ruled that the decision of the Government of Serbia on cadastre was unconstitutional and the government should find ways to make it compatible with the Constitution.

Customs Stamp

30. The agreement on custom stamps was reached on 2 September 2011 and the implementation by the Kosovo side started on 16 September 2011, while the Serbian side started implementation by the end of

¹ See more at: <http://media.unmikonline.org/?p=29450#sthash.iYkVwUq7.dpuf>

September of the same year. The agreement at the beginning was implemented fully only at four border crossings between two states. The agreement gradually started to be functional even at the other two border crossings after the implementation of the IBM agreement and the Agreement on customs revenue collection.

Civil Registration

31. The Civil Registry Agreement was reached on July 2, 2011. Implementation started on December 6, 2011. Substantial progress has been made so far, where out of 10,709 civil registry books that were taken from Serbia during the war, 10,264 civil registry scanned books have been handed over to Kosovo.

Regional Representation

32. Implementation of the Agreement on representation of Kosovo in regional organizations and initiatives has been limited. There were constant impediments by the Serbian side despite the reached Agreement, though in some cases, obstacles were removed when Kosovo requested EU support. The application of the footnote has exceeded its purpose, further endangering the statehood of Kosovo. This agreement managed was wrongly interpreted and

resulted in the application of footnote in forums and documents that have been outside the scope of the agreement whereby altering the constitutional denomination of Kosovo into a status neutral definition. In addition, this agreement can hinder Kosovo claim to statehood and impose risks to Kosovo accession in international/regional organizations.

IBM

33. Agreement on IBM at all six border crossings between Kosovo and Serbia was reached on 2 December 2011 and, the Technical protocol was initiated by both parties on 26 February 2012. The Kosovo government signed the Technical Protocol duly and conveyed it to the EU on 29 February 2012. The implementation process was followed by different incidents in the crossing point. However, as IBM is a complex process, the progress achieved till now can be considered as successful.

Liaison Agreement

34. The Agreement on liaison offices between Kosovo and Serbia was reached on 31 May 2013 in Brussels. In line with the agreement, the exchange of liaison officers had to begin on 15 July. Both Kosovo and Serbia started their diplomatic missions on 17 July.

OPINION PUBLICATIONS

Opinions and Comments are pieces that include articles through which we reflect our position as to certain policy issues to press, as well as contributions by prominent external experts on issues of topical relevance for us. In principle, opinions expressed are of the authors and do not necessarily represent those of the Group for Legal and Political Studies.



Group for Legal and Political Studies
Address: Rexhep Luci str. 10/5
Prishtina 10 000, Kosovo
Web-site: www.legalpoliticalstudies.org
E-mail: office@legalpoliticalstudies.org
Tel/fax.: +381 38 227 944